



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 06-18379
)	
Applicant for Security Clearance)	

Appearances

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

December 16, 2009

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA), on May 6, 2005. On May 19, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and C 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.

Applicant acknowledged receipt of the SOR on May 21, 2009. He answered the SOR in writing on June 10, 2009, and requested a hearing before an Administrative Judge. DOHA received the request on June 15, 2009, and I received the case assignment on July 31, 2009. DOHA issued a notice of hearing on August 12, 2009, and I convened the hearing as scheduled on September 17, 2009. The Government offered Exhibits (GXs) 1 through 4, which were received without objection. Applicant

testified on his own behalf, as did four witnesses, and submitted Exhibits (AppXs) A through D, without objection. DOHA received the transcript of the hearing (TR) on September 25, 2009. I granted Applicant's request to keep the record open until October 15, 2009, to submit additional matters. On September 28, 2009, and on or about October 15, 2009, he submitted Exhibits E and F, without objection. As AppX E was not forwarded to the undersigned, by the Department Counsel, until October 19, 2009, the record closed on October 19, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Iran. The request was granted. The request, and the attached documents, were not admitted into evidence, but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer to the SOR, Applicant admitted all of the factual allegations, with explanations. The Applicant emigrated to the U.S. in 1986, at the age of 14, to be with his natural mother (TR at page 95 line 3 to page 98 line 21). He became a naturalized U.S. citizen in 1994 (*Id*). He served in the U.S. Navy from 1992 to 1997, obtaining the rank of E-5, Quartermaster 2nd class (TR at page 39 line 21 to page 41 line 25, and AppXs A and B). The Applicant served his adopted country honorably (AppXs A and B).

Guideline B - Foreign Influence

1.a. and 1.b. The Applicant's father is a citizen and resident of Iran. He retired from the Iranian Department of Maritime Ports and Shipping (TR at page 86 line 20 to page 88 line 21). He was hired under the Shah's regime, but retired under the current regime (*Id*). He has little contact with his father, and describes his feelings in the following terms:

I do not feel any sentiments towards my father. I recall that he was not a terribly nice husband to my mother. So therefore, I have no connections with him. No emotional ties (TR at page 100 lines 3~9).

The Applicant also has a half-brother, a half-sister, and a stepmother who are citizens and residents of Iran. His half-brother is "a full time student" (TR at page 88 line 22 to page 89 line 7). He is unsure of what his half-sister does, and his stepmother is "just a housewife" (TR at page 89 line 8 to page 90 line 3). His contact with his half siblings and his stepmother is "[v]ery rare" (TR at page 89 line 16 to page 90 line 13).

1.c. and 2.b. The Applicant visited Iran in October of 2007, using his Iranian passport to enter and exit the country (TR at page 91 lines 3~6). He “had a curiosity about the family members that were still there,” and “also was interested in seeing some historic sites” (TR at page 104 lines 14~24). He was there for about “a month,” but has no intention of visiting Iran in the future (TR at page 101 lines 23~24, and at page 107 line 23 to page 108 line 22).

Guideline C - Foreign Preference

2.a. The Applicant renewed his Iranian passport in November of 2003, despite being naturalized in September of 1994 (TR at page 91 lines 7~16). That passport has since expired, and has been surrendered to and destroyed by the Applicant’s Facility Security Officer (FSO) (TR at page 104 lines 14 to 24, at page 107 line 23 to page 108 line 22, and AppX F). This is evidenced by a statement from the Applicant’s FSO (AppX F). The Applicant is willing to renounce any Iranian citizenship he may have, but believes he had already done so when he joined the U.S. Navy (TR at page 91 line 17 to page 92 line 3, and at page 104 line 25 to page 105 line 6).

As the Applicant’s father, half-siblings, and step mother are Iranian and live in Iran, I must also consider the country of Iran. Iran is possibly the most serious threat to the U.S. Iran is a state that sponsors terrorism. The U.S. has not had diplomatic relations with Iran since 1980. It is a theocratic Islamic republic in which Shi’a Muslim clergy dominate the key power structures, and ultimate political authority is vested in a learned religious scholar. Iran’s dismal and worsening human rights record presents a further threat to the U.S., as a large number of Iranians emigrated to the U.S. in 1979, after their Islamic revolution. These immigrants often left behind family members in Iran. Iran’s security forces often target family members of political prisoners for harassment purposes.

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 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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

Paragraph 6 of the new adjudicative guidelines sets out the security concern relating to Foreign Influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign 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 a foreign interest.

Here, Paragraph 7(a) is applicable: “*contacts with a foreign family member . . . 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.*” The Applicant clearly understood, himself, and the first to be a citizen of, and the identity of the

relationships with foreign persons, the country in which these persons are located . . . 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 . . . and the interests of the U.S.” The Applicant rarely contacts, and has little emotional ties to, his Iranian relatives. Apart from his father, who was hired under the Shah’s regime, none of his Iranian relatives have any connection with the Iranian government. Furthermore, I find the Applicant, a former member of the U.S. Navy, cannot be coerced by the government of Iran or any other government.

Guideline C - Foreign Preference

Paragraph 9 of the new adjudicative guidelines sets out the security concern relating to Foreign Preference:

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.

Subparagraph 10(a)(1) is applicable: *“exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport.”* Here, the Applicant, a naturalized citizen, used an Iranian passport to enter that country in 2007. This is clearly countered, however, by the mitigating conditions found under Subparagraphs 11(b) and 11(e). Subparagraph 11(b) notes that where *“the individual has expressed a willingness to renounce dual citizenship,”* this is mitigating. I find that Applicant’s renunciation intention to be genuine. Furthermore, under Subparagraph 11(e), the Applicant’s *“passport has been destroyed [by] . . . the cognizant security authority,”* his FSO.

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. 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.

The Administrative Judge should also 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) 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.”

The record shows that the Applicant has little or no contact with Iran; and as such, can not be coerced vis-a-vis any of his Iranian relatives. He understands his responsibility to the U.S., while holding a security clearance; and as such, clearly meets the eligibility criterion.

Furthermore, he has the unqualified support of those who know and have worked with the Applicant (TR at page 53 line 8 to page 85 line 10). A Senior Vice President (VP) of his firm, another VP, and his direct supervisor speak most highly of the Applicant (*Id*). They all feel he is trustworthy; and as such, should be granted a security clearance.

I have considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. 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 mitigated the security concerns arising from his alleged Foreign Influence and Foreign Preference.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge