



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



In the matter of:)
)
-----) ISCR Case No. 12-11792
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank Jr., Esq., Department Counsel
For Applicant: Jennifer Heald Castillo, Esq.

12/09/2013

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for a security clearance to work in the defense industry. The evidence shows he has strong and long-standing family and employment ties to the United States. But those ties do not outweigh and overcome his recent marital ties to Iran, a country that is hostile to the United States. Accordingly, this case is decided against Applicant.

Statement of the Case

On or about May 8, 2013, the Department of Defense (DOD) sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly

consistent with the national interest to grant Applicant access to classified information.¹ The SOR is similar to a complaint, and it detailed the reasons for the action under the security guideline known as Guideline B for foreign influence based on ties to Iran.

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on September 11, 2013. The hearing on October 9, 2013, was cancelled due to the shutdown of the federal government. The hearing then took place on November 20, 2013. The transcript (Tr.) was received December 3, 2013.

Ruling on Procedure

At the close of hearing, I proposed taking administrative notice of certain facts about Iran as set forth in a June 13, 2012 decision I issued in ISCR Case No. 11-03809.² The proposal was to supplement not subsume facts that both counsel had requested administrative notice. And the proposal was contingent upon both parties having no objections. Both counsel expressed an interest in reviewing the cited case, and both counsel stated they could file a response to my proposal by the end of the following week, which was Friday, November 29, 2013.³

Post-hearing, I notified counsel by e-mail of the cited case and again directed them to reply by close-of-business November 29, 2013.⁴ Applicant's Counsel timely replied on November 27, 2013, expressing no objections.⁵ Department Counsel untimely replied on December 4, 2013, expressing objections.⁶ As my proposal was contingent upon both parties having no objections, I will not take notice of the matters as detailed in ISCR Case No. 11-03809, and I will limit such matters to those requested by the parties during the hearing.

¹ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

² Tr. 84–87.

³ Tr. 85–86.

⁴ Appellant Exhibit I.

⁵ Appellant Exhibit II.

⁶ Appellant Exhibit III.

Findings of Fact

In his nine-page answer, Applicant admitted the factual allegations set forth in SOR ¶¶ 1.a–1.e; he also provided detailed explanations. His admissions and explanations are accepted and adopted and incorporated as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 44-year-old employee of a federal contractor. His educational background includes a bachelor's degree in arts and letters awarded in 2004; a bachelor's degree in electrical engineering and physics in 2006; and a master's degree in systems management awarded in 2008. He has worked as a software engineer for a large aerospace company since about June 2011. Before that, he worked for the same aerospace company as an electronic and electrical engineer during 2008–2011. He is seeking to obtain a security clearance from the DOD for the first time. To that end, he completed a security clearance application in August 2011; he was interviewed during a background investigation in September 2011; he provided a five-page affidavit in May 2012; and he provided supplemental information in March 2013.⁷

Applicant was born in Iran, where he lived with his mother, father, sister, and two brothers. With his family's assistance to pay for a smuggler, he fled Iran in 1984 and traveled to Pakistan.⁸ His family joined him later in Pakistan. His family fled Iran because of their religious faith of Baha'i, a religion that is subject to persecution in Iran.⁹

Applicant and his family remained in Pakistan until 1986, when they were allowed to immigrate to the United States as religious refugees. They settled in a state in the Pacific Northwest where they remain to this day (except for one brother). Applicant became a U.S. permanent resident alien in 1987 and a U.S. citizen in 1992; his parents and siblings are U.S. citizens as well.

Applicant's first marriage ended in divorce. He married a native-born U.S. citizen in 2001; they separated in about September 2010; and they divorced in July 2011. The marriage produced two sons, both of whom live with Applicant. He bought a primary residence in 2011. He has no business, financial, or property interests in Iran or any other foreign country.

Applicant disclosed four foreign contacts when he completed his 2011 security clearance application.¹⁰ He contacted the four individuals to facilitate and arrange his 2013 marriage to a citizen of Iran. The four foreign contacts are described as follows:

⁷ Exhibits 1, 3, 4, and 5.

⁸ Tr. 34.

⁹ Tr. 24–25; Administrative notice was taken of Exhibit D at 25–26 (discussing the history of persecution of members of the Baha'i Faith, which was founded in Iran in the mid-19th century).

¹⁰ Exhibit 1.

(1) since February 2011, a brother of his intended bride with contact via telephone and e-mail about three to seven times per year; (2) since January 2011, his intended bride via telephone and e-mail more than 15 times per year; (3) since June 2011, a brother of his intended bride with contact via telephone and e-mail about three to seven times per year; and (4) during March and April 2011, the cousin of his mother with contact via telephone one to two times.

Applicant initiated contact with his now wife in about January 2011, after being put in touch with her via a network of his cousin in the United States, his cousin's business partner, and the business partner's spouse.¹¹ His now wife was a never-married woman who was a homemaker who cared for her mother; she lived with her mother and a brother. His contact consisted mainly of telephone calls, but also included e-mail and the occasional letter. As of May 2012, he reported speaking to his now wife by telephone four to seven times daily.¹²

Applicant traveled to a country in the Middle East in 2012 to meet his now wife. Upon deciding to marry, he traveled to a country in the Middle East in January 2013 to accompany his now wife for an immigration interview at a U.S. Embassy. Once immigration authorities approved the paperwork, he traveled again to a country in the Middle East in February 2013 to accompany her to the United States. They married in March 2013 almost immediately upon her arrival here. He has not had contact with anyone in Iran since his February 2013 trip. His wife is a full-time homemaker and is caring for Applicant's two sons. She has submitted the necessary paperwork to adjust her immigration status to permanent resident alien and her application is pending.¹³ She intends to apply for U.S. citizenship when she is eligible.

Applicant now has in-laws who are citizens of and residents in Iran. His mother-in-law and two brothers-in-law are citizens of and residents in Iran. One brother-in-law is in charge of a company and the other is employed as an accountant. His own extended family consists of a distant cousin, his mother's cousin as noted above with whom he had contact with to arrange the marriage. Applicant's wife has regular contact with her mother, and sometimes her brothers, by telephone, and on occasion Applicant will say hello.¹⁴

During the hearing, Applicant pointed out that a central teaching of the Baha'i Faith is to shun politics and be obedient to the government in power in the place where you reside.¹⁵ He made this point to emphasize his fidelity and obedience to the U.S.

¹¹ Exhibit 3 at 1–2.

¹² Exhibit 3.

¹³ Exhibits A and B.

¹⁴ Tr. 50–51.

¹⁵ Tr. 40–41; Exhibit C (discussing politics and governments in the Baha'i Faith).

Government in the context of his application for a security clearance. In addition, Applicant expressed a concern that as a practicing member of the Baha'i Faith, as well as someone who fled Iran and became a U.S. citizen, it is likely that Iranian authorities would consider him a spy subject to prosecution and possible execution if he traveled to Iran.¹⁶ He stated that his wife may be in danger or at risk should she return to Iran.¹⁷ He also stated that they are unsure if his wife will travel to Iran in the future.¹⁸

Concerning Iran, formally known as Persia, officially known as the Islamic Republic of Iran since 1980, I took administrative notice of the facts as set forth in Department Counsel's written request,¹⁹ which are summarized or condensed to the following matters. The February 1979 fall of the Shah of Iran, then a key U.S. ally, opened a long rift in relations between Iran and the United States. On November 4, 1979, radical students seized the U.S. Embassy in Tehran, and then held hostages until shortly after President Reagan's inauguration on January 20, 1981. The United States severed relations with Iran in 1980, and the two countries have had no official dialogue since. The U.S. Government has designated Iran as a state sponsor of terrorism, and it has special concerns about four particular areas of Iranian behavior: (1) its efforts to acquire weapons of mass destruction (e.g., its nuclear program); (2) its support of and involvement with terrorism; (3) its support of violent opposition to the Middle East peace process; and (4) its dismal record of human rights. Because Iran does not recognize dual citizenship, Iranian-born-naturalized U.S. citizens are considered solely Iranian citizens by Iranian authorities, and they are required to enter and exit Iran using an Iranian passport. When in Iran, they may be subject to surveillance, search, harassment, arrest, and detention or imprisonment. In addition, time will tell if the recent and ongoing diplomatic efforts to resolve tensions over Iran's nuclear program will alter the security situation with Iran.

Law and Policies

It is well-established law that no one has a right to a security clearance.²⁰ As noted by the Supreme Court in *Department of Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."²¹ Under *Egan*, Executive Order 10865, and the Directive, any doubt

¹⁶ Tr. 37–38.

¹⁷ Tr. 38–39.

¹⁸ Tr. 39.

¹⁹ Exhibit 6.

²⁰ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

²¹ 484 U.S. at 531.

about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.²² An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²³

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²⁴ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²⁵ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²⁶ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁷ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²⁸ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²⁹

The AG set forth the relevant standards to consider when evaluating a person's security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.³⁰ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

²² Directive, ¶ 3.2.

²³ Directive, ¶ 3.2.

²⁴ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²⁵ Directive, Enclosure 3, ¶ E3.1.14.

²⁶ Directive, Enclosure 3, ¶ E3.1.15.

²⁷ Directive, Enclosure 3, ¶ E3.1.15.

²⁸ *Egan*, 484 U.S. at 531.

²⁹ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

³⁰ Executive Order 10865, § 7.

Discussion

The gravamen of the SOR is whether Applicant's recent marital ties to Iran disqualify him from eligibility for a security clearance. Under Guideline B for foreign influence,³¹ the suitability of an applicant may be questioned or put into doubt due to foreign connections and interests. The overall concern is:

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.³²

The guideline contains several disqualifying conditions. Given the evidence of Applicant's ties to Iran, I have especially considered the following disqualifying conditions:

AG ¶ 7(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of a 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 classified information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

The guideline also contains several mitigating conditions. Given the evidence here, I have especially considered the following mitigating conditions:

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 United States;

³¹ AG ¶¶ 6, 7, and 8 (setting forth the security concern and the disqualifying and mitigating conditions).

³² AG ¶ 6.

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 United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

AG ¶ 8(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country.

Applicant has multiple indicators of being a mature, responsible, and trustworthy person. And I found him to be sincere, serious, and credible at the hearing. Due to his birth in Iran, Applicant remains a citizen of Iran in the eyes of that country, notwithstanding the circumstances of his departure from there in 1984 and his eventual residence in and citizenship with the United States. Since his arrival here, he has worked steadily and pursued higher education to improve his position and station in life. He has multiple college degrees, and he now works for a large aerospace company. As his first marriage was ending, he was introduced to a native of Iran. He had extensive contact with her via frequent telephone calls, and he made multiple trips to the Middle East to facilitate the marriage and accompany her to the United States. He duly reported his contact with her, along with three other citizens of Iran, when he completed his 2011 security clearance application. He also provided detailed information about his foreign contacts during the security clearance process. He intends for his wife to become a U.S. citizen, although she is not yet eligible to apply. His ties or connections to his spouse's family members in Iran are not hindered by a language barrier, and his own infrequent contact with them is offset by his wife's close relationships with them. Looking forward, although it is unlikely that Applicant will travel to Iran, it would not be unusual for his wife to travel to Iran sometime in the future to visit her family.

The security clearance process is not a zero-risk program, because nearly every person presents some risk or concern. Many cases come down to balancing that risk or concern. Here, Applicant has ties to Iran based on his birth in that country as well as his recent marriage to an Iranian citizen. Those circumstances require careful scrutiny because Iran is a country that is hostile to the United States and poses serious security concerns. With that said, Applicant is a long-time resident and citizen of the United States, he has significant employment and educational ties to the United States, and his own immediate family members are U.S. citizens and residents. In other words, his ties to the United States are strong. Nevertheless, Iran's hostility to the United States and the heightened risk it creates place a heavy burden on Applicant to show his ties to Iran are mitigated. The best evidence of his ties to Iran are (1) his recent marriage to an Iranian citizen, (2) his wife's immediate family members in Iran, and (3) the not unrealistic probability that his wife will travel to Iran sometime in the future. Considering those circumstances as a whole, I cannot conclude that it is unlikely that Applicant will be placed in a position of compromise or conflict in a security clearance context. The situation in Iran is too uncertain and unstable and risky to reach that conclusion.

Following *Egan* and the clearly-consistent standard, the evidence leaves me with doubt about Applicant's suitability for a security clearance. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. Indeed, Applicant presented evidence that is quite favorable. I also gave due consideration to the whole-person concept.³³ Having done so, I conclude that Applicant has not met his ultimate burden of persuasion to obtain a favorable clearance decision.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline B:	Against Applicant
Subparagraphs 1.a–1.e:	Against Applicant

Conclusion

In light of the record as a whole, 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.

Michael H. Leonard
Administrative Judge

³³ AG ¶ 2(a)(1)–(9).