



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



In the matter of:)
)
) ISCR Case No. 22-00259
)
Applicant for Security Clearance)

Appearances

For Government: Brian L. Farrell, Esq., Department Counsel
For Applicant: Todd A. Hull, Esq.
09/25/2023

Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence), raised by Applicant’s family members in Iran. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 20, 2021. On June 28, 2022, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline B. The DoD acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on July 21, 2022, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on August 15, 2022, and the case was assigned to me on April 3, 2023. On April 13, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for May 23, 2023. I convened the hearing as scheduled. Government Exhibits (GE) 1 and 2 and Applicant's Exhibits (AE) A through E were admitted in evidence without objection. I kept the record open through June 6, 2023, to enable him to submit additional documentary evidence. He submitted three exhibits on May 30, 2023, AE-F (Copy of Applicant's Parents' Passports), AE-G (Copy of Permanent Resident Card for Applicant's Father), and AE-H (Copy of Application to Replace Permanent Resident Card for Mother). DOHA received the transcript (Tr.) electronically on June 2, 2023.

Department Counsel requested that I take administrative notice of relevant facts about Iran. The request and supporting documents are attached to the record as Hearing Exhibit (HE) II. The facts administratively noticed are set out below in my findings of fact.

Findings of Fact

In Applicant's Answer to the SOR, he admitted all ten allegations SOR ¶¶ 1.a -1.j. His admissions in his Answer and at the hearing are incorporated in my findings of fact.

Applicant is a 43-year-old electrical engineer. He earned his bachelor's and master's degrees in electrical engineering from an Iranian university in 2002 and 2005 respectively. He earned his doctorate in 2017 from a U.S. university.

Applicant arrived in the United States in January 2010 with approximately \$8,000 and his current estimated annual income is over \$190,000. (GE-1 at 9; Tr. at 65, 75.) While working on his doctorate he married in 2014. He and his wife have two preschool-aged children. His children are native born U.S. citizens and do not hold dual citizenship. (Tr. at 60.) He became a naturalized citizen in 2019. He currently holds dual citizenship but stated his willingness to renounce his Iranian citizenship. His Iranian passport expired in 2019. He and his wife bought a home in 2021 for over \$770,000 with five percent down and hold the mortgage jointly. Neither he nor his spouse own any property in Iran or have any financial accounts in Iran. They hold a U.S. checking account jointly and maintain separate savings accounts. He last traveled to Iran in January 2018. He stayed with his parents during the trip. (Tr. at 24, 56, 59, 61-65, 75.)

SOR ¶ 1.a alleges Applicant's wife is a dual citizen of Iran and the United States. His wife came to the United States in 2007 and became a U.S. citizen prior to Applicant. (GE-2 at 9; Tr. at 28.) She is a dentist and is the process of buying her own dental practice with her sister. (Tr. at 63.) She is not entitled to a pension from Iran. (Tr. at 65.) He was unaware if his wife was entitled to any property or accounts through inheritance. It was a question he had never asked. Her parents had sold their home when they moved to the United States in 2000. (Tr. at 65.) She last traveled to Iran in 2011 and her Iranian passport has expired. (Tr. at 28, 61.)

SOR ¶¶ 1.b and 1.c allege Applicant's mother and father are citizens and residents of Iran. Applicant sponsored his parents into the United States, and they arrived in the United States in February 2023. Both promptly began the naturalization process. (Tr. at 23-24) (AE-G and AE-H.) As of the hearing, his father had received his Green Card and his mother was still waiting to receive her Green Card. They do not intend to return to Iran. (Tr. at 24.) He is their only child. She is 69 years old, and he is 79 years old. His father was a farmer, and his mother did not work outside the home. His parents sold the farm a number of years ago and purchased an apartment in 2008. The apartment is the only property his parents have in Iran. They paid cash for their apartment. They are entitled to an old age pension from the Iranian government. (Tr. at 68, 70, 78.) They live with Applicant. (Tr. at 55.)

SOR ¶¶ 1.d and 1.e allege Applicant's mother-in-law and father-in-law are dual citizens of Iran and the United States. His in-laws arrived in the United States in approximately 2000, His mother-in-law began the naturalization process in in 2000 or 2001 and his father-in-law began the naturalization process in 2003 or 2004. (Tr. at 34-35, 37, 65.) She is 65 years old, and he is 75 years old. (Tr. at 34, 37.) She used to be a science teacher in Iran and is now a part-time teacher at a language school. (Tr at 35.) His father-in-law is presently working as a bus driver and when he was in Iran he worked as an engineer for a communication company, "like Verizon." (Tr. at 37.) He was retired from the communication company when he arrived in the United States. (Tr. at 72.) The company was affiliated with the Iranian government. (Tr. at 71.) Both are entitled to a government pension like his parents. (Tr. at 72.)

SOR ¶¶ 1.f and 1.g. allege Applicant has an uncle and aunt who are citizens and residents of Iran. His uncle is a 75-year-old farmer, and his aunt is 65 years old. She has never been employed outside the home. (Tr. at 42.) He acknowledged during COVID he called his uncle every week "because he had a critical situation" for about two months but has not spoken to him since last year. He kept in weekly contact with his aunt when she came down with COVID but has not spoken to her in the past year. (Tr. at 40, 41, 73.) He does not consider either relative to be close or immediate family. (Tr. at 73.)

SOR ¶ 1.h alleges Applicant has an uncle who is a citizen of Iran. Applicant's uncle is a 75-year-old dual citizen of Norway and Iran. His uncle is a retired Norwegian teacher and resides in Norway. He speaks to his uncle about twice a year on holidays. (Tr. at 43-44.)

SOR ¶¶ 1.i and 1.j allege Applicant worked for at least two different Iranian academic institutions and published scientific articles with Iranian co-authors. While he was working on his master's degree he worked as a part-time instructor at another university in the electronics lab from 2002-2007. He worked fulltime from 2005 to 2009 at his university. Both universities are private teaching institutions and were not involved in research. (Tr. at 45-47.) He was published in the 2006 to 2011 timeframe; all of his publications were related to his research and master's program. From his master's research he published a journal paper and one new chapter and four or six conference papers from 2006 to 2011. His name appeared on another paper in 2012, when he was asked to present a friend's paper at a conference because the friend could not obtain a

visa. He has not had any further contact with any of the individuals he co-authored with or assisted in the paper's presentation. (Tr. at 48-51, 74.) He does not have any ongoing relationships with any Iranian nationals outside of the ones listed on the SOR. (Tr. at 74.)

Applicant made it clear throughout the hearing he does not discuss anything about his work or job with his family members. 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. He explained with an evident sense of pride the work he was doing in the United States and the publication of his doctorate work in a recognized scientific journal. (Tr. 80-82.)

Notice

Department Counsel requested that I take administrative notice of certain facts about Iran. Applicant did not object, and I have taken administrative notice of the facts contained in HE-I. 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.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable, and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline B, Foreign Influence

The security concern under this guideline 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 maybe 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.

AG ¶ 7(a) requires substantial evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government.

Applicant has family members and associates who are citizens of Iran. Two of them are Iranian residents, but most of the family members alleged have acquired citizenship in the United States or are beginning the process towards U.S. citizenship or in the case of his uncle a resident and citizen of an allied nation, but 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. Nonetheless, they remain Iranian citizens, and if they choose to 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) and 7(b) have been raised by the evidence. When foreign family ties are involved, the totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). The evidence is sufficient to raise the above disqualifying conditions.

Applicant’s academic work with two Iranian universities and writings with Iranian co-authors occurred more than ten years ago. He has had no further association with the universities or his co-authors. SOR ¶¶ 1.i and 1.j do not raise any disqualifying conditions.

The following mitigating conditions under AG ¶ 8 are potentially relevant:

(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 U.S;

(b): there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., 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 raise 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 in the process of becoming naturalized U.S. citizens. He is their only child and thus his children are his parents' only grandchildren. His mother-in-law and father-in-law are naturalized U.S. citizens. His wife is a naturalized U.S. citizen and an established medical professional. His children are native-born Americans. The only persons who remain in Iran are an aunt and uncle with whom he has limited contact. 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 with a foreign government. His work and writings with Iranian institutions and co-authors occurred during his academic studies in Iran more than ten years ago. He has not had contact since with either the institutions or co-authors in over ten years.

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 his Iranian family members. I further find there is no conflict of interest, Applicant shown that his relationships and loyalties are in the United States, and that he 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 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. In applying the whole-person concept, an 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. An 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.

I 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 Norway an allied country. Applicant is not close to the two family members remaining in Iran. Applicant was sincere, open, and candid at the hearing. His testimony reflected a mature, intelligent, hard-working engineer, who performs well at his job, and has the endorsement of his supervisor. 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 United States that he has achieved on his own. With his wife (naturalized U.S. citizen) and children (U.S. citizens by birth) as his closest family ties, along with both of his parents who have now joined their only child and begun the naturalization process, as well as his mother-in-law and father-in-law, who are 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. I find that his relationships and loyalties are 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 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

I make the following formal findings on the allegations in the SOR: Paragraph 1,

Guideline B (Foreign Influence): FOR APPLICANT

Subparagraphs 1.a-1.j: For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

Charles C. Hale
Administrative Judge