



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



In the matter of:)	
)	
)	ISCR Case No. 06-17077
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer Goldstein, Esquire, Department Counsel
For Applicant: Pro Se

June 9, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted a security clearance application, (SF 86), on June 2, 2005. On December 21, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B, Foreign Influence, and Guideline C, Foreign Preference, for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On February 15, 2008, Applicant answered the SOR and requested a determination be made on the written record. Department Counsel prepared a File of Relevant Material (FORM) on March 20, 2008. The FORM was forwarded to Applicant on March 25, 2008. He received it on April 7, 2004. Applicant had 30 days from the receipt of the FORM to submit additional matters. He did not submit additional matters. The case was assigned to me on May 27, 2008. Based upon a review of the case file, pleadings, ands exhibits, eligibility for access to classified information is denied.

Administrative Notice

In the FORM, Department Counsel requested that administrative notice be taken of certain factual information pertaining to the country of Iran referenced in 11 documents. The following is a summary of the facts which administrative notice is taken.

Iran is a theocratic Islamic republic. The United States has not had diplomatic relations with Iran since April 7, 1980. The U.S. Department of State has set forth concerns of the United States with Iran's policies as: (1) Iran's efforts to acquire nuclear weapons and other weapons of mass destruction; (2) Iran's support for and involvement in international terrorism; (3) Iran's support for violent opposition to the Middle East peace process; and (4) Iran's dismal human rights record. (Admin Not 1, U.S. Department of State, Background Note: Iran, Bureau of Near Eastern Affairs, February 2008, at 8-9.) The United States has designated Iran as a state sponsor of terrorism. (Admin Not 6, U.S. Department of State, Country Reports on Terrorism, Office of the Coordinator for Counterterrorism, April 30, 2007, at 2)

The Iranian government's human rights abuses against the Iranian people include summary executions, lack of fair public trials, disappearances, torture, arbitrary arrest and detention, political prisoners and detainees, severe restrictions on freedom of religion, discrimination against women, and severe restrictions on civil liberties including speech, press, assembly, association, movement and privacy. (Admin Not 5, U.S. Department of State, Country Reports on Human Rights Practices – 2007, Iran, the Bureau of Democracy, Human Rights, and Labor, March 11, 2008, at 1; Admin Not 4, CRS Report for Congress, Iran: U.S. Concerns and Policy Responses, updated October 9, 2007, at 8-13.)

The U.S. State Department continues to warn U.S. citizens and U.S.-Iranian dual citizens to consider carefully the risks of travel to Iran. Some elements of the Iranian regime remain hostile to the U.S. and U.S. citizens. U.S.-Iranian dual citizens may be subject to harassment or arrest while residing in Iran. Recently, Iranian authorities have prevented a number of Iranian-American citizen academics, journalists, and others who traveled to Iran for personal reasons from leaving, and in some cases have detained and imprisoned them on various charges. Iranian born, naturalized U.S. citizens, and the children of such persons, are considered solely Iranian citizens by Iranian authorities, since Iran does not recognize dual citizenship. As a result, U.S.-Iranian dual citizens have been detained and harassed by the Iranian government. Under Iranian law, U.S.-Iranian dual nationals must enter and exit Iran on an Iranian passport, unless the Iranian government has recognized a formal renunciation or loss of Iranian citizenship. (Admin Not 2, U.S. Department of State, Bureau of Consular Affairs, Country Specific Information, Iran, June 5, 2007, at 1-2; Admin Not 3, Travel Warning: Iran, U.S. Department of State Bureau of Consular Affairs, January 3, 2008.)

Findings of Fact

In his Answer to the SOR, dated January 14, 2008, Applicant admitted to all the SOR allegations.

Applicant is a 42-year-old engineer employed with a Department of Defense contractor. He has worked for his current employer since November 2003. He has a bachelor's degree in electrical engineering from a U.S. university. He is married and has no children. This is his first time applying for a security clearance. (Gov 5.)

Applicant was born and raised in Iran. He immigrated to the U.S. in September 1984, at age 18. He became a U.S. citizen on August 26, 1999. (Gov 4; Gov 5) His wife is an Iranian citizen and has U.S. permanent resident status. She is eligible to apply for U.S. citizenship in 2009. (Answer to SOR.)

Applicant's father is a dual citizen of the U.S. and Iran who currently resides in Iran. His father became a U.S. citizen in 2002. He moved back to Iran after he divorced his wife because he had financial problems. He intends to move back to the U.S. when his financial situation improves. Nothing in the record evidence indicates whether Applicant's father is employed in Iran. Applicant speaks with his father by telephone about once or twice a week. His parents-in-law are citizens of and reside in Iran. He has contact with them about once a month. The record evidence does not indicate what Applicant's parents-in-law do for a living. (Gov 4 at 3-4.)

Applicant's mother and sister are dual citizens of the U.S. and Iran, who currently reside in the U.S. His brother is a dual citizen of the U.S. and Iran who resides in the U.S. His brother has never had an Iranian passport and has never traveled to Iran. (Answer to SOR; Gov 5.)

Applicant traveled to Iran on the following dates: March 16, 1998 to April 11, 1998; November 19, 1999 to November 28, 1999, September 15, 2002 to October 14, 2002; and August 17, 2003 to September 3, 2003. The purpose of the travel was to find a wife. He has not traveled to Iran since he brought his wife to the U.S. in 2003. He traveled on his Iranian passport. The Iranian government does not issue entry visas for U.S. citizens who were born in Iran. The only alternative was to use an Iranian passport to enter Iran. His Iranian passport expired on April 22, 2007. He does not intend to renew his Iranian passport. He owns no property in Iran and has no investments in Iran. He is willing to renounce his Iranian citizenship. He understands that the Iranian government would not accept it. He is also concerned that if the Iranian government discovers his desire to renounce his Iranian citizenship, they might refuse his father's request to leave Iran. (Gov 4 at 3-5; Gov 5, questions 15, 16.)

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition

to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense 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 access to classified information 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 applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining 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 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 10865 provides that 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 may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

The guideline notes several disqualifying conditions that could raise security concerns. Of the Foreign Influence Disqualifying Conditions (FI DC), the following apply to Applicant's case.

Foreign Influence Disqualifying Condition (FI DC) ¶ 7(a) (*contact with a 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*) applies with respect to Applicant's relatives who are citizens of and reside in Iran. His father and his parents-in-law are citizens of and reside in Iran. His father-in-law is also a U.S. citizen but currently resides in Iran. FI DC ¶ 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 sensitive information or technology and the individual's desire to help a foreign person, group or country by providing that information*) applies for the same reason. Applicant contacts his father by telephone once or twice a week. He has contact with his parents-in-law at least once a month. There is a rebuttable presumption that an applicant has ties of affection for, or obligation to, his spouse's immediate family members. (ISCR Case No. 02-03120, February 20, 2002, at 4.)

Foreign Influence Disqualifying Condition (FI DC) ¶ 7(d) (*sharing living quarter with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion*) applies with respect to Applicant's wife. Her contact with her parents raise the potential to create a heightened risk of foreign inducement, manipulation, pressure or coercion.

Applicant's mother, sister, and brother are dual citizens of the U.S. and Iran. They have lived in the U.S. for a long time. I find no foreign influence concerns with respect to his mother, sister, and brother.

The guideline also includes conditions that could mitigate security concerns arising from Foreign Influence. The following Foreign Influence Mitigating Conditions (FI MC) have the potential to apply in Applicant's case.

FI MC ¶ 8(a) (*the nature of the relationship with foreign persons, the country in which these persons are located, or the position 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.*) Family contacts and ties with persons in a foreign country are not automatically disqualifying but require the applicant to present evidence in mitigation and extenuation that he qualifies for a security clearance. Iran's hostile relationship with the United States and the country's poor human rights record place "a heavy burden of persuasion on applicant to show his family members do not pose a security risk. (See, ISCR Case No. 04-11463 at 4 (App. Bd. Aug 4, 2006). Applicant has not met that burden under FI MC ¶ 8(a). Applicant's family ties in Iran are significant enough to raise foreign influence concerns. The risk is heightened due to the nature of the Iranian government.

