



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



In the matter of:)	
)	
)	ISCR Case No. 12-09322
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: Eric Roper, Esquire

01/25/2013

Decision

LAZZARO, Henry, Administrative Judge

Applicant failed to overcome the foreign influence security concern that arises from his relationship with his relatives who are citizens and residents of Iran, and the travel to Iran by his wife and children. Clearance is denied.

On August 20, 2012, the Department of Defense issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.¹ The SOR alleges a security concern under Guideline B (foreign influence). Applicant submitted an undated response to the SOR in which he admitted all allegations except those contained in subparagraphs 1.b and 1.f. Applicant did not indicate if he was requesting a hearing or a decision on the record without a hearing. On September 24, 2012, Department Counsel requested a hearing.

¹ This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended (Directive), and revised adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

The case was assigned to me on December 5, 2012. A notice of hearing was issued on December 20, 2012, scheduling the hearing for January 7, 2012. The hearing was conducted as scheduled.

The Government submitted 16 documentary exhibits that were marked as Government Exhibits (GE) 1-16. GE 1-3 were admitted into the record without objection. Administrative notice was taken of the contents of GE 4, 5, 7, 8, and 12-16 over Applicant's objection. Applicant's objections to GE 6, 9, 10, and 11 were sustained. Department Counsel submitted a document entitled Administrative Notice which was marked as Appellate Exhibit (App. Ex.) I, and made part of the record without objection. Applicant testified, called two witnesses to testify on his behalf, and submitted four documentary exhibits that were marked as Applicant Exhibits (AE) 1-4, and admitted into the record without objection.

Post-hearing, Department Counsel submitted one document and requested that administrative notice be taken of its contents. That document was marked as GE-17. Department Counsel also submitted a document entitled Memorandum For Administrative Judge which was marked as App. Ex. II. App. Ex. II indicated a copy of GE 17 was served on Applicant's attorney on January 16, 2013. No response having been received from Applicant's attorney, administrative notice will be taken of the contents of GE 17, and App. Ex. II is made part of the record. The transcript was received on January 15, 2013.

Findings of Fact

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, testimony and exhibits, I make the following findings of fact:

Applicant is a 55-year-old man who has been employed as a linguist by a defense contractor since June 2010. He has served almost continuously with United States military forces in Afghanistan since he was hired, with only short periodic visits back to the United States. From September 2005 until May 2009, Applicant worked for several different employers outside the defense industry as either a driver or stocker. He was unemployed from May 2009 until June 2010.

Applicant was born in Iran to Muslim parents. Applicant did not adhere to Muslim teachings and eventually converted to Christianity. He attended school in Iran and received an associate's degree as a math teacher in July 1979. He taught math for a time in Iran, but was eventually fired because he did not espouse Muslim beliefs and participate in Muslim worship practices. He thereafter worked as a cab driver until he immigrated to Germany under the auspices of a Christian association. Applicant resided in Germany from November 1999 until he was permitted to immigrate to the United States in December 2004. Applicant did not work while he resided in Germany, but instead was supported by the organization that sponsored him into that country. Applicant became a naturalized U. S. citizen in May 2010.

Applicant has been married since March 1987. His wife is an Iranian citizen who immigrated to the United States with Applicant. She has not attempted to gain U. S. citizenship because she is unable to effectively read the English language. Applicant and his wife have two children, a 23-year-old daughter and a 21-year-old son. Both children reside with Applicant's wife, and both became naturalized U. S. citizens in 2012. Each of their children is a full-time college student and part-time employee of a grocery store.

Applicant's wife and children remained in Iran when he immigrated to Germany. They joined him in Germany after he was granted permission to immigrate to the United States, and only remained there for the 50 days it took to complete the processing for them to also be granted permission to immigrate to the United States.

Applicant's parents are both deceased. He has a brother and a sister who are both citizens and residents of Iran. Both of his siblings are married to Iranian nationals. Applicant's mother-in-law is 84 years old and a citizen and resident of Iran. Applicant's wife has a sister and brother who are citizens and residents of Iran. Both of them are married to Iranian nationals. Applicant and his wife have nephews and nieces who are citizens and residents of Iran.

Since leaving Iran in 1999, the only time Applicant has visited there was in 2009 when his mother became ill. He had not earlier returned to Iran because he felt it was too dangerous. However, when his mother became ill, he discussed the danger with his wife and informed her he felt he had to visit with his mother despite the danger. Applicant had an Iranian passport which he surrendered in May 2012. He obtained a United States passport in May 2010.

Applicant's wife has visited Iran at least three times since she immigrated to the United States. She last visited Iran in early-2012. Applicant's daughter has also visited Iran three times since she immigrated to the United States. Her last visit occurred in mid-2011. Applicant's wife and daughter stayed with relatives when they visited Iran, and neither reported experiencing any difficulties during their visits. Applicant's son has also visited Iran on at least one occasion, that occurring in either 2009 or 2010. Applicant has expressed his concern to his wife and children about their visits to Iran. However, his wife insists on returning because she has family there, none here, and her mother is elderly.

Applicant's wife has either weekly or bi-weekly telephone contact with her relatives in Iran. Applicant's daughter is close to a cousin in Iran and speaks with her by telephone about every other week. His daughter speaks with other relatives in Iran about once a month. Applicant's wife and children maintain Iranian passports.

Applicant earns approximately \$200,000 annually. The first \$95,000 is not taxed. He estimates that he paid about \$25,000 in income taxes last year. He just recently purchased a second residence. He intends to keep his prior residence and use it as

income property. He has about \$150,000 in savings, which he plans to use to start a business after working for his current employer for about one more year.

Applicant submitted certificates of appreciation and a work appraisal which establish that he has proven himself to be a valued employee who performs his duties above expectations. His letter of recommendation and the testimony of his character witness establish that Applicant has proven himself to be trustworthy, honest, sincere, and a man of his word. He has high moral standards and is dedicated to supporting the United States. Applicant's response to the SOR demonstrates he has absolutely no loyalty to Iran, but is instead totally committed to the United States.

Iran is one of the most active state sponsors of terrorism. It either directly or through intermediaries supplies training and weapons to terrorist organizations and to the Taliban in Afghanistan. Iran has a poor human rights record and is reported to have carried out many executions, including public hangings from cranes and overpasses. It has detained U. S. citizens who have traveled to Iran, including on false accusations of espionage. Iran considers dual citizens as solely Iranian, and the U. S. State Department warns U. S. citizens against traveling to Iran. It also has warned dual citizens that they may encounter difficulties when they attempt to exit Iran.

Policies

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying and mitigating conditions for each applicable guideline. Clearance decisions must be fair and impartial decisions based upon relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline B (foreign influence), with its disqualifying and mitigating conditions, is most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.² The government has the burden of proving controverted facts.³ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁴ although the government is required to present substantial evidence to meet its burden of proof.⁵ "Substantial evidence is more than a scintilla, but less than a

² ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

³ ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

⁴ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

preponderance of the evidence.”⁶ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁷ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁸

No one has a right to a security clearance⁹ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁰ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹¹

Analysis

Guideline B, Foreign Influence

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

Applicant’s wife is an Iranian citizen who has resided in the United States since 2004. She has returned to Iran on at least three occasions to visit relatives. Applicant’s son and daughter are U. S. citizens who have resided in the United States since 2004. Applicant’s daughter has returned to visit relatives in Iran on at least three occasions, and his son has returned to Iran on at least one occasion. Those visits were against Applicant’s expressed concerns for the safety of his wife and children.

Applicant has a brother, sister, sister-in-law, brother-in-law, and mother-in-law who are all citizens and residents of Iran. In addition to visiting those relatives in Iran, Applicant’s wife and daughter maintain frequent telephonic contact with at least some of them. They stayed with some of those relatives when they visited Iran.

⁶ ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

⁷ ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

⁸ ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

⁹ *Egan*, 484 U.S. at 528, 531.

¹⁰ *Id* at 531.

¹¹ *Egan*, Executive Order 10865, and the Directive.

Iran is a country with interests inimical to those of the U.S. It actively supports terrorism and is repressive to its own citizens. The U. S. State Department has warned of the danger of travel to Iran for both solely U. S. citizens and those holding dual citizenship with Iran. Applicant has been working with United States military forces engaged in combat operations against the Taliban in Afghanistan since 2010. Iran has been supplying the Taliban with training and weapons during that entire time period. Despite Applicant's expressed concerns for their well-being, his wife and daughter have traveled to Iran while he was serving in Afghanistan. The danger to his wife and daughter during those travels would be great if Iranian officials were to become aware of Applicant's service to United States military forces. Disqualifying Conditions (DC) 7(a): *contact with a foreign family member . . . or other person who is a citizen of or resident in a foreign country it that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*; and DC 7(d): *sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion* apply.

I have considered all mitigating conditions and find that none apply. Specifically, Mitigating Condition (MC) 8(a): *the nature 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.* does not apply because of the obvious close relationship between Applicant and his wife and daughter and the nature and history of the Iranian Government.

Applicant has proven himself in a relatively short time to be a loyal and dedicated United States citizen. However, considering his obvious close affection for his wife and daughter and the danger they expose themselves to when traveling to Iran while Applicant serves in Afghanistan, it is impossible to predict what action he would take if they were detained in Iran. Accordingly, MC 8(b): *there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person . . . 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.* does not apply.

Applicant has little contact with anyone in Iran, however his wife and daughter have frequent contact with their Iranian relatives. Thus, 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* obviously does not apply. The remaining mitigating conditions have no applicability to the facts of this case.

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." In this case, there is no reason to doubt that Applicant is a loyal American citizen or suspect he would ever consider doing harm to the interests of the

United States. Still, his immediate family member's travels to Iran, their regular contacts with their relatives in Iran, the potential for his immediate family members to travel to Iran in the future, and the nature of the Iranian Government and its relationship with the U.S. create a security concern that has not been overcome.

Considering all relevant and material facts and circumstances present in this case, the whole-person concept, the factors listed in ¶ 6.3.1 through ¶6.3.6 of the Directive, and the applicable disqualifying conditions, Applicant failed to mitigate the foreign influence security concern that exists in this case. He failed to overcome the case against him in this regard or satisfy his ultimate burden of persuasion. Guideline B is decided against Applicant. It is not clearly consistent with the national interest to grant Applicant a security clearance.

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
Subparagraphs 1.c-f:	Against Applicant
Subparagraph 1.g:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Henry Lazzaro
Administrative Judge

