



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



In the matter of:)	
)	
)	ISCR Case No. 07-01436
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel
For Applicant: Mr. Keith Willeford, Esquire

March 6, 2008

Decision

HEINY, Claude R., Administrative Judge:

Applicant is a thirty-four-year old Iranian born, naturalized U.S. citizen, who has lived in the United States since 1998. She has substantially more connections to the United States than to Iran. Applicant's parents are citizens and residents of Iran. In 2004, she showed her Iranian passport when she traveled to Iran. After a thorough review of the case file, pleadings, exhibits, and evidence, I conclude Applicant has rebutted or mitigated the government's security concerns under Guideline C, foreign preference, and Guideline B, foreign influence. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Applicant contests the Defense Department's intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance*

Statement of Reasons (SOR) on July 11, 2007, detailing the security concerns under Foreign Preference and Foreign Influence.

On August 29, 2007, Applicant answered the SOR, and requested a hearing before an administrative judge. On October 16, 2007, I was assigned the case. On October 17, 2007, DOHA issued a notice of hearing scheduling the hearing held on November 14, 2007. The government offered Exhibits (Ex.) 1 through 3, which were admitted into evidence. Applicant testified on her own behalf. The record was kept open to allow Applicant to submit additional matters. On November 14, 2007, additional documents were received. Department Counsel did not object to the material and it was admitted into evidence as Ex. A and Ex. B. On November 26, 2007, the transcript (Tr.) was received.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Iran. The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibits (HEX) I–VIII.

Applicant's counsel argued that the facts administratively noticed must be limited to matters of general knowledge and matters not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In her Answer to the SOR, Applicant admitted all of the factual allegations in the SOR, with explanations. The admissions are incorporated herein as findings of fact. After a thorough review of the record, case file, pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 34-year-old software engineer who has worked for a defense contractor since July 2005, and is seeking to obtain a security clearance.

Applicant was born in Iran in 1973. In 1998 her parents — now ages 60 and 68 — helped her and her two siblings leave Iran and move to the U.S. Applicant was 24 years old, her brother was 23, and her sister was 18. (Tr. 72) Her parents remained in Iran to care for their parents who were old and sick. (Tr. 35) Applicant's grandparents have since died. In December 1997, she obtained an Iranian passport (Ex. A) in order to leave the country. She entered the U.S. as a refugee because of her faith. (Tr. 27, Ex.

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.

2)The passport initially expired in September 2002, but was renewed in May 2003, and expired in June 2007. The expired passport has been cut up. (Ex. B)

Applicant showed her Iranian passport when she entered Iran in 2004. She had not seen her parents since leaving Iran in 1998. When she left Iran, she knew there was a real possibility she may never have seen her parents again. (Tr.45, 83) She was in Iran 17 days visiting her parents. Her father was ill suffering from heart problems. She used her U.S. passport when she left Iran. (Ex. 2)

She became a U.S. citizen in November 2003. Her parents' applications before the United States Citizenship and Immigration Service have been approved and they are awaiting visas to come to the U.S. since 2005. (Tr. 30, 58, Answer to SOR) They have been waiting since 2005. Neither of her parents have ever worked for or been affiliated with the current Iranian government. Before the 1979 Islamic Revolution, Applicant's father worked for the city government and her mother was a teacher. (Tr. 28, 56) Applicant has no intention of ever visiting Iran again. (Ex. 2) She is willing to denounce her Iranian citizenship. (Tr. 39) If someone tried to pressure her through her parents she would report it to the company security officer. (Tr. 45, 84) She talks with her parents twice a month for ten minutes. (Tr. 49)

Applicant belongs to a faith that has been persecuted in Iran since 1979. Iran does not recognize it as a faith and people are not allowed to practice this religion in Iran. (Tr. 28, 53) People of her faith have been specifically persecuted by the government of Iran for practicing their religion. (Hex. 14, 15, 27) The Iranian government defines the faith as a political sect linked to the Shah monarchy and Israel, and, therefore, counter-revolutionary. (Tr. 91) As a member of her faith she is not allowed to have an Iranian National Identification Card. She believes the Iranian government does not consider members of her faith to be Iranian citizens. (Answer to SOR) Members of her faith are not allowed higher education, to have a government job, to own land, and are not treated well in Iranian society. Applicant has no rights in Iran due to her religion. (Ex. 2)

After graduating high school in Iran, there was no way for Applicant to improve her life. She was not free to practice her religion, and could not get a job. There was no way to obtain a better job. (Tr. 34) Since coming to the U.S., Applicant states she has experienced freedom and the "American Dream." She has obtained her bachelor's and master's degrees. She attended school full time and also worked full time on the night shift. (Tr. 73) She is married to a pharmacist and they have bought a house. Her husband is a U.S. citizen. (Tr. 39)

Her brother resides in the U.S., has a master's degree, and works as a senior associate accountant for an auditing and professional services firm. (Tr. 31) He is married and has two children. Application could not be made until Applicant's brother had become a citizen. (Tr. 63) Her sister resides in the U.S., has a master's degree, and

works as a civil engineer. Both her brother and sister are U.S. citizens. (Tr. 32) Her uncle, his wife, and their son immigrated to the U.S. in 1988. They currently live in the U.S. Her uncle is a college professor. In 1984, her aunt, her husband, and their son immigrated to the U.S. (Tr. 67) They live in the U.S. Her aunt owns a beauty salon. In 2001, another uncle and his wife and two children immigrated to the U.S. All of her relatives living in the U.S. are U.S. citizens. (Tr. 33)

Iran

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;
- Its support for and involvement in international terrorism;
- Its support for violent opposition to the Middle East peace process;
- Its dismal human rights record; and
- Iran's intervention in the internal affairs of Iraq.²

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. 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

²Background Note; Country Reports on Terrorism 2006, U.S. Department of State Office of the Coordinator for Counter-Terrorism, dated April 30, 2007 (country Report on Terrorism). .

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.

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

Foreign Preference

Foreign Preference is a security concern 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 ¶ 9. Additionally, the possession or use of a foreign passport is a condition that could raise a security concern and may be disqualifying. AG ¶ 10(a) (1) Applicant did possess a now expired Iranian passport, which she used for identification when entering Iran in 2004. I find AG 10(a) applies.

Even individuals without Iranian passports who do not consider themselves Iranian, are considered Iranian citizens by Iranian authorities, since Iran does not recognize dual citizenship. Because of her religious beliefs, Applicant is unable to hold an Iranian National Identification card and she does not believe Iran considers her a citizen. Even individuals holding U.S. citizenship, under Iranian law, must enter and exit Iran on an Iranian passport, unless the Iranian government has recognized a formal renunciation or loss of Iranian citizenship.

Applicant showed her Iranian passport when she entered Iran in 2004. Her parents are the only relatives she has in Iran. They have been approved by the United States Department of Justice Immigration and Naturalization Service for entry into the U.S. They are awaiting notification from the National Visa Center at the State Department to have their visas issued. She has no need of the expired Iranian passport and destroyed it by cutting it up. The Iranian passport had expired in June 2007.

AG ¶ 11(e) sets forth conditions that could mitigate security concerns if the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated. First, the passport is no longer a valid passport. It expired in June 2007. Second, the passport was destroyed. AG ¶ 11(e) applies.

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 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. AG ¶ 6

I have considered all of the Foreign Influence disqualifying conditions. Conditions that could raise a security concern and may be disqualifying are listed under AG ¶ 7. 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 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, apply. Applicant's parents are citizens and residents of Iran.

In 1989, Applicant — then age 25 — moved to the U.S. She obtained her bachelor's and master's degree. She became a U.S. citizen in November 2003. She is married and a home owner and has no foreign assets. Applicant has significant ties to the U.S. and few ties to Iran.

¶ 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.” and ¶ 8(b) “there is no conflict of interest, either because the individual's sense of loyalty or obligations 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,” apply to Applicant's parents.

Applicant's sense of loyalty is exclusively to the U.S. There is little likelihood Applicant has any conflict of interest. If she did it is clear, due to her loyalty to the U.S. and the likely minimal nature of the conflict; that she would resolve the issue in favor of the U.S.

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 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. Applicant is an established, highly regarded software engineer, with U.S. ties and assets. Since coming to the U.S., Applicant has experienced freedom and the "American Dream." She has obtained her bachelor's and master's degrees. She is married to a pharmacist and they have bought a house. Her brother, sister, aunt, uncles, and cousins resides in the U.S. Applicant stated she is loyal to the U.S. and would do nothing to compromise U.S. interests.

I considered the totality of Applicant's family ties to Iran and the heavy burden an applicant carries when she has family members in a foreign 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.

Applicant has strong ties to the U.S. with limited contact with Iran. Her financial ties are in the U.S., and she and her husband own a home in the U.S. She owns no property and has no financial or business interests in Iran. All of her relatives, except her parents, are citizens and residents of the U.S., including her siblings, aunts, uncles, and cousins. Her parents have approved applications before the United States Citizenship and Immigration Service and are awaiting visas to come to the U.S. Neither of her parents have ever worked for or been affiliated with the current Iranian government. Applicant has no intention of ever visiting Iran again. Applicant has no rights in Iran due to her religion. Applicant's faith has been persecuted in Iran since 1979. As a member of her faith she is not allowed higher education, to have a government job, to own land, is not treated as an Iranian citizen, and is treated poorly in Iranian society. Her sense of loyalty is exclusively to the U.S. She will never return to Iran. Applicant left Iran nine years ago and returned only once. Her parents are not connected to any foreign government. These facts minimize any potential for pressure, coercion, exploitation, or duress.

Applicant was sincere, open, and honest at the hearing. In the unlikely event that her parents were subjected to coercion or duress from terrorist groups, I find that with Applicant's deep relationships and loyalties to the U.S., including her uncompromising commitment to this country, Applicant would resolve any attempt to exert pressure, coercion, exploitation, or duress in favor of the U.S.

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 or overcome the foreign preference and foreign influence security concerns. I have no doubts concerning Applicant's security eligibility and suitability. I conclude Applicant is eligible for access to classified information.

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: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Paragraph 2, Guideline B: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.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 for a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge