



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



In the matter of:)	
)	
)	ISCR Case No. 17-04151
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

01/15/2019

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Based on a review of the pleadings, testimony, and exhibits, I conclude that Applicant has mitigated foreign influence concerns raised by his grandmother, who is a citizen of and resident in Iran; as well as the concerns raised by his mother, who is a dual citizen of the United States and Iran and travels to Iran to care for Applicant's grandmother. His request for a security clearance is granted.

Statement of Case

On September 26, 2016, Applicant submitted a security clearance application (SF 86). On March 5, 2018, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline B for foreign influence. The SOR further informed Applicant that, based on information available to the Government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on April 5, 2018, and April 17, 2018 (Answer), and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On September 7, 2018, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was received by him on September 12, 2018. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. On October 10, 2018, he submitted an 11-page response to the FORM (Reply). He did not object to any of the Items. On January 8, 2019, the case was assigned to me. Items 1 through 6 and the Reply are admitted into evidence, without objection.

Procedural Rulings

The Government and Applicant both requested I take administrative notice of certain facts relating to the Islamic Republic of Iran (Iran). Department Counsel provided a seven-page summary of the facts, supported by 16 Government documents pertaining to Iran, marked as Item 6. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge and not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant denied SOR ¶¶ 1.a and 1.b. The facts are as follows:

Applicant is 27 years old. He is unmarried, and has a minor child. Applicant was born in Iran and immigrated to the United States in 2006, at the age of 15. He graduated from a U.S. high school. He was naturalized as a U.S. citizen in October 2011. He earned a bachelor's degree in 2016 from a U.S. university. He has not visited Iran since 2007. He does not hold an Iranian passport and has "no loyalty or care for the government of Iran nor do[es he] have any interest in the country of Iran." (Answer; Item 3; Item 4.)

Applicant's brother, uncles, aunts, cousins, and his mother are all naturalized citizens of the United States. Applicant's daughter is a natural born citizen of the United States. (Answer; Item 4.) Applicant has no contact with his father or stepsisters, who are citizens and residents of Iran, since 2007. Applicant indicated that "all of my family members including myself are strongly opposed to the Islamic government of Iran." (Reply.)

Applicant's mother is a dual citizen of the United States and Iran. She immigrated to the United States with Applicant in 2006 and was naturalized as a U.S. citizen in 2012. His mother travels to Iran annually to assist her ailing mother. Most recently, she resided in Iran for about a year between 2016 and 2017, and then returned to the United States. After his grandmother's impending passing, Applicant's mother will

remain wholly in the United States. Applicant has little contact with his mother when she is in Iran. He does not discuss the details of his job with her even when she is in the United States. (Item 4; Reply.)

Applicant's maternal grandfather is deceased. Applicant's maternal grandmother remains a citizen and resident of Iran. She is 92 years old and was a homemaker. She previously held legal permanent resident status in the United States, but has not been able to travel to the United States due to her health. She is in failing health and cannot travel to the United States due to her condition. Applicant communicates with her a few times each year. (Item 4; Item 5; Reply.)

None of Applicant's family members have ever been employed by a foreign government or military. He has no foreign assets. Applicant's only foreign travel in the past ten years was for a vacation in Mexico. (Item 5.)

Applicant is considered an "exemplary contributor as an engineer and innovator" by his manager. He is considered to be among the best and brightest in his line of work and is a valuable asset to his employer. (Reply.)

Iran

Iran is an authoritarian state in which a theocratic religious scholar, the Supreme Leader, is accountable only to the Assembly of Experts, a popularly elected 86-member body of clerics. Iran has been considered to be a State Sponsor of Terrorism by the United States since 1984. Iran provides financial aid, advanced weapons and tactics, and directions to militant and terrorist groups across the Middle East. Citizens of Iran are currently barred from entry into the United States, with certain exceptions. The United States has imposed sanctions on Iran for its nuclear-related activities.

The United States does not have diplomatic relations with Iran and warns U.S. citizens not to travel to Iran due to risks of arbitrary detention and imprisonment. Human rights concerns include: illegal detention in unofficial holding facilities; torture and coerced confessions; and detention and harassment of journalists, lawyers, writers, bloggers, dissidents, and others whose actions are deemed unacceptable. There is a lack of due process and individuals have limited forms of redress against official abuse. Visitors may be placed under surveillance and may be searched without knowledge or consent.

Iran has targeted the United States and leverages cyber espionage, propaganda, and attacks to support its security priorities. Iran has been identified by the U.S. Director of National Intelligence as one of the greatest cyber threats to the United States.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 national security eligibility will be resolved in favor of the 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 adverse 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property 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. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Three are potentially applicable in this case:

- (a) contact, regardless of method, 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
- (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.

Applicant's grandmother is a citizen and resident of Iran. His mother is a dual U.S. and Iranian citizen and travels to Iran frequently. There is an articulated heightened risk associated with having relationships with family members in or tied to Iran, due to Iran's sponsorship of terrorism, its attempted nuclear proliferation, its cyber threat, and the persistent human rights abuses present there. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

- (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.

Applicant's emotional bonds to his relatives in Iran have decreased since he left Iran at the age of 15 and moved to the United States. His bonds with his immediate and extended family in the United States have strengthened his ties here. He attended high school in the United States. He earned a bachelor's degree at a U.S. university. He has adapted to the American way of life and plans to remain in the United States. His daughter is solely an American citizen. His ties to his 92-year-old grandmother are diminished. He contacts her infrequently. She is ill and once she has passed, Applicant's mother will not return to Iran. Applicant has little contact with his mother when she is in Iran. Further even when she is in the United States, he does not discuss his work with her. He demonstrated sufficient relationships with the United States, which outweigh any risks associated with his mother or grandmother. AG ¶ 8(b) provides mitigation.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

According to 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 applicable guidelines and the whole-person concept. Applicant's personal property and investments are located in the United States. He has adopted the American way of life and considers himself a true American with full loyalty only to the United States. I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Overall, the record evidence leaves me without doubt as to Applicant's suitability for a security clearance. He met his burden to mitigate the security concerns arising under the guideline for foreign influence.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraphs 1.a and 1.b: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant national security eligibility and a security clearance. National security eligibility is granted.

Jennifer I. Goldstein
Administrative Judge