



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



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| In the matter of: |) | |
| |) | |
| [Redacted] |) | ISCR Case No. 12-11015 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: Mark S. Zaid, Esq.

06/17/2013

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence) because of Applicant’s family ties to Iran. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on July 12, 2011. On January 2, 2013, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline B. DOD acted 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 adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant received the SOR on January 20, 2013; answered it on the same day; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 1, 2013, and the case was assigned to me on April 10, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on

April 19, 2013, scheduling it for May 15, 2013. I convened the hearing as scheduled. Government Exhibits (GX) 1 and 2 were admitted in evidence without objection. Applicant testified, presented the testimony of three witnesses, and submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. DOHA received the transcript (Tr.) on May 22, 2013.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Iran. The request is attached to the record as Hearing Exhibit (HX) I. I have taken administrative notice of the facts listed below.

Iran is a theocratic Islamic republic dominated by Shia Muslim clergy, with ultimate political authority vested in a learned religious scholar. Current U.S. concerns about Iran are based on its efforts to acquire nuclear weapons and weapons of mass destruction; support for and involvement in international terrorism; support for violent opposition to the Middle East peace process; and its human rights abuses, including summary executions, torture, arbitrary arrest and detention, and restrictions on civil liberties. Iran has provided guidance, training, and weapons to Shia political and militant groups in Iraq. It also provides encouragement, training, funding, and weapons to anti-Israeli terrorist groups in its efforts to undermine the Arab-Israeli peace process. Iran's intelligence operations against the United States, including cyber-intelligence capabilities, have dramatically increased in depth and complexity during the past few years. Iran has aggressive programs for collecting U.S. dual-use technologies and advanced materials development, especially in the area of a nanotechnology.

The current government of Iran is hostile to the United States. The United States has designated Iran as a state sponsor of terrorism. The United States broke diplomatic relations with Iran in April 1980, prohibits most trade with Iran, and uses multilateral sanctions and diplomatic pressure to contain the threats posed by Iran.

Iran does not recognize dual citizenship. Iranian-born, naturalized U.S. citizens are considered solely Iranian citizens by the Iranian authorities, and they are subject to surveillance, search, harassment, arrest, and imprisonment while traveling or residing in Iran.

Findings of Fact

In his answer to the SOR, Applicant admitted all the factual allegations in the SOR. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 49-year-old computer software consultant employed by a federal contractor since July 2011. He worked for another federal contractor from May 2008 until he was hired by his current employer. He has never held a security clearance.

However, his security clearance application reflects that he was cleared for a “moderate risk position” by another government agency in 2004. (GX 1 at 30-31.) His resume reflects that he has worked on projects for the U.S. Government from April 2003 to March 2004, September 2004 to October 2005, December 2007 to May 2008, and May 2008 to July 2011. (AX A.) He held a public trust position from June 2008 to July 2011. He then applied for a similar position with another government agency, was informed that the position required a security clearance, and submitted his application in July 2011, triggering the current proceedings. (GX 2; Tr. 6, 105.)

Applicant was born in Iran. When he was 13 or 14 years old, he learned about life in the United States from an aunt. After the Iranian Revolution, Applicant decided he “just wanted to get out of there and come to the U.S.” (Tr. 90.) He left Iran in 1985, three or four weeks after he finished his mandatory military service in the Iranian Navy. He became a permanent resident alien in the United States in 1986, and he became a U.S. citizen in August 1994. When he became a U.S. citizen, he changed his first name to an American name, because he wanted to be “really an American.” (Tr. 91.) He obtained a bachelor’s degree in aeronautical technology from a U.S. university in December 1990 and a master’s degree in business administration in September 1994. (Tr. 78-84.) He has never returned to Iran, because he does not trust the Iranian government or the religious authorities who dominate it. (Tr. 92.)

Applicant married a native-born U.S. citizen in July 2001. They have two children, ages nine and seven. They met in 1992, when they were both in graduate school. His wife’s parents are citizens and residents of the United States, and her great uncle served in the U.S. intelligence community. In spite of Applicant’s slight accent, his wife thought he was an American when she first met him. Their children are named for members of his wife’s family. Applicant testified that he wanted them to have American names because he wants them to think like Americans. (Tr. 110.)

Applicant’s two brothers, ages 56 and 54, are citizens and residents of the United States. His older brother is an electronic engineer, has lived in the United States since 1978, held a security clearance from 1986 to 1992, and worked on classified projects for a U.S. electronics company. His younger brother came to the United States in 1988 and works for a large retail store. (AX F; Tr. 86-88, 100.)

Applicant’s sister, age 52, is a citizen and resident of Iran. She is an artist. Her husband is a civil engineer employed by a private company. They have two sons. One son is in high school in Iran. The other son came to the United States with his family in 2001 to attend Applicant’s wedding, and he remained in the United States when his family returned to Iran. He is now attending dental school and intends to remain in the United States. (Tr. 106.) Applicant’s sister visited Applicant and his wife in the United States when their daughter was one year old. She has not visited them again, and Applicant has not visited her in Iran. He talks to her briefly about twice a year, but he has no contact with her husband. His sister does not know what he does for a living. (Tr. 101-03.)

Applicant testified that his sister married a man from a traditional Iranian family where women must cover their hair and face in the presence of men, but she refused to follow that practice. Her marriage suffered, but eventually her husband decided that it was “a losing battle.” Applicant testified: “So that’s kind of . . . [the] strong person she is. So she would never do anything to harm me or my family. She would never, you know, give up and she would never give in, I should say. And the same thing goes for my parents.” (Tr. 120.)

Applicant’s parents are naturalized U.S. citizens residing in the United States. They have been U.S. citizens for about 10 years. His father worked as an accountant for a U.S. company in Iran until the Iranian Revolution, when he retired and moved to the United States. His father receives a pension from the U.S. company for whom he worked. He is 87 years old, in poor health, and sleeps 16-17 hours per day because of the medications he takes. Applicant’s mother is 74 years old and has never worked outside the home. (Tr. 85-86.) His parents spend about six months each year in Iran, visiting their daughter. They visit in the summer, to avoid the hot summer weather in the area where their primary home is located. Applicant explained, “My mom wants to go back because my sister is there. And my dad . . . likes to go there, you know, because it’s cooler.” He testified that if his sister lived in a cooler climate in the United States, they would spend the summer in the United States instead of Iran. (Tr. 119.)

Applicant’s parents own a small one-bedroom apartment in Iran. Their primary home in the United States is far away from where Applicant lives and works. Applicant visits his parents about once a year and speaks with them on the telephone about once a month. His parents do not have a computer and they do not understand what he does at work. (Tr. 92-97.)

Applicant was asked where he would rank his relationships with his family members on a scale from “incredibly close” to “strained.” He testified that they are “incredibly close,” but that his family is “very quiet” and they “do not get involved in each other’s business.” Regarding his contacts with his sister, he testified that they are close but do not have much to say to each other. He testified, “All I know of what she wants is for me to have a good life. And I want the same thing for her. But we are not interested in knowing, you know, what I do or what I own” (Tr. 107.)

Applicant testified that he has voted in every presidential election and congressional election since becoming a U.S. citizen. He is actively involved in his children’s Boy Scout and Girl Scout activities. He is an avid reader of American history. He testified, “I believe to love a country is to know its history. . . and every time I read a book, my admiration grows for the United States.” (Tr. 108.)

Applicant has no assets in Iran. He testified that if he inherited an interest in his parents’ Iranian apartment, he would not travel to Iran to claim it. Instead, he would ask his sister to take his interest in the property. (Tr. 98.)

A witness with extensive experience in the intelligence community, diplomatic security assignments, and security clearance adjudications testified that he has known Applicant for about two years, and they have conversed about Applicant's views of Iran, his family, and his views of the United States. They became acquainted through Applicant's mother-in-law, because Applicant's wife is the witness's second cousin. The witness recommended, without reservation, that Applicant's application for a security clearance be granted. (Tr. 21-31.)

Another witness, who manages a family-owned company, has known Applicant since about 1987 and maintains weekly contact with him, usually by email. He also is acquainted with Applicant's parents, his two brothers, and their wives. He hired the son of Applicant's sister for a sales position. Based on their conversations, he believes that Applicant focuses on the future and prefers to not discuss the past. He described Applicant as "the epitome of a great American citizen." He was impressed by Applicant's extensive study of American history. He testified that he would "emphatically" recommend Applicant for a security clearance. (Tr. 34-44.)

One of Applicant's coworkers from May 2008 to July 2011 considers him a trusted friend, a person of solid character, and a hard-working provider for his family. During their conversations, Applicant's coworker gained the impression that Applicant is very happy to be an American and opposed to the Iranian political regime. (AX B.) Another coworker from the same time period describes Applicant as very knowledgeable, patient, family-oriented, a trusted friend, and "as American as anyone else." (AX D.) Applicant's supervisor during this time period considers him loyal, well-liked, a devoted father, and "just a regular guy." (AX E.)

A former Air Force officer and retired aerospace industry employee, who held a security clearance during his military and civilian careers, has known Applicant since 2005. He believes that Applicant is "completely American" and does not consider himself associated with Iran except to the extent that it is part of his past. He believes that if Applicant were faced with a threat from a foreign power, "he would speak and act as a true American." (AX C.)

Applicant's older brother, who has been a U.S. citizen for 29 years, married to a native-born U.S. citizen for 33 years, and held a security clearance for 6 years, describes Applicant as honest, straightforward, hard-working, trustworthy, and devoted to his family. He states that all his family members are very pro-American and have no involvement with the government of Iran. (AX F.)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants

eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

The SOR alleges that Applicant's sister and her husband are citizens and residents of Iran (SOR ¶¶ 1.a and 1.b), and his parents reside in Iran for about 3-5 months annually (SOR ¶ 1.c). The security concern under this guideline is set out in AG ¶ 6 as follows:

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.

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

AG ¶ 7(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; 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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

AG ¶¶ 7(a) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise this disqualifying condition is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government.

An applicant with foreign family ties to a country that is hostile to the United States has a very heavy burden of persuasion to show that neither he nor his family members are subject to influence by that country. ISCR Case No. 11-01888 (App. Bd. Jun. 1, 2012), citing ISCR Case No. 07-00029 (App. Bd. Dec. 7, 2007). The totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

Family ties to Iran are not *per se* disqualifying. Nevertheless, Iran's hostility to the United States places a "very heavy burden of persuasion" on Applicant to demonstrate that his immediate family members in Iran do not pose a security risk, and he is not in a

position to be forced to choose between loyalty to the United States and his family members. See ISCR Case No. 02-13595 at 3 (App. Bd. May 10, 2005) (stating an applicant has “a very heavy burden of persuasion to overcome the security concerns” when parents and siblings live in Iran). See also ISCR Case No. 04-11463 at 4 (App. Bd. Aug. 4, 2006) (articulating “very heavy burden” standard when an applicant has family members living in Iran). With its adversarial stance and its negative human rights record, it is not unlikely that Iran would target any citizen in an attempt to gather information from the United States.

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified 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).

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, 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 government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

Based on the citizenship and place of residence of Applicant’s sister, his sister’s marriage to a citizen and resident of Iran, the extended visits of Applicant’s parents to Iran, the hostility of Iran to the United States, and Iran’s abysmal human rights record, I conclude that the “heightened risk” in AG ¶ 7(a) and the potential conflict of interest in AG ¶ 7(b) are established by substantial evidence. Thus, the “heavy burden” of mitigating the facts is shifted to Applicant.

Three 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 U.S;

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.

Applicant's relationship with his parents and his sister and the nature of the Iranian government preclude application of AG ¶ 8(a). However, Applicant's relationships and loyalties in the United States are so deep and longstanding that AG ¶ 8(b) is established. He left Iran 28 years ago and never looked back. He was educated in the United States and held a public trust position for three years.¹ His parents and brothers are U.S. citizens, and his older brother held a security clearance for several years. Applicant changed his name when he became a U.S. citizen, married a native-born U.S. citizen, and gave his children American names. He has steeped himself in American history.

AG ¶ 8(c) is not established, because Applicant has strong bonds of affection and obligation to his parents and his sister, notwithstanding the infrequency and superficial nature of his communications with them. Applicant has not rebutted the presumption that contacts with an immediate family member in a foreign country are not casual. See ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002).

Whole-Person Concept

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. In applying the whole-person concept, an 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. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

¹ I recognize that "an applicant's prior history of complying with security procedures and regulations is considered to be of relatively low probative value for the purposes of refuting, mitigating, or extenuating the security concerns raised by that applicant's more immediate disqualifying conduct or circumstances," except "when compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security." ISCR Case No. 06-25928 at 4 (App. Bd. Apr 9, 2008) (internal citations omitted). Nevertheless, Applicant's track record of service to the United States and compliance with security procedures and regulations are relevant elements of his deep and longstanding relationships and loyalties in the United States.

(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.

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.

Applicant was candid, sincere, and credible at the hearing. In every respect, he considers himself and his children as Americans. He feels no attachment to his Iranian heritage. He held a public trust position for three years without incident. During his testimony, his demeanor, tone of voice, and body language reinforced his words as he passionately expressed his love for the United States and his disdain for the current regime in Iran.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his family ties to Iran. Accordingly, I conclude he has carried his heavy burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence): FOR APPLICANT

Subparagraphs 1.a-1.c: For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman
Administrative Judge