



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



In the matter of:)	
)	
)	ISCR Case No. 23-00164
)	
)	
Applicant for Security Clearance)	

Appearances

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

August 28, 2023

Decision

LOKEY ANDERSON Darlene D., Administrative Judge:

Statement of the Case

On March 17, 2023, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on a date uncertain 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 12, 2023, and July 18, 2023. The Government offered two exhibits, referred to as Government Exhibits 1 and 2, 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 31, 2023, to allow Applicant the opportunity to submit additional documentation.

Applicant offered no submissions. DOHA received the transcript of the hearing (Tr.) on July 26, 2023.

Procedural Rulings

The Government requested I take administrative notice of certain facts relating to the Islamic Republic of Iran. Applicant had no objection. (Tr. p. 13.) Department Counsel provided a nine-page summary of the facts, supported by twenty Government documents pertaining to Iran, identified as Government Exhibit HE-1. The documents provide elaboration and context for the summary. Applicant had no objection. I took 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.

Findings of Fact

Applicant admitted each of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 43 years old. He is not married, but resides with his fiancé. He has a Ph.D. in Engineering. He currently holds the position of Senior Principal Antenna Engineer. A security clearance is required in connection with his employment with a defense contractor.

Applicant was born in 1980, in Tehran, Iran. He was raised there, and attended the University of Toosi, in Tehran, where he obtained his undergraduate degree. He then obtained his Master's degree in Electrical Engineering at the University of Tehran. He then came to the U.S. in 2007, and obtained his Doctorate degree at the University of Mississippi in 2011. He became a naturalized U.S. citizen in 2018. He considers himself a dual citizen of Iran and the United States. (Tr. p. 28.) He has been working in the Antenna Engineering field related to Microwave Engineering since he obtained his Doctorate degree. Applicant began working for his current employer in April 2020. He has never held a security clearance before.

Applicant lives with his fiancé who is also from Iran. He met her in 2016, they broke up, and then reconnected at the end of 2020. She is a naturalized U.S. citizen. She initially studied business and worked for a university. She is currently taken classes to become a Radiology Technician. (Tr. p. 30.) Her parents live in Iran. They have received their permanent residency, and they come and visit the U.S. when they choose. Her father is retired, but he was an Electrical Engineer working for an oil company in Iran. (Tr. p. 21.) Applicant stated that he never discusses his work with his father-in-law or any of his relatives. (Tr. p 27.) His fiancé's mother has never worked outside the home.

Applicant's mother, father, sister and brother are citizens of Iran. His parents and sister currently live in Iran. His brother lives in Finland, and is also a citizen of Australia. (Tr. p. 22.) Applicant's father is a retired lawyer. He later became a University professor in Iran. He retired from teaching about seven or eight years ago. Applicant's mother was an elementary school teacher in Iran, before she retired about 20 years ago. Applicant's sister was a Software Engineer in Iran, and she retired a few months ago. She was working for a Government contractor. (Tr. p. 23.) Applicant does not know the name of the agency or department she worked for. Applicant's brother is a mechanical engineer and currently works for a university in Finland as a researcher. (Tr. p. 24 and 25.)

Applicant last traveled to Iran a few months ago. He has traveled in the past to Iran on about an annual basis and he plans to continue to travel at least that much in the future. (Tr. p. 31.) He continues to travel using his Iranian passport, and he plans to continue to maintain his foreign passport for traveling purposes. He has no plans to relinquish his passport. (Tr. p. 27.) Applicant also stated that every time he travels back to Iran to visit his parents or friends, he never mentions anything about his work. (Tr.p. 33.)

Applicant stated that he recently applied for his parents to move to the U.S. They recently received their green cards. He also applied for his sister to move to the U.S. (Tr. p. 32.)

During his interview with an authorized investigator for the DoD, Applicant stated that his ultimate allegiance lies with the United States. However, as a dual citizen of Iran and the United States, he has the right to vote in Iranian elections and he plans to vote in future elections in Iran. (Government Exhibit 2, p. 3.)

Applicant testified that his work product has been great. Despite the fact that the record remained open following the hearing to allow Applicant the opportunity to provide documentary support, and it was specifically stated that additional information would be helpful in making a decision in this case, Applicant offered no submissions. No performance appraisals, and no letters of recommendation from management or others who could attest to his credibility were submitted. Applicant also testified that his parents and sister had already applied for their green cards and were waiting for a response. Applicant had the opportunity to provide documentation to show what steps his family in Iran have accomplished towards their goal, and he submitted nothing.

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. (HE-1.)

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 Executive Order (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 has close family ties and friends in Iran. Applicant's foreign family members include his mother, father, and sister, who are citizens and residents of Iran. Applicant maintains a very close relationship with his family in Iran. Although he has applied for them to come to the United States, this process may take some time to accomplish, if at all. He travels to Iran to visit his family and friends there on a regular basis, and he plans to continue to do so in the future. He maintains his foreign Iranian passport, and has no intentions of relinquishing it. He also plans on voting in future Iranian elections.

Based upon the evidence presented, Applicant's foreign family members and his close commitment to Iran do present a risk to national security. They may threaten or influence Applicant's choice of interest as a naturalized United States citizen. Under the particular circumstances here, the risk-benefit analysis is applicable, and this contact poses a security risk to the U.S. government that is not necessary. This unnecessary security risk is not worth any benefit to the U.S. government. The nature of his very close relationship with his family may manipulate or induce the Applicant to help a foreign person or government in a way that is inconsistent with the U.S. interests. There is a heightened risk of foreign influence, or exploitation, or personal conflict of interest from his foreign contacts. The evidence is sufficient to raise these disqualifying conditions..

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; 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.

Although Applicant stated that no one in his family is associated with the Iranian government, he continues to show some unusual allegiance to the country. Even as a naturalized U.S. citizen, he maintains his Iranian passport, and he plans to vote in future elections in Iran. This is very telling about his connection to the country, its people and his family there. Given Applicant's current situation, Applicant is a naturalized U.S.

citizen, and his close relationship with his foreign family members in Iran, present the possibility of a divided allegiance. Insufficient mitigation has been shown under AG ¶ 8(a), 8(b), and 8(c).

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. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant provided no documentary evidence to support his testimony or corroborate his statements.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate 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 F:	AGAINST APPLICANT
Subparagraphs 1.a., and 1.b.	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 national security eligibility and a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge