



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



In the matter of:)
)
) ADP Case No. 18-01580
)
Applicant for Public Trust Position)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: Ryan C. Nerney, Esq.

September 11, 2019

Decision

TUIDER, Robert, Administrative Judge:

Applicant mitigated trustworthiness concerns pertaining to Guidelines B (foreign influence) and E (personal conduct). Eligibility for access to sensitive information is granted.

Statement of the Case

On October 15, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guidelines B and E. On January 10, 2019, Applicant responded to the SOR through counsel, and requested a hearing before an administrative judge.

On March 20, 2019, the case was assigned to me. On March 27, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, scheduling the hearing for April 30, 2019. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and called one witness. Applicant Exhibits (AE) A through W were admitted without objection. On May 13, 2019, DOHA received the hearing transcript (Tr.).

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts about Iran. Applicant did not object to the request, and it was approved. The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibit (HE) I. The facts are summarized in the written request and will not be repeated verbatim in this decision. Of particular note is that the U.S. Government has designated Iran as a state sponsor of terrorism. It conducts cyber espionage and attacks, and more traditional espionage against U.S. interests and allies. It does not recognize Israel and has hindered the Middle East peace process, including in Syria. It has a dismal human rights record. Iran does not recognize dual nationality and will treat U.S.-Iranian dual nationals solely as Iranian citizens subject to Iranian laws. U.S.-Iranian dual nationals have been denied permission to enter or depart Iran using their U.S. passports. U.S.-Iranian dual citizens have been detained and harassed by the Iranian government. Iranian security personnel may place Iranian citizens and foreign visitors under surveillance. Hotel rooms, telephones and fax machines may be monitored, and personal possessions in hotel rooms may be searched.

Findings of Fact

Background Information

Applicant is a 53-year-old radiologist, who has been employed since September 2016 as a contract physician at a major military hospital. He seeks a position of trust as a condition of his continued employment. (Tr. 32-34, 42, 46-48, 98-99)

Applicant graduated from high school in June 1982. He subsequently earned several degrees: (1) a bachelor of science degree in physics, minoring in biology and mathematics, in June 1987; (2) a master's degree in physics in March 1989; (3) a Ph.D. in physics in December 1994; and (4) a joint degree – J.D. in December 1998 and M.D. in May 2002. All of Applicant's education, discussed above, took place in the United States. Applicant completed two residency programs and two fellowship programs at prestigious hospitals in the United States. He has active licenses to practice medicine in five states, an inactive license to practice medicine in one state, and active licenses to practice law in two states. (Tr. 35-42; AE C, AE L, AE R, AE S)

Applicant was married from June 2000 to November 2003, and that marriage ended by divorce. He remarried in April 2014. Both spouses are U.S.-born citizens. (Tr. 43, 105-106; GE 1) Applicant has three minor sons, all of whom are U.S.-born citizens. His oldest son was born while he was married to his first wife, and two younger sons were born while he was married to his second and current wife. Applicant's wife is not employed outside the home. At the time Applicant met his wife, she was employed as a grant analyst at a major university. (Tr. 43-45)

Foreign Influence

Applicant was born in Iran to Iranian parents. In September 1978, at age 12, he immigrated to the United States, along with his two older brothers, because of political instability in Iran. Since then, he has never returned to Iran. Initially Applicant and his brothers lived with their uncle (mother's brother), who was an active duty U.S. Navy doctor. Applicant's parents and older sister later joined him and his brothers in the United States. (Tr. 48-49, 88, 99-; GE 1) Applicant became a naturalized U.S. citizen in June 1996, and was issued his most recent U.S. passport in July 2007. (GE 1; AE M, AE N)

Applicant's father was an Iranian Army colonel during the Shah of Iran's government, and was "in charge of passports in Iran." When his father retired from the Iranian Army, he joined the family business of "multi-generational real estate people" doing "land transactions." His father's post-military real estate career was going well until the Shah was overthrown in February 1999. Hearing reports that several of his friends were executed shortly after the Shah was overthrown, Applicant's father left Iran for the United States. His father remained in the United States until he passed away in 2008. (Tr. 102-105)

Applicant's elderly mother is a naturalized U.S. citizen and lives in Iran part time. At the time of Applicant's hearing, she was in Iran and unable to return to the United States because of poor health. Applicant tries to communicate with his mother "once a week" on the telephone. His mother was a school teacher before becoming a homemaker. (Tr. 49-54, 82-85, 90-91, 97, 99) Applicant has two older brothers and an older sister, who live in the United States. His oldest brother and sister are successful physicians and his other brother is a real estate agent and software programmer. Applicant communicates with his siblings on a regular basis as time allows, given everyone's respective schedules with their careers and families. (Tr. 55-57)

Applicant has extended family members on his mother's side living in Iran, including an aunt, three ("maybe four") uncles, and several cousins who are resident citizens of Iran. His aunt and uncles are retired, elderly, and not affiliated with the Iranian government. Since Applicant came to the United States, he talked to his relatives in Iran infrequently -- a handful of times by telephone. He met one of his cousins, a dentist, who visited the United States about seven years ago. All of his uncles on his father's side have passed away. Applicant does not have a close relationship with any of his relatives in Iran, except his mother. (Tr. 57-63)

Applicant has ownership or co-ownership interest in approximately 12 properties in Iran, including a family home, two apartments, a house, and eight parcels of land, with an estimated value of at least \$1 million U.S. dollars. These properties are managed by his mother. All of these properties were acquired by his late father before the Iranian revolution. Applicant has not visited these properties since he arrived in the United States nor does he provide any financial support to maintain them. These properties are also co-owned by his siblings and his mother. Applicant did not have a full appreciation of his Iranian properties until he completed the paperwork for his

background investigation. It was only after some extensive conversations with his brothers that he realized the extent of his real estate holdings in Iran. Once he became aware of these assets, he fully disclosed that information during his background investigation. (Tr. 63-68, 85-87, 89, 95)

Unbeknownst to Applicant, he also had an ownership or co-ownership interest in an Iranian bank account used to maintain family properties in Iran. This bank account has an undetermined value, and is managed and controlled by his mother. Applicant has no idea when this bank account was established, has never seen a bank statement, and requested that his name be removed from the account. Applicant surmised this account was established when he was a child by his parents. He only found out about the bank account when he began making inquiries of his family members in response to questions that arose during his background investigation. Applicant had his name removed from the account, which is documented by the sworn affidavit of his brother. (Tr. 71-72, 88-89, 108-109; AE W)

Applicant has a number of properties in the United States that far exceed the value of the Iranian properties in which he may have an interest. Because of the current embargo between the United States and Iran, Applicant is unable to derive any proceeds from the family Iranian properties. Furthermore, he has no control over his Iranian property interests, nor does he want any involvement with these properties. In essence, Applicant's Iranian properties are of no value to him. (Tr. 68-70, 95-96; GE 4; AE E) To that end, he set up a blind trust in December 2018, which is irrevocable for the duration of his employment as a defense contractor that transferred any and all of his Iranian property rights to his older brother. Applicant has chosen not to be involved in any way with any property in Iran, real or personal, stating, "I don't care what happens to it." The terms of this blind trust are documented by the sworn affidavit of his brother. (Tr. 70-71, 89-90, 106-107; AE H, AE V, AE W)

Applicant's real property holdings in the United States consist of four homes and several land parcels. He estimates his net worth to be in the range of \$5 to \$6 million dollars. He has approximately \$100,000 in retirement accounts. (Tr. 72-74, 107; AE T) Applicant's annual salary as a contract physician is \$450,000. He also has a part-time job as a physician consultant with a search engine company, with an annual salary of \$200,000. His combined annual salary is \$650,000. (Tr. 107-108; AE K)

Personal Conduct

Applicant is alleged to have falsified his September 2016 e-QIP by failing to list two of his siblings, three uncles, an aunt, his Iranian real estate holdings, and the Iranian bank account, discussed above. Before submitting his e-QIP on line, Applicant completed a draft hard copy of his e-QIP. When completing his e-QIP on line, he encountered some "computer glitches." He thought he had provided the requested information when he hit the "submit" button, but apparently the information did not go through. He stated when he hit the "submit" button, the program "would just freeze." He informed the security office about the problems he encountered when completing his e-QIP and provided documentation of same. (Tr. 75-78, 90-94; AE U, AE V)

Applicant provided the draft hard copy of his e-QIP that he used when completing his e-QIP on line. The draft hard copy listed the missing relatives. He also disclosed these relatives during his April 2018 Office of Personnel Management Personal Subject Interview (OPM PSI), and in his March 2018 Response to Interrogatories. (Tr. 75-78, 94; GE 2, GE 3; AE D, AE F)

Applicant is also alleged to have falsified his September 2016 e-QIP by failing to list his real property interests in Iran. As discussed above, Applicant was unaware of these properties until he underwent his background investigation. As with the missing relatives issue, Applicant disclosed the Iranian bank account during his OPM PSI as well as in his Response to Interrogatories. Applicant credibly testified regarding these e-QIP omissions and did not attempt to withhold or conceal information on his e-QIP to gain a position of trust. (Tr. 78-82)

Applicant professed his loyalty for the United States. He appreciates the freedoms and opportunities available to him and his family here. Applicant believes he has served the United States well as a productive citizen. He is grateful that he can provide care for this country's servicemen and women and their dependents, and give back in some small measure to the United States what this country has given to him. (AE A)

Character Evidence

Applicant called an active duty senior hospital corpsman (HM) as a character witness. HM is the clinical supervisor and senior technician at the hospital where Applicant is employed. HM has held a secret security clearance for 19 years and is familiar with the clearance process. HM supervises 34 active duty military personnel and 16 civilian employees. (Tr. 17-20) HM has known Applicant since he reported to the hospital in January 2017 and interacts with him on a daily basis, 12 hours a day, 5 days a week. (Tr. 20-21) HM described the clinic workload as "very heavy," with their radiologists responsible for treating "thousands of patients." He stated Applicant is always willing to assist in whatever task is needed and always puts the patient first. Applicant is considered to be a very honest, straightforward, caring, dependable, and trustworthy physician. (Tr. 21-26)

Applicant has earned a reputation for being one of the most highly respected radiologists on staff. HM has no reason to doubt Applicant's loyalty to the United States. He is familiar with the security concerns Applicant is facing and stated that that he has no concerns with Applicant's ties to Iran. HM recommended Applicant for a position of trust. Applicant regularly demonstrates his trustworthiness in a key position that is crucial to this hospital's ability to provide timely and comprehensive services to their patient population. (Tr. 26-28)

Applicant submitted numerous reference letters from fellow physicians and colleagues. The collective sense of these letters reflects that Applicant is loyal to the United States, and is a tremendous asset at the hospital and to the patient population he serves. (AE B, AE P) Applicant has authored or co-authored 22 articles published in

various medical journals or medical media, participated in 31 oral presentations, and participated in two funded research projects. (AE L) His work performance evaluations and awards document rock-solid performance. (AE O, AE Q) On the home front, Applicant and his family are firmly established in their community. (AE A, AE I, AE J)

Policies

This case is adjudicated under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. 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 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.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable trustworthiness decision.

