



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 11-03809  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Gina Marine, Esq., Department Counsel  
For Applicant: *Pro se*<sup>1</sup>

06/13/2012

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a security clearance. She is unable to mitigate the foreign preference security concern stemming from her ongoing exercise of Iranian citizenship by possession of a current Iranian passport. Likewise, she is unable to mitigate the foreign influence security concern stemming from her relatively strong family ties to Iran. Accordingly, this case is decided against Applicant.

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<sup>1</sup> Applicant had the assistance of legal counsel in preparation for the hearing, but she elected to represent herself during the hearing. Tr. 14–21.

## Statement of the Case

Acting under the relevant Executive Order and DoD Directive,<sup>2</sup> on or about November 1, 2011, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant Applicant access to classified information. The SOR is similar to a complaint, and it detailed the reasons for the action under the security guidelines known as Guideline C for foreign preference and Guideline B for foreign influence.

Applicant timely answered the SOR and requested a hearing. The hearing took place on May 1, 2012. The transcript (Tr.) was received on May 9, 2012.

## Findings of Fact

The gravamen of the SOR is as follows: (1) under Guideline C, Applicant is subject to a foreign preference security concern because she exercised and benefitted from her Iranian citizenship by possession of a current Iranian passport after becoming a U.S. citizen; and (2) under Guideline B, Applicant is subject to a foreign influence security concern because of her family ties to Iran, including traveling to Iran in 2003, 2005, and 2008 to visit relatives. In her answer to the SOR, she admitted the factual allegations except those in SOR ¶¶ 1.c and 2.f. Her admissions are accepted and adopted and incorporated herein as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 56-year-old senior management official of a privately-held firm, which has a facility clearance for its work with the State Department.<sup>3</sup> As a senior management official, she is required to have a security clearance at the same level as the firm's facility clearance.<sup>4</sup> She is a highly accomplished professional and executive with decades of experience in her field.<sup>5</sup>

Applicant is a native-born citizen of Iran. She came to the United States in 1978 to pursue a master's degree, which she completed in 1979. She intended to return to Iran after completing her degree, but events in Iran at the time intervened. Her father

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<sup>2</sup> This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

<sup>3</sup> The Directive, by mutual agreement, extends to other federal agencies, including the State Department.

<sup>4</sup> ¶ 2-104 of the NISPOM (Feb. 2006).

<sup>5</sup> Exhibits D-1, D-2, and D-3.

sent the rest of her immediate family to the United States in 1978, but he was unable to depart until 1980 or 1981. She has been employed by the same firm since 1983, which is the same year she married her husband. He is also a dual-citizen of the United States and Iran, and he is employed as a high-level engineer for another company. They have lived at the same address since 1985. She became a U.S. citizen via the naturalization process in 2003.

Applicant has held an Iranian passport since her immigration to the United States in 1978. Until becoming a U.S. citizen in 2003, it was her only passport and she used it for any foreign travel. This included her first trip back to Iran in 1990. Since obtaining U.S. citizenship, she used her U.S. passport for all foreign travel except for her travel to Iran. She used her Iranian passport to travel there in 2003 for a family visit, in 2005 when her father-in-law passed away, and in 2008 when a brother-in-law was seriously ill. Her husband traveled to Iran by himself in 2009 for his brother's funeral. She intends to travel to Iran in the future.<sup>6</sup> She is now in possession of a current Iranian passport, which was issued to her in 2008.<sup>7</sup> She and her husband have Iranian passports to facilitate their travel to Iran to visit family and relatives.<sup>8</sup> She intends to retain her current Iranian passport,<sup>9</sup> and she intends to renew it when it expires in 2013.<sup>10</sup>

At the hearing, Applicant stated her fundamental disagreement with and non-support of the current government of Iran. She considers her allegiance to be solely with the United States. To that end, she offered to give her Iranian passport to the firm's facility security officer (FSO).<sup>11</sup> She agreed that the FSO would retain custody of the passport, and she would only take possession of it for compassionate reasons, such as a serious illness or death of a family member in Iran. The FSO confirmed this offer, and stated that if Applicant took possession of the Iranian passport, he would comply with security requirements by notifying the Government of that action.<sup>12</sup>

Applicant has several family members who are citizens of and residents in Iran, which were alleged in the SOR. Her 90-year-old mother-in-law, brother-in-law, and sister-in-law live in Iran. Applicant stated that none of them have any connection or affiliation with the Iranian government, as her mother-in-law is elderly, her brother-in-law is a small business owner, and her sister-in-law is a teacher. In addition, Applicant has a number of extended relatives in Iran.

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<sup>6</sup> Tr. 111–112.

<sup>7</sup> Exhibit 2.

<sup>8</sup> Tr. 76.

<sup>9</sup> Tr. 125–126.

<sup>10</sup> Exhibit 2.

<sup>11</sup> Tr. 66-67.

<sup>12</sup> Tr. 157–167.

Concerning Applicant's country of birth, both parties requested that I take administrative or official notice of certain facts about Iran, and those requests were granted. I took notice of the facts as set forth in Department Counsel's written request,<sup>13</sup> which are summarized or condensed to the following matters. The February 1979 fall of the Shah of Iran, then a key U.S. ally, opened a long rift in relations between Iran and the United States. On November 4, 1979, radical students seized the U.S. Embassy in Tehran, and then held hostages until shortly after President Reagan's inauguration on January 20, 1981. The United States severed relations with Iran in 1980, and the two countries have had no official dialogue since. In the United States, the Iranian Interest Section is located in the Embassy of Pakistan. The U.S. protecting power in Iran is Switzerland. The U.S. Government has designated Iran as a state sponsor of terrorism, and it has special concerns about four particular areas of Iranian behavior: (1) its efforts to acquire weapons of mass destruction (e.g., its nuclear program); (2) its support of and involvement with terrorism; (3) its support of violent opposition to the Middle East peace process; and (4) its dismal record of human rights. Because Iran does not recognize dual citizenship, Iranian-born-naturalized U.S. citizens are considered solely Iranian citizens by Iranian authorities, and they are required to enter and exit Iran using an Iranian passport. When in Iran, they may be subject to surveillance, search, harassment, arrest, and detention or imprisonment.

I also took notice of the facts set forth in Applicant's written request.<sup>14</sup> Those matters are summarized or condensed as follows: (1) the Iranian-American community is a vital and integral element of the larger U.S. community; (2) in the United States, there are about half a million people identifying themselves as Iranian-American; (3) there are many notable Iranian-Americans who have made significant contributions in the various fields; (4) Iranian-Americans tend to be well educated; (5) Iranian-Americans have a high rate of business ownership and generate a high amount of business income; and (6) more than 75 percent of Iranian-Americans have family currently living in Iran, and they communicate regularly with family and friends in Iran.

At the hearing, Applicant easily demonstrated that she is an intelligent, well-spoken, and accomplished person. That was confirmed by favorable character evidence,<sup>15</sup> which included testimony from the firm's former CEO as well as her husband. The central point of all that information is that Applicant is highly regarded by those who know her and work with her, and that she is a reliable and trustworthy person who exercises good judgment. She made a cogent and organized presentation. She was at times emotional when expressing herself and how the takeover of Iran by a theocratic Islamic government has impacted her and her family. I found Applicant's testimony throughout the hearing was both sincere and credible.

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<sup>13</sup> Appellate Exhibit I.

<sup>14</sup> Appellate Exhibit II at 9–13.

<sup>15</sup> Exhibits C-1 through C-9.

## Law and Policies

It is well-established law that no one has a right to a security clearance.<sup>16</sup> As noted by the Supreme Court in *Department of Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>17</sup> Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.<sup>18</sup> An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.<sup>19</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>20</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>21</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>22</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>23</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>24</sup> The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.<sup>25</sup>

The AG set forth the relevant standards to consider when evaluating a person’s security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense

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<sup>16</sup> *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

<sup>17</sup> 484 U.S. at 531.

