



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



In the matter of:)	
)	
)	ISCR Case No. 13-01078
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: Nicole A. Smith, Esq.

03/11/2014

Decision

LYNCH, Noreen A., Administrative Judge:

On November 7, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on January 17, 2014. A notice of hearing was issued on January 30, 2014, scheduling the hearing for February 25, 2014. Government Exhibits (GX) 1-3 were admitted into evidence without objection. Applicant testified, presented the testimony of two witnesses, and submitted Applicant Exhibit (AX) A-C, which were admitted without objection. The transcript was received on March 6, 2014. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Department Counsel requested that I take administrative notice of certain facts relating to Iran. The request and the attached documents are included in the record as HE I. The facts administratively noticed are set out in the Findings of Facts, below.

Findings of Fact

In his answer to the SOR, Applicant admitted the SOR allegation in ¶ 1.a with explanations.

Applicant, who was born in Iran, is 52 years old. While in Iran, he attended private schools which he described as “westernized.” He came to the United States in 1978 on an F-1 visa for education purposes. Applicant became a naturalized citizen in March 2003. He graduated from undergraduate school in the United States in 2004. He married his wife, who is a naturalized citizen, in 1998. (Tr. 56) . He has two children who are U.S. citizens. Applicant completed his first security clearance application in 2008. He has held a security clearance since 2009.¹ Applicant has been employed with his current employer, as a government contractor, since 2008. (GX 1)

Applicant’s mother and father are dual citizens of the United States and Iran who reside in Iran for approximately one-half of the year. His father is 90 years old, is in poor health, and has dementia. (AX A) He was an agriculture engineer before he retired. Applicant’s mother is 80 years old, and has never held employment outside of the home. They live with Applicant or his sister when they are in the United States. They have been living between Iran and the United States for about 30 years. When traveling to the United States, they use a U.S. passport and when traveling to Iran they use an Iranian passport. Applicant stated that they have not encountered any difficulties. (Tr. 114)

Applicant’s father has Medicare health benefits when he is in the United States. Applicant’s mother does not have such care as she was never employed in the United States. She receives universal health care in Iran. (Tr. 72) Applicant’s parents receive income from the sale of various properties in Iran.

Applicant’s parents became naturalized U.S. citizens in 2001, but they have been traveling between Iran and the United States since the 1980s. They were permanent residents of the United States before receiving the citizenship. (Tr. 102) Applicant’s parents have no connection to the Iranian government. (Tr. 77) When Applicant’s parents are in Iran, Applicant speaks to them by telephone about once a week. His parents have no knowledge of Applicant’s work or the security clearance process.

¹Applicant explained that he had not been adjudicated by DOD for a clearance as a contractor. He explained that in 2008, another agency had adjudicated his application. He completed an application for DOD in 2011.

Applicant's sisters and brothers are U.S. citizens who reside in the United States. His mother-in-law and father-in-law are naturalized citizens of the United States. He has many nieces, nephews, aunts, and uncles who are in the United States. (GX 2) These family members were born in Iran.

Applicant traveled to Iran on three occasions in the past 30 years. The last visit was in 2007 for a wedding. For those three trips, he used his Iranian passport. Applicant has returned his Iranian passport to his FSO, and he will not return to Iran. He has a U.S. passport. Despite his father's wishes to be buried in Iran, Applicant will not travel to Iran for a funeral. (Tr. 26) He visited his family in 1997. (Tr. 58) When he visited, he felt that he did not belong there and felt like a foreigner. (Tr. 59) After the birth of Applicant's first child, he visited Iran in 2002. (Tr. 60) The last time that Applicant traveled to Iran was in 2007 for his brother's wedding. He went alone and was there for about ten days. At that time, he traveled on an Iranian passport. In 2008, he surrendered his Iranian passport to his facility security officer. (Tr. 88) Applicant will never return to Iran. He signed documents to that effect when he surrendered his Iranian passport. Applicant understands that he will not return to Iran for any reason, even if his parents are ill. Applicant stated that he has brothers and sisters who live in the United States who could return to help his parents.

Applicant and his wife own three homes in the United States. Their net worth is approximately \$1.2 million. He and his wife have retirement accounts. (AX B) Applicant has no assets or property in Iran. (GX 2)

Applicant's current supervisor testified that Applicant is an invaluable member of the team. He has supervised Applicant for several years and states that he works with Applicant on a daily basis and sometimes on the weekend. Applicant has been exemplary in his service to this company. (Tr. 21) Applicant consistently goes beyond expectations. Applicant's supervisor is familiar with the security concern at issue. He states that Applicant can properly handle and safeguard classified information. (Tr. 23)

Applicant's friend, a retired Naval officer, who holds a security clearance, testified that he has known Applicant since 2009. Applicant is active in the community with Cub Scouts and sports. He is aware that Applicant was born in Iran and that his parents are elderly. (Tr. 36) He describes Applicant as a family man.

Applicant submitted five letters of recommendation from colleagues and former employers. Each attests to Applicant's high degree of integrity, responsibility, and ambition. The president of Applicant's current employment company wrote that "he is one of the few"inner circle" employees who I have entrusted with personnel and contact information."

Applicant enjoys his work and provides a service to the U.S. Government. He is lauded for his dedication and support. He was passionate when noting that if placed in a compromising position regarding the protection of classified information and loyalty to his parents in Iran, he would contact authorities to solve any problem. (Tr. 93)

Administrative Notice

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 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 threat 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. A U.S. State Department consular information sheet advises that to enter Iran if you are an Iranian-born citizen, regardless of any naturalization process, one must present an Iranian passport.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”² The burden of proof is something less than a preponderance of evidence.³ The ultimate burden of persuasion is on the applicant.⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline B (Foreign Influence)

The security concern under Guideline B 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

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

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.

A disqualifying condition may be raised by “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.” AG ¶ 7(a). A disqualifying condition also may be raised by “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(b). Finally, another disqualifying condition, “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” is applicable. AG ¶ 7(d)

Applicant’s parents are dual citizens of the United States and Iran who live in the United States about six months in a year. The other six months are spent in Iran. However, under either disqualifying condition, security concerns could arise in connection with the potential that hostile forces might seek protected information from Applicant by threatening harm to his parents. Based on this evidence, AG ¶¶ 7(a) 7(b), and 7(d) are raised.

Since the Government produced evidence to raise the disqualifying conditions in AG ¶¶ 7(a), (b), and (d), the burden shifted to Applicant to produce evidence 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).

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, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). 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.

Security concerns under this guideline can be mitigated by showing that “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(a). 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). Similarly, AG ¶ 8(b) can mitigate concerns when “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.”).

Applicant has lived in the United States since he was 16 years of age. He was educated in private schools in Iran. When he came to the United States, he obtained his undergraduate degree from an American university. He is a naturalized U.S. citizen. His wife is a naturalized U.S. citizen and his children are U.S. citizens. He has lived in the United States since 1978. Applicant’s family members are residents and citizens of the United States. He has no other extended family in Iran with whom he maintains contact, except his parents, who he talks to on a weekly basis. His parents, who are elderly, are dual citizens of the United States and Iran. They live in the United States for about six months a year. The remaining six months are spent in Iran. They have been doing this for many years and have not experienced any problems. They have no knowledge of Applicant’s work. They have no connection to the Iranian Government. Applicant does not support them. Applicant has substantial interests in the United States. He has no desire to return to Iran to live. He realizes that he will no longer be able to go to Iran if something happens to his parents. He surrendered his Iranian passport. He does not deny that he loves his parents, but he is committed to his personal and professional life in the United States. There is substantial mitigation in this case.

Applicant spoke about his undivided loyalty to the United States. I find Applicant has such deep and longstanding relationships and loyalties in America that he can be expected to resolve any potential conflict of interest in favor of the United States. He has established application of AG ¶ 8(b). Applicant has mitigated the concerns under the foreign influence guideline.

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 an applicant’s conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 52 years old. He is an educated man, who is a naturalized U.S. citizen. His family is in the United States with him. Applicant's parents are dual citizens of the United States and Iran. They reside in the United States with their children for half the year. His financial assets are substantial. Applicant has held a security clearance and has had access to classified information. He has worked for his current employer since 2008.

Applicant's mother and father are dual citizens of the United States and Iran. They return to Iran each year and live in retirement. They are elderly and ill. They live a quiet life. They do not have any knowledge about Applicant's work. Applicant is candid in that he loves his parents, but his primary duty is to his own wife and children who are U.S. citizens. He will not travel back to Iran at any time. He does not have his Iranian passport. He will seek advice to resolve any issues that may arise in the future with the help of his FSO. For all these reasons, Applicant has mitigated the security concerns under foreign influence. Clearance is granted.

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: FOR APPLICANT

Subparagraph 1.a: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge