

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: In 1977, Applicant immigrated to the United States on a student visa. He completed his education in the United States, married, and became a naturalized U.S. citizen in 1995. Applicant's ties of affection and/or obligation and contacts with his elderly parents and six siblings, who are citizen residents of Iran, pose an unacceptable risk or concern. His favorable information is not sufficient to mitigate the foreign influence and preference security concerns. Clearance is denied.

CASENO: 06-25912.h1

DATE: 06/30/2007

DATE: June 30, 2007

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In re:)	
)	
-----)	ISCR Case No. 06-25912
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
ROBERT J. TUIDER**

APPEARANCES

FOR GOVERNMENT

Francisco Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

In 1977, Applicant immigrated to the United States on a student visa. He completed his education in the United States, married, and became a naturalized U.S. citizen in 1995. Applicant's ties of affection and/or obligation and contacts with his elderly parents and six siblings, who are citizen residents of Iran, pose an unacceptable risk or concern. His favorable information is not sufficient to mitigate the foreign influence and preference security concerns. Clearance is denied.

STATEMENT OF THE CASE

On February 1, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR), alleging facts that raise security concerns under Guideline B (Foreign Influence), and Guideline C (Foreign Preference). The SOR informed Applicant that based on information available to the Government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant him access to classified information.¹ On March 2, 2007, Applicant answered the SOR (Answer), and requested a decision based on the record. On March 23, 2007, the government requested a hearing pursuant to ¶¶ E3.1.7 of the Additional Procedural Guidance of Enclosure (3) of DoD Directive 5220.6.

The case was assigned to me on April 11, 2007. On May 22, 2007, I convened a hearing at which the government presented five exhibits, marked GE 1 through 5, to support the SOR.² Applicant testified on his own behalf, and did not present any exhibits nor call any witnesses. DOHA received the transcript (Tr.) on May 31, 2007.

FINDINGS OF FACT

Applicant admitted all of the SOR allegations with explanations. His admissions are incorporated herein as findings of fact. After a thorough review of all evidence of record, I make the following additional findings of fact:

Applicant is 55 years old and has been married to his second wife since December 1997. His second wife is Iranian born and is a U.S citizen. They have two U.S. born daughters, ages six and four. He was previously married to his first wife, a U.S.born citizen, from August 1986 to November 1991. That marriage ended by divorce.

Applicant was born in Iran and immigrated to the U.S. in January 1977 on a student visa at age 25. He was awarded a bachelor of science degree in computer science in May 1980 and awarded a master's degree in mathematics in December 1982. He became a naturalized U. S. citizen in 1995, and received his U. S. passport in 1995.

Applicant has worked for his current employer, a federal contractor, as a computer specialist, since October 1999. He is a first time applicant for a security clearance and desires a clearance to enhance his upward mobility within his company.

¹ See Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960, as amended, and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992) (Directive), as amended, modified, and revised.

² Additionally, Exhibits (Ex.) 1 through 10 (U.S. Dept. of State documents concerning Iran), were marked for identification and considered for administrative notice only.

Applicant's parents are citizen residents of Iran. His father is 87 years old and his mother is 79 years old. Both his parents are in poor health. His father is a retired shoemaker and his mother is a housewife. Applicant has six siblings who are citizen residents of Iran, and he also has two siblings who reside in the U.S. Applicant's parents-in-law are also citizen residents of Iran. Applicant has one brother-in-law living in the U.S., and one brother-in-law and one sister-in-law who are citizen residents of Iran. Tr.26.

Applicant telephones his parents "about once a month." If he speaks to his siblings, it is more likely one or more of them happens to be at his parents home when he calls. Tr. 28. Applicant testified he is close to his family in Iran. Tr. 28. Applicant's wife telephones her parents "once a month" and he is not usually home when she calls them. Tr. 26-27. Applicant testified his wife is close to her parents and two siblings in Iran. Tr. 27.

Applicant held an Iranian passport issued to him in June 1976, which expired in February 2006. He initially stated that he was holding his Iranian passport with the intent to renew it should an emergency arise with his parents in Iran. Answer. He later testified he was "not sure at this point" when asked if he intended to renew his Iranian passport. Tr. 18-19. He later added that if he received word his parents became ill, he would have to renew his Iranian passport if he were to travel to see his parents in Iran.

Applicant traveled to Iran in March 1996 when he received word his father was having a pacemaker operation. Tr. 19. Applicant testified that given his dual citizenship status, he must use an Iranian passport. Tr. 20-21. None of Applicant's family members living in Iran work for the Iranian government. Tr. 23-24.

Applicant owns a home in the U.S., conducts all his banking in the U.S., and votes in U.S. elections. He does not own any real or personal property in Iran.

I take administrative notice of the following facts. The United States has not had diplomatic relations with Iran since April 7, 1980.³ Iran is a theocratic Islamic republic in which Shi'a Muslim clergy dominate the key power structures. Iran engages in clandestine efforts to acquire nuclear weapons and other weapons of mass destruction (WMD), sponsors international terrorism, intervenes in the internal affairs of Iraq, undermines the Middle East peace process, and violates the human rights of the Iranian people. The United States and its allies are attempting to block Iran's goals of obtaining nuclear weapons and other WMD and to counter Iran's efforts to destabilize Iraq and other the Middle East countries.

The United States has designated Iran as the most active state sponsor of terrorism. The United States is concerned about the possibility that Iran could transfer WMD to terrorists. Iran supports terrorists who attack Israel and Shiite militias who pursue sectarian violence in Iraq. Iranian born, naturalized U.S. citizens are warned to carefully consider the risks of travel to Iran because they are still considered Iranian citizens by Iranian authorities. Iran does not recognize dual

³ The facts in the next two paragraphs were obtained from U.S. Dept. of State documents concerning Iran in Ex. 2 through Ex. 10.

citizenship. The Iranian government has harassed and detained dual citizens of the United States and Iran.

POLICIES

The Directive sets forth adjudicative guidelines which must be considered in evaluating an Applicant's eligibility for access to classified information. Foremost are the Disqualifying and Mitigating conditions under each adjudicative guideline applicable to the facts and circumstances of the case. However, the guidelines are not viewed as inflexible ironclad rules of law. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive,⁴ and the whole person concept.⁵ Having considered the record evidence as a whole, I conclude Guideline B (Foreign Influence), Guideline C (Foreign Preference) are the applicable relevant adjudicative guidelines.

BURDEN OF PROOF

The purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.⁶ The government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the government must establish a prima facie case by substantial evidence.⁷ The responsibility then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, the applicant carries the ultimate burden of persuasion.⁸

A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest to ensure each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest"

⁴ Directive, Section 6.3. states, "Each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2 . . ."

⁵ Directive, ¶ 2(a). states, ". . . The adjudication process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. . . ."

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁷ ISCR Case No. 98-0761 at 2 (App. Bd. Dec. 27, 1999) (Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.); ISCR Case No. 02-12199 at 3 (App. Bd. Apr. 3, 2006) (Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.); Directive, ¶ E3.1.32.1.

⁸ *Egan*, *supra* n. 6, at 528, 531.

standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.⁹

The scope of an administrative judge's decision is limited. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. Executive Order 10865, § 7.

CONCLUSIONS

Under Guideline B (Foreign Influence), the government's concern is that "foreign contacts and interest may be a security concern if the individual has divided loyalties or foreign financial interests, [he or she] 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." Guideline ¶ 6.

Guideline ¶ 7 indicates conditions that could raise a security concern and may be disqualifying in this case, including:

(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;

(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 possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.¹⁰ Applicant has frequent contacts (at least once a month) and a close relationship with his father, who is a resident and citizen of Iran. These contacts create a heightened risk of foreign pressure or attempted exploitation because there is the possibility that

⁹ See *Id.*; Directive Enclosure 2, ¶ 2(b).

¹⁰ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Iranian agents may exploit the opportunity to obtain intelligence, classified, or economic information about the United States. His connection to his parents, and to a lesser extent his siblings and in-laws, also create a potential conflict of interest because his relationships are sufficiently close to raise a security concern about his desire to help family members or the government of Iran by providing sensitive or classified information.

The Government produced substantial evidence raising these two potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. As previously indicated, the burden of disproving a mitigating condition never shifts to the Government.

Three Foreign Influence Mitigating Conditions under Guideline ¶ 8 are potentially applicable to these disqualifying conditions:

(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 and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

After considering the totality of the facts and circumstances in Applicant's case, I conclude that none of the mitigating conditions apply. Applicant has feelings of affection and/or obligation for his parents and six remaining sibling in Iran. The closeness of the relationship is demonstrated by Applicant's telephone contacts to his parents, and his visit to Iran in 1996.

In deciding whether Applicant's family members are in a position to be exploited, I considered Iran's form of government;¹¹ Iran and the United States have not had diplomatic relations since 1980; Iran is the most active state sponsor of terrorism; Iran's clandestine effort to acquire weapons of mass destruction; Iran's aggressive efforts to undermine the Middle East peace process; and its intervention into the internal affairs of Iraq. I also considered the government of Iran's dismal

¹¹ The focus is not the country or its people, but its rulers and the nature of the government they impose. This approach recognizes that it makes sense to treat each country in accordance with the level of security concern or threat it presents to the United States.

human rights record and serious human rights abuses. The security concerns raised by Iran are heightened because of Iran's hostile stance toward the United States, and its blatant support of terrorism.

Considering the totality of the circumstances in his case, Applicant did not establish it is unlikely he will be placed in a position of having to choose between the interests of his family and the interests of the U.S. His frequent contacts and close relationship with his parents and siblings could potentially force him to choose between the United States and Iran. He did not meet his burden of showing there is little likelihood that his relationship with his family could create a risk for foreign influence or exploitation.

Guideline ¶ 8(b) partially applies because Applicant has developed a sufficient relationship and loyalty to the U.S., that he can be expected to resolve any conflict of interest in favor of the U.S. interest. He has lived in the United States since he was 25 years old. He was educated in the United States, and became a U.S. citizen in 1995. His wife and two U.S. born children are citizen residents of the United States. All of his financial investments and business are in the United States. His contacts and linkage to the United States are greater than his linkage to Iran. Although this mitigating condition is partially applicable, these facts are insufficient to overcome the security concerns.

Under Guideline C (Foreign Preference), the government's concern is that "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." Guideline ¶ 10.

Guideline ¶ 10 indicates conditions that could raise a security concern and may be disqualifying in this case, including:

(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;

The Government produced substantial evidence raising one potentially disqualifying condition, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. As previously indicated, the burden of disproving a mitigating condition never shifts to the Government.

Although Applicant's Iranian passport has expired, it is clear from his testimony he wishes to keep his options open to renew it should the need arise to visit his aging parents in Iran. As such, I am unable to apply any mitigating conditions.

In addition to the enumerated disqualifying and mitigating conditions as discussed previously, I have considered the general adjudicative guidelines related to

the whole person concept under Directive ¶ E2.2.1. “Under the whole person concept, the Administrative Judge must not consider and weigh incidents in an applicant’s life separately, in a piecemeal manner. Rather, the Judge must evaluate an applicant’s security eligibility by considering the totality of an applicant’s conduct and circumstances.”¹² The directive lists nine adjudicative process factors (factors) which are used for “whole person” analysis. Additionally, other “[a]vailable, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.” Directive ¶ E2.2.1. Ultimately, the clearance decision is “an overall common sense determination.” Directive ¶ E2.2.3.

Applicant’s mitigating evidence weighs towards grant of his security clearance. Applicant has lived in the United States for 30 years, and is a naturalized U.S. citizen. His testimony shows he is a loyal U.S. citizen. His wife is also a naturalized U.S. citizen and his two children are U.S. born citizens. His ties to the United States are stronger than his ties to family members in Iran. There is no evidence he has ever taken any action which could cause potential harm to the United States. He takes his loyalty to the United States very seriously, and he has worked diligently for his current defense contractor employer for over seven years. He was candid and respectful in his remarks, and he appears to be an individual who is conscientious, responsible, mature, and of high integrity.

Notwithstanding his favorable information, the heightened risk of foreign exploitation remains. Applicants with immediate family members living in Iran have a "very heavy burden of persuasion" to demonstrate that their contacts with those family members do not pose a security risk.¹³

“Because of the extreme sensitivity of security matters, there is a strong presumption against granting a security clearance. Whenever any doubt is raised . . . it is deemed best to err on the side of the government’s compelling interest in security by denying or revoking [a] clearance.”¹⁴ After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude he has not mitigated the foreign influence security concerns.

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

¹² ISCR Case No. 03-04147 at 3 (App. Bd. Nov. 4, 2005) (quoting ISCR Case No. 02-01093 at 4 (App. Bd. Dec. 11, 2003)).

¹³ See ISCR Case No. 02-13595 at 3 (App. Bd. May 10, 2005) (stating an applicant has "a very heavy burden of persuasion to overcome the security concerns" when parents and siblings live in Iran); ISCR Case No. 04-11463 at 4 (App. Bd. Aug. 4, 2006) (articulating "very heavy burden" standard when applicant's family members live in Iran).

¹⁴ *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990).

Subparagraphs 1.a – 1.e

Against Applicant

Paragraph 2, Guideline C:

AGAINST APPLICANT

Subparagraphs 1.a. - 2.b.:

Against Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Clearance is denied.

Robert J. Tuidor
Administrative Judge