



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



In the matter of:)
)
) ISCR Case No. 22-01203
)
Applicant for Security Clearance)

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

02/28/2024

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant did not mitigate the foreign influence security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On September 2, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. Applicant responded to the SOR on September 7, 2022 (Answer) and requested a decision based on the administrative record without a hearing. On March 20, 2023, he amended his election and requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). The Government did not object to his request, and the matter was converted to a hearing. The case was assigned to me on December 5, 2023. The hearing was convened as scheduled on February 13, 2024. I received a transcript (Tr.) of the hearing on February 21, 2024.

Evidence

I admitted Government Exhibits (GE) 1 through 4 in evidence without objection. Applicant testified but did not offer any documents in evidence. At Applicant's request and without objection, I left the record open until February 23, 2024, for the parties to provide post-hearing documentation. Applicant timely provided Applicant Exhibits (AE) A and B, which I admitted without objection.

On the Government's motion, and without objection, I took administrative notice of certain facts about the country conditions in the Islamic Republic of Iran and its relationship with the United States, as contained in official U.S. Government documents (HE I). Those facts are summarized in the official government documents, so I will not recite them verbatim here, but I will expound upon them in the Findings of Fact.

Findings of Fact

Applicant is a 43-year-old naturalized U.S. citizen. He has an employment offer from a U.S. defense contractor that is conditioned upon his being granted security clearance eligibility. He was born in Iran to Iranian parents. He has a bachelor's degree and a master's degree from an Iranian university. He was working toward his Doctor of Philosophy (PhD) degree at an Iranian university, but he was "fired" from the program because he practices a religion not authorized by the Iranian government. Applicant first came to the United States in 2011. He was assisted in this effort by the Hebrew Immigrant Aid Society (HIAS). (Tr. 23-27, 31-33, 42, 51-52; GE 1-3)

Applicant became a naturalized U.S. citizen in April 2017. He solely holds U.S. citizenship, as he renounced his Iranian citizenship in 2017. He has been married and divorced twice. His first marriage was to an Iranian woman from 2008 until 2014. They were married in Iran and divorced shortly after entering the United States. His second marriage was to a U.S. citizen from 2019 until August 2021. From his first marriage, he has a 14-year-old child, who is a dual U.S. and Iranian citizen and who resides with him in the United States. (Tr. 23-27, 31-33, 42, 51-52; GE 1-3)

Applicant's mother (SOR ¶ 1.a), sister (SOR ¶ 1.b), three brothers (SOR ¶ 1.c), and several aunts and uncles (SOR ¶ 1.d) are citizens and residents of Iran. All these family members, except for one of his brothers, are in various stages of emigrating from Iran to come to the United States. Applicant is not aware of the whereabouts of this one brother. He has not seen or been in contact with this brother after the Iranian Islamic Revolutionary Guard Corps (IRGC) abducted this brother without charge in 2003. (Tr. 29-30, 36-42, 54-61; GE 1-3; AE A, B)

Applicant and the rest of his family members listed in the SOR have left or are in the process of leaving Iran with the assistance of HIAS because they are part of a religious minority in Iran. As a result of their religious beliefs, the Iranian government has repeatedly and consistently violated their human rights. In addition to his brother being abducted, his now-deceased father was arrested without charge. Also, in about 2007, the IRGC arrested Applicant for playing unapproved religious music in a public

square and held him in jail for several days. A few weeks later, the IRGC took him from his workplace and held him in a cage in an unknown location for several weeks without charge. The IRGC tortured him physically and psychologically and repeatedly threatened to kill him. (Tr. 27-42, 44-46, 50, 54, 66-69; GE 1-3; AE A, B)

When the IRGC finally released Applicant, one of their members told Applicant that it would be best for him to leave the country but took his passport and told him he had to buy it back. Without his passport, Applicant could not leave and was subjected to further abuse such as receiving threatening phone calls and having his vehicle damaged. In the meantime, Applicant applied with HIAS for assistance to leave Iran for the United States. In 2011, two days before he was scheduled to leave Iran with HIAS's assistance, he bought back his passport for \$20,000. When he asked the individual to whom he paid for his passport if it was valid, the individual responded that it was valid because the Iranian Government wanted him to leave. (Tr. 31, 33-38, 42-45; GE 3)

Applicant, his ex-wife, and his daughter left on a flight for Vienna, but were not sure if the Iranian Government would stop the plane until a flight attendant announced that they were in Austrian airspace. He flew to the United States after staying for about five months in Vienna while finalizing his U.S. immigration paperwork. The entire process of working with HIAS until he came to the United States took a little under three months. He has not been back to Iran since then and has vowed never to go back again. He has not received any threats or been contacted by the Iranian Government after he came to the United States, but the Iranian Government has continued to target, harass, and intimidate his family members that remain in Iran. Suspected members of the IRGC also caused Applicant's family to close their business by repeatedly targeting it for theft and vandalism. (Tr. 31, 42-45, 47-48, 53-54, 60, 66-69; GE 3)

Applicant described the process that HIAS is using to assist him and his family members. After obtaining a sponsor in the United States and applying for immigration to the United States, HIAS provides its enrollees with a case number. HIAS then works with U.S. immigration officials to facilitate their entry into the United States. Once that process reaches a certain point, each enrollee must pay HIAS \$3,100, which it will later give back to the enrollee so that the enrollee has enough resources to support themselves in the United States. After an enrollee pays the money, HIAS books a flight for them to leave Iran for the United States via either Croatia or Vienna. It is unclear how long this process normally takes. (Tr. 44-49, 54-60; GE 2, 3; AE A, B)

Given U.S. immigration policy from early 2017 until early 2021, the HIAS program from Iran was paused and only recently began again. Applicant's mother and sister first applied for relocation to the United States with HIAS in 2015. They have each paid the \$3,100 and they are scheduled to fly to Croatia in early March 2024, where Applicant will meet them and assist with his elderly mother. Applicant expects that they will stay a few days in Croatia finalizing paperwork before coming to the United States. (Tr. 44-49, 54-60; GE 2, 3; AE A, B)

Two of Applicant's brothers that are listed in the SOR have case numbers from HIAS, as well. They first applied for relocation in 2017. Applicant is sponsoring them for

entry into the United States. They have not received flight information, nor have they paid the required \$3,100. However, they have the required money to provide when it is requested. It is not clear when or whether they will leave Iran, but they intend to do so. (Tr. 48-49, 55-57, 59; GE 1-3; AE A, B)

Applicant's aunts and uncles listed in the SOR also have HIAS case numbers. They first enrolled with HIAS sometime during the Obama administration. They are being sponsored by U.S. citizens who live in the United States. They have not received flight information, nor have they paid the required \$3,100. However, they have the required money to provide when it is requested. It is not clear when or whether they will leave Iran, but they intend to do so. (Tr. 60-62; GE 1-3; AE A, B)

Applicant has not seen any of his family members in Iran in about 14 years. He does not often communicate with them because he is worried the Iranian Government could be monitoring them and cause them trouble. In addition to his daughter, he has an older sister, nieces and nephews, many cousins, and an aunt and uncle who are citizens and residents of the United States. While he does not currently own real property in Iran or in the United States, he has a bank account with a U.S. based bank with about \$30,000 in it. He also has a U.S.-based retirement account with about \$17,000 in it. He works here and he is a member of a U.S.-based linguists' organization. (Tr. 46, 53, 63-66; GE 1-3)

Applicant considers himself an American and does not identify as Iranian. He has never been associated with the Iranian Government. He attempted to join the U.S. military but could not for health reasons. He applied to work for another government agency, but it did not hire him. It was clear from his testimony that he has nothing but contempt for the current Iranian regime. He is not looking for more money by attempting to be hired for this new job, and he will be making about the same amount as with his current job. He wants to obtain a security clearance and work this new job as a way of showing his loyalty to the United States, and showing his gratitude for the freedoms that living here has afforded him. He has not told any of his family that he is attempting to obtain a security clearance. (Tr. 51-53, 70-71; GE 1-3)

Republic of Iran

In HE I, the Government included information from the U.S. Department of State about the United States' relations with Iran and the current conditions in that country. I take administrative notice of the information contained in those documents including, but not limited to:

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 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. (HE I)

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; 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.

The nature of a nation's government, including its level of control, its relationship with the United States, and its human-rights record are relevant in assessing the likelihood that an applicant's family members and foreign contacts are vulnerable to coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member or friend is associated with or dependent upon the government, the country is known to conduct intelligence-collection operations against the United States, or the foreign country is associated with a risk of terrorism.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

The mere possession of close family ties with one or more family members living in Iran is not, as a matter of law, disqualifying under Guideline B; however, if an applicant has a close relationship with even one relative living in a foreign country, 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 (App. Bd. Feb. 8, 2001). There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members.

Applicant's mother, sister, three brothers, and several aunts and uncles are citizens and residents of Iran. The Iranian Government has consistently targeted Applicant and his family with serious human rights violations because of their religious beliefs and religious practices. Applicant's connection to his Iranian family members residing in Iran presents a potential conflict of interest. The administratively noticed country conditions in Iran, such as its religious based autocratic rule, its dire human-rights record, and its willingness to target U.S. interests and personnel with violence and cyberattacks, raise these security concerns to the level of a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Application of the AG is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved one, such as a family member. (ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009)). AG ¶¶ 7(a) and 7(b) are established.

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;

(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.

Country conditions in Iran and its government's hostility towards the U.S. Government and citizens raise security concerns to the level of a heightened risk. Applicant has several close family members in Iran. While he does not necessarily maintain close and frequent contact with them, this lack of contact is because he cares about them and fears for their safety; not because he is not close to them or does not care deeply about them. He has not provided sufficient evidence to rebut the presumption that he has ties of affection for, or obligation to, his immediate family members.

Most of Applicant's family members listed in the SOR are known by the Iranian Government and that regime has subjected and continues to subject his family to horrific human rights abuses. Prospective targeting of family members residing in a foreign country controlled by an authoritarian government that engages in human rights abuses is a security concern. Here, there is actual targeting by such a government. While he has established a life here in the United States and clearly has loyalties here, I do not find that those loyalties are stronger than his bonds with his family, such that he would resolve any conflict of interest in favor of the United States. I acknowledge that his family members want to flee Iran and are in the process of doing so. However, while they remain there, I do not find that any of the Guideline B mitigating conditions apply.

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. While circumstances may change in the future for Applicant if things go as planned and his relevant family members relocate from Iran to the United States, I cannot decide this matter based upon those possibilities. I note that this decision may seem harsh considering how the Iranian Government has mistreated Applicant and his family. Unfortunately, this poor treatment tends to work against him, as it provides actual as opposed to theoretical evidence of the Iranian Government's willingness and ability to mistreat him and his family.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Benjamin R. Dorsey
Administrative Judge