<sup>18</sup> Directive, ¶ 3.2.

<sup>19</sup> Directive, ¶ 3.2.

<sup>20</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>21</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>22</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>23</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>24</sup> *Egan*, 484 U.S. at 531.

<sup>25</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.<sup>26</sup> Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

### **Discussion**

In analyzing this case, I have considered several factors as most probative: (1) Applicant is in possession of a current Iranian passport; (2) she has used that passport for travel to Iran in 2003, 2005, and 2008 for family visits and she intends to travel there in the future; (3) she intends to retain her current Iranian passport until it expires in 2013; (4) she intends to renew the Iranian passport upon expiration; (5) Applicant's husband is a dual-citizen of Iran and travels there using an Iranian passport; (6) in addition to her husband, Applicant has relatively strong family ties to family in Iran; and (7) Iran is ruled by an authoritarian government that is hostile to the United States. With these in mind, it is appropriate to address the particular security guidelines.

Under Guideline C for foreign preference,<sup>27</sup> the suitability of an applicant may be questioned or put into doubt due to an applicant's foreign preference. The overall concern under the guideline is:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.<sup>28</sup>

Given the evidence of Applicant's ongoing exercise of Iranian citizenship by possession of a current Iranian passport, the Government has established its case under Guideline C. In reaching this conclusion, I considered the following disqualifying condition:

AG ¶ 10(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport.

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<sup>26</sup> Executive Order 10865, § 7.

<sup>27</sup> AG ¶¶ 9, 10, and 11 (setting forth the security concern and the disqualifying and mitigating conditions).

<sup>28</sup> ¶ AG 9.

The guideline also provides that certain facts and circumstances may mitigate foreign preference security concern. I have considered all the mitigating conditions as follows:

AG ¶ 11(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

AG ¶ 11(b) the individual has expressed a willingness to renounce dual citizenship;

AG ¶ 11(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

AG ¶ 11(d) use of a foreign passport is approved by the cognizant security authority;

AG ¶ 11(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated;

AG ¶ 11(f) the vote in a foreign election was encouraged by the United States Government.

None of these mitigating conditions, individually or in combination, apply in Applicant's favor. She is exercising her Iranian citizenship on a daily basis by possession of an Iranian passport after becoming a U.S. citizen in 2003. She used that passport, and by doing so held herself out to Iranian authorities as an Iranian citizen, when she traveled there in 2003, 2005, and 2008. Although her motivation to travel there was benign (e.g., family visits), that does not change or alter the operative facts. Moreover, she has no intention to rid herself of the Iranian passport, and she intends to retain it, renew it, and use it in the future. Her proposal to have her firm's FSO take custody of the passport, unless she needs it for compassionate reasons, is not a viable solution. Her proposal does not mitigate the security concern because it is conditional in nature, it is a situation that she would effectively control, and she would in a practical sense still have possession (not actual, but constructive) of the Iranian passport. No mitigation is available under these circumstances.

Under Guideline B for foreign influence,<sup>29</sup> the suitability of an applicant may be questioned or put into doubt due to an applicant's foreign connections and interests. The overall concern under the guideline is:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a

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<sup>29</sup> AG ¶¶ 6, 7, and 8 (setting forth the security concern and the disqualifying and mitigating conditions).

way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.<sup>30</sup>

Given the evidence of Applicant's family ties to Iran, a country that is hostile to the United States, the Government has established its case under Guideline B. In reaching this conclusion, I considered the following disqualifying condition:

AG ¶ 7(a) contact with a foreign family member, business, or professional associate, friend, or other person who is a citizen of or a resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

The guideline also provides that certain facts and circumstances may mitigate foreign influence security concern. Given the evidence, I have considered the following mitigating conditions as most pertinent:

AG ¶ 8(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States; and

AG ¶ 8(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

Applicant has all the indicators of a mature, stable, responsible, and trustworthy person. She was articulate, serious, and credible at the hearing. Nevertheless, Iran's hostility to the United States and the heightened risk it creates place a heavy burden on Applicant to show her family ties to Iran are mitigated. On this point, she has relatively strong ties to family members in Iran. The best evidence on this point is her travel to Iran (2003, 2005, and 2008), which shows the strength of her family ties. But she has also lived in the United States for more than 30 years, which is nearly all of her adult life and all of her working life. She has been a naturalized U.S. citizen for nearly ten years. She has not previously worked in the defense industry or held a security clearance. She is married to a dual citizen of Iran. Considering the evidence as a whole, including her

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<sup>30</sup> AG ¶ 6.



intent to travel to Iran in the future and the risks associated with that travel, I cannot conclude that it is unlikely that she will be placed in a position of compromise or conflict in a security clearance context. The situation in Iran is too uncertain and unstable and risky to reach that conclusion.

In deciding this case, I acknowledge that Applicant has a heavy burden to meet as an Iranian-American who holds an Iranian passport. For example, the Appeal Board recently reversed a favorable decision in a Guideline B and C case involving an Iranian-American who gave an Iranian passport to an FSO, attempted to retrieve it without success, obtained another Iranian passport, and then used that passport to travel to Iran, albeit for a benign purpose.<sup>31</sup> That decision was consistent with a long line of Appeal Board caselaw involving Iranian-American applicants.<sup>32</sup> But an Iranian-American does not have an impossible or insurmountable burden to meet in a security clearance case. A few months ago I decided a Guideline B case for an Iranian-American applicant, and that case was not appealed.<sup>33</sup> In that case the most probative facts were that the applicant did not possess a current Iranian passport, had lived in the United States for more than 30 years, had held a security clearance for 20 years, had not traveled to Iran since departing in 1979, and had no intention of traveling to Iran in the future. I see that case as factually distinguishable from Applicant's case. All in all, both the facts and caselaw militate against a favorable decision for Applicant.

Following *Egan* and the clearly-consistent standard, the evidence leaves me with doubt about Applicant's suitability for a security clearance. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. Indeed, Applicant presented a good deal of evidence that is quite favorable. I also gave due consideration to the whole-person concept.<sup>34</sup> Having done so, I conclude that Applicant has not met her ultimate burden of persuasion to obtain a favorable clearance decision.

### Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline C:	Against Applicant
Subparagraphs 1.a–1.b:	Against Applicant

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<sup>31</sup> ISCR Case No. 11-01888 (App. Bd. Jun. 1, 2012).

<sup>32</sup> See *e.g.*, ISCR Case No. 07-12471 at 8–10 (AJ Foreman May 30, 2008) (reviewing Appeal Board caselaw involving Iranian-American applicants under the previous and current AG).

<sup>33</sup> ISCR Case No. 11-03503 (AJ Leonard Feb. 10, 2012).

<sup>34</sup> AG ¶ 2(a)(1)–(9).

Subparagraph 1.c:	For Applicant <sup>35</sup>
Paragraph 2, Guideline B:	Against Applicant
Subparagraphs 2.a–2.d:	Against Applicant
Subparagraph 2.e:	For Applicant <sup>36</sup>
Subparagraph 2.f:	Withdrawn
Subparagraph 2.g:	Against Applicant

### Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Michael H. Leonard  
Administrative Judge

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<sup>35</sup> The allegations in SOR ¶¶ 1.c and 2.e both concern Applicant's interest in real estate in Iran. Based on Applicant's testimony and documentary evidence (Exhibits B and B-1) showing that the Iranian government effectively confiscated the real estate, I am persuaded that Applicant has little if any ownership interest remaining in the real estate. Whatever does remain is mitigated because its value is not substantial—indeed, it is likely quite minimal—compared with the value of financial interests held by Applicant and her husband in the United States. Accordingly, these two allegations are decided for Applicant and will not be discussed further.

<sup>36</sup> *Id.*