



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ADP Case No. 20-00375
)
Applicant for Public Trust Position)
)

Appearances

For Government: Tara R. Karoian, Esquire, Department Counsel

For Applicant: *Pro se*

August 5, 2021

Decision

ROSS, Wilford H., Administrative Judge:

On March 30, 2018, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). (Item 3.) On May 14, 2020, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline B (Foreign Influence). (Item 1.) The 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 adjudicative guidelines (AG) effective within the DoD on June 8, 2017.

Applicant answered the SOR in writing on June 15, 2020, and requested a decision without a hearing before an administrative judge. (Item 2.) On February 4, 2021, and February 24, 2021, Applicant was provided the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 4, was provided to Applicant, who received the file on April 6, 2021.

Attached to the FORM is a request for administrative notice concerning the Islamic Republic of Iran (Iran). Department Counsel provided an eight-page summary of the facts, supported by 19 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 on April 12, 2021. Department Counsel had no objection and the additional information is identified as Applicant Exhibit A and entered into the record. The case was assigned to me on June 29, 2021. Based upon a review of the pleadings and exhibits, national security eligibility for a public trust position is denied.

Amendment to SOR

Department Counsel moved in Paragraph VI of the FORM to amend subparagraph 1.b of the SOR to correct a drafting error, pursuant to Directive, Additional Procedural Guidance, ¶ E3.1.17. Applicant raised no objection. Accordingly, SOR subparagraph 1.b is amended to read:

1.b. Your sister is a citizen and resident of Iran.

Findings of Fact

Applicant is 60 years old, married, and has one adult son. He has a Master of Science degree from a major American university, where he continues to work part-time as a lecturer. Applicant requires access to personally identifiable information in order to perform his work duties. He has been employed by his current employer since 2014 as an Information Developer. (Item 3 at Sections 12, 13A, 17, and 18.)

Paragraph 1 (Guideline B – Foreign Influence)

The Government alleges in this paragraph that Applicant is ineligible for access to sensitive information because he has foreign contacts or interests that might result in divided allegiance, or make Applicant vulnerable to pressure or coercion. Applicant admitted all allegations under this paragraph with explanations.

Applicant was born in Iran in 1961. He received his Bachelor's degree from a university in Iran in 1987. He married his wife in 1993. Applicant moved to the United States in 2005 and attended graduate school from 2006 to 2012. He became a naturalized American citizen in 2010. Applicant's wife and son are also American citizens. (Item 3 at Sections 10, 12, 17, and 18.)

Applicant's mother, sister, and four brothers are citizens and residents of Iran. One of his brothers is a dual-citizen of France and Iran, and splits his time between the two countries. Applicant talks to his mother on a weekly basis and talks to his siblings on approximately a quarterly basis. (Item 2.)

Applicant was interviewed by an investigator from the Office of Personnel Management (OPM) on May 2 and 3, 2019. A Report of Investigation was prepared. Applicant stated to the investigator that he owned an apartment in Iran worth approximately \$50,000. Applicant's mother lived in the apartment with one of his brothers and Applicant intended to continue owning the apartment until his mother passed away so that she had a place to live. In Applicant Exhibit A he updated the information to state that his mother has left his brother's home and is now living with Applicant's sister. Applicant stated, "I asked my brother to move out from my house because taking care of my mother was our deal and was broken by them [Applicant's brother and his wife]. I informed him that I intended to sell my house and he needed to move out." Applicant has stated that once the house is sold he will transfer the money to the United States and use it for a down payment on a home here. (Item 4, Applicant Exhibit A.)

Applicant also stated to the investigator that he had an Iranian passport and intended to renew it so that he could travel to Iran to see his mother. He also needed an Iranian passport in order to own and transfer property. Applicant also updated this information in his response to the FORM. He stated:

I returned my Iranian passport to the Interests Section of I.R. [Islamic Republic] of Iran (Embassy of Pakistan – Washington D.C.) because I intended to renounce my Iranian citizenship. Per their officials, this process might take 2 years or even more that is expected from an abnormal regime. They were supposed to send me confirmation letter but they have not yet. Currently, I have no document except the post office receipt. Hopefully, I would have enough time to sell my house and transfer the money. (Item 3 at Section 10, Item 4; Applicant Exhibit A.)

Applicant's mother-in-law is also a citizen and resident of Iran. Applicant obtained lawful permanent resident status for her and she moved to the United States at one point. However, she subsequently returned to Iran and currently lives there. (Item 4.)

Applicant did not submit any evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. Applicant did not supply any information as to his financial situation here in the United States. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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 disappearances, and torture. (Request for Administrative Notice: Attachments.)

Policies

Positions designated as ADP I/II/III are classified as "sensitive positions." The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to the DoD and DOHA by the Defense Security Service and Office of Personnel Management. DoD contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the Adjudicative Guidelines (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(d), 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 "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of 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.

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 [trustworthiness] decision.”

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

Section 7 of Executive Order 10865 provides that “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 trustworthiness concern relating to Foreign Influence is set forth 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

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

Applicant's mother, sister, four brothers, and mother-in-law all reside in Iran. He has frequent contact with his mother and regular contact with his siblings. He owns a house in Iran valued at approximately \$50,000. All three of the disqualifying conditions apply to the facts in Applicant's case, thereby transferring the burden to Applicant to mitigate the concerns.

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; 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 close family connections in Iran. As stated, he speaks to his mother on a weekly basis, and his siblings fairly regularly. AG ¶¶ 8(a) and 8(c) do not apply to the facts of this case.

To Applicant's credit, he has begun to make essential moves to make himself less vulnerable to coercion or pressure. Applicant's decision to revoke his Iranian citizenship and return his Iranian passport is noted. It is also noted that Applicant has worked for several years for a defense contractor without a blemish on his record. However, there is little additional information in the file concerning Applicant's life that would support a finding of "deep and longstanding relationships and loyalties to the United States." AG ¶ 8(b) applies minimally to the facts of this case.

Applicant has decided to sell his house in Iran. That will be an important fact once the sale has been completed. However, there is no evidence in the record concerning Applicant's financial situation in the United States that would allow comparison with his financial interests in Iran. Without such evidence, I cannot find that AG ¶ 8(f) applies.

The available evidence precludes a finding in Applicant's favor at this time. Guideline B is found against Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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 trustworthiness determination 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. Applicant's current relationship and contacts with his family in Iran, as set forth above, make him ineligible for a position of public trust at this time. The potential for pressure, coercion, exploitation, or duress is substantial. For all these reasons, I conclude Applicant has not mitigated the trustworthiness concerns under the whole-person concept.

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:	AGAINST APPLICANT
Subparagraphs 1.a through 1.e:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a public trust position. National security eligibility for access to sensitive information is denied.

Wilford H. Ross
Administrative Judge