



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



In the matter of:)	
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SSN: -----)	ISCR Case No. 07-10712
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: Pro se

June 9, 2008

Decision

ABLARD, Charles D., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline B (Foreign Influence) and Guideline C (Foreign Preference). Security concerns regarding Guideline E (Personal Conduct) and Guideline J (Criminal Conduct) were mitigated. Clearance is denied.

Statement of the Case

Applicant submitted his Security Clearance Application (SF 86), on January 16, 2006. On January 8, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B, C, E and J for Applicant. 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 January 28, 2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on February 2, 2008, and I received the case assignment on February 25, 2008. DOHA issued a notice of hearing on February 27, 2008, for a hearing on March 14, 2008, and I convened the hearing as scheduled.

At the hearing, the government offered three exhibits (Exh.) which were admitted in evidence without objection. The government offered eleven official government documents for administrative notice and they were admitted without objection. Applicant offered no exhibits but he testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on March 24, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Notice

The hearing notice was dated 15 days before the hearing date. 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 the 15 days notice and indicated he was ready to proceed (Tr. 7).

Pleading

The government conceded that the allegations under Guidelines E and J were not proven and moved to withdraw them from consideration (Tr. 65). I approved the motion to withdraw those allegations from consideration.

Findings of Fact

Applicant is a 51-year-old employee of a defense contractor who was born in Iran, traveled to England in 1975 at age 19 to study and live with a brother. He earned three university degrees in England including a Ph.D in computer imagery. He became a British citizen in 1984 and worked for a British defense contractor. He came to the U.S. and became a U.S. citizen in 1993. He operated his own consulting company for a period of time. He was employed by a U.S. defense contractor in 2000 and still works for a successor company. His work involves developing software systems for baggage scanning in airports. He has not held a security clearance but needs one to advance in his professional career with the company.

In his Answer to the SOR, Applicant admitted that his mother, two brothers, two sisters, and his mother-in-law are citizens of and resident in Iran. His two brothers in Iran are in the business of exporting fruit. A third brother lives in the U.K. and has a small business. He admitted traveling to Iran in 2000, 2005, 2006, and 2007, and holding an Iranian passport which he has held for many years (Tr. 25). It was set to expire in 2003 and he applied for a new one which does not expire until 2008. He

prefers to travel with the Iranian passport to Iran as use of a U.S. passport with his background raises problems for him with immigration authorities in Iran (Tr. 31). He has offered to place his Iranian passport in the custody of his security office to be used only on travels to Iran but does not want to give it up or destroy it (Tr. 12). He needs to travel there every year primarily to visit his mother but he also sees his siblings while he is there (Tr. 40-45). In past years his family was able to visit him in England and the U.S. and did so, but that is not feasible now so he must visit them in Iran if he is to see them. Even though he does not hold a security clearance, he has advised cognizant authorities in his company of his past travels to Iran (Tr. 30).

Applicant's wife was born in Iran, has a college degree, and works as a pharmacist in the U.S. They have two children ages 17 and 9 who were born in the U.S. They have investments and assets in the U.S. and none in Iran.

The documents submitted for administrative notice by the government consisted of U.S. government reports establishing some of the following adjudicative facts. Iran is a theocratic Islamic republic dominated by Shia Muslim clergy. The government is hostile to the U.S. and has provided training, funding, and weapons to Shia political and militant groups in Iraq. The U.S. has designated Iran as a state sponsor of terrorism. The U.S. and international organizations are concerned about Iranian efforts to acquire nuclear weapons and other weapons of mass destruction. Iran regards Iranian-born naturalized U.S. citizens as solely Iranian citizens and expects them to enter and exit Iran on an Iranian passport.

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 useful 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 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 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 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 *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B (Foreign Influence)

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR:

Conditions under Guideline B that could raise a security concern and may be disqualifying include contact with a foreign family member 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 ¶ 7a). Based on the evidence of record, including Applicant’s acknowledgment of family members living abroad, the Government established a basis for concern over foreign influence. The Applicant had the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

By virtue of his relationships to the foreign family members, Applicant’s contacts cannot be deemed casual. Mitigating conditions (MC) that might be applicable are a

determination that the nature of the relationships with foreign persons, the country in which the persons are located, or the positions or activities of those persons in that country are such that is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual group or government and the interests of the U.S. (AG ¶ 8a). The other relevant MC is that the individual has such deep and longstanding relationships and loyalties in the U.S. that he can be expected to resolve any conflict of interest in favor of the U.S. (AG ¶ 8b). Applicant's relatives live in a country whose government is hostile to the U.S. Terrorist organizations are located in the country and pose a threat in the area of the world with which the U.S. has security interests. Applicant has traveled there frequently and intends to continue to do so imposing a very heavy burden on him to mitigate this allegation as has been repeatedly held by the Appeal Board. I conclude that he has not done so. Neither mitigating condition applies.

Guideline C: (Foreign Preference)

The applicable guidelines for Foreign Preference Guideline C provide that an individual who acts in such a way as to indicate a preference for a foreign country over the United States may be prone to provide information or make decisions that are harmful to the interests of the United States (AG ¶ 9). Conditions that could raise a security concern and may be disqualifying include the possession of a current foreign passport (AG ¶ 10 (a) 1).

Security concerns may be mitigated by providing evidence that the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated. (AG ¶ 11e) Applicant prefers to keep his Iranian passport and believes it provides more security to him when he travels to Iran. He has traveled there almost annually since 2000. He intends to continue to do so in view of his family loyalties to his mother and siblings in Iran. His proposal to give custody of the passport to his company is insufficient to mitigate since he has not and does not intend to completely surrender the passport to a security official. Thus, the mitigating condition is not 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) 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.

Applicant is a person of substance who is well educated and ambitious. He has a responsible position of trust. He provided sincere and credible testimony as to his relationship with his family, his motivations, and his loyalty to the U.S. He has established a successful life here building financial ties to the U.S. He has a strong financial stake in the U.S. He has no deference to or loyalty to Iran. However, the multitude of family connections and uncertainties in a tumultuous part of the world where possibilities exist to bring pressure on Applicant leads me to conclude that it is premature at this time to grant a clearance to him because of the potential for pressure or coercion.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is not clearly consistent with the national interest to grant clearance to Applicant.

I considered the potentially disqualifying and mitigating conditions as well as the above nine factors in light of all the facts and circumstances surrounding this case. While there is no evidence that Applicant is anything other than a loyal U.S. citizen, he has close relatives living in a country whose government has expressed hostility to the U.S. and seeks to harm other countries allied to the U.S. While Applicant left Iran before the revolution in 1979 that brought that government to power, he, through no fault of his own, still has relatives living there who could be pressured into attempting to cause him to take action contrary to the best security interests of the U.S. He continues to hold a passport of Iran which is still valid. Guidelines B and C are not mitigated. Thus, he is not eligible for a security clearance and must be 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.: Against Applicant

Subparagraph 1.c.: Against Applicant

Paragraph 2, Guideline C:AGAINSTAPPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Conclusion

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

CHARLES D. ABLARD
Administrative Judge