



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



In the matter of:)
)
) ISCR Case No. 15-00647
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

02/27/2017

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, I conclude that Applicant failed to provide adequate documentation to mitigate security concerns for foreign influence under Guideline B and foreign preference under Guideline C. Eligibility for access to classified information is denied.

Statement of the Case

On September 10, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance for her employment with a defense contractor. (Item 6) On October 19, 2012, Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM). (Item 7) After reviewing the results of the interview, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On August 27, 2015, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for foreign influence under Guideline B and foreign preference under Guideline C. (Item 1) The action was taken under Executive Order 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 in the DOD on September 1, 2006.

Applicant answered the SOR on September 25, 2015, admitting all allegations under both guidelines with explanation. She elected to have the matter decided on the written record. (Item 1) Department Counsel submitted the Government's written case on March 18, 2016. (Item 10) Applicant received a complete file of relevant material (FORM) on March 21, 2016, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. She provided additional information in response to the FORM on April 24, 2016. (Item 11) I was assigned the case on December 2, 2016.

Procedural Issues

Applicant was advised in the FORM that the summary of the Personal Subject Interview (PSI) with an OPM investigator (Item 3) was not authenticated and could not be considered over her objection. She was further advised that she could make any corrections, additions, or deletions to the PSI to make it clear and accurate, and could object to the admission of the PSI as not authenticated by a Government witness. She was additionally advised that if no objection was raised to the PSI, the Administrative Judge could determine that she waived any objection to the admissibility of the PSI. In her reply to the FORM, Applicant did not raise any objection to consideration of the PSI. Since there is no objection by Applicant, I will consider information in the PSI in my decision.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact. Applicant was born in Iran in January 1955 and is 62 years old. She came to the United States in January 1982, and became a United States citizen in September 2000. She graduated from high school in Iran in 1974 and received an associate's degree from a school in the United States in May 1994. She has been employed as a quality control engineer by a defense contractor since June 2008. Prior to working for the defense contractor, she was unemployed from November 2007 until June 2008 after being laid off from a private company as a quality control technician where she had worked since September 2000. Applicant married her husband in October 1979, and they have three grown children. Her husband and children were all born in Iran but are now United States citizens. (Item 6, EQIP, dated September 10, 2012; Item 7, PSI, dated October 19, 2012)

Applicant received a U.S. passport in December 2001. It was reissued in March 2012, and is due to expire in March 2022. Applicant also has an Iranian passport first issued in approximately 1980. It was last renewed in June 2012, and is due to expire in May 2017. She made trips to Iran in 2000, 2005, 2007, and 2012 using her Iranian passport to enter and exit Iran. She uses her U.S. passport to reenter the United States. She maintains her Iranian citizenship and passport to enter Iran to visit her parents. Iran

does not recognize dual citizenship of people born in Iran, so her Iranian passport permits her to enter and exit Iran without issue.

Applicant's husband and children were born in Iran and are naturalized citizens of the United States. They all reside in the United States but are considered dual citizens with Iran and the United States. They all hold both Iranian and U.S. passports, and have used the Iranian passports in the past to enter and exit Iran. (Item 7, PSI at 1)

Applicant admits that her mother, father, four brother and a friend are citizens and residents of Iran. Both parents are elderly. Her father served in the Iranian Air Force for 25 years and retired over 30 years ago. Her mother was a civilian employee of the Iranian Army for 20 years and retired over 30 years ago. Applicant has contact with them about once a month, and stays with them when she visits Iran. One of her brothers is a retired employee of the Iranian education department; another is an employee of a foreign automobile company; her third brother is retired from the Iranian Army; and her fourth brother works for an unknown company. She has contact with her siblings about once a year by telephone during holidays, and in person when she visits Iran. Her husband has a friend who is a citizen and resident of Iran. She or her husband have contact with the friend by telephone about two or three times a year. They visit the friend when they travel to Iran. (Item 8)

Applicant traveled to Iran when her mother had knee surgery, when her sister passed away, and when her father had a stroke and was partially paralyzed. Her husband also visited Iran when his brother passed away. Applicant believes that it is important for her children to visit her parents. (Item 2)

Iran is a country that has been hostile to the United States since the 1979 revolution that overthrew the former pro-western government. Iran's support for terrorist groups has long concerned the United States. Iran's human rights practices are also a concern for the United States. The Iranian theocratic government has repressed its people, pursued weapons of mass destruction, initiated a nuclear program that may include nuclear weapons, and continues to support terrorism in Iraq and around the world. Iran is known to conduct intelligence operations and economic espionage against the United States. There is no direct evidence in the record concerning Iranian espionage activity towards or within the United States, but this hostile relationship supports the inference that Iran would seek to damage or counter United States military capabilities by seeking to obtain classified or sensitive information when possible. The United States Department of State warns United States citizens, particularly United States citizens of Iranian origin, to consider carefully the risks of travel to Iran. Iran does not recognize renunciation of citizenship by those born there, and has detained and harassed naturalized United States citizens traveling there. Iran's continued support for terrorism and human rights violations contributed to President Bush's strong criticism of Iran in his 2002 State of the Union message and his designation of Iran as one of the "Axis of Evil." Iran is a nation whose interests are inimical to the United States. (Item 9)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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, these guidelines are applied 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion for obtaining a favorable security 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline B: Foreign Influence

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 the 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 consideration 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. (AG ¶ 6)

Applicant's husband and children were born in Iran but now reside in and are citizens of the United States. They possess current Iranian passports which they used to enter and exit Iran. Nonetheless, as residents and citizens of the United States, they do not create a security concern for Applicant. SOR allegations 2.a and 2.b are resolved for Applicant.

Applicant's parents, brothers, and a friend have been citizens and residents of Iran all of their lives. Applicant has telephone contact with her parents monthly and with her siblings at least once a year. She has telephone contact with her friend a few times a year. Applicant sees each of these people when she visits Iran every few years. She last visited in 2012. Applicant's family members and friend in Iran are a security concern and raise the following Foreign Influence Disqualifying Conditions under AG ¶ 7:

- (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; and
- (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.

The mere existence of foreign relationships and contacts is not sufficient to raise the above disqualifying conditions. The nature of Appellant's contacts and relationships must be examined to determine whether it creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. "Heightened" is a relative term denoting increased risk compared to some normally existing risk that can be inherent anytime there are foreign contacts and relationships. The totality of an applicant's ties to a foreign country as well as to each individual family tie must be considered. The foreign influence security concern is not limited to countries hostile to the United States. The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States. Even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Friendly nations have engaged in espionage against the United States, especially in economic, scientific, and technical fields. 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 is at risk of coercion, persuasion, or duress.

Applicant has contact with family members who are residents and citizens of Iran. Iran has an authoritarian government that aggressively targets and seeks sensitive and protected U.S. technology and military information and has a poor human rights record. These factors place a heightened risk of exploitation, inducement, manipulation, pressure, or coercion on Applicant.

I considered Foreign Influence Mitigating Conditions under 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 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; and

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

None of these mitigating conditions apply. There is a rebuttable presumption that a person has ties of affection for or obligation to immediate family members. Applicant did not present any information that rebuts this presumption. These facts show a close and continuing contact between Applicant and her parents and siblings that creates a security concern. Applicant has telephonic contact with her parents monthly and with her siblings yearly. She sees them when she visits Iran. She has visited Iran in 2005, 2007, and 2012 when there were family medical problems. This level of contact for the reasons stated are not casual or infrequent and indicates that Applicant's sense of loyalty to the family members is not minimal. While Applicant has a strong sense of loyalty to the United States, the presence of family members in Iran can place her in a position to have to choose between the interest of the family members and the interests of the United States.

The information presented by Applicant does not negate the heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of the circumstances in Iran and the presence of family members in Iran. Even though her family members are ordinary citizens, the situation in Iran is such that anyone living in Iran is vulnerable to be exploited, pressured, or induced to provide protected

information. Accordingly, Applicant has not met her heavy burden to show that her relationships with her family members in Iran are not a security concern. I conclude Appellant has not mitigated security concerns for foreign influence.

Guideline C, Foreign Preference

When an individual who acts in such a way as to indicate a preference for a foreign country over the United States, then he may be prone to provide information or make decisions that are harmful to the interests of the United States. (AG ¶ 9) The principal goal of the foreign preference assessment is to determine the risk, based on foreign associations, that information may be compromised if access to sensitive information is granted. It is not a measure of Applicant's loyalty to the United States.

Applicant was born in Iran, came to the United States in 1982, and became a United States citizen in 2000. She received a United States passport in December 2001. She has an Iranian passport issued in 2012 that does not expire until May 2017. She traveled to Iran using her Iranian passport. She has not shown a willingness to renounce her Iranian citizenship. These facts raise the following Foreign Preference Disqualifying Conditions under 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.); and

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

I considered Foreign Preference Mitigating Conditions under AG ¶ 11:

(a) dual citizenship is based solely on parent's 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 obligation 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; and

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

These mitigating conditions do not apply. While Applicant's dual citizenship with Iran and the United States is based on her birth in Iran, she has not indicated a willingness to renounce her Iranian citizenship since obtaining U.S. citizenship in September 2000. Applicant renewed her original Iranian passport and still possesses a current Iranian passport that does not expire for a few more months. She used the Iranian passport a few times in the past to travel to and exit Iran. Her husband and her children also hold valid Iranian passports that they have used to enter and exit Iran. Applicant has not mitigated security concerns for foreign preference.

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 the 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 access to sensitive information 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. The whole-person concept requires consideration of all available information about Applicant to reach a determination concerning Applicant's eligibility for access to classified information.

The presence of Applicant's parents and brothers and a friend in Iran creates a heightened risk of foreign influence leading to the potential for vulnerability, pressure, or coercion of Applicant by Iranian officials. Applicant's dual citizenship with Iran and possession of a current Iranian passport shows there may be a preference for Iran over the United States. These facts leave me with questions and doubts about Applicant's eligibility and suitability for access to classified information. The protection of the national security is the paramount consideration. Any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.

For all these reasons, I conclude Applicant has not mitigated her foreign preference and foreign influence concerns relating to Iran. Because Applicant has not

mitigated the security concerns arising from foreign preference and foreign influence, access to classified information is denied.

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 C:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a – 2.b:	For Applicant
Subparagraphs 2.c – 2.d:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, 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.

THOMAS M. CREAN
Administrative Judge