



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-13116
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

September 23, 2008

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence), based on Applicant's family ties to Iran and Sweden. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SF 86) on May 15, 2007. On April 8, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing security concerns under Guideline B. 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 acknowledged receipt of the SOR on April 24, 2008; answered it on May 12, 2008; and requested a hearing before an administrative judge. DOHA received the request on May 15, 2008. Department Counsel was ready to proceed on May 31, 2008, and the case was assigned to me on June 13, 2008. DOHA issued a notice of hearing on July 29, 2008, scheduling the hearing for August 25, 2008. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified on his own behalf, and submitted Applicant's Exhibits (AX) A through E, which were admitted without objection. I granted Department Counsel's request to keep the record open until September 2, 2008, to submit additional materials pertaining the Sweden. Department Counsel timely submitted his additional materials to support a request for administrative notice, discussed below. The record closed on September 2, 2008. DOHA received the transcript (Tr.) on September 3, 2008.

Amendment of the SOR

After both sides had presented their evidence, Department Counsel moved to amend SOR ¶¶ 1.a and 1.e to conform to the evidence. Applicant did not object, and I granted the motion (Tr. 77-78). SOR ¶ 1.a originally alleged Applicant's wife is a citizen of Sweden, and it was amended to allege she is a dual citizen of Sweden and Iran. SOR ¶ 1.e originally alleged his mother-in-law is a dual citizen of Iran and Sweden, and it was amended to allege his mother-in-law and father-in-law are dual citizens of Iran and Sweden. The amendments are hand-written on the SOR.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Iran and Sweden (Hearing Exhibits (HX) I and II). I took administrative notice as requested by Department Counsel, with no objection by Applicant. The facts administratively noticed are set out below in my findings of fact.

Findings of Fact

In his answer to the SOR, Applicant admitted all the allegations in the SOR. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 48-year-old senior systems integration/test engineer for a defense contractor. He has held a clearance since January 1996 (Tr. 5; GX 1 at 9). He worked for another federal contractor from December 1995 to May 2001. He worked for two private employers who were not federal contractors and had two periods of unemployment until he was hired for his current position. He has worked for his current employer since March 2006. His current supervisor for the past three years describes him as a quick learner, technically proficient, willing to help others, and very conscientious (AX B).

Applicant was born in Iran. He came to the U.S. in 1976 at age 16 (GX 4 at 1). He received his high school diploma in 1977 and registered with the Selective Service in January 1983 (AX C). He obtained a bachelor of computer science degree from a U.S. university in May 1985, and a master's degree in May 1988. He became a U.S. citizen in July 1995.

Applicant's parents are citizens and residents of Iran. They brought him to the U.S. and then returned to Iran, leaving Applicant behind to live with his brother (Tr. 47). They returned to the U.S. and became permanent residents of the U.S. in 1996 (AX D). They both applied for U.S. citizenship in 2001, but their applications were rejected because they had difficulty understanding English (Tr. 40-41; AX A at 2).

Applicant's father is 95 years old and a retired medical doctor who had a private practice in Iran. He became seriously ill in December 2001 and returned to Iran because of the high cost of medical care in the U.S. He has heart disease, and he is blind in one eye and hard of hearing (AX A at 1). Applicant's mother is 86 years old and has never worked outside the home. She was diagnosed with Alzheimer's disease in February 2008 and has limited mobility as a result of breaking her hip in 2002. His parents know he works with computers, but they do not know who he works for or that he has a security clearance (Tr. 41-42; GX 3 at 2; AX A at 1).

Applicant talks to his parents by telephone about once a month, but communication is difficult because of their age and infirmities. His mother no longer recognizes him (Tr. 64). His parents own a home in Iran, but Applicant and his brothers will be unable to inherit it because they would be required to travel to Iran and personally claim their inheritance. Applicant believes the home probably will be taken by the Iranian government (Tr. 59).

Applicant's older brother came to the U.S. in 1974 and earned a master's degree and a doctorate. He became a U.S. citizen in December 2000 (Tr. 43; AX A at 2). He currently resides in Canada and is a professor at a Canadian university (Tr. 53).

Applicant's younger brother also came to the U.S. in 1974. He obtained a master's degree in 1979, is married to a U.S. citizen, has two sons who are U.S. citizens, and is employed by a state government (Tr. 43-44) AX A at 2). He became a U.S. citizen in May 1991.

Applicant's sister was born in Iran. She moved to Spain in the early 1980s. Applicant had no contact with his sister after she moved to Spain and does not know her current whereabouts (GX 4 at 2).

Applicant's wife and her parents were born in Iran, moved to Sweden in 1980, and now are citizens of Sweden. Applicant and his wife met in December 2003, after she came to the U.S., and they were married in June 2005. She is a permanent resident of the U.S. (AX E). All her relatives live either in the U.S. or in Sweden (Tr. 45).

Applicant's wife intends to become a U.S. citizen as soon as she is eligible (Tr. 72). They have a son, born in December 2006.

Applicant's father-in-law is a computer salesman and his mother-in-law works for a sign company. Neither is connected to the governments of Sweden or Iran (GX 4 at 2).

Applicant traveled to Iran in 1999 to visit his father, who suddenly developed heart problems. He reported his travel to his security officer and used an Iranian passport. He traveled to Iran again in 2002 when his mother broke her hip. He was not working for the government or a government contractor when he made this trip (AX A at 2). He destroyed his Iranian passport in February 2008 after being advised that it raised security concerns (GX 2 at 3). He is aware that he probably will be unable to visit his parents in Iran without an Iranian passport (Tr. 46-47).

