



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



In the matter of:

)	
)	ISCR Case No. 13-01297
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Esq., Department Counsel
For Applicant: *Pro se*

12/11/2014

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, I conclude that Applicant failed to provide adequate information to mitigate security concerns for foreign influence under Guideline B. Eligibility for access to classified information is denied.

Statement of the Case

On June 18, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance for his employment as a linguist for a defense contractor. (Item 4) Applicant was interviewed by an investigator from the Office of Personnel Management (OPM). (Item 5) The record also includes a United States Department of State Diplomatic Security Investigation (Item 6), and a counterintelligence report of investigation (Item 7). After reviewing the results of the background investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On February 20, 2014, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for foreign influence under Guideline B. (Item 1) The action was taken 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) effective in the DOD on September 1, 2006.

Applicant answered the SOR on March 31, 2014, admitting four of the five allegations. He elected to have the matter decided on the written record. (Item 2) Department Counsel submitted the Government's written case on August 29, 2014. Applicant received a complete file of relevant material (FORM) on October 22, 2014, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant provided additional information in response to the FORM on October 23, 2014. Department Counsel had no objection to consideration of the additional information. (Memorandum, dated November 5, 2014) I was assigned to case on November 19, 2014.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 54 years old and has been employed as a linguist for a defense contractor serving in Afghanistan since June 2013. Applicant was born in Iran and came to the United States in March 1986. He became a United States citizen in September 1992. He married a U. S. citizen in 1988 and they are still married. He has no children. He received his high school diploma in Iran, an associate's degree from a U. S. school in June 2007, and a bachelor's degree in psychology from a U.S. school in 2009. Applicant deployed twice previously in support of U.S. forces in the Middle East. He was deployed to Iraq as a construction expeditor from January 2005 until June 2006 when the contract he was working ended. He worked again in Iraq as a pharmacy specialist for a defense contractor from October 2011 until July 2012 when the contract ended. (Item 4, e-QIP, dated June 18, 2013; Item 5, Subject Interview, dated July 15, 2013; Item 6, Diplomatic Security Report of Investigation, dated October 12, 2011; Item 7, Counterintelligence Investigation Report, dated July 24, 2013)

The SOR alleges security concerns about Applicant's five sisters and three of their husbands who are citizens and residents of Iran (SOR 1.a and 1.c), a brother who is a citizen of Iran living in Japan (SOR 1.b), and two nieces and a nephew who are citizens and residents of Iran (SOR 1.d). It is also alleged that Applicant worked for an Iranian government agency from approximately 1980 to 1985 (SOR 1.e). Applicant admitted all allegations except SOR 1.d. He has only one niece and a nephew who are residents and citizens of Iran. He also notes that he has two nieces who are citizens and residents of Japan.¹

Applicant's parents are deceased. Applicant admits that he has five sisters who are citizens and residents of Iran. Three of his sisters are full sisters, and two are half-

¹ The only listing for a niece and a nephew in Iran is in item 7, Diplomatic Security Investigation, List of Relatives and Associates, at page 2. Applicant does have a niece and nephew who are citizens and residents of Iran, as well as two nieces who are citizens and residents of Japan.

sisters. Applicant's father left his first family, remarried and had two more daughters. Applicant did not know the two half-sisters until his father's funeral. All of the sisters are homemakers and have never been employed with the Iranian government. His last in-person contact with his two oldest sisters was in 2007 when he and both sisters visited his brother in Japan. He last saw his three other sisters just before he left Iran in 1986. Applicant now has contact with his five sisters three to four times a year by telephone. He knows the husbands of his three full sisters. They are self-employed merchants in a bazaar in Iran. He does not believe the husbands have any affiliation or association with the Iranian government. He talks to them when he also talks to his sisters.

Appellant has contact with his brother, who is a citizen of Iran and has resided in Japan for almost 20 years. There is no information in the file showing the brother is also a citizen of Japan. The brother, a foreman for a furniture manufacturer, is married with two daughters. Applicant traveled to Japan once a year from 2003 until 2009 to visit his brother and his family. He now talks to his brother by telephone approximately four times a year. He considers himself close to his brother and the brother's family.

Applicant admits that as a young adult he worked part time under the direction of the Iranian Ministry of Construction as a volunteer interior manager from 1980 to 1985. Applicant worked for a non-profit organization that built homes for the poor. He did not consider the work as government employment since he actually worked for the non-profit organization and the Iranian Ministry only directed the work. He learned many skills related to construction that later enabled him to be hired as a construction expeditor. (Response to SOR, dated March 31, 2014; Item 5, Subject Interview, dated July 15, 2013).

In his response to the SOR, Applicant included a letter of recommendation from a U.S. Army colonel who was the site lead for the Iraq security command. He noted that Applicant worked hard with a determined work ethic and strong will as a pharmacy specialist supporting the medical efforts for U.S. Forces in Iraq during Applicant's second tour in Iraq. The colonel noted that Applicant is polite, has a positive attitude, and is enthusiastic and humble. The colonel considers Applicant to be trustworthy and reliable and a valued member of the medical support team. The colonel gives Applicant his strongest recommendation. (Letter, dated July 31, 2012) The vice-president of the defense contractor that employed Applicant on his first tour in Iraq in 2005 to 2006 wrote that Applicant provided exemplary performance and due diligence in all of his work as an expeditor. Applicant worked as a team member and supported many demanding tasks. He recommends Applicant for any position. (Letter, dated February 2, 2008)

In response to the FORM, Applicant noted that he was born without a left hand. He is now fitted with a prosthesis that enables him to perform many tasks. When he grew up in Iran as a disabled person, he was shunned by Iranian society and his family. He grew independent and resilient. Because of his family's attitude towards his disability, he did not develop a true sense of loyalty or bond to his family, Iranian

society, or the Iranian government. He has grown to appreciate the interest shown for him in the United States regardless of his disability.

Iran is a country that has been hostile to the United States since the 1979 revolution that overthrew the former pro-western government. Iran's support for terrorist groups has long concerned the United States. Iran's human rights practices are also a concern for the United States. The Iranian theocratic government has repressed its people, pursued weapons of mass destruction, initiated a nuclear program that may include nuclear weapons, and continues to support terrorism in Iraq and around the world. Iran is known to conduct intelligence operations and economic espionage against the United States. There is no direct evidence in the record concerning Iranian espionage activity towards or within the United States, but this hostile relationship supports the inference that Iran would seek to damage or counter United States military capabilities by seeking to obtain classified or sensitive information when possible. The United States Department of State warns United States citizens, particularly United States citizens of Iranian origin, to consider carefully the risks of travel to Iran. Iran does not recognize renunciation of citizenship by those born there, and has detained and harassed naturalized United States citizens traveling there. Iran's continued support for terrorism and human rights violations contributed to President Bush's strong criticism of Iran in his 2002 State of the Union message and his designation of Iran as one of the "Axis of Evil." Iran is a nation whose interests are inimical to the United States.

Policies

When evaluating an applicant's suitability for a security clearance, the 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, which must be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

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 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline B: Foreign Influence

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 the 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 consideration as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism. (AG ¶ 6)

Applicant’s brother has been a resident of Japan for over 20 years. There is no information in the file showing he is a citizen of Japan, but he is still a citizen of Iran since that country does not recognize native-born Iranians renouncing their citizenship. The brother’s children, Applicant’s nieces, are also citizens of Japan by birth. Applicant worked in the 1980s as a volunteer for a nonprofit organization in Iran that did work for the Iranian Ministry of Construction. At the time, Applicant was a young adult. I find that Applicant’s brother and his family members in Japan, and Applicant’s work for the nonprofit are not security concerns. I find for Applicant as to SOR 1.b and SOR 1.e, and as to one niece in SOR 1.d.

Applicant’s three sisters and three brothers-in-law have been citizens and residents of Iran all of their lives. Applicant also has two half-sisters who have been citizens and residents of Iran their entire lives. Applicant has telephone contact with his sisters and their husbands approximately once every quarter. He saw two of his sisters in 2007 when they all visited the brother in Japan. He has not seen the other sisters since he left Iran in 1986. One of his sisters has two children, Applicant’s niece and

nephew, who are citizens and residents of Iran since birth. Applicant's family members in Iran are a security concern and raise the following Foreign Influence Disqualifying Conditions under 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

(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.

The mere existence of foreign relationships and contacts is not sufficient to raise the above disqualifying conditions. The nature of Appellant's contacts and relationships must be examined to determine whether it creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. "Heightened" is a relative term denoting increased risk compared to some normally existing risk that can be inherent anytime there are foreign contacts and relationships. The totality of an applicant's ties to a foreign country as well as to each individual family tie must be considered. The foreign influence security concern 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. Even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Friendly nations have engaged in espionage against the United States, especially in economic, scientific, and technical fields. 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 is at risk of coercion, persuasion, or duress. Applicant has contact with family members who are residents and citizens of Iran. Iran has an authoritarian government that aggressively targets and seeks sensitive and protected U.S. technology and military information and has a poor human rights record. These factors place a heightened risk of exploitation, inducement, manipulation, pressure, or coercion on Applicant.

I considered Foreign Influence Mitigating Conditions under 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.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

None of these mitigating conditions apply. Applicant has telephonic contact with three of his siblings and their husbands at least quarterly. He also has quarterly telephone contact with his two half-sisters. This level of contact is not casual or infrequent, and indicates that Applicant's sense of loyalty to the family members is not minimal. While Applicant has a strong sense of loyalty to the United States, the presence of family members in Iran can place him in a position to have to choose between the interest of the family members and the interests of the United States. The information presented by Applicant does not negate the heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of the circumstances in Iran and the presence of family members in Iran. Accordingly, Applicant has not met his heavy burden to show that his relationships with his family members in Iran are not a security concern. I conclude Appellant has not mitigated security concerns for foreign influence.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all 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 access to sensitive information must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The whole-person concept requires

consideration of all available information about Applicant to reach a determination concerning Applicant's eligibility for access to classified information.

I considered that Applicant has served in war zones for U.S. defense contractors three times, putting himself in harm's way to serve the U.S. Armed Forces. I considered his deep and abiding respect and loyalty for the United States and his lack of loyalty to Iran. Access to classified information is not based on a finding of loyalty to the United States. It is based on the potential harm to the United States from contact with residents and citizens of a foreign country and the nature of the foreign country's government and activities. Applicant's contact with family members in Iran, coupled with the nature of the Iranian government, creates a heightened risk of foreign influence leading to the potential for vulnerability, pressure, or coercion of Applicant by Iran against the interest of the United States. Applicant has not presented sufficient information to mitigate that security concern. These facts leave me with questions and doubts about Applicant's eligibility and suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated foreign influence concerns about his family members in Iran. Because Applicant has not mitigated the security concerns related to foreign influence, access to classified information is denied.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant (as to one niece and nephew only)
Subparagraph 1.e:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge