



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



In the matter of: REDACTED Applicant for Security Clearance)))))	ISCR Case No. 12-11506
---	-----------------------	------------------------

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

03/31/2016

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated security concerns raised by his relatives living in Iran through his deep roots in the United States and long track record of security conscientiousness, including rejecting and reporting on a lucrative business offer potentially involving the illicit sale of certain material to Iran. Clearance is granted.

History of the Case

On May 20, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that his circumstances raised security concerns under the foreign influence guideline.¹ Applicant answered the SOR and requested a hearing to establish his eligibility for access to classified information (Answer).

¹ This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines implemented by DOD on September 1, 2006.

On July 21, 2015, Department Counsel indicated that the Government was ready to proceed. After conferring with the parties, I scheduled the hearing for October 20, 2015. To ensure Applicant was provided fair notice of the evidence to be offered against him at hearing and to alleviate the danger of unfair surprise to either party, I issued a prehearing order requiring the parties to exchange documents prior to the hearing. The parties complied and exchanged documents in advance of the hearing.²

The hearing was convened as scheduled. Applicant testified and both sides submitted exhibits for admission into the record. Government Exhibits (Gx.) 1 – 3 and Applicant's Exhibits (Ax.) 1 – 9 were admitted without objection. The transcript of the hearing was received by the Defense Office of Hearings and Appeals (DOHA) on November 5, 2015.

The Islamic Republic of Iran (Iran)

DOHA administrative judges may accept for administrative notice uncontroverted, easily verifiable facts regarding a foreign country from official U.S. Government reports. Additionally, the official position of relevant federal agencies or the pertinent statements of key U.S. Government officials regarding a foreign country may be appropriate for administrative notice. The following relevant facts are hereby accepted for administrative notice:³

1. The United States and Iran do not have diplomatic relations.
2. Since 1984, the United States has designated Iran as a state sponsor of terrorism.
3. Iran's foreign aims are generally contrary to the national security interests of the United States.
4. Individuals acting on behalf of Iran have been implicated in espionage-related activity against the United States. The United States continues to charge and convict individuals involved with the illegal export, or attempted illegal export, of restricted or dual-use technology to Iran.
5. Iran has a poor human rights record.
6. Iran's security forces monitor the social activities of its citizens, including monitoring telephone conversations and internet communications.

² Scheduling correspondence, notice of hearing, and case management order are attached to the record as Hearing Exhibits (Hx.) I – III.

³ The facts administratively noticed are taken from Gx. 3, a summary of generally recognized facts taken from publically-available U.S. Government documents. Applicant, who was provided Gx. 3 prior to the hearing, stipulated to the accuracy of the facts regarding Iran set forth in the exhibit. He also waived any objection to the Government not supplying copies of the cited source documents for the record. Department Counsel was satisfied with the waiver and elected not to supplement the record with the source documents. See, Tr. at 23-24; Hx. IV. Accordingly, Gx. 3 was admitted as a summary of uncontroverted facts regarding Iran. See Directive, Enclosure 3, ¶ E3.1.19 (Federal Rules of Evidence (F.R.E.) shall serve as a guide in DOHA proceedings and technical rules of evidence may be relaxed to permit the development of a full and complete record); F.R.E. 201; F.R.E. 1006.

7. Iran's security personnel may at times place foreign visitors under surveillance, including searching personal possessions left in hotel rooms.
8. The Iranian government does not recognize dual citizenship and will treat U.S.-Iranian dual nationals as Iranian citizens subject to Iranian laws. Dual nationals must enter and exit Iran using an Iranian passport, and sometimes have had their U.S. passports confiscated and denied permission to leave Iran, or encountered other problems with Iranian authorities.
9. Iran has detained and prevented a number of U.S. citizens from leaving Iran.

Findings of Fact

Applicant, 57, was born in Iran. He immigrated to the United States in 1976. He allowed his Iranian passport to expire because he did not want to return to Iran, especially after the Iranian revolution in 1979. He has never returned to Iran. He testified with obvious pride about celebrating the U.S. bicentennial shortly after arriving in the United States. He has lived in the United States continuously since 1976, and became a naturalized U.S. citizen in 1991. Applicant stated on his security clearance application (SCA) that he would never relinquish his U.S. citizenship and wishes he knew how to renounce his Iranian citizenship.⁴ He credibly testified that:

This [the United States] is my home and where my children were born. I will defend it just as I swore to do when I became a citizen. I will take arms to defend it if necessary.⁵

Applicant and his wife, a U.S. citizen, have been married for over 25 years. They have two children who were born and raised in the United States. His wife works for a semi-government agency, and his youngest child aspires to become the President of the United States. Applicant earned his undergraduate and master's degrees from U.S. schools. He testified that he worked construction when he was younger and while going to school. He is a software engineer and has been with his current employer since 2012. He owns a home and several rental properties in the United States. His U.S. retirement account has a balance of over \$500,000, and his net worth is in excess of two million dollars.⁶

Applicant's mother and siblings are originally from Iran. His father is deceased, but was a naturalized U.S. citizen before passing away. His mother and siblings are naturalized U.S. citizens. Applicant's father and two of his siblings served in the Iranian military before the Iranian revolution. One of Applicant's siblings worked for a prominent U.S. defense contractor in Iran before the Iranian revolution. Applicant's mother and most of his siblings live in the United States, Canada, or Europe. Applicant lives close to his mother and several of his siblings in the United States. His older brother moved to

⁴ Tr. at 17-18, 57; Gx. 1.

⁵ Tr. at 22.

⁶ Tr. at 17-22, 27, 54-55; Gx. 1; Ax. 1 – 5.

Iran following a divorce and is attempting to regain a piece of property that their father once owned. Applicant and his other siblings relinquished their claim to the property to their brother. Applicant relinquished his claim to the property years before submitting his SCA. Applicant has no foreign investments, properties, or interests.⁷

Three of Applicant's uncles served in the Iranian military. Uncle Number 1, who served in the Shah's secret police, is dead. Uncle Number 2, who was the only one of the three uncles who served in the military after the Iranian revolution, has lived with his family in the United States since the mid-1990s. Uncle Number 3, who lives in Iran, served in the Iranian military prior to the Iranian revolution. He is in his mid-80's, blind, bedridden, and has no contact with those he served with in the military.⁸

Applicant has a large number of distant relatives in Iran. Before they passed away, some of Applicant's relatives were public school teachers in Iran. Other than his older brother, Applicant barely knows his relatives in Iran because many were born after he immigrated to the United States. Applicant recently reconnected, through Facebook, with an old acquaintance who is retired from a newspaper and now lives in Iran. He has infrequent contact with this individual. Applicant voluntarily provided extensive information regarding his foreign relatives and contacts during the course of the present investigation, to include providing copies of his long distance phone records from 2013 to the present.⁹ When asked at hearing what he would do if his foreign relatives were targeted by the Iranian government or hostile elements operating within Iran, Applicant credibly and without hesitation testified he would report any attempt to influence him to the appropriate authorities.¹⁰

From 2002 to 2012, Applicant worked for a U.S. company on a federally-funded project. In 2008, he was approached by a family friend with a lucrative business offer to purchase certain material. He became suspicious that the individual might be trying to circumvent U.S. laws and regulations prohibiting the sale and transfer of certain material to Iran. He refused the business offer and, during the course of his background investigation, voluntarily disclosed the information and the individual's name.

Applicant's security vigilance continues to the present day. His foreign relatives are unaware that he is applying for a U.S. security clearance. He does not discuss sensitive information when speaking to his brother in Iran, sticking to mundane family members. When he recently received unsolicited e-mails he became suspicious and reported it to his company's security officer. One of these e-mails was from me about scheduling his hearing. Applicant's references, who have known him for over 30 years and work with him, state that he is of high moral character, professional, and

⁷ Tr. at 20-21, 27-35, 55-57; Gx. 1 – 2.

⁸ Tr. at 31-45; Answer; Gx. 2 at 22-25.

⁹ Tr. at 41-46, 52-53, 61; Answer; Ax. 6 – 7.

¹⁰ Tr. at 53.

trustworthy. He has been entrusted with and properly handled and safeguarded his employer's sensitive, proprietary information.¹¹

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. E.O. 10865, § 2.

When evaluating an applicant's eligibility, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15.

Administrative Judges are responsible for ensuring that due process proceedings are conducted "in a fair, timely and orderly manner." Directive ¶ E3.1.10. Judges make certain that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014).

In resolving the ultimate question regarding an applicant's eligibility, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b). Moreover, recognizing the difficulty at times in making suitability determinations and the paramount importance of protecting national security, the Supreme Court has held that "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

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. 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

¹¹ Tr. at 17-22, 27, 44-60; Ax. 2 at 16; Ax. 9.

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.” E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

Analysis

Guideline B, Foreign Influence

The foreign influence security concern is explained at 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.¹²

An individual is not automatically disqualified from holding a security clearance because they have connections and contacts in a foreign country. Instead, in assessing an individual’s vulnerability to foreign influence, an administrative judge must take into account the foreign government involved; the intelligence-gathering history of that government; the country’s human rights record; and other pertinent factors.¹³ An individual with relatives in a hostile foreign country, such as Iran, faces a very heavy burden of persuasion due to the obvious security concerns raised by such circumstances. See ISCR Case No. 11-14079 at 3 (App. Bd. May 6, 2013).

Applicant’s relatives living in Iran, notably, his brother, raise the foreign influence security concern.¹⁴ The record evidence also raises the following disqualifying conditions:

¹² ISCR Case No. 09-07565 at 3 (App. Bd. July 12, 2012) (“As the Supreme Court stated in *Egan*, a clearance adjudication may be based not only upon conduct but also upon circumstances unrelated to conduct, *such as the foreign residence of an applicant’s close relatives.*”) (emphasis added) (internal citation omitted).

¹³ ISCR Case No. 05-03250 at 4 (App. Bd. Apr. 6, 2007) (setting forth factors an administrative judge must consider in foreign influence cases).

¹⁴ I also considered that some of Applicant’s relatives were members of Iran’s military, to include the secret police, and that some of Applicant’s distant relatives, who are public school teachers, are considered, in the security clearance context, government agents of a foreign power. However, these connections to the Iranian government are so attenuated, by time and/or the relative strength of the familial relationship or bond, that they do not pose a security concern. Moreover, many of these

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.¹⁵

An individual with close family members and other connections in a foreign country faces a high, but not insurmountable hurdle in mitigating security concerns raised by such foreign ties. An applicant is not required "to sever all ties with a foreign country before he or she can be granted access to classified information."¹⁶ However, what factor or combination of factors will mitigate security concerns raised by an applicant with family members in a foreign country is not easily identifiable or quantifiable.¹⁷ An administrative judge's predictive judgment in these types of cases must be guided by a commonsense assessment of the evidence and consideration of the adjudicative guidelines, as well as the whole-person factors set forth in the Directive. A judge's ultimate determination must also take into account the overarching standard in all security clearance cases, namely, that any doubt raised by an applicant's circumstances must be resolved in favor of national security. AG ¶ 2(b).

I have considered all the foreign influence mitigating conditions, including the following:

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.; and

attenuated connections were firmly destroyed through the death of the particular family member or the family member's decision to immigrate to the United States with their family over 20 years ago.

¹⁵ I also considered AG ¶ 7(h), as it is possible that the distant family friend who approached Applicant with the business offer in 2008 and the e-mails he recently received may have originated in Iran. However, the evidence to support this hypothesis was highly speculative. Moreover, as noted herein, if such was the case, Applicant flatly rejected the offer and reported the information; which is exactly what the Government expects from those granted access to classified information.

¹⁶ ISCR Case No. 07-13739 at 4 (App. Bd. Nov. 12, 2008).

¹⁷ ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).

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.

AG ¶ 8(a) does not apply. Applicant's foreign relatives and other connections in Iran are susceptible to pressure or coercion, both subtle and not so subtle, from the Iranian regime and elements within Iran hostile to the United States.

AG ¶ 8(b) applies. Applicant established that if a foreign government or entity attempted to use his family and friends in Iran to obtain classified information that, notwithstanding the obvious difficulty, he would repel any such attempt and resolve the conflict in favor of protecting U.S. information. Moreover, he would immediately report such attempt to the proper authorities. In reaching this finding, I considered the following record evidence:

- (1) Applicant immigrated to the United States when he was 17 years old. In the past 40 years, he has established deep ties to the United States, to include: a family; a home; and a professional career. All of his assets, totaling over two million dollars, are in the United States. Most of his family, including his mother and siblings, are U.S. citizens, living in the United States. Applicant's foreign connections and contacts are insignificant in comparison to his ties to the United States. Thus, attempts to pressure or influence Applicant through his foreign family members, would be futile.
- (2) From the outset of the security clearance background investigation, Applicant disclosed his connections and contacts in Iran. His interrogatory responses are very detailed regarding his relatives' connections to Iran, including disclosing military service prior to the 1979 Iranian revolution. He continued to cooperate throughout the course of the security clearance process, including providing phone records going back to 2013. This favorable record evidence strongly indicates that Applicant will continue to provide the Government full and frank information regarding his circumstances, no matter the potential personal ramifications from such disclosures.
- (3) Applicant, years before applying for a security clearance, demonstrated that he was unwilling to leverage his foreign connections for potential financial gain. Of note, Applicant voluntarily relinquished his interest in a familial piece of property in Iran. Based on the description of the foreign property, it is not insignificant and could have resulted in a large financial windfall for Applicant. Furthermore, when he suspected that a distant family friend might be trying to get him involved with securing material that could end up in Iran he refused the lucrative business offer and reported his suspicions. This record evidence demonstrates that Applicant implicitly understands the security concerns at

issue and cannot be adversely influenced through his foreign connections and contacts.

- (4) Applicant is conscientious in following rules and regulations, to include those pertaining to security. This was confirmed by Applicant's: (a) decision not to get involved in the suspicious business deal, (b) past handling and safeguarding of sensitive proprietary information, and (c) reporting of unsolicited e-mails to his security officials. His vigilance regarding security matters continues to the present day and, if anything, has been heightened in light of recent events, namely, the recent cyber breach involving the Office of Personnel Management.
- (5) Applicant's testimony that, if necessary, he would be willing to take up arms to defend the United States against all enemies, to include his country of birth, was poignant and highly credible.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a). I hereby incorporate my Guideline B analysis.

Applicant's personal character and integrity, which are vital matters to be considered in assessing an individual's suitability for a security clearance, are unassailable. He has been candid about his foreign connections throughout the security clearance process. Furthermore, I had an opportunity to observe his demeanor while he testified. I found him forthcoming and resolute in his ability to resolve any potential conflict of interest in favor of the United States. Accordingly, if any foreign entity were to attempt to influence Applicant through his connections and contacts in Iran, he would report any such attempt to the appropriate authorities and not succumb to the attempt to influence him. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility for access to classified information.

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 (Foreign Influence):	FOR APPLICANT
Subparagraphs 1.a – 1.d:	For Applicant

Conclusion

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

Francisco Mendez
Administrative Judge