



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



In the matter of:)
)
) ISCR Case No. 23-00579
)
)
Applicant for Security Clearance)

Appearances

For Government: Cassie Ford, Esq., Department Counsel, and Mark D. Lawton, Esq.,
Department Counsel
For Applicant: Christopher Snowden, Esq.

03/27/2024

Decision

BORGSTROM, Eric H., Administrative Judge:

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

Statement of the Case

On May 2, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence). The DCSA CAS acted under Executive Order (EO) 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 implemented by the DOD on June 8, 2017.

In Applicant's July 15, 2023 response to the SOR, he admitted, with clarifications, SOR ¶¶ 1.a., 1.b., 1.c., and 1.e., and he denied SOR ¶ 1.d. He attached 14 exhibits, which

will be discussed below. He requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge.

I was assigned this case on December 20, 2023. On January 5, 2024, DOHA issued a notice scheduling a hearing by video teleconference for January 29, 2024. The hearing proceeded as scheduled. The Government proffered two exhibits, which I marked as Government's Exhibits (GE) 1 and 2. I sustained Applicant's objection to GE 2's lack of authentication, and I admitted GE 1 without objection. The Government proffered a request of facts for administrative notice regarding the Islamic Republic of Iran (Iran), including the relevant source materials. Applicant testified and submitted 19 exhibits, which I admitted as Applicant Exhibits (AE) A through S without objection. At Applicant's request, I held the record open until February 12, 2024, to provide him an opportunity to supplement the evidentiary record. On February 5, 2024, Appellant submitted four exhibits, which I admitted as AE T through W without objection. DOHA received the hearing transcript (Tr.) on February 6, 2024. The record closed on February 12, 2024.

Findings of Fact

Applicant is 32 years old. He graduated from high school in May 2010, earned a bachelor's degree in May 2014, and earned a doctorate in December 2019. Since August 2021, he has been employed as a senior systems engineer with a DOD contractor. He has been married since August 2018. (GE 1; AE A, F-I; Tr. 22-26, 28-29, 66-67)

SOR ¶ 1.a. Applicant's wife is a dual citizen of Iran and the United States. She was born in Iran, and she earned an undergraduate degree at an Iranian university. In August 2013, she moved to the United States to attend graduate school. In November 2014, Applicant met his wife through a mutual friend, while they were both attending graduate school. Applicant's wife earned a doctorate degree in 2019, and she completed some post-doctorate coursework at other U.S. academic institutions. From mid-2021 until December 2023, she was employed as an engineer for a U.S. startup company in the healthcare field. She was laid off in December 2023, and is currently unemployed. She currently volunteers as an English As A Second Language (ESL) instructor on a weekly basis. (Answer; GE 1; AE O, Q-U; Tr. 26-28, 33-34, 38, 46-47, 50, 61, 76)

Applicant's wife last visited Iran in 2014, and she does not intend to return. She does not have any property or bank accounts in Iran. She maintains close contact with her parents in Iran, but not her aunts, uncles, and cousins in Iran. In Iran, she and her family members face challenges as members of marginalized groups on the basis of their gender and/or lack of affiliation with any faith or religious organization. Applicant's wife obtained her U.S. lawful permanent resident (LPR) status shortly she and Applicant were married. On January 4, 2024, she became a naturalized U.S. citizen, and she and Applicant hosted a party with family and friends to celebrate. It is virtually impossible for Applicant's wife to renounce her Iranian citizenship. Applicant and his wife purchased their home about 18 months ago, and they hope to start a family and bring her parents to live in the United States. (Answer; GE 1; AE O, Q-U; Tr. 26-28, 33-34, 38, 46-47, 50, 62, 76, 79, 93-94)

