



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



In the matter of:)
)
) ISCR Case No. 12-09571
)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

07/17/2013

Decision

DAM, Shari, Administrative Judge:

In 1986, Applicant was born in Iran. In 2004, he immigrated to the United States. In 2010, he became a U.S. citizen. His spouse is a citizen of Iran and immigrated here in 2011. His mother and one sister are citizens of Iran residing in the United States. Three sisters, a brother, and two in-laws are citizens and residents of Iran. He maintains contact with all of his Iranian family members. He produced insufficient evidence to mitigate foreign influence security concerns. Access to classified information is denied.

Statement of the Case

On November 30, 2010, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (hereinafter SF-86). On March 14, 2013, the Department of Defense (DoD) issued to Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006. The SOR detailed reasons why DoD adjudicators could not make

the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance for Applicant, and it recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant answered the SOR on March 27, 2013, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 3.) Department Counsel submitted the Government's written case on April 11, 2013. A complete copy of the File of Relevant Material (FORM) containing seven Government Items was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on April 23, 2013, and returned it to the Defense Office of Hearings and Appeals (DOHA). He did not submit any additional information. DOHA assigned the case to me on June 24, 2013.

Procedural Ruling

Department Counsel requested administrative notice of facts concerning Iran. (FORM.) Counsel provided supporting documents to show detail and context for those facts. (Item 7, Exhibits I through XX.) Applicant did not object to the documents and I granted Department Counsel's request.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Findings of Fact

Applicant admitted the underlying facts alleged in the SOR. His admissions, including those made in his response to DoD Interrogatories, are incorporated in the following findings of fact. (Items 3, 6.)

Applicant was born in Iran in 1986 and attended high school there. In December 2004, he immigrated to the United States, having been sponsored by his father who had become a naturalized U.S. citizen and resident. Applicant attended a U.S. university, from which he graduated with a bachelor's degree in 2009 and a master's degree in 2010. From August 2009 to June 2010, he worked as a teaching assistant at the university he attended. He became a naturalized U.S. citizen in May 2010. He returned to Iran in June 2010 for two months. He used his Iranian passport to enter and leave

Iran. In September 2010, he began a position as a consultant with his current employer. In March 2011, he voluntarily surrendered his Iranian passport to his employer for destruction. (Items 4, 5.)

Applicant's wife was born in Iran in 1992. They married in July 2010 while Applicant was visiting Iran. In March 2011, Applicant vacationed with his wife in a different country for ten days. She immigrated to the United States in May 2011 on a spousal visa. She taught high school in Iran before immigrating. She is an Iranian citizen and has permanent U.S. resident status. (Item 5.)

Applicant's parents were born in Iran. They were citizens and residents of Iran, before immigrating to the United States. His father became a naturalized U.S. citizen. He is deceased. His mother is an Iranian citizen, residing in the United States. He has two brothers and six sisters, all of whom were born and raised in Iran. One brother is a citizen and resident of Iran. He is a teacher. Applicant's other brother's is dual citizen of the United States and Iran, residing in the United States. He is a pediatrician.

Three of Applicant's sisters are citizens and residents of Iran. One of those sisters works in the field of computers. Applicant has monthly contact with her. One sister is a psychologist. He has no contact with her. One sister is self-employed and also works in the computer field. He has contact with her every two to three weeks.

One of Applicant's sisters is a citizen of Iran, residing in France. He does not have contact with her. He has two sisters who reside in the United States. One sister is a citizen of Iran. She is unemployed. He contacts her every two or three weeks. Another sister is a dual citizen of the United States and Iran. She is a dentist. The frequency of his contact with her is unknown. (Items 4, 6.)

Applicant's father-in-law and mother-in-law are citizens of Iran, residing in Iran. He contacts them every two months. (Item 6.)

There is no derogatory information concerning Applicant's police or financial records. He has never been fired from a job. There is no evidence of record showing any U.S. arrests, illegal drug possession or use, or alcohol-related incidents.

I took administrative notice of the facts set forth in Item 7 concerning the Islamic Republic of Iran, which are incorporated herein by reference. Of particular significance are: Iran's history of state sponsored terrorism; its dismal record of human rights violations; its expanding nuclear capabilities; its overall active and hostile anti-democracy and anti-United States policies; and its commitment to illegally collecting U.S. technologies and proprietary materials.

Policies

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines. 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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

Analysis

Foreign Influence

AG ¶ 6 explains the security concern about "foreign contacts and interests" stating:

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.

AG ¶ 7 indicates three conditions that could raise a security concern and may be disqualifying in this case:

- (a) contact 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;
- (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; and
- (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.

The mere possession of close family ties with a family member 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 Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001)).

Iran has significant internal anti-western terrorism threats that operate openly contrary to U.S. interests. It is known to target U.S. citizens to obtain protected information, and has a significant interest in acquiring defense-related proprietary information and advanced technology. Accordingly, Applicant's strong family connections there have more potential to generate heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶¶ 7(a) and (d) than would similar connections to many other countries.

Applicant shares living quarters with his wife, who remains an Iranian citizen. His mother and sister, both of whom reside in the United States, remain Iranian citizens. He has contact with them. His brother and three sisters are citizens and residents of Iran. He maintains regular contact with three of those siblings. He communicates with his mother-in-law and father-in-law, who are resident citizens of Iran. These immediate-family relationships are presumed to be close and loving, and Applicant offered no evidence to the contrary. AG ¶¶ 7(a), 7(b), and 7(d) apply.

These facts meet the Government's burden of production by raising the aforementioned foreign influence disqualifying conditions. Applicant's regular, close,

and personally significant contacts, relationships, and connections with Iran shift a heavy burden to him to prove mitigation under applicable Appeal Board precedent.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns. Those with potential application in mitigating the above security concerns are:

(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 U.S.;

(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

(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.

Considered in light of the substantial anti-western terrorism threat and state sponsored terrorist activities in Iran, Applicant did not demonstrate that it is unlikely he could be placed in a position of having to choose between the interests of a foreign individual or government and those of the United States due to family ties there. He has close relationships with family members living in Iran and an interest in protecting his siblings and in-laws. He should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his family members, who might be coerced by terrorists or other governmental entities in Iran. In addition, his communications with his Iranian family members since coming to the United States are neither casual nor infrequent. Accordingly, he failed to establish mitigating conditions set forth in AG ¶¶ 8(a) or (c).

The evidence also fails to establish significant mitigation under AG ¶ 8(b). Applicant provided insufficient evidence of longstanding relationships or deep ties to the United States since arriving here in December 2004 and becoming a U.S. citizen in 2010. Other than having expressed connections to the university he attended, there is no information regarding his financial or real estate interests in the United States, community involvement, professional performance, or the level of responsibility his duties entail. He provided no character witnesses attesting to his devotion or loyalty to the United States. His wife, here since 2011, mother, and sister remain Iranian citizens.

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(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.

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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

There are a few facts supporting mitigation of the foreign influence security concerns. Applicant immigrated to the United States in 2004 and became a citizen six years later. Since then, he returned to Iran only one time, during which he married. His Iranian passport is destroyed. There is no derogatory information concerning Applicant's police or financial records. There is no evidence of record showing any U.S. arrests, illegal drug possession or use, or alcohol-related incidents.

The circumstances tending to support denial of Applicant's clearance are more significant than the facts weighing toward approval of his security clearance. Applicant's three sisters, brother, and in-laws are citizens and residents of Iran. Applicant has frequent contact with those family members, indicating his commitment to them and their welfare. Terrorists would not hesitate to coerce Applicant through his family in Iran to obtain classified information. His wife immigrated here two-years ago, and has not yet become a U.S. citizen. Two family members have not obtained their U.S. citizenship, although the record implies that they have lived in the United States for some time. A brother and sister maintain dual citizenship with Iran. These numerous family members' connections to Iran indicate their attachment to Iran, and raise security concerns for Applicant. There is insufficient evidence documenting Applicant's strong connections or ties to the United States.

Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from foreign influence considerations.

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 to 1.f: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, 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.

SHARI DAM
Administrative Judge