



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



In the matter of:)
)
) ISCR Case No. 23-00068
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro Se*

August 8, 2023

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of the Case

On February 18, 2022, Applicant submitted a security clearance application (SF-86). On March 3, 2023, 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 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 for Determining Eligibility for Access to Classified Information*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on March 16, 2023, and requested a hearing before an administrative judge. The case was assigned to me on May 15, 2023. The Defense Office of Hearings and Appeals issued a notice of hearing on May 18, 2023, and the hearing was convened as scheduled on July 11, 2023. The Government offered four exhibits, referred to as Government Exhibits 1 through 4, which were admitted without objection. The Applicant offered no exhibits at the hearing. Applicant testified on his

own behalf. The record remained open until close of business on July 25, 2023, to allow the Applicant the opportunity to submit supporting documentation. Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on July 19, 2023.

Request for Administrative Notice

The Government requested I take administrative notice of certain facts relating to the Islamic Republic of Iran. Department Counsel provided a 9 page summary of the facts, supported by 20 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. (HE I) They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant is 42 years old. He is married and has three children. He has a Bachelor's degree in Information Systems. He is employed with a defense contractor as a Systems Administrator. He is seeking to retain a security clearance in connection with his employment.

Guideline B – Foreign Influence

Applicant was born in Tehran, Iran in 1980. He came to the United States in 2005 to pursue higher education. He then attended junior college and a university where he obtained an Associate and a Bachelor's degree. In 2011, Applicant married a woman from Iran. She is a naturalized U.S. citizen. They have three children who are native born Americans, ages 9, 6, and 4. Applicant became a naturalized U.S. citizen in 2013. Applicant began working for his current employer in March 2021. He has never held a security clearance before.

Prior to his current employment, Applicant worked as an IT Assistance for a medical imaging healthcare company from November 2011 to August 2021. He was unemployed from February 2021 to March 2021; and May 2020 to March 2021. He worked as a Systems Administrator from August 2019 to May 2020; and April 2016 to August 2019. He worked as an IT Technician from March 2018 to April 2018; and as a Network Monitoring Technician from July 2016 to March 2018. (Government Exhibit 1.)

Applicant's parents are both naturalized U.S. citizens and they hold dual citizenship with Iran. They reside in the United States, close to where the Applicant lives. Applicant's father is a licensed land surveyor. In Iran he was a private civil engineer and had no affiliation with the government. Applicant's mother has never worked outside the home. His parents do not receive any benefits, pensions or income of any sort from Iran. (Tr. p. 28.)

Applicant has one brother and one sister who are naturalized U.S. citizens and they reside in the U.S, close to where the Applicant lives. Applicant's sister lives with their parents in the U.S.

Applicant's mother inherited an apartment in Tehran, Iran from her parents. The apartment is rarely used and not rented out. When Applicant's parents travel back to visit Iran, they stay at the apartment. (Tr. p. 29.) Applicant does not know what the plans are for the apartment, but he does not stand to inherit it. (Tr. p. 38.) Applicant last traveled to Iran in 2012 for a wedding. (Tr. p. 31.)

Applicant's father-in-law is a citizen and resident of Iran. He lives part time in the U.S. He is 70 plus years old, and is a retired accountant who used to work for a private bank in Iran. He owns an apartment in Iran. His current wife, is his second wife, and she lives in Iran in the apartment. (Tr. p. 33.) Applicant's father-in-law travels to Iran about two times a year to see his wife there. He is in the process of bringing his wife to live in the U.S. They are trying to expedite the process but have not been successful at it. She is retired. (Tr. p. 23.) Applicant's mother-in-law passed away several years ago. She was at one time a civil engineer in Iran. Applicant does not discuss his work in the U.S. with his in-laws. (Tr. p. 25.)

Applicant testified that he loves Iran, but the government does not take care of its people. Applicant stated that he appreciates living in the United States, and he has good opportunities here. His wife and children are here, and he has built everything here from scratch, and did it on his own. He has no intention of ever going back to live in Iran. (Tr. pp. 42-43.)

Applicant's Year End Reviews for 2021 and 2022, reflect that he has grown into a significant contributor; learning processes quickly, understanding organization structure and business, and most importantly, becoming visible to internal and external personnel. He is a good communicator, demonstrates maturity, is a diligent engineer, has excellent skills, continues to expand his knowledge, and is a pleasure to work with. (Applicant's Post-Hearing Exhibit A.)

A letter from Applicant's supervisor indicates that Applicant was originally hired as an IT Engineer, but accepted a stretch assignment in software development in support a of an important project. Since then, Applicant has been leading the Test Equipment Software Engineer Role for the past year and has repeatedly completed software deliveries in a timely manner. He works with minimal management supervision and has consistently delivered software within or ahead of schedule. (Applicant's Post-Hearing Exhibit A.)

Notice

I have taken administrative notice of the following information concerning the Islamic Republic of Iran. Iran is an authoritarian theocratic republic with a Shia Islamic political system. The supreme leader is the head of state and holds constitutional

authority over the judiciary, government-run media, and other key institutions. The U.S. Department of State travel advisory for Iran is Level 4. Do not travel to Iran due to risk of kidnapping, and the arbitrary arrest and detention of U.S. citizens. U.S. citizens visiting or residing in Iran have been kidnapped, arrested, and detained on spurious charges. Iranian authorities continue to unjustly detain and imprison U.S. citizens on spurious charges, particularly Iranian-Americans, including students, journalists, business travelers, and academics, on charges including espionage and posing a threat to national security. The U.S. government does not have diplomatic or consular relations with Iran and is unable to provide emergency services to U.S. citizens in Iran. Significant human rights issues included credible reports of unlawful or arbitrary killings by the government and its agents, most commonly execution for crimes not meeting the international legal standard of “most serious crimes” or for crimes committed by juvenile offenders, as well as after trials without due process; forced disappearance attributed to the government and its agents; torture or cruel, inhuman, or degrading treatment by the government and its agents; arbitrary arrest or detention; harsh and life-threatening prison conditions; political prisoners and detainees; politically motivated reprisals against individuals in another country; including killings kidnappings, or violence, serious problems with independence of the judiciary, particularly the revolutionary courts; and unlawful interference with privacy.

The Iranian government has taken few steps to identify, investigate, prosecute, and punish officials who committed human rights abuses or corruption. Impunity remained pervasive throughout all levels of the government and security forces. (HE-1)

Policies

When evaluating an applicant’s suitability 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 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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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.

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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for access to classified 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 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.

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 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. Two 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; and

(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.

Applicant's mother and father as well as his father-in-law are dual citizens of the U.S. and Iran. They have immigrated to the U.S. to make it their home. Applicant has limited contact with anyone in Iran and has not traveled there since 2012. Any foreign family ties that Applicant may have in Iran pose a heightened security risk for the United States Government. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 and two of them are applicable in this case.

(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.

Family ties in a foreign country raises a prima facie security concern that required the applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. Thus, Applicant bears the burden to establish that his relatives are not vulnerable to influence, coercion, exploitation, or duress. In this case, Applicant carefully explained that most of his family is in the U.S. His mother and father are naturalized U.S. citizens. His two siblings are also naturalized U.S. citizens. His wife is a naturalized U.S. citizen. His children are native-born Americans. The only person who remains in Iran is his mother-in-law who is in the process of immigrating to the U.S. to be with the rest of her family. Applicant does not discuss anything with his family members about his work or his job and he has no plans to ever do so. None of his foreign family members in Iran are affiliated in any way with any foreign government.

It is recognized that Applicant is at a higher risk of being targeted for Iranian intelligence gathering since he works for a defense contractor. Thus, it can be assumed that Applicant will continue to place the interest of the U.S. paramount, and always

protect the U.S. from any risk of terrorism, and/or any situation that could place the interests of the U.S. in jeopardy. Under the circumstances, Applicant has met his burden and has established the two mitigating conditions set forth above under Guideline B.

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 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.

Applicant is a mature, intelligent, hard-working Engineer, who performs well at his job, and has the endorsement of his manager. It is also noted that while he was born in Iran, he is a naturalized U.S. citizen by choice. He is proud of his many accomplishments in the U.S. that he has achieved on his own. With his wife and children as his closest family ties, who are naturalized and native Americans, along with both of his parents and his father-in-law, who are all naturalized U.S. citizens, Applicant has established that his permanent life is here in the United States. He has no intentions of ever returning to Iran. There is nothing in Iran for him.

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

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 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 Applicant national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson
Administrative Judge