



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



In the matter of:)
)
) ISCR Case No. 20-01537
)
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: Leon J. Schachter, Esq.

10/20/2021

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On April 5, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. Applicant responded on May 21, 2021, and requested a hearing before an administrative judge. The case was assigned to me on September 28, 2021. The hearing was convened as scheduled on October 4, 2021.

Evidence

Government Exhibit (GE) 1 was admitted in evidence without objection. The objection to GE 2 was overruled, and it was admitted in evidence. Applicant testified and submitted Applicant's Exhibits (AE) A through Q, which were admitted without objection.

Department Counsel requested that I take administrative notice of certain facts about Iran and Russia. Applicant did not object, and I have taken administrative notice of the facts contained in Hearing Exhibits (HE) I and II. The facts are summarized in the written requests 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 has a dismal human rights record. Russia is one of the most serious intelligence threats to U.S. interests. It conducted extensive espionage and other actions against the United States and other countries. It also has human rights problems, and it has been victimized by terrorism.

Findings of Fact

Applicant is an employee of a defense contractor, where she has worked since 2011. She is applying for a security clearance for the first time. She has a bachelor's degree from an Iranian university and a master's degree from a U.S. university, which she earned in 2016. She is married without children. (Transcript (Tr.) at 25, 32, 62; GE 1, 2; AE B, C)

Applicant's father was [REDACTED] in Iran. Her mother [REDACTED]. Her father served in the Iranian military until he retired as a senior officer more than 30 years ago. He receives a small retirement payment, but it is deposited to an account in Iran that he cannot access. Applicant was born in the United States while her father was here on assignment. As such, she is a natural-born U.S. citizen. Applicant returned to Iran with her parents after her father's assignment was completed. (Tr. at 26-28, 42, 58-66; Applicant's response to SOR; GE 1, 2; AE C, J, K)

Applicant spent part of her youth in Iran and part in other countries, where her father was assigned or where he worked after he retired. She moved to the United States permanently about 18 years ago. Her parents and two siblings also immigrated to the United States and became U.S. citizens. Her siblings are highly educated, with prestigious jobs. Applicant has more than 30 family members on her father's side of the family, and all but one emigrated from Iran. Many of them were granted asylum in the United States. All of the individuals in this decision who became U.S. citizens or citizens of other countries continue to be recognized by Iran as Iranian citizens. (Tr. at 28-32, 39-46, 60-61; Applicant's response to SOR; GE 1, 2; AE C, J-N)

Applicant's husband, his siblings, and his parents are from Iran. They are [REDACTED] as Applicant and her family. Her husband and her in-laws are U.S. citizens. Her husband is a professional. Applicant and her husband have millions of dollars of assets in the United States, and none in Iran. (Tr. at 26, 35-39, 45, 69, 85; Applicant's response to SOR; GE 1, 2; AE C, E, F, I, O, P)

Applicant's two aunts, an uncle, and a cousin are citizens and residents of Iran. Her aunts and uncles are on her mother's side of the family. Her cousin is the only remaining family member from her father's side who is still in Iran. Applicant is not close to her cousin or her mother's side of the family. She has a friend from her youth who is

an Iranian citizen. He was a resident of Iran, but he moved to the United Arab Emirates. She has not seen her friend since he visited the United States about ten years ago. She has electronic contact with him a few times a year. (Tr. at 32, 46-48, 67-69, 76-78, 82-83; Applicant's response to SOR; GE 1, 2)

One of Applicant's cousins and her cousin's husband are dual citizens of the United Kingdom and Iran (SOR ¶¶ 1.j and 1.k). Applicant has a friend who is a dual citizen of Australia and Iran (SOR ¶ 1.m). (Tr. at 47-49; Applicant's response to SOR; GE 1, 2)

Applicant erred on the side of caution when she reported her foreign contacts on her Questionnaire for National Security Positions (SF 86). She reported an Iranian citizen and resident who was her tutor in Iran in 2003. Applicant has minimal contact with him, usually on holidays, but she has not seen him since the last time she was in Iran more than 15 years ago. One of Applicant's cousins moved to Russia from the United States for a business opportunity. Applicant visited Russia in about 2015. While she was there she stopped and visited her cousin. Applicant has had minimal contact with her cousin before and after the trip to Russia. Applicant reported her tour guides from her Russia trip on her SF 86. She maintained some contact with them via electronic media after the trip, but she has not had any contact with them in about four years. (Tr. at 48-51, 71-75; Applicant's response to SOR; GE 1, 2)

