



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



In the matter of: )  
)  
) ADP Case No. 11-15022  
)  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Philip J. Katauskas and Julie R. Mendez, Esq., Department Counsel  
For Applicant: Richard Murray, Esq.

03/05/2013

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant immigrated the United States in 1998, and became a naturalized U.S. citizen in 2002. She does not have strong family ties or substantial property interests in Iran. Her family members in Iran do not subject her to a risk of foreign influence or exploitation. She has established deep and longstanding relationships and loyalties in the United States, and she can be expected to resolve any conflict of interest in favor of the United States. Foreign influence and foreign preference concerns are mitigated. Eligibility to hold a position of public trust is granted.

**Statement of the Case**

Applicant submitted an electronic questionnaire for a public trust position (Application) on September 4, 2010. On August 20, 2012, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) listing security concerns under Guideline B (foreign influence), and Guideline C (foreign preference).<sup>1</sup> Applicant

<sup>1</sup> DOHA acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the

answered the SOR on September 21, 2012, and requested a decision without a hearing. The Government requested a hearing before an administrative judge on October 5, 2012. The case was assigned to me on November 9, 2012.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 19, 2012, scheduling a hearing for December 10, 2012. On November 29, 2012, Applicant's counsel entered his appearance and requested a postponement, which I granted. An amended notice of hearing was issued on December 5, 2012, scheduling a hearing for January 8, 2013. At the hearing, the Government offered exhibits (GE) 1 through 3. Applicant testified, presented the testimony of two witnesses, and submitted exhibits (AE) 1 through 6. GEs 1 and 2 and AEs 2 through 6 were admitted without objection. GE 3 and AE 1 were marked for identification and admitted for administrative notice purposes. DOHA received the hearing transcript (Tr.) on January 16, 2013.

### **Findings of Fact**

Applicant admitted the factual allegations in SOR ¶¶ 1.a, 1.c, 1.e, 1.f, 2.a, and 2.b, with explanations. Concerning SOR ¶ 1.b, she admitted that her husband is a citizen of the United States and Iran, but denied that he is a citizen of Australia. Regarding SOR ¶ 1.d, she admitted her mother is a citizen of Australia and Iran, but denied that she is a resident of Iran. Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, and having observed Applicant's demeanor and considered her testimony, I make the following findings of fact.

Applicant is a 48-year-old employee of a defense contractor. She and her husband were born and raised in Iran. After graduating from high school (around 1982, at age 18), Applicant followed her older sister into Europe, where she lived with relatives for approximately 18 months. Applicant explained that after the 1979 Iranian revolution, she and her family had little opportunity for jobs, education, and to prosper in Iran because they were non-Muslims. Applicant, her family, and her husband are practicing Zoroastrians. In 1984 (age 20), she emigrated to Australia seeking better opportunities. Applicant became a naturalized Australian citizen, received an Australian passport, and lived there until 1998. She attended college in Australia and received a postgraduate diploma in management (two year degree).

Applicant's husband travelled to the United States in 1977-1978, seeking an advanced college degree. He was 26 years old when he left Iran. After the 1979 Iranian revolution, his scholarship was cancelled, and he did not return to Iran. He remained in the United States, and became a naturalized U.S. citizen in 1998. Applicant met her husband while she was living in Australia. They were married in 1998, and she emigrated to the United States that same year with her husband. They decided to make

their home in the United States because of the better opportunities available. Applicant became a naturalized U.S. citizen in 2002.

From 1998 until May 2009, Applicant worked for a contractor providing services to U.S. government agencies. Applicant testified that she held public trust positions with two government agencies for many years. She started working for her current employer, a government contractor, in May 2009. There is no evidence that she ever compromised or caused others to compromise classified or sensitive information. Nor is there any evidence of trustworthiness concerns or issues concerning her ability to protect sensitive information. Applicant's husband has several advanced education degrees from U.S. universities, including a doctorate degree in electrical engineering. He worked as a university professor for several U.S. universities, as an examiner for a government agency, and currently he works as a quality assurance lead for a contractor servicing a government agency.

Applicant's husband has three siblings who are residents and citizens of Iran, with whom he maintains infrequent contact. His brother works for a private company in Iran. His older sister is retired, and she is divorced with two children. The other sister is a homemaker, and she has four children. Applicant's husband testified that his family members are also practicing Zoroastrians. They are not allowed to serve in the Iranian military services, and are not connected in any way to the Iranian government. Applicant has contact with her siblings-in-law approximately three to four times a year, mostly during special occasions.

Applicant has two daughters born in the United States, ages 12 and 10. She and her husband own a home in the United States with an estimated value of \$1.5 million, owing a mortgage of around \$400,000. Both she and her husband have 401(k) retirement plans with a value of around \$300,000 each. Applicant and her husband do not own any property or financial interest in Iran. They have a bank account with a value of around \$60,000 in Australia, as well as retirement plans they earned while working in that country, with a value of around \$20,000 to \$30,000.

Applicant's father died in Iran in 2001. She claimed that the only relatives she has living in Iran are an uncle and one cousin from her father's side. The last time she had contact with her father's relatives was in 2007-2008. Applicant's mother, 82, and her sister emigrated to Australia in 2008. Both are now naturalized citizens and residents of Australia. Applicant's mother visited Iran in 2011. Applicant believes that because of her mother's age (82), it is very unlikely that her mother will ever travel to Iran again.

Applicant has extended family members (aunts, uncles, and numerous cousins) that live in Australia, Germany, and the United States. Many of them are dual citizens of Iran and their country of residency. In 2007, Applicant travelled to Germany to visit with her relatives in that country.

Since 1998, Applicant travelled to Iran on four occasions. She visited her husband's family in Iran in 1999, after their wedding. In 2001, she visited her father

when he was ill with cancer. In 2002, a year after the death of her father, she travelled to Iran to visit with her relatives living in Iran. And, in 2008, she travelled to Iran to help her mother with her move to Australia. Applicant used her Iranian passport to travel to Iran.

After submitting her September 2010 SCA, Applicant was made aware of the security concerns raised by her and her husband's possession of valid foreign passports. After she was made aware of these security concerns, on November 2012, Applicant turned over both foreign passports (Australia and Iran) to her company's facility security officer (FSO). (AE 2) In January 2013, Applicant destroyed both foreign passports in the presence of her FSO, and then returned the mutilated passports to the FSO. (AE 3) Applicant's husband also destroyed both of his foreign passports.

Both Applicant and her husband testified that they do not intend to travel to Iran ever again for any reason. They intend to use only their U.S. passports for any foreign travel. They would have renounced their Iranian citizenship, but they were told that Iran does not accept the renunciation of citizenship and that the renunciation process would have brought too much attention to them.

Applicant considers herself and her family to be loyal U.S. citizens. Applicant and her husband have chosen to live in the United States, and they are raising and educating their children as Americans. They are committed to building their future and their children's future in the United States. Applicant testified that she has no reason to be loyal to any other country, but the United States. She has lived most of her adult life outside of Iran, and she has no allegiance to Iran. Applicant is considered to be honest, trustworthy, and dependable. Both she and her husband are involved in their community and their church's activities.

I take administrative notice of the following facts concerning Iran and its relations with the United States:

The United States has not had diplomatic relations with Iran since 1980, and nearly all trade and investment with Iran is prohibited. Iran has sought to illegally obtain U.S. military equipment and sensitive technology. Sanctions have been imposed on Iran because of its sponsorship of terrorism, its refusal to comply with international obligations on its nuclear program (Iran's efforts to acquire nuclear weapons and other weapons of mass destruction (WMD)), and its dismal human rights record.

The United States has designated 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.

### **Policies**

Positions designated as ADP I and ADP II are classified as “sensitive positions.” Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3. “The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security.” Regulation ¶ C6.1.1.1. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. See Regulation ¶ C8.2.1.

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for a public trust position. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing suitability for a public trust position. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable must be considered.

A public trust position decision resolves whether it is clearly consistent with the national interest to grant or continue an applicant’s access to sensitive information. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her access to sensitive information.

Persons with access to sensitive and classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any

reasonable doubt about an applicant's suitability for access in favor of the Government. "[Access to sensitive information] determinations should err, if they must, on the side of denials." AG ¶ 2(b). Eligibility for a public trust position decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing access to sensitive information.

## **Analysis**

### **Foreign Influence**

AG ¶ 6 explains the trustworthiness concern about "foreign contacts and interests" stating:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, [he or she] 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.

Applicant has foreign connections that present a potential risk of divided loyalties or undue foreign influence. Applicant has uncles, aunts, cousins, and other extended family members, including those on her husband's side of the family, that are resident citizens of Iran. Applicant's mother, her siblings, and some of her extended family members are dual citizens of Iran and Australia residing in Australia. She also has other extended family members who are dual citizens of Iran and either Germany or the United States, and who are residents of Germany or the United States. Four disqualifying conditions under AG ¶ 7 are potentially applicable:

- (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 create 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;
- (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; and

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant's relationship with her and her husband's family members who are citizens and residents in Iran is sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion," and a potential conflict of interest between Applicant's "obligation to protect sensitive information or technology and [her] desire to help" her relatives and friends living in Iran. She has close affection for her mother, siblings, and extended family members living in Australia. She communicates with her immediate family members on a frequent basis.

The mere possession of close family ties with family living in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence collection operations against the United States, or the country has a significant problem with lawless elements or terrorists.

Iran is a country with interests inimical to those of the United States. It actively sponsors terrorism against the United States and its allies, and it has used violence to undermine the stability of Iraq and Afghanistan. The government of Iran sanctions abuse, violence, and repression against its own citizens. The U. S. State Department has warned of the danger of travel to Iran for both solely U. S. citizens and those holding dual nationality with Iran. Iran does not recognize dual nationality, and it treats dual nationals as Iranian citizens.

There is no evidence that intelligence operatives from Iran or terrorists seek or have sought classified or economic information from or through Applicant or her family living in Iran. Notwithstanding, an Applicant should not be placed into a position where she might be forced to choose between loyalty to the United States and a desire to assist her family living in Iran. Her relationships with her family living in Iran create a potential conflict of interest. Her relationship with them is sufficiently close to raise a security concern about her desire to assist them by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant's contacts with her family living in Iran, raising the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(d) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence trustworthiness concerns including:

(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 U.S.;

(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 interest in favor of the U.S. interest;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant left Iran at 18, seeking better education, job opportunities, and religious freedom. After a short stay in Europe, she immigrated to Australia in 1984 (age 20), and became an Australian naturalized citizen. She married her husband and immigrated to the United States in 1998, at age 34. She has lived in the United States for 15 years. During this period, Applicant and her husband have established deep and longstanding relationships and loyalties in the United States. She has two U.S. born daughters who are being raised as Americans.

Applicant and her husband have significant proprietary and financial interests in the United States, including their \$1.5 million home (owing a \$400,000 mortgage); their 401(k) retirement plans (around \$300,000 each); and their jobs. Since 1998, Applicant worked for government contractors and held positions of trust without any security incidents. She has worked for her current employer, a government contractor, since May 2009. Applicant's spouse worked as a university professor, for a government agency, and now works for a government contractor providing services to a government



agency. Additionally, they both have strong ties in their community as shown by their participation in community activities, and their involvement in their church, which includes holding important positions of responsibility.

Applicant has a strong affection and sense of obligation to her mother and siblings living in Australia, who are dual nationals of Australia and Iran. Because most of Applicant's relatives are living outside of Iran (Australia, Germany, and the United States), the security concerns are less. It is unlikely that the government of Iran will be able to use Applicant's relatives living outside of Iran to manipulate or coerce her. Applicant's mother is 82 years old. Applicant believes that because of her mother's age, it is not likely that her mother would ever travel again to Iran. Applicant has no immediate family members living in Iran. Her husband has siblings who are residents and citizens of Iran with whom Applicant and her husband have infrequent contact.

Considering the evidence as a whole, Applicant is not able to fully meet her burden of showing there is "little likelihood that [her relationships with her relatives, friends, and associates who are Iranian citizens and living in Iran] could create a risk for foreign influence or exploitation." AG ¶ 8(a) has limited applicability and does not mitigate the foreign influence concerns.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by her relationships with her family living in Iran. Although there is no evidence that Iranian government agents or terrorists have approached or threatened Applicant or her family living in Iran because of her work for the United States, she is nevertheless potentially vulnerable to threats and coercion made against her family living in Iran. Iran is a country with interests inimical to those of the U.S. It actively supports terrorism and is repressive to its own citizens. The U. S. State Department has warned of the danger of travel to Iran for both solely U. S. citizens and those holding dual citizenship with Iran.

A key factor in the AG ¶ 8(b) analysis is whether Applicant has "deep and longstanding relationships and loyalties in the U.S." Applicant worked for government contractors since 1998, sometimes holding positions of trust. There is no evidence that she ever compromised or caused others to compromise classified or sensitive information. There is no evidence of any trustworthiness concerns or issues concerning her ability to protect sensitive information.

Applicant's husband and two daughters are naturalized U.S. citizens. Her spouse worked for a government agency, and currently works for a contractor providing services to a government agency. Applicant and her husband have significant property interests in the United States (a home and two retirement plans). Applicant and her spouse credibly testified that their loyalty is to the United States. Their actions show that they intend to live and retire in the United States. Applicant's actions show that "[she] can be expected to resolve any conflict of interest in favor of the U.S. interest."

AG ¶ 8(c) applies with respect to Applicant's husband's extended family members living in Iran. Their contact and communication is so casual and infrequent

that there is little likelihood that it could create a risk of foreign influence. AG ¶ 8(d) does not apply because Applicant's contacts and relationships with his family in Iran are not on behalf of the U.S. Government. AG ¶¶ 8(e) and (f) are not raised by the facts in this case and do not apply.

In sum, Applicant's connections to her extended family members living in Iran are not significant to her or her husband. She has established deep and longstanding relationships and loyalties in the United States and she can be expected to resolve any conflict of interest in favor of the United States. The mitigating information taken together is sufficient to fully overcome the foreign influence trustworthiness concerns under Guideline B.

### **Guideline C, Foreign Preference**

AG ¶ 9 explains the trustworthiness concern about foreign preference stating:

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.

AG ¶ 10 indicates four conditions that could raise a trustworthiness concern and may be disqualifying 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;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial. or business interests in another country;
- (6) seeking or holding political office in a foreign country;
- (7) voting in a foreign election;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

In 1982, Applicant, an Iranian citizen, immigrated to Australia, and became a naturalized Australian citizen. She immigrated to the United States in 1998, and became a naturalized U.S. citizen in 2002. After becoming a U.S. citizen, Applicant continued to renew, and possessed valid Australian and Iranian passports. Foreign preference disqualifying condition AG ¶ 10(a) is supported by the evidence. If these conditions are not mitigated they would disqualify Applicant from eligibility to hold a public trust position.

AG ¶ 11 provides six conditions that could mitigate the security concerns for foreign preference:

(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;

(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;

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

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

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

In 2010, Applicant was made aware of the Government's foreign preference concerns raised by her possession of the foreign passports. Shortly thereafter, Applicant surrendered her passports to her FSO, and then she and her husband destroyed both foreign passports and surrendered them to her FSO. Applicant and her husband also expressed their willingness to renounce their Iranian citizenship. Foreign preference mitigating conditions AG ¶¶ 11(b) and (e) apply and mitigate the trustworthiness concern.

## **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. (AG ¶ 2(c))

Applicant left Iran in 1982, at age 18, seeking religious freedom, and better employment and education opportunities. She immigrated to Australia, and then to the United States in 1998. She became a naturalized U.S. citizen in 2002. She worked for government contractors from 1998 to present, sometimes holding positions of trust without any trustworthiness concerns.

Applicant's connections to her extended family members living in Iran are not significant to her or her husband. She has established deep and longstanding relationships and loyalties in the United States and she can be expected to resolve any conflict of interest in favor of the United States. The mitigating information taken together is sufficient to fully overcome the trustworthiness concerns under Guidelines B and C.

## **Formal Findings**

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

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a-1.f:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility to occupy a position of trust. Eligibility to occupy a position of trust is granted.

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JUAN J. RIVERA  
Administrative Judge