



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



In the matter of:)	
)	
)	ISCR Case No. 22-01079
)	
)	
Applicant for Security Clearance)	

Appearances

For Government:
Tara Karoian, Esquire, Department Counsel

For Applicant:
Pro se

March 10, 2023

Decision

GLENDON, John Bayard, Administrative Judge:

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on April 18, 2021. On April 5, 2022, the Department of Defense Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline B (Foreign Influence). The CAF acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within the DoD after June 8, 2017.

Applicant answered the SOR in writing (Answer) on July 1, 2022, and requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals

(DOHA). Department Counsel was ready to proceed on September 20, 2022. The case was assigned to me on September 26, 2022. DOHA issued a Notice of Hearing on December 13, 2022. The case was heard on January 18, 2023. DOHA received the transcript (Tr.) of the hearing on January 25, 2023.

Department Counsel offered Government Exhibits (GE) 1 and 2, which were admitted without objection. She also provided a Request for Administrative Notice (AN), which is discussed below. Applicant testified and offered two emails as exhibits, which I marked together as Applicant Exhibit (AE) A and admitted without objection. The record closed at the conclusion of the hearing. (Tr. at 11-14, 52-54.)

Procedural Ruling

Department Counsel requested in its AN that I take administrative notice of certain facts relating to the Islamic Republic of Iran (Iran). She provided an eight-page summary of those facts, supported by 18 U.S. Government documents pertaining to Iran. The documents provide elaboration and context for the factual summary set forth in the AN. I take administrative notice of certain facts included in the Government documents attached to AN. These facts are limited to matters of general knowledge, not subject to reasonable dispute. They are set forth in the Findings of Fact, below. (Tr. at 14-16; AN.)

Findings of Fact

Applicant was born in the United States in 1956. His parents, now deceased, were Iranian citizens working in the U.S. as part of a technology-exchange program between the Iranian Government and the United States before the 1979 Islamic Revolution. Applicant is a dual citizen of the U.S. and Iran due to his birth in the United States and his parents' Iranian citizenships. He lived in the U.S. until age six, when his family moved back to Iran in 1962. He lived there until he graduated from high school. He returned to the United States for his higher education and earned a bachelor's degree in 1979, a master's degree in 1980, and a doctoral degree in 1986. As a young man, he received a medical exemption from performing mandatory military service in Iran. He has worked for 40 years in the United States and Europe and asserts that his professional "reputation is very well established." Applicant held a DoD secret clearance in the 1980s. He presently works for a DoD contractor as an engineer and is seeking eligibility for a clearance in relation to his employment. (Tr. at 9-10, 17, 19-27, 39-40, 57-58; GE 1, Sections 2, 9, 12, 17, 18, 25.)

Applicant's parents became naturalized U.S. citizens before they returned to Iran with Applicant and his three sisters in 1962. His father was a railroad locomotive expert. He came to the United States in 1952 as an employee of the Iranian Ministry of Transportation and Railroads to research ways to improve the Iranian railroad system. He and his family returned to Iran because he was laid off at his job at a U.S. research

facility. Applicant's parents returned to live in the United States in 1978, one year before the revolution in Iran. They lived in the U.S. the remainder of their lives. His three sisters also continued their adult lives in the United States. (Tr. at 19-27.)

Applicant has been married twice. In 1987, he married an Iranian-born woman, who is a dual citizen of the United States and Iran. They divorced in 2018. They have two adult children. Applicant remarried another Iranian-born woman in 2019. She is a citizen of Iran and lives with Applicant in the United States. She is a U.S. lawful permanent resident (LPR). She intends to apply for U.S. citizenship when she has met the residency requirement in 2024. Her father is deceased. At the time Applicant submitted the e-QIP, his mother-in-law was alive, but she passed away in September 2022. His wife has three brothers and a sister who are Iranian citizens and residents. Her family are part of a small, minority religious group in Iran. She speaks with her sister and one of her brothers by phone with some frequency. Applicant's wife works in the United States as a mathematics teacher at a private school. (Tr. at 33-39, 41-43; GE 1 at Sections 17, 18; AE A.)

Applicant has travelled to Iran several times during his adult life, including a number of times after the Iranian Revolution. He traveled frequently to Iran to visit his future second wife before they married in 2019 and until she received her visa to enter the United States as his wife in 2021. He uses his Iranian passport to enter Iran because that is a requirement of the Iranian Government. Now that his mother-in-law has died, he no longer has any reason to return to Iran. If his wife returns to Iran to visit with her siblings, Applicant claims that he has no reason to travel with her. Applicant's last trip to Iran was in April 2021 to escort his second wife to the United States following her receipt of her LPR status. He did not travel to Iran to attend the funeral services for his mother-in-law in 2022. Applicant stated that, from his prior experience as a clearance holder, he understands the foreign travel procedures and the importance of compliance with those security procedures in the event he travels anywhere outside the United States. (Tr. at 29-33, 44-45, 55.)

Guideline B, Foreign Influence

At the hearing, Applicant responded to the following allegations in the SOR:

1.a: Applicant's Wife. Applicant's wife is a citizen of Iran. As of 2021, she has relocated to be with Applicant in the United States and is a lawful permanent resident in the U.S. She intends to apply for U.S. citizenship when she is eligible to do so in 2024.

1.b: Applicant's Mother-in-Law. Applicant's mother-in-law died a few months prior to the hearing. Her death makes the alleged security concern under this subparagraph moot.

Iran

Through his wife's citizenship in Iran, Applicant has contact with that country. Accordingly, it is appropriate to look at the current conditions in Iran.

Iran is an authoritarian theocratic republic with a Shia Islamic political system. Shia clergy and political leaders vetted by the clergy dominate key power structures in the country. Iran's Supreme Leader is the head of state and holds constitutional authority over the judiciary, government-run media, and other important institutions.

The U.S. Department of State advises U.S. citizens not to travel to Iran due to the risk of kidnapping and the arbitrary arrest and detention of U.S. citizens. Since 1984, Iran has been designated by the United States as a state sponsor of terrorism. Its support of terrorist organizations throughout the Middle East creates instability in the region. Iran threatens U.S. persons directly and through proxy attacks, particularly in the Middle East.

Iran's growing expertise and willingness to conduct aggressive cyber operations make it a major threat to U.S. and allied networks and data. As of 2018, all previously suspended sanctions imposed on Iran were reinstated with the goals of permanently preventing Iran from acquiring a nuclear weapon, ceasing Iran's development of ballistic missiles, and ending Iran's broad range of malign activities.

The U.S. Department of State has identified significant human rights issues in Iran. The issues include the unlawful and arbitrary killings by the Iranian Government or its agents; forced disappearances attributed to the government; torture and inhumane treatment by the government and its agents; the imprisonment of political opponents; severe restrictions on free expression and the media; serious restrictions on political participation; and government corruption.

Policies

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, “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. 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, “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 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, “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* 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.

Guideline B sets forth nine conditions in AG ¶ 7 that could raise security concerns and may be disqualifying in this case. The following three conditions are potentially applicable:

(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.

I note 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 is a citizen of 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, e.g.*, ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 3 (App. Bd. Feb. 8, 2001).

The evidence is sufficient to establish the above potentially disqualifying conditions and shifts the burden to Applicant to mitigate the security concerns. AG ¶ 8 provides six conditions that could mitigate security concerns under Guideline B. The following two conditions have possible application in this case:

(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.

Both of the above mitigating conditions apply in this case. The nature of Applicant's relationship with his wife, who legally resides with him in the United States, renders it unlikely that he will be placed in a position of having to choose between the interests of his wife or the Iranian Government and the interests of the United States. Moreover, there is no conflict of interest because Applicant's sense of loyalty to the Iranian Government and country is so minimal and because he has such deep and longstanding relationships and loyalties in the United States that he can be expected to resolve any conflict of interest in favor of the U.S. interest. Based upon an overall view of the facts of this case and the mitigating conditions, Applicant has established mitigation of security concerns under Guideline B. SOR paragraph 1 is found for Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's potential for 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 for 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 pertinent facts and circumstances surrounding this case. Applicant has provided evidence of his strong ties to the United States, starting with his U.S. birth and citizenship. His marriage to an Iranian citizen raises concerns about the potential for foreign influence, but that concern has been mitigated by his wife's relocation to the United States and her current status as an LPR. As noted, the recent death of his mother-in-law has eliminated the security concerns raised by her Iranian citizenship and residency. Although the

Government has not alleged any security concerns due to the presence of Applicant's brothers-in-law and sister-in-law in Iran, I have weighed the concerns such contacts could raise and have concluded that they do not present a potential for a conflict of interest under the facts of this case. Applicant's nearly lifelong presence in the United States mitigates the potential for a conflict of interest due to his wife's relationships with her siblings in Iran. I have also weighed the risks presented by Applicant's past travel to Iran. I view his testimony as highly credible that he has no reason to continue to travel to Iran in the future. Overall, the record evidence does not create any questions or doubts as to Applicant's present suitability for national security eligibility.

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 and 1.b:	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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

JOHN BAYARD GLENDON
Administrative Judge