Applicant sponsored her father's friend and his wife for immigration to the United States. Her father's friend also retired from the Iranian military as a senior officer. Applicant sponsored them primarily as a favor to their daughter, who was in the United States, but did not have the finances to sign an affidavit of support guaranteeing their financial support in the United States. The wife is living in the United States as a permanent resident. The father is still in Iran waiting for approval of his immigration petition. Applicant is not close to the father or the mother. (Tr. at 51-56, 78-82; Applicant's response to SOR; GE 1, 2)

Applicant expressed disdain for the Iranian government, and she has no intention to ever return to Iran. Those sentiments are shared by her husband, parents, siblings, in-laws, and other members of her family. She expressed her allegiance to the United States, which she considers her home. She credibly testified that she would report any attempt to use her family in Iran to coerce or intimidate her into revealing classified information. (Tr. at 85-88; Applicant's response to SOR; AE I-K, M-P)

Applicant submitted documents and letters attesting to her excellent job performance and strong moral character. She is praised for her trustworthiness, determination, strong will, honesty, integrity, and loyalty to the United States. (AE A, D)

Policies

This case is adjudicated under Executive Order (EO) 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), which became effective on June 8, 2017.

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

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 security 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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 *also* 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. 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
- (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 family members, friends, and associates who are citizens of Iran. A few of them are Iranian residents, but most of them have acquired citizenship in the United States or other countries, and Iran continues to recognize them as Iranian citizens. This is true even when the new citizens took no affirmative steps to maintain their Iranian citizenship, and in the case of the United States, swore to renounce allegiance to Iran.¹ Nonetheless, they remain Iranian citizens, and if they choose to

¹ See Naturalization Oath of Allegiance to the United States of America at Section 337 of the Immigration and Naturalization Act (INA):

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution

return to Iran for any reason, they will be treated as Iranian citizens. Iran is hostile to the United States. It is a state sponsor of terrorism; it conducts cyber espionage and attacks, and more traditional espionage against U.S. interests and allies; and it has a dismal human rights record. Applicant's contacts with Iranian citizens create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a), 7(b), and 7(e) have been raised by the evidence.

Russia is a country that can raise significant security concerns. However, Applicant has not been in contact with the Russian tour guides in about four years. Those limited contacts do not subject her to a heightened risk of foreign influence or exploitation or personal conflict of interest. AG ¶¶ 7(a) and 7(b) are not applicable to the Russian tour guides. SOR ¶ 1.n is concluded for Applicant.

The SOR alleges both that Applicant has family friends who are citizens and residents of Iran (SOR ¶¶ 1.q and 1.s), and that she sponsored those family friends into the United States (SOR ¶¶ 1.r and 1.u). I do not find that sponsoring someone to immigrate to the United States raises any security concerns independent of the citizenship and residence status of the individuals, which are already contained in other allegations. SOR ¶¶ 1.r and 1.u are concluded for Applicant.

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; and

(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 is a U.S. citizen by birth, because she was born in the United States while her father was here on assignment. The process was more difficult for the rest of

and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.

her family. Almost all of her family fled Iran and arrived in the United States or other allied countries like the United Kingdom and Australia. She and her husband are both extremely successful with substantial U.S. assets and no Iranian assets. She credibly professed her allegiance to the United States and that she would report any attempt to use her family in Iran against her.

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, a terrorist organization, or her Iranian family members. I further find there is no conflict of interest, because Applicant has such deep and long-standing relationships and loyalties in America, that she 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.

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 eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline B in my whole-person analysis.

I considered Applicant's favorable character evidence. I also 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 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 family members are vulnerable to government coercion. 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.

Almost all of Applicant's family members are in the United States or other allied countries like the United Kingdom and Australia. Applicant is not close to the few family members remaining in Iran. Applicant was sincere, open, and candid at the hearing. In the unlikely event that her family members were subjected to coercion or duress from the Iranian government or terrorist groups, I find that because of her deep and long-standing relationships and loyalties in the United States, that Applicant would 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 eligibility and suitability for a security clearance. 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	For Applicant
Subparagraphs 1.a-1.u:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge