



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



In the matter of:)
)
) ISCR Case No. 19-00072
)
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esquire, Department Counsel
For Applicant: I. Charles McCullough, III, Esquire

May 21, 2020

Decision

ROSS, Wilford H., Administrative Judge:

On August 18, 2016, Applicant submitted his most recent Electronic Questionnaires for Investigations Processing (e-QIP). (Item 3.) On April 2, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on June 8, 2017.

Applicant answered the SOR in writing (Answer) on May 7, 2019, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals. (Item 2.) He subsequently requested through counsel that his case be decided on the written record in lieu of a hearing. A complete copy of the file of relevant material

(FORM) prepared by Department Counsel, consisting of Items 1 to 6, was provided to Applicant on October 9, 2019. Applicant received received the file on October 17, 2019.

Attached to the FORM is a request for administrative notice concerning the Islamic Republic of Iran (Iran). Department Counsel provided a seven-page summary of the facts, supported by 18 Government documents pertaining to Iran. 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, not subject to reasonable dispute. They are set out in the Findings of Fact.

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted additional information in a timely fashion. Department Counsel had no objection and the submission is admitted into evidence as Applicant's Exhibit A. The case was assigned to me on December 5, 2019. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is granted.

Findings of Fact

Applicant is 37 and married. He and his wife have two boys. He seeks to obtain national security eligibility for access to classified information in connection with his employment as a Senior Solutions Architect for a defense contractor. (Item 4 at Sections 17 and 18.)

Paragraph 1 – Guideline B (Foreign Influence)

Applicant was born in the United States in 1982. His parents, who were born in Iran, were living in the United States at the time. Applicant lived in the United States until he was 9 years old, when his family moved back to Iran. Applicant returned to the United States in 1997 and has lived here continuously since that time. He has never been a citizen of Iran. He has not traveled to Iran since moving back to the United States. (Item 3 at Section 18; Item 5 at 2.) He attended high school and college in the United States, and has worked for his present employer since January 2010. (Item 4 at Sections 12 and 13A.)

Applicant's wife is a naturalized American citizen. She was born in Canada. Her parents are citizens of Canada, and are of Iranian descent. She is also employed in the defense industry. (Item 2 at 39; Item 4 at Sections 17 and 18.)

Applicant's parents moved permanently to the United States in approximately 2011, and they have become naturalized American citizens. They both now live with Applicant, since his mother has serious health issues. (Item 2 at 4.)

The following are the specific security concerns raised in the SOR:

(a) Applicant's father worked for a local police department in Iran until he retired in 1979, over 40 years ago. He is 79 years old. At one point he received a small pension from the Iranian government. Applicant does not believe his father still receives a pension. (Item 2 at 29; Item 6 at 5.)

(b) Applicant has one older brother. He is about 20 years older than Applicant, and they have little in common due to their age difference. Applicant's brother is a dual citizen of Iran and the United States, and currently lives in Iran. He is a language teacher. Applicant has not seen his brother since he moved back to Iran around 2016. Applicant has had little contact of any kind with his brother since he returned to Iran. He does not know his brother's address in Iran. (Item 2 at 29; Item 6 at 5.)

(c) Applicant has one older sister. She is about 18 years older than Applicant and they have little in common due to their age difference. Applicant's sister is a dual citizen of Iran and the United States, and currently lives in Iran. She is a housewife. Applicant has not seen his sister since she moved back to Iran around 2016. Applicant has had little contact of any kind with his sister since she returned to Iran. He does not know his sister's address in Iran. (Item 2 at 29; Item 6 at 5.)

Mitigation

Applicant is highly respected as a person, and as a successful and talented engineer. Letters of recommendation were provided by coworkers, who are also Applicant's personal friends. They all admire his professional accomplishments, and view him as a trustworthy person worthy of national security eligibility. (Item 2 at 36-38, 40-42.)

On coworker, who has known Applicant since 2011, ended his letter:

In conclusion, if it's a matter of an individual displaying integrity, ethics, honor and taking pride in themselves both personally and professionally, I can say that [Applicant] has all those qualities . . . as well as an abundance of other positive tangible merits that I've had the privilege to witness in person and . . . years to come.

Applicant's work evaluations are consistently "Outstanding," the highest ranking. (Item 2 at 44-73.) In 2016, in evaluating areas Applicant needed to improve, his supervisor said, "He [Applicant] has been doing an outstanding job since he started in 2010. He believes he needs improvement in all areas. I believe he needs to spend more time with his family and his children." (Item 2 at 45.)

Over the years Applicant has also received many letters of appreciation from his management. Many of these letters include laudatory comments from customers served by Applicant. (Item 2 at 75-89.)

Iran

I take administrative notice of the following facts about Iran:

Iran is an authoritarian theocratic republic. The U.S. Department of State advises American citizens not to visit Iran due to the very high risk of kidnapping, arrest and detention of U.S. citizens in Iran, particularly dual national Iranian-Americans. Iran has been designated a state sponsor of terrorism since 1984. Iran continues to present a cyber-espionage and attack threat. The Iranian government's human-rights record is extremely poor. There are numerous reports of unlawful killings, forced disappearance and torture. (Request for Administrative Notice: Attachments.)

Policies

When evaluating an applicant's suitability for national security eligibility 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, the administrative judge applies 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(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, "Any 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.

According to 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,

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.

Finally, as emphasized in Section 7 of EO 10865, “Any 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 *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Paragraph 1 - Guideline B (Foreign Influence)

The security concern relating to the guideline 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;

(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.

Applicant has one brother and one sister currently living in Iran. His father, who is now an American citizen and lives in the United States with Applicant, worked for a local police department in Iran over 40 years ago. The evidence is sufficient to raise these disqualifying conditions.

Iran has a government that operates contrary to U.S. interests. Iran's government is a state sponsor of terrorism, and engages in significant human rights abuses. Accordingly, Applicant's family connections in that country have the potential to generate a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a). The DOHA Appeal Board has said that 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. (See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).)

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

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

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

Applicant has minimal contact with his family members who live in Iran. He last had personal contact with either of them in 2016, before they moved back to Iran. Applicant, his wife, and sons are all American citizens and reside here. Applicant's connections with his direct family here far outweigh his contacts with his siblings in Iran. He is a native-born American citizen, who has made a good and successful life here. He is liked and respected by co-workers. His managers at work are fully supportive of him. He is extremely knowledgeable of his obligations as a person holding national security eligibility. AG ¶¶ 8(a), (b), and (c) apply.

I have carefully considered the fact that Applicant's two siblings live in Iran. In this particular case, I find that Applicant has mitigated the security significance arising from their presence for the following reasons. Applicant has consistently identified his siblings and discussed his tenuous relationship with them. Applicant has completely mitigated the security significance of the presence of his relations in Iran. Paragraph 1 is found for Applicant.

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.

Under AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility and 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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but warrant additional comment.

Applicant was born and raised primarily in the United States. He has lived here continuously since he was 16. Applicant has shown himself to be a talented and patriotic American citizen and member of the defense industry. He can be expected to resolve any conflict of interest in favor of the United States due to his sense of loyalty to the United States. His attenuated relations with two much-older siblings who reside in Iran do not create significant potential for pressure, coercion, or duress.

Overall, the record evidence leaves me without questions or doubts as to Applicant's suitability for national security eligibility and a security clearance. For all these reasons, 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 Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a through 1.c:	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. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge