



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 14-02117
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Erin P. Thompson, Esq., Department Counsel  
For Applicant: Joseph E. Schmitz, Esq.

07/17/2018

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant did not present sufficient evidence to mitigate the security concerns raised by her connection to and contact with family in Iran. Clearance is denied.

**Statement of the Case**

On March 28, 2017, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the foreign preference and foreign influence guidelines.<sup>1</sup> Applicant submitted an initial and a supplemental answer to the SOR on April 17, 2017 and December 23, 2017, respectively (collectively referred to as the "Answer"). She requested a hearing and, by agreement of the parties, the hearing was scheduled for February 22, 2018.

The hearing was convened as scheduled. Applicant and her character witness testified. The exhibits offered by the parties were admitted into the record without objection.<sup>2</sup> The transcript of the hearing was received on March 5, 2018.

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<sup>1</sup> Department Counsel later amended the SOR by withdrawing allegations 2(a)(1) and 2(a)(2). Appellate Exhibit (App. Exh. I).

<sup>2</sup> Government Exhibits 1 – 5; Applicant's Exhibits A – F. Correspondence, parties index of exhibits, and other such non-substantive matters are attached to the record as App. Exh. II – V.

## Findings of Fact

Applicant, 32, was born in Iran. At age 15, she entered into an arranged marriage. Her husband was a decade older than her and a dual U.S.-Iranian citizen. They moved to the United States in 2000. Applicant graduated from high school in 2003 and earned an undergraduate degree from a U.S. college in 2006. She also became a U.S. citizen in 2006. She obtained an order of protection from her abusive ex-husband in 2008, and they divorced a year later. Since the divorce, Applicant has started her professional career, working for a federal contractor since 2012; purchased a home; and recently moved in with her partner, a successful businessman who has worked in the U.S. intelligence community for years.

Applicant is actively involved in her community through a number of social and sports clubs. At work, she has been recognized for her exemplary work and has been granted a position of trust to work on several U.S. Government projects. She estimates her home is worth approximately \$600,000, and she has about \$200,000 in equity. In addition, she has about \$50,000 in savings and a 401(k) retirement account through her employer. She holds no assets or properties outside the United States, though she briefly contemplated several years ago purchasing an investment property in Iran.<sup>3</sup>

In May 2013, Applicant submitted a security clearance application. She reported her dual citizenship, possession of an Iranian passport, her Iranian relatives, and her travel to Iran to visit relatives. A month later, she discussed her Iranian ties with a security clearance investigator.<sup>4</sup>

In June 2014, Applicant was sent an SOR alleging similar security concerns as the present SOR. In the 2014 SOR, Applicant's possession of an Iranian passport and her vote in an Iranian election were cited to as raising a foreign preference security concern. DOHA thereafter lost jurisdiction over the matter.<sup>5</sup>

In 2016, Applicant renewed her Iranian passport to facilitate her travel to Iran to visit her parents. Iran does not recognize dual citizenship and requires all U.S.-Iranian dual nationals to enter and exit Iran on Iranian passports.<sup>6</sup> Applicant understands that without an Iranian passport she cannot enter Iran, not even to visit her parents. However, she is willing to surrender the passport and renounce her Iranian citizenship.<sup>7</sup>

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<sup>3</sup> Transcript (Tr.) 17, 35-39, 43-48; Exhibits 1 – 2; Exhibits A, E, F.

<sup>4</sup> Exhibits 1 – 2.

<sup>5</sup> Exhibit 3; Exhibit E. A hearing was supposedly held in March 2015, but presumably DOHA lost jurisdiction over the matter prior to the start of the hearing.

<sup>6</sup> Exhibit 4.

<sup>7</sup> Tr. 18-19, 33.

Applicant admits she voted in Iranian elections in 2009, but believes her vote was consistent with U.S. national security interests. Since then, Applicant has not voted in Iranian elections. She provided documentation to corroborate her testimony.<sup>8</sup>

Applicant has no interest in returning to live in Iran. She notes that one of the irreconcilable differences with her ex-husband was his desire to return to Iran to raise a family.<sup>9</sup> She testified about her lack of desire to return to live in Iran as follows:

Your Honor, this whole process made me realize why I love America so much. . . . In Iran, women do not have divorce rights. Women cannot leave the country without their husband's permission. If I were still married in Iran . . . I basically did not have a way to escape from the physical abuse that I endured during my marriage. America, United States, empowered me to break away from the abuse and, for once, live as an individual and not feel like I am someone's property. Ever since my divorce, I've started enjoying my life, traveled the world, established myself, bought a condo. I basically found my happiness here. I love America. Iran, to me represents a repressive era of my life that I never, ever want to go back to. For me, America is my safe haven.<sup>10</sup>

Applicant's parents and siblings are Iranian citizens. Applicant sponsored her parents for U.S. immigration purposes. Her parents hold permanent residency status in the United States and recently applied for U.S. citizenship. They reside about half the year in the United States and the other half in Iran. When in the United States, Applicant's parents live with her. They are both retired and have no connection to the Iranian government, military, or its intelligence services. They are aware that she is applying for a security clearance.<sup>11</sup>

Applicant's siblings are residents and citizens of Iran. She is sponsoring one of her siblings for immigration to the United States. When Applicant first immigrated to the United States, her contact with her siblings was fairly frequent, once a week to once a month by phone, email, or other electronic means. However, as time has passed, Applicant's contact with her siblings has dwindled to the point that she did not visit with them when she last traveled to Iran and now rarely speaks with them. Her siblings have no connection to the Iranian government, military, or its intelligence services. They are not aware that Applicant is under consideration for a security clearance.<sup>12</sup>

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<sup>8</sup> Tr. 18-19, 40-41; Exhibits A – C.

<sup>9</sup> Tr. 24, 40-41; Exhibit C.

<sup>10</sup> Tr. 20.

<sup>11</sup> Tr. 22-30, 39; Exhibits A, B, D.

<sup>12</sup> Tr. 20-35, 41; Exhibits 1 – 4; Exhibits A, B.

## **Administrative Notice – The Islamic Republic of Iran (Iran)**

In May 2017, the Director of National Intelligence (DNI) made the following official statement about Iran: “The Islamic Republic of Iran remains an enduring threat to US national interests because of Iranian support to anti-US terrorist groups and militants . . . and because of Iran’s development of advanced military capabilities.”<sup>13</sup>

The following additional relevant facts, which are taken from official, publically-available U.S. Government reports, are hereby accepted for administrative notice:<sup>14</sup>

1. The United States and Iran do not have diplomatic relations.
2. Iran is a state sponsor of terrorism.
3. Individuals acting on behalf of Iran have been implicated in cyber-attacks against the United States.
4. Iran has a poor human rights record.
5. Iran’s security personnel, at times, place foreign visitors under surveillance, including searching personal possessions left in hotel rooms. Hotel rooms, telephones, computers, fax machines and other electronics may be monitored.
6. The Iranian government does not recognize dual citizenship and will treat U.S.-Iranian dual nationals as Iranian citizens subject to Iranian laws. Dual nationals must enter and exit Iran using an Iranian passport, and sometimes have had their U.S. passports confiscated and denied permission to leave Iran. U.S. citizens, particularly Iranian-Americans, have been unjustly detained and imprisoned by the Iranian government.

### **Law, Policies, and Regulations**

This case is decided under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the National Security Adjudicative Guidelines (AG), which became effective on June 8, 2017.

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Instead, persons are only eligible for access to classified information “upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865 § 2.

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<sup>13</sup> Exhibit 5 (DNI’s Statement for the Record, Worldwide Threat Assessment of the US Intelligence Community).

<sup>14</sup> See generally Exhibit 5.

When evaluating an applicant's eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision. AG ¶ 2.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15.

DOHA administrative judges “are creatures of the Directive,”<sup>15</sup> who derive their authority from the Directive. The Directive also sets forth an administrative judge’s responsibilities and obligations, including the requirement that a judge remain fair and impartial, and carefully balance the needs for the expedient resolution of a case with the demands of due process. Therefore, an administrative judge will ensure that an applicant: (a) receives fair notice of the issues, (b) has a reasonable opportunity to address those issues, and (c) is not subjected to unfair surprise. Directive, ¶ E3.1.10; ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014).

In evaluating the evidence, a judge applies a “substantial evidence” standard, which is something less than a preponderance of the evidence. Specifically, substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive, ¶ E3.1.32.1. See *also* ISCR Case No. 16-03712 at 3 (App. Bd. May 17, 2018).<sup>16</sup>

Any doubt raised by the evidence must be resolved in favor of the national security. AG ¶ 2(b). See *also* Security Executive Agent Directive 4 (SEAD 4), ¶ E.4. Additionally, the Supreme Court has held that responsible officials making “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

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. 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 an applicant may deliberately or

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<sup>15</sup> ISCR Case No. 17-01213, n. 2 (App. Bd. June 29, 2018).

<sup>16</sup> However, a judge’s mere disbelief of an applicant’s testimony or statements, without actual evidence of disqualifying conduct or admission by an applicant to the disqualifying conduct, is not enough to sustain an unfavorable finding. ISCR Case No. 15-05565 (App. Bd. Aug. 2, 2017); ISCR Case No. 02-24452 (App. Bd. Aug. 4, 2004). Furthermore, an unfavorable decision cannot be based on non-alleged conduct. ISCR Case No. 14-05986 (App. Bd. May 26, 2017). Unless an applicant is provided notice that unalleged conduct raises a security concern, it can only be used for specific limited purposes, such as assessing mitigation and credibility. ISCR Case No. 16-02877 at 3 (App. Bd. Oct. 2, 2017).

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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

## **Analysis**

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

A security concern arises when a person acts in such a way as to indicate a preference for a foreign country over the United States. Such action may indicate that the person may provide information or make decisions that are harmful to the United States. However, foreign citizenship by itself does not raise a security concern under Guideline C, unless the foreign citizenship is in conflict with U.S. national security interests or the person attempted to conceal the information about his or her foreign citizenship. See *generally* AG ¶ 9.

Here, the Government alleges that Applicant’s exercise of foreign citizenship, namely, her 2009 vote for a presidential candidate, who was widely seen as a far more moderating force than the incumbent, indicated her purported preference for Iran over the United States. However, the evidence clearly dispels this allegation. Applicant reported her foreign connections and ties to Iran, including her possession of a foreign passport. She voluntarily provided her foreign passport to document her travel and 2009 vote. She has been upfront and candid throughout the security clearance process about her foreign ties, as well as her love for her adopted homeland. The overwhelming weight of the record evidence clearly demonstrates that Applicant holds no preference for Iran. Accordingly, the Guideline C allegation is decided for Applicant.

### **Guideline B, Foreign Influence**

The foreign influence security concern is explained at AG ¶ 6:

Foreign contacts and interests . . . are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest.

A person is not automatically disqualified from holding a security clearance because they have relatives living in a foreign country. Instead, in assessing an

individual's potential vulnerability to foreign influence, a judge considers the foreign country involved, the country's human rights record, and other pertinent factors.<sup>17</sup>

In assessing the foreign influence security concern, I considered all pertinent disqualifying and mitigating conditions, including:

AG ¶ 7(a): contact, regardless of method, with a foreign family member . . . if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

AG ¶ 7(b): connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology;

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 . . . and the interests of the United States;

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

AG ¶ 8(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; and

AG ¶ 8(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.

An applicant with foreign relatives faces a high, but not insurmountable hurdle in mitigating security concerns raised by such foreign ties. An applicant is not required "to sever all ties with a foreign country before he or she can be granted access to classified information."<sup>18</sup> However, what factor or combination of factors will mitigate security concerns raised by an applicant with relatives in a foreign country is not easily identifiable

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<sup>17</sup> See *generally* AG ¶ 6. See *also* ISCR Case No. 05-03250 at 4 (App. Bd. Apr. 6, 2007) (setting forth factors an administrative judge must consider in foreign influence cases).

<sup>18</sup> ISCR Case No. 07-13739 at 4 (App. Bd. Nov. 12, 2008).

or quantifiable.<sup>19</sup> Furthermore, a heightened level of scrutiny is warranted when an applicant's relatives with whom they have a close relationship reside in a hostile foreign country, such as Iran.<sup>20</sup>

Here, Applicant has a close relationship to her parents. This relationship and her parents' residency in Iran for half the year raises a heightened security concern.<sup>21</sup> Applicant did not provide sufficient evidence to mitigate this security concern. In reaching this conclusion, I considered Applicant's compelling life story, including the strength of character she showed in leaving an abusive marriage; her strong professional, personal, and financial ties to the United States; her work as a federal contractor; and her honesty in reporting her foreign ties on the SCA and the candor she exhibited throughout the security clearance process. However, this and the other favorable record evidence are not enough to mitigate the serious security concern that Applicant could be subjected to foreign influence through her parents from a regime that is a threat to U.S. national security.<sup>22</sup> However, this adverse security assessment is *not* a comment on Applicant's patriotism or loyalty. Instead, it is an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved one, such as a family member. ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009).

Specifically, I find that AG 7(a) and 7(b) apply. AG ¶¶ 8(b) and 8(e) have some limited applicability, but are insufficient, even when considered with the favorable whole-person matters raised by the evidence,<sup>23</sup> to mitigate the heightened security concern at issue. Overall, the record evidence leaves me with doubts about Applicant's eligibility for access to classified information.<sup>24</sup>

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<sup>19</sup> ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).

<sup>20</sup> The Appeal Board has consistently held that a person who has a close relationship with relatives in Iran, a hostile foreign power, bears a "very heavy burden" of proof and persuasion in mitigating security concerns raised by such foreign ties. ISCR Case No. 11-14079 at 3 (App. Bd. May 6, 2013); ISCR Case No. 10-09986 at 3 (App. Bd. Dec. 15, 2011).

<sup>21</sup> See *e.g.* ISCR Case No. 05-02210 at 3 (App. Bd. Jan. 18, 2008) (serious foreign influence security concern raised by applicant's close relationship to her parents who regularly travel to Iran).

<sup>22</sup> Applicant's present relationship with her siblings is relatively weak when compared to the relationship she has with her parents. Although Applicant's siblings are residents and citizens of Iran, they do not pose the same foreign influence concern raised by her parents. AG ¶¶ 8(b) and 8(c) apply to the security concerns raised by Applicant's relationship with her siblings. These mitigating factors, coupled with the other noted favorable record evidence, mitigates the potential foreign influence security concern raised by Applicant's relationship to her siblings. Accordingly, SOR 1.b and 1.c is decided for Applicant.

<sup>23</sup> See *generally* AG ¶ 2.

<sup>24</sup> I also considered the exceptions listed in SEAD 4, Appendix C, including whether the grant of a clearance subject to additional security measures would sufficiently mitigate the foreign influence security concern. However, in light of the heightened security concern at issue and after considering the record evidence, including the lack of evidence that Applicant's employer is willing and able to monitor her compliance (and report any non-compliance) with security measures, I decline to exercise my discretion to apply any of the listed exceptions.



### **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 (Foreign Influence):	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b and 1.c:	For Applicant
Paragraph 2, Guideline C (Foreign Preference):	FOR APPLICANT
Subparagraphs 2.a(1) and 2.a(2):	Withdrawn
Subparagraph 2.a(3):	For Applicant

### **Conclusion**

In light of the circumstances presented by the record in this case, it is not clearly consistent with the interest of national security to grant Applicant eligibility for access to classified information. Applicant's request for a security clearance is denied.

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Francisco Mendez  
Administrative Judge