FI MC ¶ 8(b) (*there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, or 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*) does not apply. In order for FI MC ¶ 8(b) to apply, Applicant must meet at least one of the elements outlined. The first element is that there is no conflict of interest because the individual's sense of loyalty or obligation to the foreign person(s) is minimal. This element is not met because Applicant's relationship with his father in Iran cannot be considered minimal. He has contact with him at least once or twice a week. His relationship with his in-laws residing in Iran cannot be considered minimal. He has contact with them at least once a month. The second element of FI MC ¶ 8(b) is that individual has such deep and longstanding relationships and loyalties in the U.S. that the individual can be expected to resolve any conflict in favor of the U.S. interest. Applicant first came to the U.S. in 1984. He attended college in the U.S. He has lived in the U.S. for the past 27 years. His wife, mother, sister and brother reside in the U.S. However, a potential conflict of interest remains due to Applicant's family ties in Iran. He has a close relationship with his father. Although he may not be as close to his parents-in-law, he has monthly contact with them, and it is reasonable to conclude that his wife remains close to her parents. Although Applicant has longstanding ties to the U.S., concerns remain due to his relatives in Iran. FI MC ¶ 8(b) cannot be applied.

FI MC ¶ 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*) is not applicable. Applicant's relationship with his family members who live and reside in Iran cannot be considered casual and infrequent.

Security concerns remain due to Applicant's relatives who are citizens of and reside in Iran. Foreign influence concerns are not mitigated. Guideline B is found against Applicant.

Guideline C, Foreign Preference

The security concern relating to the guideline for Foreign Preference is set out in AG ¶9:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

The guideline notes several disqualifying conditions that could raise security concerns. Foreign Preference Disqualifying Condition (FP DC)10(a) (*exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport*); and FP DC ¶ 10(b) (*action to acquire or obtain recognition of a foreign citizenship by an American citizen*) apply. Applicant traveled to Iran using his Iranian passport after becoming a U.S. citizen in August 1999, during trips in November 1999, September/October 2002, and August/September 2003. He applied for an extension of his Iranian passport in August 2002. While Iranian law makes it difficult for U.S./Iranian dual citizens to travel to Iran without the use of an Iranian passport, Applicant's possession and use of an Iranian passport after becoming a U.S. citizen is considered an exercise of his rights of foreign citizenship and raises a security concern under foreign preference.

The guideline also includes conditions that could mitigate security concerns arising from Foreign Preference. The following Foreign Preference Mitigating Conditions (FP MC) have the potential to apply in Applicant's case.

FP MC ¶ 11(a) (*dual citizenship is based solely on parents' citizenship or birth in a foreign country*) does not apply. While Applicant obtained his dual citizenship based on his birth in Iran, he exercised his dual citizenship by applying for an extension of his Iranian passport, and using his Iranian passport after becoming a U.S. citizen in 1999.

FP MC ¶ 11(e) (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*) applies. Applicant provided proof that his Iranian passport expired on April 22, 2007. FP MC ¶ 11(e) applies. He does not intend to renew his Iranian passport.

Applicant has mitigated the Foreign Preference concerns. Guideline C is found for Applicant.

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 the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(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) 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 common sense 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. Guideline B is a security concern that affects Applicants through no fault of their own. The government need not prove an applicant is a bad person before it can deny or revoke access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control. An applicant with good character and personal integrity can pose a security risk because the applicant has close relatives in a country that is hostile to the United States. (ISCR 01-26893, dated October 16, 2002, at 9-10.)

The current nature of the Iranian government and the hostile relationship between Iran and the U.S. make it a substantial burden to mitigate the concerns raised under foreign influence. Applicant's significant personal relationships and contacts within the U.S. do not outweigh the concerns raised by having relatives who are citizens and reside in Iran. Foreign influence security concerns are not mitigated. Foreign preference concerns are mitigated because he no longer possesses a valid Iranian passport.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant

Paragraph 2, Guideline C:

FOR APPLICANT

Subparagraph 2.a:

For Applicant

Subparagraph 2.b:

For Applicant

Subparagraph 2.c:

For Applicant

Conclusion

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

ERIN C. HOGAN
Administrative Judge