



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



In the matter of:)
)
) ISCR Case No. 18-02850
)
)
Applicant for Security Clearance)

Appearances

For Government: Moira Modzelewski, Esq., Department Counsel
For Applicant: *Pro se*

07/09/2019

Decision

DAM, Shari, Administrative Judge:

Applicant did not mitigate the foreign influence security concerns arising from her connections to family members in Iran. National security eligibility for access to classified information is denied.

History of Case

On February 8, 2018, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On December 21, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence). On January 22, 2019, Applicant answered the SOR in writing and requested a hearing (Answer). The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on April 5, 2019. DOHA issued a Notice of Hearing on April 26, 2019, setting the hearing for May 30, 2019. At the hearing, Department Counsel offered Government Exhibits (GE) 1 and 2 into evidence. Applicant testified and offered Applicant Exhibits (AE) A through F into evidence. All exhibits were admitted without objection. The Government also submitted

Hearing Exhibit (HE) 1 a discovery letter sent to Applicant The record closed at the conclusion of the hearing. DOHA received the hearing transcript (Tr.) on June 10, 2019.

Procedural Ruling

Department Counsel also submitted HE 2, a written request that I take administrative notice of certain facts about Iran. Applicant did not object to the request, and I have taken administrative notice of the facts contained in the request that are supported by source documents from official U.S. Government publications attached to the request. (Tr. 16) The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. The pertinent facts are set out in the Findings of Fact, below.

Findings of Fact

Applicant admitted the four allegations contained in the SOR. Her admissions are incorporated into these findings.

Applicant is 42 years old. She was born in Iran. She earned a bachelor's and a master's degree from an Iranian university. She arrived in the United States in 2001 on a student visa. In 2009, she finished her doctorate degree at a state university. She supported herself as a graduate assistant. She received permanent U.S. residency status in 2011. She became a naturalized U.S. citizen in 2017. (Tr. 20-21, 25, 27)

Applicant met her husband while both were attending the state university. He was born in Iran. They married in 2005. He came to the United States in 2002 on a student visa. He earned a doctorate degree. He became a naturalized U.S. citizen in 2017. (Tr. 21-26, 30) His immediate family resides in Iran. He does not have any immediate family members residing in the United States. (Tr. 53)

Applicant and her husband have two children, ages eight and five, who were born in the United States. Applicant and her husband purchased a \$600,000 home in 2017, and have a \$480,000 mortgage on the property. They have retirement accounts in the United States. She has about \$60,000 in savings. They have no property or financial interests in Iran. (Tr. 22-25, 31, 40)

Applicant returned to Iran to visit her ill father once in 2008. She visited him two to three times in 2012, before his death. He was not affiliated with the government. She and her husband and children have visited both her husband's and her families four or five times since 2012, including in 2017. She did not go in 2018, but would like to return to visit her family in Iran in the future. (Tr. 26, 45-48; GE 2) Applicant uses her Iranian passport to enter and exit Iran, as it is easier. She said she has never been questioned by the Iranian government about her activities in the United States during her trips to Iran. (Tr. 41; Answer)

Applicant's mother is a citizen and resident of Iran. She is 63 years old. Applicant generally speaks to her mother every day. She last saw her mother in 2017 when she visited her in Iran. Her mother visited the United States in 2006 and 2010. Applicant does not provide financial support to her mother. Her mother is supported through Applicant's deceased father's estate. (Tr. 32-33, 39) Applicant is sponsoring her mother for U.S. citizenship. She said her family members know that she works in research in the United States, but they do not know the name of her employer. However, Applicant recently told her mother the name because she needed that information for an interview that is part of the U.S. citizenship process. (Tr. 29)

Applicant has three sisters. All of them are citizens and residents of Iran. The oldest sister is 41 years old. She is married and has two children. She and her husband are both medical doctors. Applicant speaks to this sister either every day or at least once a month. (Tr. 33-35) The second sister is 29 years old. She and her husband have advanced degrees. Applicant speaks to this sister monthly or every three months. The third sister is 23 years old and unmarried. She lives with Applicant's mother. She is pursuing a master's degree at an Iranian university. Applicant speaks to this sister once or twice a month. (Tr. 33-38; Answer) Applicant is sponsoring all three sisters and their families for U.S. citizenship and has filed initial immigration applications on their behalf. (Tr. 51) None of Applicant's immediate family lives in the United States. (Tr. 53)

Applicant's elderly mother-in-law and father-in-law are citizens and residents of Iran. Neither of them is associated with the Iranian government or military. Her father-in-law worked as an accountant and taught at a university. Applicant has little contact with her in-laws, but does visit them when she is in Iran. She thinks her husband communicates with them about every two weeks. (Tr. 42-45)

Applicant began working for her employer in 2014. She has an extensive and impressive background in research. (AE B, AE E) Two of her supervisors strongly support her request for a security clearance. They attest to her accomplishments, leadership, and integrity. (AE C, AE D) She is active in several professional organizations. (Tr. 24, 28)

Applicant said that the United States is her home. She intends to live here with her family the rest of her life. She is happy in the United States. (Tr. 42)

Iran

The following facts are based on the source documents in HE 2:

Iran has been designated as a State Sponsor of Terrorism since 1984. It remains the most prominent state sponsor of terrorism, providing financial aid, advanced weapons and tactics, and direction to militant and terrorist groups across the Middle East. It cultivates operatives across the globe as a contingency to enable potential terrorist attacks.

Iran uses terrorist groups to implement foreign policy goals, provide cover for intelligence operations, and create instability in the Middle East. It remains an enduring threat to the U.S. national interests. Iran and its primary terrorism partners pose a persistent threat to the United States and its partners worldwide. The U.S. Government does not have diplomatic ties or consular relations with Iran. The Department of State warns U.S. citizens not to travel to Iran due to the risk of arbitrary arrest and detention.

Iran continued to leverage cyber espionage, propaganda, and attacks to support its security priorities, influence events and foreign perceptions, and counter threats including against U.S. allies in the region. The U.S. Director of National Intelligence (DNI) has identified several countries, including Iran, as posing a significant cyber threat against the United States. The DNI specifically noted that Iran will continue to penetrate U.S. and allied networks for espionage and to position itself for potential cyber-attacks. There is also concern that Iran will expand its influence in the region and will develop military capabilities that threaten U.S. forces.

In 2015, the Visa Waiver Program was amended. Under the amendment, citizens of Iran, Iraq, Sudan, and Syria are ineligible to travel or be admitted to the United States. The exclusion of these countries from waiver eligibility reflects that the presence of an individual in that country increases the likelihood that the individual is a credible threat to the national security of the United States, that a foreign terrorist organization has a significant presence in the country; or that the country is a safe haven for terrorists.

Iran has a poor human rights record. There are severe restrictions on civil liberties, including freedom of assembly, association, speech, religion, and the press. Other problems include abuse of due process combined with the use of capital punishment for crimes that do not meet requirements for due process, as well as cruel, inhuman, or degrading treatment and punishment; and disregard for the physical integrity of persons, whom authorities arbitrarily and unlawfully detained, tortured, or killed. There are numerous other human rights problems in Iran.

Policies

This national security eligibility action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD after June 8, 2017.

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

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. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 applying for national security eligibility seeks to enter 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 national security eligibility. 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 or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, "[a]ny determination under this order adverse to an applicant shall be a determination 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline B: Foreign Influence

¶ 6: The security concern relating to the guideline for foreign influence is set out in AG

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 describes conditions that could raise security concerns and may be disqualifying 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;

(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

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

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, that factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Iran is hostile toward the United States and engages in extensive anti-western terrorism activities that operate openly and contrary to U.S. interests. Accordingly, Applicant's close connections and visits to her family and her husband's family there generate significant heightened risks of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a).

Applicant has ongoing contacts with her mother, three sisters, and parents-in-law, who are citizens and residents of Iran. She visited her family once in 2008, two or three times in 2012, and five or six times after that through 2017. These relationships create a heightened risk of foreign pressure or attempted exploitation because powerful government agencies and terrorist sponsors in Iran seek intelligence and engage in

behaviors that are hostile to the United States' interests. Applicant's relationship with family members creates a potential conflict of interest between Applicant's obligation to protect sensitive information or technology and her desire to help family members living in Iran. The evidence is sufficient to raise disqualifying security concerns under AG ¶ 7(b).

Applicant's husband maintains regular contact with his parents in Iran. Applicant visits them when she is in Iran. This creates additional heightened risk. AG ¶ 7(e) applies.

After the Government produced sufficient evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. Three mitigating conditions under AG ¶ 8 are potentially applicable to the disqualifying 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 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

(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.

Considered in light of the substantial anti-western military, espionage, and terrorism threats from Iran, Applicant did not sufficiently demonstrate that it is unlikely she could be placed in a position of having to choose between the interests of a foreign individual or government and those of the United States due to her Iranian family ties. Applicant has legitimate and appropriately close relationships with family members living in Iran, and a strong interest in protecting those people. The potential for conflict of interest situations created by those family circumstances is not sufficiently mitigated. Her ongoing communication and contact with them are neither casual nor infrequent. Accordingly, she failed to establish the mitigating conditions set out in AG ¶¶ 8(a) and (c).

The evidence fails to establish sufficient mitigation under AG ¶ 8(b). A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the United States." Applicant has developed some connections to the United States: she arrived in the United States in 2001; she earned a doctorate degree in 2009; her husband and children are U.S. citizens and residents; and she became a citizen in 2017, less than two years ago. While these facts are in Applicant's favor, they do not outweigh

her long history and important familial relationships within Iran. There is insufficient evidence to conclude that Applicant's U.S. ties are so deep and longstanding that she can be expected to resolve any conflict of interests, involving her family members in Iran, in favor of the U.S. interests. Accordingly, she did not sufficiently mitigate the foreign influence security concerns under this condition.

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.

According to 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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline B and in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

The foreign influence security concerns do not arise from any questionable conduct by Applicant, but rather from circumstances that are normal results of her family situation. There is no evidence that she has ever taken any action that could cause potential harm to the United States. However, after weighing the disqualifying and mitigating conditions, and all pertinent facts and circumstances in the context of the whole-person, including her impressive professional accomplishments in the United States and developing ties here, Applicant did not sufficiently mitigate the substantial security concerns pertaining to foreign influence. The significant potential for pressure, coercion, exploitation, or duress remains unmitigated. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