SOR ¶¶ 1.b. and 1.c. Applicant's father-in-law (SOR ¶ 1.b.) and mother-in-law (SOR ¶ 1.c.) are citizens of Iran, and they reside in Tehran, Iran. Applicant's father-in-law is a retired engineer, who was employed by an Iranian construction firm. In the 1980s, he served his two years of compulsory military service in the Iranian Navy during the Iran-Iraq War. Applicant's mother-in-law is a retired dentist, who was employed by a government-sponsored academic institution. Applicant's parents-in-law own a vacation property in Iran, from which they derive rental income, and their primary residence. They also receive the equivalent of U.S. Social Security benefits from the Iranian government. Both parents-in-law have several siblings who are citizens and residents of Iran; however, there is no record evidence as to the nature and frequency of the parents-in-law's contacts with those siblings or their spouses and offspring. (Answer; GE 1; Tr. 34-39, 48-54, 72)

Applicant and his wife have weekly contact with her parents via a video conferencing platform. His parents-in-law sought to attend their 2018 wedding, but they were denied U.S. tourist visas. In 2019, Applicant and his wife vacationed with her parents in Turkey for a week. Applicant's parents-in-law are aware that Applicant works in a research lab supporting the U.S. Government. Due to Applicant's wife's U.S. citizenship, Applicant and his wife hope her parents will get scheduled for an immigration interview to obtain U.S. LPR status. Applicant's father-in-law disapproves of the current Iranian regime. Both parents-in-law are eager to leave Iran. Applicant and his wife do not provide financial support to her parents. (Answer; GE 1; Tr. 34-39, 48, 70)

SOR ¶ 1.d. Applicant's brother-in-law is a citizen of Iran, and he attended college in Iran. In December 2022, he moved to the United States to attend graduate school. He currently resides in the United States on a U.S. student visa while attending graduate school.

He is seeking employment with a U.S. company that will sponsor his work visa. He does not wish to return to Iran, in part because he will be compelled to perform two years of mandatory military service upon his return. His employment opportunities, quality of life, and proximity to his sister are his motivating factors for remaining in the United States. Applicant and his wife currently maintain contact with his brother-in-law, approximately every week or every other week. When he first arrived in the United States in December 2022, they visited him. (Answer; GE 1; AE W; Tr. 35-37, 39, 64-65, 73-74)

SOR ¶ 1.e. The SOR alleges foreign influence security concerns triggered by Applicant's contacts with Iranian nationals. On February 22, 2022, Applicant completed and submitted an Electronic Questionnaire for Investigations Processing (e-QIP). Under Section 19 - Foreign Contacts, he listed contacts with five Iranian nationals - H, M, H2, P, and R - who were former fellow students or faculty from his undergraduate and graduate education. Applicant and his wife met H and M, who are married to one another, during graduate school. H and M were present at the small gathering celebrating Applicant's wedding in 2018, and they currently reside near Applicant and his wife. Applicant and his wife see H and M often in person, including for outings, vacations, barbecues, etc. H and M are Iranian citizens, and they have both applied for U.S. LPR status. They have resided in the U.S. since 2017. M completed his compulsory military service in Iran prior to

immigrating to the U.S. in 2017 for graduate school. M and H are currently employed by two U.S. private companies. (Answer; GE 1; Tr. 40-42, 55, 83)

Applicant listed three additional Iranian nationals in his e-QIP. H2 is an Iranian national who resides in the United States, with whom Applicant has had no contact in over two years. P is a former graduate school friend who resides in the United States. Applicant has had no contact with P in about a year. Z is a former graduate school friend with whom Applicant has had no contact since 2020. (Answer; GE 1; Tr. 57, 84-85)

SOR ¶ 1.f. The SOR alleges foreign influence security concerns triggered by Applicant's contacts with citizens of the People's Republic of China (PRC). On his February 2022 e-QIP, Applicant listed foreign contacts with PRC nationals who were fellow undergraduate and graduate students. He no longer maintains contact with any of the PRC nationals. Applicant previously had quarterly email or text contact with two friends, but he had no contact with the third friend since 2018. (Answer; GE 1; Tr. 33, 57-59)

Applicant's parents divorced when he was four years old. He father remarried, and Applicant has two half-siblings who are nine years younger than he is with whom Applicant maintains contact. Applicant's father has since passed away, and there is no evidence of any contact between Applicant and his stepmother. Applicant's mother remarried twice, but there is no evidence of any continuing contact between Applicant and his stepsiblings. Applicant's first stepfather passed away in 2013. Applicant's mother visited in January 2024 to celebrate Applicant's wife's naturalization. Applicant maintains some contacts with aunts, uncles, and cousins in the United States. Applicant has a childhood friend and his wife who live nearby Applicant and his wife. (GE 1; Tr. 29, 60-61, 86-89)

Applicant's annual salary is approximately \$130,000. Applicant and his wife's joint Federal income tax return reflects over \$300,000 in earnings for 2022. Applicant estimated that they have about \$300,000 in equity in their residence. Applicant does not participate in any organized volunteer activities, but he does help his neighbors. At the urging of his employer, Applicant continues to publish academic research papers identifying himself and his employer. These papers are all pre-screened for sensitive information prior to publication. (Tr. 61, 67-68, 78-79; AE V)

Whole Person

Applicant submitted five character-reference letters in support of his clearance eligibility. Applicant's project leader and mentor praised his subject-matter expertise, invaluable insights, professionalism, and honesty. Applicant's manager lauded Applicant's adherence to security rules, safeguarding of sensitive information, and good character. A former faculty member who previously worked with Applicant during his post-doctoral fellowship described Applicant as intelligent, imaginative, hardworking, sensible, reliable, and honest. (AE A, P; Tr. 29-30)

Two neighbors described Applicant as friendly, kind, hard-working, trustworthy, and reliable. Applicant twice assisted one neighbor with moving heavy items within her residence. (AE P; Tr. 30-31)

In 2022, Applicant received a favorable performance review from his employer. The review noted Applicant's quick start and proactive approach in the workplace. (AE C)

Facts for Administrative Notice

Iran

I have taken administrative notice of the following facts concerning the Islamic Republic of Iran (Iran), excerpted from the materials proffered by Department Counsel:

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. 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 has issued a Level 4 travel advisory for Iran, advising U.S. nationals not to travel to Iran due to the risk of kidnapping and the arbitrary arrest and detention of U.S. citizens. Iranian authorities continue to unjustly detain and imprison U.S. nationals, particularly dual U.S.-Iranian nationals. (AN I)

Iran is the leading state sponsor of terrorism, facilitating a wide range of terrorist and other illicit activities around the world. Iran used the Islamic Revolutionary Guard Corps-Qods Force to provide support to terrorist organizations, provide cover for associated covert operations, and create instability in the region. Iran has allowed al-Qa'ida facilitators to operate a core facilitation pipeline through Iran since at least 2009, enabling al-Qa'ida to move funds and fighters to many locations. (AN I)

Iran has an advanced intelligence-collecting apparatus targeting the sensitive and classified information of the U.S. government and U.S. companies. (AN I)

Human rights issues included credible reports of: unlawful or arbitrary killings by the government and its agents; forced disappearances attributed to the government and its agents; torture or other cruel, inhuman, or degrading treatment or punishment by the government and its agents; arbitrary arrest or detention; enabling abuses by terrorist groups throughout the region; severe restrictions on freedom of expression; and severe restrictions on religious freedom. (AN I)

Policies

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(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 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 sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive 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 under this guideline is set out in AG ¶ 6 as follows:

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.

Two disqualifying conditions under this guideline are relevant to this case:

AG ¶ 7(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

AG ¶ 7(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 United States has a compelling interest in protecting and safeguarding [sensitive] 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 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 coercion.

To establish AG ¶ 7(a), the Government must demonstrate a "heightened risk" of exploitation due to Applicant's contacts with his parents-in-law, brother-in-law, and friends who are citizens of Iran or the PRC. The Government did not submit any materials for administrative notice concerning the PRC and did not establish the requisite "heightened risk" under AG ¶ 7(a) for Applicant's contacts with PRC nationals alleged in SOR ¶ 1.e. As for Applicant's contacts with PRC nationals with whom he attended college and graduate school, the Government did not establish connections or relationships that rose to the level of creating a potential conflict of interest under AG ¶ 7(b). Furthermore, he has had very limited continuing contact with these individuals. I find for Applicant as to SOR ¶ 1.e.

The materials for administrative notice concerning Iran detail the significant security concerns raised the Iranian Government, its hostility towards the United States, its active support of terrorist organizations, its intelligence-collecting activities targeting the United States, and significant human-rights issues. "An applicant with family members living in a country hostile to the U.S. has a very heavy burden to show that they are not a

means through which the applicant can be subjected to coercion or exploitation." ISCR Case No. 11-12659 at 3 (May 30, 2013). The Government has established a "heightened risk" required under AG ¶ 7(a) concerning Applicant's relatives and friends who are Iranian nationals. Given the active, capable, and hostile entities within Iran, Applicant must overcome the "very heavy burden" to show that his foreign contacts are not a means through which he may be influenced or coerced. AG ¶¶ 7(a) and 7(b) apply to Applicant and his wife's close and continuing contacts with Iranian nationals.

The following mitigating conditions under this guideline are potentially relevant:

AG ¶ 8(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;

AG ¶ 8(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

AG ¶ 8(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.

As for Applicant's Iranian friends (SOR ¶ 1.d.), Applicant has had very limited contact with H2, P, and Z, and the nature of those relationships does not present a potential conflict of interest. AG ¶¶ 8(b) and 8(c) apply. Applicant's relationships with H and M are closer, and they have more frequent contact; however, these relationships also do not present a conflict of interest. AG ¶ 8(c) applies.

Applicant's wife is a dual citizen of Iran and the United States. She has not returned to Iran since 2014, and she does not intend to do so. She has established her career and life here in the United States and is not financially dependent on individuals in Iran. Notwithstanding her U.S. citizenship and residence, her close and continuing relationships with her parents and brother cause her to be inseparable from the web of family relationships in this case. To parse out Applicant's relationship with his wife from the web of family relationships would reflect piecemeal analysis. AG ¶ 8(a) does not apply.

There is a rebuttable presumption that a person has obligations to his or her immediate family members, and this presumption extends to the immediate family members of an individual's spouse. See ISCR Case No. 02-1150 at 7 (App. Bd. May 19, 2007); ISCR Case No. 14-03112 at 3 n.1 (App. Bd. Nov. 3, 2015). Applicant and his wife have close and continuing relationships with her parents and brother, with whom they

speak regularly. Applicant and his wife sought to have her parents at their 2018 wedding, and later visited them in Turkey when her parents were denied a visa. As soon as Applicant's wife became a naturalized U.S. citizen, she initiated the process to have her parents immigrate to the United States. Her interest in their relocation to the United States is intensified by their potentially precarious position as non-Muslims. Applicant's brother-in-law is currently in the United States attending graduate school; however, his U.S. residency is temporary and contingent upon his education, and he is required to complete his compulsory military service upon his return.

Applicant has cultivated an exemplary career in the United States as a subject-matter expert, and he continues to publish in academic journals and to be consulted for his expertise. All of the assets he and his wife own, including their home, are in the United States. Applicant has a close relationship with his mother and continuing contacts with his extended family members in the United States. Nevertheless, taking the entirety of the record evidence, Applicant has not overcome the "very heavy burden" to show that his foreign contacts are not a means through which he may be influenced or coerced. AG ¶¶ 8(b) and 8(c) do not apply as to Applicant's wife, parents-in-law, and brother-in-law. Applicant did not mitigate the foreign influence security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant has excelled academically and professionally in the United States. His supervisors, a former faculty advisor, and neighbors unilaterally praise his work ethic, subject-matter expertise, trustworthiness, kindness, and reliability. Notwithstanding this favorable evidence, Applicant's close and continuing relationships with his wife, parents-

in-law and brother-in-law remain a potential conflict of interest. He has not overcome the "very heavy burden" to show that these family members are not a means through which he may be influenced or coerced. If his in-laws were to permanently relocate to the United States, this analysis may shift. At present, Applicant has not 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 section E3.1.25 of Enclosure 3 of the Directive, are:

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

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric H. Borgstrom
Administrative Judge