



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



In the matter of: )  
)  
) ISCR Case No. 15-03450  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey De Angelis, Esquire, Department Counsel  
For Applicant: Catie Young, Esquire

September 12, 2016

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**Decision**

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CEFOLA, Richard A., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on March 7, 2013. On November 25, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and F for Applicant. 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 within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing through counsel on March 2, 2016, and requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter, and I received the case assignment on August 9, 2016. DOHA issued a notice of hearing on August 9, 2016, and I convened the hearing as scheduled on August 22, 2016. The Government offered Exhibits (GXs) 1 through 4, which were received without objection. Applicant testified

on her own behalf, as did two witnesses: her mother and a friend. She also submitted Exhibits (AppXs) A through M, which were received without objection. DOHA received the transcript of the hearing (TR) on August 30, 2016. The record closed on August 22, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted the factual allegations in Paragraph 1 of the SOR, with explanations. She denied the factual allegations in Paragraph 2 of the SOR. She also provided additional information to support her request for eligibility for a security clearance.

### **Guideline B - Foreign Influence**

Applicant is a 38-year-old native-born American, of Iranian ancestry. (GX 1 at page 5, and TR at page 70 lines 7~11, and at page 86 line 8 to page 87 line 19.) She is a "Federal Contractor," who has worked for her current employer since March of 2013. (TR at page 55 lines 3~16, and Item 1 at page 17.) All of her financial interests are connected with the United States. (AppX H.) Applicant has had a "whirlwind" relationship with an active duty Navy lieutenant commander since January of 2016. (TR at page 88 line 23 to page 90 line 13, and AppX I at page 2.) He is a graduate of the U.S. Naval Academy, and in his letter of support avers that he plans "on getting married to . . . [Applicant] in the near future." (*Id.*)

1.a. Applicant's Iranian-born mother immigrated to the United States in April of 1975, more than 40 years ago. (TR at page 31 lines 9~18.) She became an American citizen in 1989. (TR at page 33 line 18 to page 34 line 3.) Her second husband, Applicant's father, passed away in May of 1999. (TR at page 32 line 13 to page 33 line 6.) Applicant's mother is a dual national with Iran, and last visited Iran "a little over five years" ago to attend a wedding. (TR at page 34 line 8 to page 35 line 11.) She is a "retired . . . Sales Associate," having worked for a department store, and was also a real estate agent. (TR at page 40 line 24 to page 41 line 5.) Her current husband is 93 years old, an American of Swedish ancestry. (TR at page 43 lines 2~10, and at page 44 lines 2~7.)

1.b. and 1.c. Applicant has a brother, and two half-brothers, all of Iranian ancestry. (GX 1 at pages 31, 34, and 36.) The oldest is a 48 year-old half-brother. He is a dual national with Iran, as their mother applied for Iranian citizenship on his behalf when he was a child, although he was born in the United States. (TR at page 52 lines 14~23, and GX 1 at page 34.) He lives in the United States, and is the manager of a super market. (TR at page 53 lines 1~5, GX 1 at pages 34~35, and AppX F.)

The younger half-brother is a citizen and resident of Iran. (GX 1 at page 36.) He is a medical doctor in private practice. (TR at page 92 lines 5~25, and GX 1 at page 37.) Applicant has contact with him is about "once a year," and she last spoke to him

about “three years ago.” (TR at page 92 line 2 to page 93 line 5.) He has no connection with the Iranian government.

Her full biological brother is the youngest of Applicant’s siblings. (GX 1 at page 31.) He is a native born American. Like her other American born half-brother, he became an Iranian citizen through the actions of his mother, when he was a child. (TR at page 52 lines 14~23.) He lives in the United State, where, as a businessman, he owns bars (where alcohol is served.) (TR at page 77 line 3 to page 78 line 5.) In his letter of support, he describes his sister “as American as Apple Pie,” a trait which she consistently exhibited at her hearing. (AppX E, and TR at page 86 line 11 to page 87 line 19.)

1.d. Applicant has a cousin who is a citizen and resident of Iran. (TR at page 94 lines 13~22.) Her husband is a businessman who owns textile companies. (TR at page 94 line 24 to page 95 line 6.) Applicant sees this cousin “every five years or so,” when she and her family visits the United States. (TR at page 95 lines 1~8.) She describes her relationship with her cousin as “casual” to “non-existent.” (TR at page 96 lines 14~17.)

1.e. Applicant admits that she met a citizen and resident of China, when she visited China about “13 years ago.” (TR at page 101 line 18 to page 102 line 3.) She denies that she maintains “contact with him.” (TR at page 102 lines 9~16.) She has deleted him from her “Face Book” account. (TR at page 104 lines 3~9, and AppX D.) There is no evidence that he has any connection with the Chinese government.

Through GXs 4 and 5, I have been asked to take administrative notice, in part, of the following facts regarding Iran and China:

The U.S. Government does not have diplomatic relations with Iran. The United States has long-standing concerns over Iran’s nuclear program, sponsorship of terrorism, and human rights abuses. The U.S. Government prohibits nearly all trade and investment with Iran by U.S. persons. Iran continues to act assertively abroad in ways that run counter to U.S. interests and worsens regional conflicts. The Iranian government does not recognize dual nationality and will treat U.S.-Iranian dual nationals solely as Iranian citizens subject to Iranian laws. (GX 4.)

China has been identified as one of the two most aggressive collectors of U.S. economic information and technology. (The other one being Russia.) China’s intelligence services, as well as private companies and other entities, frequently seek to exploit persons with family ties to China who can use their insider access to corporate networks to steal secrets using removable media devices or e-mail. Human rights abuses are also noted. (GX 5.)

## **Guideline F - Financial Consideration**

2.a. Applicant admits that initially, she did not file her Federal income tax return for tax year 2011. She does excuse her lack of action, but couches it in the following terms:

I am not good at doing my own taxes. And so, at that point in time, I was doing my own business and I didn't know how to do business taxes. When you're running your own business, how do you equate - - how do you do a tax for an independent business? Who knows? You know, so, in a sense, I'm at fault for not finding a CPA sooner. So, it took me a bit of time to find a CPA. But, in reality, I knew I didn't owe any money. And I was under the impression that as long as you don't owe money, you're okay. You know, once you owe money, you're in the doghouse. (TR at page 64 lines 6~15.)

Applicant filed her 2011 tax return in January of 2014, and received a refund of \$223, as evidenced by her Internal Revenue Service Form 1040. (AppX G at page 4.) Applicant is current with her income tax filings. (TR at page 113 line 10 to page 116 line 19.)

## **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 are useful 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 over-arching 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to 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 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 Executive Order 10865 provides that 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**

Paragraph 6 of the adjudicative guidelines sets out the security concern relating to Foreign Influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign 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 a foreign interest.

Here, Paragraph 7(a) is arguably applicable: “*contacts with a foreign family member . . . 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.*” One of Applicant’s half-brothers and a cousin are citizens and residents of Iran. Her mother and two other siblings are dual nationals with Iran. This is clearly countered, however, by the first mitigating condition, as under 8(a) “*the nature of the relationships with foreign persons, . . . 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 . . . and the interests of the U.S.*” The Applicant is a native-born American. Her mother has lived in the United States continuously since 1975, and her two native-born siblings have little connection to Iran, other than their dual nationality orchestrated by their

mother when they were children. She has little connection with her Iranian half-brother, perhaps once a year; and less with her Iranian cousin, perhaps once every five years. She has virtually no connection with the citizen and resident of China, with whom she has severed internet relations. Foreign Influence is found for Applicant.

## **Guideline F - Financial Considerations**

The security concern relating to the guideline for Financial Considerations is set out in Paragraph 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes a condition that could raise security concerns. Under Subparagraph 19(g) "*failure to file annual Federal, state . . . income tax returns as required*" may raise security concerns. Applicant failed to file her 2011 Federal income tax return in a timely fashion. However, I find a countervailing Mitigating Condition that is applicable here. Under Subparagraph 20 (d), it may also be mitigating where "*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*" Applicant filed her delinquent income tax return more than two years ago, and is current with the Federal taxing authority. Financial Considerations is found for Applicant.

## **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. 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.

The Administrative Judge should also 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.

I have considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Those who know Applicant in the work place speak most highly of her. (TR at page 20 line 9 to page 29 line 14, and AppX I.) Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her alleged Foreign Influence and Financial Considerations.

### **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
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Subparagraphs 1.a.~1.e.	For Applicant
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Paragraph 1, Guideline F:	FOR APPLICANT
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Subparagraph 2.a.	For Applicant
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### **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.

Richard A. Cefola  
Administrative Judge