Applicant has no financial interests in Iran (GX 4 at 2). He and his brother jointly own a rental property in the U.S. Applicant lives in another home owned by his brother and pays all the household expenses except the mortgage (Tr. 67-68). He has a retirement account worth about \$35,000 and about \$4,000 in savings (Tr. 68-69). He votes in U.S. elections (Tr. 70).

I took administrative notice of the following adjudicative facts. Iran is a theocratic Islamic republic dominated by Shia Muslim clergy, with ultimate political authority vested in a learned religious scholar. Iran's government is hostile to the U.S. 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, and it advocates the destruction of Israel. The U.S. has designated Iran as a state sponsor of terrorism. The U.S. broke diplomatic relations with Iran in April 1980, prohibits most trade with Iran, and uses multilateral sanctions and diplomatic pressure to contain the threats posed by Iran. Because Iran does not recognize dual citizenship, Iranian-born, naturalized U.S. citizens are considered solely Iranian citizens by the Iranian authorities, and they are required to enter and exit Iran on an Iranian passport. While traveling or residing in Iran, they are subject to surveillance, search, harassment, arrest, and imprisonment.

I also took administrative notice that Sweden is a constitutional monarchy with a multiparty parliamentary government. The government generally respects the human rights of its citizens, and the law and judiciary provide effective redress for individual instances of abuse. Sweden was neutral in World War I, followed a policy of armed neutrality in World War II, and it currently remains nonaligned. In 2002, Sweden refined its foreign policy to allow non-alignment in peacetime with the ability to cooperate with

military alliances in peacekeeping and peace-building. Friendship and cooperation between the U.S. and Sweden is strong and close.

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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.

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline B, Foreign Influence

The SOR, as amended at the hearing, alleges Applicant’s spouse is a dual citizen of Sweden and Iran living in the U.S. (SOR ¶ 1.a); his father and mother are citizens and residents of Iran (SOR ¶¶ 1.b and c); his two brothers are dual citizens of Iran and the U.S. (SOR ¶ 1.d); his mother-in-law and father-in-law are dual citizens of Iran and Sweden (SOR ¶ 1.e); and he traveled to Iran in December 2002 and November 1999 (SOR ¶ 1.f). The security concern under this guideline 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 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.

Applicant’s travel to Iran was solely to visit his ailing parents. Except for his use of a foreign passport to enter and exit Iran, his foreign travel has no independent security significance. See ISCR Case No. 02-26978 (App. Bd. Sep 21, 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 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, or the country is known to conduct intelligence operations against the U.S. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

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). 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).

Iran's hostility to the United States places a "very heavy burden of persuasion" on applicant to overcome the security concerns that are raised when an applicant has immediate family members living in Iran. See ISCR Case No. 04-11463 at 4 (App. Bd. Aug. 4, 2006). With its adversarial stance and its poor human rights record, it is not unlikely that Iran would target any citizen in an attempt to gather information from the United States. I conclude AG ¶¶ 7(a) and (b) are raised by the presence of Applicant's parents in Iran.

A security concern also may be raised if an applicant is "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" AG ¶ 7(d). Applicant's spouse and her parents were born in Iran and are considered to be Iranian citizens by that government, but they have no attachment to Iran and no family or financial ties to Iran. They are citizens of Sweden, a friendly country with a good human rights record. Applicant's spouse aspires to be a U.S. citizen. I conclude Applicant's relationships with his spouse and her parents do not create the "heightened risk" contemplated by AG ¶ 7(d).

Finally, a security concern also may be raised by "a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation." AG ¶ 7(e). Applicant is resigned to the fact that he cannot inherit his parent's home in Iran, and he did not appear particularly concerned about it at

the hearing. There is no “heightened risk” because Applicant is unconcerned about the property.

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 7(a) and (b), 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).

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). Applicant cares about his parents, and it is not unlikely that Iran would target them in an attempt to gather information from the United States. I conclude AG ¶ 8(a) is not established.

Security concerns under this guideline also can be mitigated by showing “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.” AG ¶ 8(b). Applicant’s loyalty, affection, and sense of obligation toward his parents are not “minimal,” but his relationships and loyalties in the U.S. are strong. He came to the U.S. when he was 16 years old and has never lived under the current regime in Iran. He has lived in the U.S. for 32 years. He completed high school, college, and graduate school in the U.S. His two brothers have lived in the U.S. since 1974, were educated in the U.S., and have been U.S. citizens for many years. Applicant is devoted to his spouse and young son. His spouse aspires to be a U.S. citizen, and his son is a native-born citizen. He has held a clearance since 1996. His entire professional career has been in the U.S., and he has spent much of his career working as a contractor for the U.S. government. He made a conscious choice to destroy his Iranian passport, knowing that doing so made it virtually impossible for him to visit his aged and ailing parents again. His destruction of his Iranian passport demonstrated that he would resolve any conflict of interest in favor of the U.S. I conclude AG ¶ 8(b) is established.

Whole Person Concept

Under the whole person concept, an 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. An 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. Some of the factors in AG ¶ 2(a) were addressed above, but some warrant additional comment.

Applicant is mature, well-educated, and intelligent. He was candid, sincere, and credible at the hearing. He has spent all his adult life in the U.S. But for his parents' medical problems and the high cost of medical care in the U.S., he would have no family ties to Iran. But for their difficulty with the English language, his parents would be U.S. citizens. His family ties to Sweden do not raise significant security concerns. He has not told his parents the identity of his employer or that he holds a clearance. He has carefully thought about the conflict raised by the presence of his parents in Iran, and he has resolved it by destroying his passport and making it impossible for him to see his parents again.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has carried his "very heavy burden" and mitigated the security concerns based on foreign influence. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant continue his eligibility for access to classified information.

Formal Findings

I make the following formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25:

Paragraph 1, Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraphs 1.a-1.f:	For Applicant

Conclusion

In light of all of the circumstances, it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman
Administrative Judge