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

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. The following 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;

(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; and

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

Applicant's mother is a part-time resident of Iran, and his aunt, at least three uncles, and several cousins are resident citizens of Iran, a country that is clearly hostile to the United States. See ISCR Case No. 05-03250 at 5 (App. Bd. Apr. 6, 2007). Iran is a leading state sponsor of terrorism; it conducts cyber espionage and attacks, and more traditional espionage against U.S. interests and allies; and the government of Iran has committed numerous, serious human rights abuses against its people and foreign visitors. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. Applicant's real property and financial assets raise additional concerns under this Guideline. AG ¶¶ 7(a), 7(b), and 7(f) have been raised by the evidence. Further review is necessary.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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 United States;

(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; and

(f) the value or routine nature of the foreign business, financial, or property interests is such they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant has lived in the United States since 1978. His wife is a native-born U.S. citizen. His three children were born in the United States. His mother, in poor health and unable to travel, is a U.S. citizen but currently living in Iran. His two older brothers and older sister are well-established professionals and productive members of society living in the United States. He credibly professed his allegiance to the United States. I find that it is unlikely Applicant will be placed in a position of having to choose between the interests of the United States and the interests of the Iranian government, any terrorist organization, or his Iranian family members. I further find there is no potential for conflict of interest, because Applicant has such deep and long-standing relationships and loyalties in America that he can be expected to resolve any conflict of interest in favor of the United States. AG ¶ 8(a) is partially applicable. AG ¶ 8(b) is applicable.

Applicant has temporarily divested himself of any Iranian financial interests, which under the current political situation are worthless to him in any event. The evidence further established that, before Applicant temporarily divested himself of these assets, his knowledge of and involvement with these Iranian assets was negligible or non-existent. Even if Applicant's Iranian assets proved to be of value at some later time, they are unlikely to result in a conflict that could effectively influence, manipulate, or pressure him given his significant U.S. assets. AG ¶ 8(f) is applicable.

Personal Conduct

Applicant credibly stated that, when he completed his e-QIP, he believed that he had reported all the requested family background information regarding his Iranian relatives. Sensing that the information might not be accurately recorded, he promptly alerted his security office of the problems he encountered with the computer program and provided documentation of same. He also provided the draft hard copy of his e-QIP that listed the missing relatives. Furthermore, he reported his Iranian relatives during his OPM PSI and in his Response to Interrogatories.

Applicant credibly stated that he was unaware of his interests in his family's Iranian properties and bank account when he completed his e-QIP. His background investigation prompted him to investigate these holdings further. It was only after

extensive conversations with family members that he came to realize the extent of these properties and the existence of the bank account in Iran. As with his Iranian relatives, he reported these properties and the bank account during his OPM PSI and in his Response to Interrogatories. As noted, he has since divested himself of those interests in Iranian assets. Based on the available information, it appears Applicant did not exercise the attention to detail he could have when completing his e-QIP, but that lack of attention to detail was not a willful and deliberate attempt to undermine the investigative process. Although the information he provided regarding his Iranian relatives and Iranian assets later proved to be incomplete or inaccurate, I attribute these lapses to carelessness and am satisfied that he did not deliberately and intentionally fail to disclose his relatives or Iranian assets with the intent to deceive.

The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)). Applicant has refuted the allegation that he intentionally falsified his security clearance application, and his e-QIP answers do not raise trustworthiness concerns.

Analysis

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility 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. I have incorporated my comments under Guidelines B and E in my whole-person analysis.

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 and financial interests in a hostile country. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's foreign interests make him or her vulnerable to exploitation. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism. Iran is a leading state sponsor of terrorism, conducts espionage against the United States, and has a dismal human rights record.

Applicant's family members have no direct connection to the Iranian government and are not likely to raise Applicant's profile with the Iranian government. Applicant was sincere, open, and candid at the hearing. In the unlikely event that his family members were subjected to coercion or duress from the Iranian government or terrorist groups, I am confident that his deep and long-standing relationships and loyalties in the United States, including his uncompromising commitment to this country and his wife and children, would cause Applicant to resolve any attempt to exert pressure, coercion, exploitation, or duress in favor of the United States.

Overall, the record evidence leaves me without questions or doubts about Applicant's national security eligibility. I conclude Applicant 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 ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline B:	For Applicant
Subparagraphs 1.a - 1.d:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a – 2.c:	For Applicant

Conclusion

It is clearly consistent with interests of national security to grant Applicant eligibility for a public trust position. National security eligibility for access to sensitive information is granted.

Robert Tuider
Administrative Judge