



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



In the matter of:)
)
) ISCR Case No. 07-05311
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: B. Daniel Lynch, Esq.

January 28, 2008

Decision

LOUGHRAN, Edward W., Administrative Judge:

On September 14, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B, Foreign Influence and Guideline C, Foreign Preference. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on October 5, 2007, and requested a hearing before an Administrative Judge. The case was assigned to another Administrative Judge on November 1, 2007, and reassigned to me on November 28, 2007. DOHA issued a notice of hearing on November 28, 2007, and I convened the hearing as scheduled on December 19, 2007, at Woodland Hills, California. DOHA received the transcript of the hearing (Tr.) on January 8, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

The government offered Exhibits (GE) 1 and 2, which were admitted without objection. Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Iran. Applicant's counsel did not object. The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibit (HE) I through XI. Applicant's counsel submitted a formal request that I take administrative notice of certain facts, as contained in HE XII and Applicant Exhibits (AE) A and B. AE A is a newspaper article about Iraq and Iran. I did not take administrative notice of the facts in AE A, but admitted the document into evidence as an Applicant Exhibit. I took administrative notice of the facts in AE B. The facts administratively noticed for the government and Applicant are set out in the Findings of Fact, below. AE C was admitted without objection. Applicant testified on her own behalf and called four witnesses. Applicant's counsel submitted a Hearing Memorandum which was marked HE XIII.

Findings of Fact

Applicant is a 38-year-old engineer for a defense contractor. She was born in Iran. Applicant started to visit relatives in the U.S. when she was seven years old. She immigrated to the United States in 1985, when she was about 15 years old. She attended college and graduate school in the United States, and has a Bachelor of Science degree and a Master of Science degree from an American university. Applicant became a U.S. citizen in 1993. She has held a security clearance for about 12 years. She is single with no children.¹

Applicant's father passed away in 1979. Her mother is 78 or 79 years old. She became a U.S. citizen in 2002. Applicant did not admit that her mother was a dual citizen of Iran. However, her mother splits her time between the U.S. and Iran. As discussed below, U.S. citizens who were born in Iran are considered Iranian citizens by Iranian authorities. Applicant did not testify that her mother has formally renounced her Iranian citizenship, and did not specify which country's passport her mother uses to enter Iran. There is strong circumstantial evidence that she uses an Iranian passport. I find Applicant's mother is a dual citizen of the United States and Iran. Her most recent stay in the United States was from November 2006 to July 2007. She has lived in Iran since she left the U.S. in July 2007. Prior to her last trip to the U.S., when she was in the United States, she would stay with one of her five children. Before her last trip, Applicant's brothers rented their mother an apartment. She felt isolated in her U.S. apartment, and the children would have to drive her when she needed to go somewhere. She is more comfortable in Iran. When in Iran, she lives in a condominium that she owns in a big complex and has ready access to public transportation. She receives a pension in Iran based on her husband's retirement.²

¹ Tr. at 69-73, 98; GE 1, 2.

² Tr. at 80-84, 88-97; Applicant's response to SOR; GE 1.

Applicant has two brothers and two sisters. All her siblings are U.S. citizens residing in the U.S. One sister has not returned to Iran, but the other three siblings have visited Iran, using Iranian passports.³

Applicant did not consider herself a dual citizen after she was naturalized as a U.S. citizen. However, Iran continued to consider her an Iranian citizen. She became aware of some of the problems Iranian-Americans had attempting to travel to Iran with a U.S. passport. She felt that traveling to Iran with a U.S. passport would unduly draw attention to her, and she could be harassed. This is consistent with the advice in the State Department's Consular Information Sheet, as discussed below. She obtained an Iranian passport in 1997. The passport expired in 2002. She renewed it in 2003. She visited her mother in Iran on four occasions, in 2003, again in December 2003 through January 2004, in 2005, and in 2006. Her passport expired in 2007. Applicant still possesses the expired passport. She has no immediate plans on returning to Iran, but may renew the passport or obtain another Iranian passport if she has to travel to Iran again to visit her mother. She does not feel comfortable attempting to enter Iran on a U.S. passport.⁴

Applicant feels no loyalty to the government of Iran, and has strong feelings against their current government.⁵ Applicant's counsel called four witnesses and submitted three character letters on her behalf. She is described as a loyal, patriotic American with integrity, who is trustworthy, reliable, honest, dedicated, hard-working, and professional. They all recommended Applicant for a security clearance.⁶

Iran is a constitutional Islamic republic with a theocratic system of government in which Shi'a Muslim clergy dominate the key power structures, and ultimate political authority is vested in a learned religious scholar. The U.S. has not had diplomatic relations with Iran since 1980. The President's National Security Strategy has stated that the United States "may face no greater challenge from a single country than from Iran." The U.S. Government has defined the areas of objectionable Iranian behavior as:

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

Iran's intervention in the internal affairs of Iraq is also a concern.

The U.S. has designated and characterized Iran as the most active state sponsor of terrorism. Iran provides critical support to non-state terrorist groups.

³ Tr. at 79; GE 1.

⁴ Tr. at 77-80, 84-88, 97; Applicant's response to SOR; GE 1, 2; HE II.

⁵ Tr. at 96.

⁶ Tr. at 25-67; AE C.

The government of Iran has committed numerous, serious human rights abuses against the Iranian people. Abuses include political killings and incarceration; summary executions, including of minors; disappearances; religious persecution; torture; arbitrary arrest and detention, including prolonged solitary confinement; denial of due process; severe restrictions on civil liberties - speech, press, assembly, association, movement and privacy; severe restrictions on freedom of religion; official corruption; violence and legal and societal discrimination against women, ethnic and religious minorities, and homosexuals; trafficking in persons; and child labor.

The State Department continues to warn U.S. citizens to consider carefully the risks of travel to Iran. U.S. citizens who were born in Iran and the children of Iranian citizens—even those without Iranian passports who do not consider themselves Iranian—are considered Iranian citizens by Iranian authorities, since Iran does not recognize dual citizenship. Therefore, despite the fact that these individuals hold U.S. citizenship, under Iranian law, they must enter and exit Iran on an Iranian passport, unless the Iranian government has recognized a formal renunciation or loss of Iranian citizenship. U.S.-Iranian dual nationals have been denied permission to enter/depart Iran using their U.S. passport; they even had their U.S. passports confiscated upon arrival or departure. U.S.-Iranian dual citizens have been detained and harassed by the Iranian government. Iranian security personnel may place foreign visitors under surveillance. Hotel rooms, telephones and fax machines may be monitored, and personnel possessions in hotel rooms may be searched.

The National Counterintelligence Center, Annual Report to Congress on Foreign Economic Collection and Industrial Espionage – 2000, lists the seven countries that most actively engage in economic collection and industrial espionage. Iran is not among the seven countries and is not named in the report.

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised 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 common sense 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

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 7:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 7(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” is potentially disqualifying. Similarly under 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 sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information” may raise security concerns. Applicant’s mother is currently living in Iran, a country that is clearly hostile to the United States.⁷ It is considered the most active state sponsor of terrorism, and the government of Iran has committed numerous, serious human rights abuses against its people. Her mother’s presence in Iran creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. It also creates a potential conflict of interest. AG ¶¶ 7(a) and (b) have been raised by the evidence.

AG ¶ 8 provides conditions that could mitigate security concerns:

(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.

⁷ ISCR Case No. 05-03250 at 5 (App. Bd. Apr. 6, 2007); HE I-XI.

Applicant is clearly close to her mother. She and her siblings would like their mother to move permanently to the U.S. However, her mother is more comfortable in Iran. She is elderly with no connection to the Iranian government. Applicant is a well educated, highly regarded engineer, and a patriotic U.S. citizen. She has deep and longstanding relationships and loyalties in the United States. Applicant is also a citizen of Iran, a country that is hostile to the United States, sponsors terrorism, and commits human rights abuses against its people. AG ¶ 8(b) is partially applicable. No other mitigating condition is applicable.

Guideline C, Foreign Preference

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

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

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

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

(1) possession of a current foreign passport;

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

Applicant possessed and used an Iranian passport while a U.S. citizen. The passport was current until it expired before the hearing. This raises a security concern under AG ¶ 10(a). The renewal of her Iranian passport while a U.S. citizen constituted an action to obtain recognition of her Iranian citizenship. AG ¶ 10(b) is also applicable.

Conditions that could mitigate Foreign Preference security concerns are provided under AG ¶ 11:

(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.

Applicant did not consider herself a dual citizen after she was naturalized. Iran, however, continued to consider her an Iranian citizen. She exercised her Iranian citizenship by obtaining and using an Iranian passport after becoming a U.S. citizen. Because of her active exercise of dual citizenship, it was not based solely on her parents' citizenship or birth in Iran. AG ¶ 11(a) is not applicable. While Applicant has voiced a willingness to renounce her dual citizenship, it was with a condition. Applicant honestly admitted that she may need to renew or obtain another Iranian passport to travel to Iran if her mother needs her. She is not truly willing to renounce her Iranian citizenship as long as her mother lives in Iran. Applicant's conditional willingness to renounce her Iranian citizenship is not sufficient to fully invoke AG ¶ 11(b). Applicant's passport has not been destroyed or surrendered, but it has expired. I find that it is "otherwise invalidated," and AG ¶ 11(e) is applicable. No other mitigating condition is raised by the evidence.

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) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence." Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense 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. Applicant was born in Iran. She came to the U.S. when she was 15 years old. She became a U.S. citizen, as did her

mother and her four brothers and sisters. She was educated here and became a highly regarded engineer. Applicant did not consider herself a dual citizen after becoming a U.S. citizen. Iran felt otherwise and continued to consider Applicant one of its citizens. She felt that she could be harassed if she traveled to Iran with a U.S. passport. She used an Iranian passport on her four trips to Iran between 2003 and 2006. The passport is now expired. Applicant was open, candid, and honest at the hearing. She admitted that she may renew the passport or obtain another Iranian passport if she has to travel to Iran again to visit her mother.

I considered the totality of Applicant's family ties to Iran, a country that is clearly hostile to the United States, and the heavy burden an applicant carries when he or she has family members in a hostile country. Iran is the most active state sponsor of terrorism and has a dismal human rights record. Most of Applicant's family is in the United States, and her mother is a U.S. citizen. However, her mother is also an Iranian citizen and is presently living in Iran. That raises considerable security concerns that Applicant was unable to mitigate.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her Foreign Influence and Foreign Preference.

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

Conclusion

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

EDWARD W. LOUGHRAN
Administrative Judge