



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



In the matter of:

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) ISCR Case No. 07-07928
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Applicant for Security Clearance

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel

For Applicant: Edward A. Kraus, Esq.

June 27, 2008

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated the security concerns raised by his foreign family members. Eligibility for access to classified information is denied.

On November 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline B, Foreign Influence and Guideline C, Foreign Preference. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on March 7, 2008, and elected to have the case decided on the written record in lieu of a hearing. On April 21, 2008, Applicant changed his request to a hearing before an Administrative Judge. The case was assigned to me on May 6, 2008. DOHA issued a Notice of Hearing on May 20, 2008,

and I convened the hearing as scheduled on June 5, 2008. DOHA received the transcript of the hearing (Tr.) on June 16, 2008.

Procedural and Evidentiary Rulings

Notice

I advised Applicant of his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived his right to 15 days notice.

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Iran. Applicant objected on the basis of hearsay. The objection was overruled and the request was approved. The request and the attached documents were not admitted into evidence but were included in the record as HE I through XII. The facts administratively noticed are set out in the Findings of Fact, below.

Evidence

The Government offered Exhibits (GE) 1 through 3, which were received without objection. Applicant testified on his own behalf, called one witness, and submitted Exhibits (AE) A through D, which were received without objection. Applicant's counsel submitted a hearing brief and a copy of a DOHA Administrative Judge's decision for argument purposes. They were marked HE XIII and XIV.

Findings of Fact

Applicant is a 48-year-old engineer for a defense contractor. He was born in Iran. Applicant came to the United States in the late 1970s to attend college. He graduated with a bachelor's degree and also obtained a master's degree and a Ph.D. from American universities. He remained in the United States and became a U.S. citizen in 2000. Applicant's wife was also born in Iran. She was introduced to Applicant through a relative. They met in Iran in 2001, and married in Iran in 2002. She became a U.S. citizen in 2006. As discussed below, U.S. citizens who were born in Iran are considered Iranian citizens by Iranian authorities. She maintained an Iranian passport in order to visit her relatives in Iran. They have a three-year-old child.¹

Applicant's parents, five siblings, parents-in-law, and brother-in-law are all citizens and residents of Iran. His sixth sibling lives in the U.S. as a permanent resident. His father owns a farm and his mother does not work outside the home. His two brothers are self-employed or own their own business in industries unrelated to the Iranian government. They have both applied to become U.S. permanent residents. Their applications are pending. His three sisters work in education and medicine. Two of his sisters have applied to immigrate to a western hemisphere country. He speaks to his

¹ Tr. at 77; Applicant's response to SOR; GE 1-3.

parents on the telephone about once or twice a month. His father-in-law is self-employed in a private business and his mother-in-law is not employed outside the home. His parents-in-law have U.S. permanent residence status and divide their time between the U.S. and Iran. His brother-in-law works in the family business.²

Applicant visited Iran on five occasions between about 2000 and 2005. He traveled to Iran using an Iranian passport. He renewed his Iranian passport after the last trip. When he realized that possession of a foreign passport posed a security concern, he “surrendered” it to his facility security officer (FSO). The FSO certified she accepted Applicant’s passport and that her company would notify DOHA “immediately if the foreign passport is ever returned to [Applicant].” Applicant has not formally renounced his Iranian citizenship, as that would be ill-advised. He has verbally renounced his dual citizenship. He does not intend to return to Iran. He would visit his family in a third country if necessary.³

Applicant does not own any foreign assets. He is described as responsible, honest, diligent, and trustworthy, with good character. He is considered a good citizen, who is very loyal to the United States.⁴

Iran

Iran is a constitutional Islamic republic with a theocratic system of government in which Shi’a Muslim clergy dominate the key power structures, and ultimate political authority is vested in a learned religious scholar. The U.S. has not had diplomatic relations with Iran since 1980. The President’s National Security Strategy has stated that the United States “may face no greater challenge from a single country than from Iran.” The U.S. Government has defined the areas of objectionable Iranian behavior as:

- Iran’s efforts to acquire nuclear weapons and other weapons of mass destruction (WMD);
- Its support for and involvement in international terrorism;
- Its support for violent opposition to the Middle East peace process; and
- Its dismal human rights record.

Iran’s intervention in the internal affairs of Iraq is also a concern.

The U.S. has designated and characterized Iran as the world’s leading state sponsor of terrorism. Iran provides critical support to non-state terrorist groups.

The government of Iran has committed numerous, serious human rights abuses against the Iranian people. Abuses include political killings and incarceration; summary

² Tr. at 74-84, 87-92; Applicant’s response to SOR; GE 1-3.

³ Tr. at 66-71, 77, 93-104; Applicant’s response to SOR; GE 1-3.

⁴ Tr. at 50-51; AE A.

executions, including of minors; disappearances; religious persecution; torture; arbitrary arrest and detention, including prolonged solitary confinement; denial of due process; severe restrictions on civil liberties - speech, press, assembly, association, movement and privacy; severe restrictions on freedom of religion; official corruption; violence and legal and societal discrimination against women, ethnic and religious minorities, and homosexuals; trafficking in persons; and child labor.

The State Department continues to warn U.S. citizens to consider carefully the risks of travel to Iran. U.S. citizens who were born in Iran and the children of Iranian citizens, even those without Iranian passports who do not consider themselves Iranian, are considered Iranian citizens by Iranian authorities, since Iran does not recognize dual citizenship. Therefore, despite the fact that these individuals hold U.S. citizenship, under Iranian law, they must enter and exit Iran on an Iranian passport, unless the Iranian government has recognized a formal renunciation or loss of Iranian citizenship. U.S.-Iranian dual nationals have been denied permission to enter/depart Iran using their U.S. passport; they even had their U.S. passports confiscated upon arrival or departure. U.S.-Iranian dual citizens have been detained and harassed by the Iranian government. Iranian security personnel may place foreign visitors under surveillance. Hotel rooms, telephones and fax machines may be monitored, and personal possessions in hotel rooms may be searched.

Policies

When evaluating an applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, Administrative Judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion as to 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that adverse 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.” See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 7:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Three are potentially applicable in this case:

(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;

(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; and

(d) 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.

Applicant's parents, five siblings, and in-laws are citizens and residents of Iran, a country that is clearly hostile to the United States.⁵ His wife, although a U.S. citizen, is also considered an Iranian citizen. Iran is considered the world's leading state sponsor of terrorism, and the government of Iran has committed numerous, serious human rights abuses against its people. His family members' presence in Iran creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, both through him and through his wife. It also creates a potential conflict of interest. AG ¶¶ 7(a), (b), and (d) have been raised by the evidence. No security concerns are raised by Applicant's brother who is a U.S. permanent resident. SOR ¶ 1.c is concluded for Applicant.

Conditions that could mitigate Foreign Influence security concerns are provided 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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

⁵ ISCR Case No. 05-03250 at 5 (App. Bd. Apr. 6, 2007).

(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; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant has been in this country for about 30 years and has been a U.S. citizen since 2000. His wife is an American citizen and his child was born in the United States. However, because of his close family ties to Iran and the nature of the government of Iran, I am unable to find any of the mitigating conditions to be fully applicable.

Guideline C, Foreign Preference

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. Two are potentially applicable in this case:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

(1) possession of a current foreign passport;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

Applicant possessed and used an Iranian passport while a U.S. citizen. AG ¶ 10(a) applied at one point. The renewal of his Iranian passport while a U.S. citizen could raise concerns under AG ¶ 10(b), as an action to obtain recognition of his Iranian citizenship.

Conditions that could mitigate Foreign Preference security concerns are provided under AG ¶ 11. Three are potentially applicable:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship; and

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Iran continued to consider Applicant an Iranian citizen after he was naturalized as a U.S. citizen. As such, he was required to use an Iranian passport to enter Iran. When he became aware that the passport was a security concern, he surrendered it to his company's security officer. To the extent that Iran considers him an Iranian citizen, he is very willing to renounce that citizenship. AG ¶ 11(a) is partially applicable. AG ¶¶ 11(b) and (e) are applicable.

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 a security clearance must be an overall common sense 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. Applicant was born in Iran. He came to the U.S. about 30 years ago to attend college. He obtained several advanced degrees and remained, becoming a U.S. citizen in 2000. He is very highly regarded personally and professionally.

I considered the totality of Applicant's family ties to Iran, a country that is clearly hostile to the United States, and the heavy burden an applicant carries when he or she has family members in a hostile country. The nature of a nation's government, its relationship with the U.S., 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, the country is known to conduct intelligence operations against

the United States, or the foreign country is associated with a risk of terrorism. Iran is the world's leading state sponsor of terrorism and has a dismal human rights record. Applicant and his wife both have a significant amount of close family members who are citizens and residents of Iran. Applicant is obviously an intelligent, honest, trustworthy, and loyal U.S. citizen. He just was unable to mitigate the considerable security concerns raised by his family in Iran.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Foreign Influence security concerns.

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
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Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant

Paragraph 1, Guideline C:	FOR APPLICANT
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Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

Conclusion

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

Edward W. Loughran
Administrative Judge