



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 11-12187
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: Joseph Testan, Esq.

January 31, 2013

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a dual citizen of both the United States and Iran. She exercised her Iranian citizenship by using her Iranian passport to travel to Iran on three trips between 2005 and 2008, and by voting in the 2008 Iranian parliamentary election. She has two sisters, a mother-in-law, and father-in-law, who are presently Iranian citizens and reside in Iran. Her husband and youngest sister reside with her in the United States, and are Iranian citizens. Her mother is a dual citizen of both Iran and the United States, residing with Applicant in the United States. Applicant's Iranian passport has been destroyed, she is willing to renounce her Iranian citizenship, and she has ceased almost all communication with her family still in Iran. Security concerns raised under Foreign Preference and Foreign Influence are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On August 22, 2012, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under the Guidelines for Foreign Preference and Foreign Influence. The action was taken under Executive Order (EO)

10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective after September 1, 2006.

Applicant answered the SOR (Answer) on July 31, 2012, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on December 3, 2012. DOHA issued a notice of hearing on December 3, 2012, scheduling the hearing for January 8, 2013. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 and 2, which were admitted without objection. The Government also offered documents pertaining to Iran, marked GE 3, for administrative notice. Applicant offered Exhibits (AE) A through J, which were admitted without objection. Applicant called three witnesses, and testified on her own behalf. DOHA received the transcript of the hearing (Tr.) on January 18, 2013.

Findings of Fact

Applicant admitted the SOR allegations 1.a, 1.c, 1.d, 2.a, 2.b, and 2.c. She denied allegation 1.b. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 33 years old. She has been employed by a defense contractor since June 2011 and seeks a clearance in connection with her employment. She graduated with a Doctorate of Science and Mechanics awarded to her by a prestigious American university in May 2011. (GE 1; Tr. 50-57.)

Applicant was born in February 1979 in the United States.¹ Her parents were Iranian citizens studying in the United States on student visas at the time of her birth. Applicant acquired U.S. citizenship through her birth in the United States. However, because she was the child of Iranian citizens, she also acquired Iranian citizenship through her parents. Before her first birthday, Applicant's parents returned to Iran because their visa expired. Applicant, an infant at the time, accompanied her parents to Iran. In order to facilitate travel to Iran, her parents obtained an Iranian passport for her. Applicant, through the help of the Swiss embassy in Iran, maintained her American passport while living in Iran. She also renewed her Iranian passport to facilitate travel into and out of Iran. She lived in Iran from the age of six-months to 23. During that time, she never left Iran. (GE 1; GE 2; Tr. 58-60, 74-77.)

Applicant always intended to return to the United States to live. As she grew up, she requested to be permitted to return, but her father would not permit her to go alone. She testified:

¹ The month and date of her birth is relevant because on "February 1, 1979, exiled leader Ayatollah Ruhollah Khomeini returned from France to assume control of the revolution and established himself as Supreme Leader of a new, theocratic republic guided by Islamic principles." (GE 3, Item I at page 5.)

I love this country because only a woman that has independence, modern mentality is what I am saying, because you don't have human rights over there, and it is very important for an educated woman to, you know, make sure that she has equal, you know, rights as men and can work in that country and continue the major that she loves. For example, I wanted to be Engineer. I couldn't continue my major there. Women cannot do Mechanical Engineer [sic], for example. So, I love the United States because it gives me the opportunity that I never could have in Iran. (Tr. 67-68.)

Finally, in 2002, Applicant married a medical doctor in Iran who intended to move to the United States. At the age of 23, Applicant moved back to the United States in approximately 2003. Applicant and her husband divorced shortly thereafter. (GE 1; GE 2; Tr. 96-99.)

In 2006, Applicant married her current husband. He was born in Iran and sought political asylum in the United States because he was opposed to the Iranian regime. He was granted asylum on April 9, 2004. He maintains his status as a citizen of Iran but resides permanently in the United States. His parents, Applicant's mother-in-law and father-in-law, still reside in Iran and are Iranian citizens. His father is a retired banker who now does farming work. Neither of his parents have ever had a connection to the military or government of Iran. Applicant has not communicated with her in-laws in the past four months now that she is aware of the Government's security concerns. Prior to that, she spoke to them once per month. They have never visited Applicant in the United States. (GE 1; GE 2; AE I; Tr. 66-67, 91-92.)

Applicant's father is deceased. Her mother is now a naturalized U.S. citizen and an Iranian citizen. She worked as a public school teacher in Iran, but is retired. She may be entitled to a small pension in Iran, but does not plan to utilize it. Applicant's mother holds an American passport issued April 6, 2012. She resides with Applicant in the United States. She owns an apartment in Iran valued at approximately \$100,000, in which two of Applicant's sisters currently reside. (GE 1; GE 2; AE C; Tr. 60-61, 77-79.)

Applicant has three sisters. Her youngest sister is a legal permanent resident of the United States and currently resides with Applicant. She is a citizen of Iran. She has been a resident of the United States since December 29, 2011. She attends high school in the United States. (GE 1; GE 2; AE C; Tr. 61-62, 84.)

Applicant's middle sister is also a legal permanent resident of the United States. She obtained permanent resident status on February 17, 2012. However, after living in the United States for approximately a month-and-a-half to obtain her residency status, she returned to Iran to finish her studies at an Iranian university. She has recently completed her coursework and intends to return to the United States permanently within two-to-three months. She has supported herself while attending school through work at a local coffee shop. She maintains Iranian citizenship. Applicant used to maintain monthly communication with this sister, but Applicant has not spoken to this sister in the

past three months because she is angry that her sister has not yet returned to live permanently in the United States. (GE 1; GE 2; AE C; Tr. 62-63, 85-88.)

Applicant's oldest sister is a citizen and resident of Iran. Applicant petitioned for this sister to be granted permanent residency in the United States. The petition was approved on November 2, 2009. She is now on a waiting list for a visa to immigrate to the United States. Applicant expects the visa process to take a few more years. Applicant testified that her sister intends to move to the United States once the visa is granted. This sister is also employed in a coffee shop and is self-sufficient. She is not married and has no children. Applicant has only had communications once in the past three months, via email, with this sister. (GE 1; GE 2; AE B; Tr. 63-65, 86-90.)

Applicant traveled to Iran, using her Iranian passport, in May 2005, August 2006, and May 2008. Each trip was to visit family. In April 2011, she chose to forgo traveling to Iran to visit her family and instead had her sisters meet her in Turkey because it was safer. She did not want to travel back into Iran. Applicant's Iranian passport was destroyed by her facility security officer on June 20, 2011. Applicant has no intent to travel to Iran again. She testified that she is willing to renounce her Iranian citizenship. However, she indicated that formal renunciation would require her to travel to Iran and petition the Iranian Supreme Court in person. She provided documentation of this requirement to support her claim. She does not want to return to Iran and has no other legally available method to perfect her renunciation. (GE 1; GE 2; AE D; AE E; Tr. 69-71.)

In 2008, the Iranian government held parliamentary elections.² Applicant learned of the election from watching American new programs and voted in the election from the United States. She hoped the election would bring positive changes to Iran. At the time she voted, she was a student at an American university and was not aware of her future need for a security clearance. She testified that she will not vote in any subsequent Iranian elections. (GE 2; Tr. 72-74.)

Applicant has no assets in Iran. However, she and her husband have amassed \$16,000 in bank accounts and \$30,622 in a retirement savings account in the United States. She does not financially support anyone in Iran. She has not told any of her Iranian relatives of her work as a government contractor. If Applicant were ever threatened through her Iranian relatives, she testified that she would inform the Federal Bureau of Investigations and her facility security officer. She indicated that she does not support the current Iranian government. (AE H; Tr. 66-68, 93-95.)

Applicant has only been working for the government contractor for a year-and-a-half. However, during that time she has impressed her colleagues who testified on her behalf. Two witnesses from her company testified that Applicant is reliable, trustworthy, and had no reservations recommending her for a security clearance. Her performance evaluation from her first year indicates she was "outstanding" and she was recommended for a performance award. A friend that has known Applicant and her

² GE 3, Item I at page 5-6.

family also testified that she exercises good judgment. In addition, she presented four letters of support all attesting to her honesty and good character. (AE F; AE G; AE J; Tr. 12-33.)

Iran³

The United States has not had diplomatic relations with Iran since 1980, and nearly all trade and investment with Iran has been prohibited. Iran has sought to illegally obtain U.S. military equipment and other sensitive technology. The United States has defined the areas of objectionable Iranian behavior as:

- Iran's efforts to acquire nuclear weapons and other weapons of mass destruction (WMD);
- Its support for and involvement in international terrorism;
- Its support for violent opposition to the Middle East peace process; and
- Its dismal human rights record.

The United States has designated and characterized Iran as the world's leading state sponsor of terrorism. Iran provides critical support to non-state terrorist groups. Iran has sought to make the United States suffer political, economic, and human costs. Further, Iran has engaged in efforts to sow violence and undermine stability in Iraq and Afghanistan, including lethal support for groups that are directly responsible for U.S. casualties.

The government of Iran has committed numerous, serious human rights abuses against the Iranian people. Abuses include politically motivated violence and repression, including torture, beatings and rape; severe officially sanctioned punishments, including amputation and flogging; arbitrary arrests and detentions, often holding individuals incommunicado; little judicial independence and few fair public trials; severe restrictions on right to privacy and civil liberties, including freedoms of speech and the press, assembly, association, and movement; and monitoring the social activities of citizens, entering homes and offices, monitoring telephone conversations and internet communications, and opening mail without court authorization.

The Iranian government does not recognize dual nationality and will treat U.S.-Iranian dual nationals solely as Iranian citizens. Iranian authorities have prevented a number of U.S. citizen academics, scientists, journalists, and others who travel to Iran for personal, cultural, or business reasons from leaving the country and in some cases have detained, interrogated, and imprisoned them. Iranian security personnel may at times: place foreign visitors under surveillance; monitor hotel rooms, telephones and fax machines; and search personal possessions in hotel rooms.

³ GE 3.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are applicable in this case:

- (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;
- (b) connections to a foreign person, group, government, or country that creates a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and
- (d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant's two sisters and her parents-in-laws are citizens and residents of Iran. Her husband and youngest sister are also citizens of Iran, residing in the United States with Applicant. Applicant's mother is a dual citizen of both Iran and the United States, and resides with Applicant. Iran is a country that is clearly hostile to the United States.⁴ Iran is considered the world's leading state sponsor of terrorism; it commits espionage against the United States; and the government of Iran has committed numerous, serious human rights abuses against its people and citizens of the United States traveling to Iran. Applicant's significant familial contacts with Iran and her cohabitation with others who have ties to Iran create a heightened risk of foreign exploitation,

⁴ See ISCR Case No. 05-03250 at 5 (App. Bd. Apr. 6, 2007.)

inducement, manipulation, pressure, and coercion. It also creates a potential conflict of interest. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(a) the nature of the relationship 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 U.S.; and

(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 U.S., that the individual can be expected to resolve any conflict of interests in favor of the U.S. interests.

Applicant was born in the United States and has always identified herself as an American. Growing up in Iran, she was anxious to return to the United States, but her father prohibited her. She married with the intent of finally being permitted to leave Iran. When she moved back to the United States, she did so permanently. She loves the freedoms the United States represents and has taken advantage of its opportunities to study in her chosen field of interest and obtain a doctorate degree here. After graduating with her doctorate, she was hired by a government contractor. Prior to being hired, she had no knowledge of security rules and regulations.

Applicant traveled three times between May 2005 and May 2008 to visit her family in Iran. However, in April 2011, she determined it was dangerous to visit Iran and met her sisters in Turkey. This decision shows that even prior to working for a government contractor, Applicant was cautious and prudent in her dealings with Iran. Her husband, mother, and youngest sister all reside in the United States and are safely outside of the Iranian government's influence. They have no plans to return to Iran. In fact, her husband has little love of Iran after being forced to seek refuge in the United States due to his beliefs.

Once Applicant started work with the government contractor, she immediately presented her Iranian passport for destruction to her facility security officer. She does not plan to return to Iran. Her siblings, like Applicant, are educated and seek the freedoms available in the United States that are not available in Iran. Her oldest sister already has been granted permanent residency status and plans to move to the United States once she is granted a visa. Her other sister still in Iran has obtained a permanent residency card and will return to the United States permanently in a few months, after she graduates. Applicant has eliminated almost all contact with her siblings and in-laws in Iran in the past four months. None of Applicant's foreign family members have any connection with the Iranian government. She explained that if her foreign family members were threatened, she would immediately notify the proper authorities. She

understands the nature of the Iranian government and finds it repugnant. She would do nothing to aide such a regime.

I find that it is unlikely Applicant will be placed in a position of having to choose between the interests of the United States and the interests of the Iranian government, a terrorist organization, or her Iranian family members. I further find there is no conflict of interest, because Applicant has such deep longstanding relationships and loyalties in America that she can be expected to resolve any conflict of interest in favor of the United States. AG ¶ 8(a) is partially applicable. AG ¶ 8(b) is applicable.

Guideline C, Foreign Preference

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. The following is potentially applicable in this case:

(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; and
- (7) voting in a foreign election.

Applicant is a dual citizen of the United States and Iran. She possessed a valid Iranian passport that she used to travel to Iran three times between 2005 and 2008, despite that fact that she was a United States citizen by birth and had a U.S. passport. She also voted in a 2008 Iranian election. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate foreign preference security concerns are described under AG ¶ 11. Three are potentially applicable:

- (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- (b) the individual has expressed a willingness to renounce dual citizenship; and

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant's dual citizenship is based solely on her parent's Iranian citizenship. She was a U.S. citizen by birth. She returned to Iran as an infant and her parents obtained an Iranian passport for her to facilitate their travel. As soon as she was able, she left Iran. While she exercised her Iranian citizenship in 2005 to 2008 by using her Iranian passport on her trips to Iran, she has no future interest in returning to Iran, as demonstrated by her 2011 trip to Turkey. That decision was made before she applied for a security clearance. Now that she is aware of security regulations, she is even more adamant about avoiding future exercise of her Iranian citizenship. She will not vote in future Iranian elections. Applicant expressed a willingness to renounce her Iranian citizenship. She has not formally done so because she does not want to return to Iran, which is a requirement. However, she does not intend to utilize her Iranian citizenship again. Her Iranian passport was surrendered to her facility security officer and it was destroyed. AG ¶¶ 11(a), 11(b) and 11(e) are mitigating.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is well respected by her colleagues and friends who testified and wrote letters on her behalf. She performs well at her job. She is an American by birth and showed through her testimony that her allegiances are solely to that of the United States. She would not do anything to jeopardize the freedoms and opportunities that she has found here. She no longer has an Iranian passport and verbally renounced her

citizenship with Iran. All of her decisions to exercise Iranian citizenship occurred before applying for a clearance and do not reflect poorly on her character. She has done all that she is capable of to bring her family out of Iran. She has no more involvement with the immigration process, as the permanent residency petitions have all been granted. Overall, the record evidence leaves me without serious questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Foreign Preference and Foreign Influence security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Jennifer I. Goldstein
Administrative Judge