



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-13209
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jennifer I. Goldstein, Esquire, Department Counsel
For Applicant: *Pro Se*

June 25, 2008

Decision

LOKEY-ANDERSON, Darlene, Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (eQip), on August 16, 2006. On February 8, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B 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.

The Applicant responded to the SOR on March 6, 2008, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on March 28, 2008. A notice of hearing was issued on April 4, 2008, scheduling the hearing for April 24, 2008. At the hearing the Government presented three exhibits. The Applicant called one witness, presented four exhibits and testified on his own behalf. The official transcript (Tr.) was received on May 8, 2008. Based

upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts concerning the current political condition in Iran. Applicant had no objection. (Tr. p. 23). The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 49 years of age and has a Masters Degree in Engineering. He is employed as a Mechanical Engineering Design Manager for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Iran in 1958. He immigrated to the United States in 1976, before the Revolution, to obtain an advanced education. He obtained both his Bachelors and Masters degrees and started working in the defense industry. He married an American woman in 1984, and they had two children, who are native born American citizens. In 1987, he received his United States citizenship. The Applicant received a security clearance in 1990, and has committed no security violations. In 2002, he and his first wife divorced.

In 2003, the Applicant married an Iranian woman that he met through a friend in Iran. It took a year and a half before the Applicant was able to bring her to the United States. After going through the process of applying for her green card, in 2005, the Applicant's Iranian wife was permitted to come to the United States. She is now a legal permanent resident. She had a son from a previous marriage. The Applicant sponsored her, her son, and her parents in Iran to come to the United States. Their marriage experienced problems, the Applicant filed for divorce in October 2007, and it is pending. The Applicant's wife, and his step-child are citizens of Iran. His mother-in-law, father-in-law, and brother-in-law are also residents and citizens of Iran.

The Applicant's father, and a brother are residents and citizens of Iran. Another brother of the Applicant's is a citizen of Iran, and resides in Sweden, and a sister is a

citizen of Iran, and resides in the United Arab Emirates. The Applicant has another brother who resides in and is a citizen of the United States.

Applicant's mother is a United States citizen who received her citizenship in 2002. She travels between the United States and Iran. When she comes to the United States, she lives with the Applicant. When she travels to Iran she lives with the Applicant's brother. She is presently in Iran taking care of the Applicant's ailing father. The Applicant maintains contact by telephone or e-mail with his mother, father, and brother in Iran about once a month or so. They also send him pictures of their children. The Applicant has on occasion sent birthday and wedding gifts to his relatives in Iran. In 2002, the Applicant's mother applied to bring the Applicant's two brothers and his sister to the United States. They have applied for permanent residency and have INS file numbers.

The Applicant has traveled to Iran on five separate occasions: 1978, for a summer vacation; April 1996, when his father was sick; July 2000, for his brother's wedding; August 2007; December 2003 through January 2004 to visit his wife; and again from December 2004 through January 2005, to bring his wife to the United States. On each occasion, he traveled to Iran using his Iranian passport. He has now surrendered this Iranian passport to his company security office.

When asked what his intent is as far as traveling to Iran? The Applicant stated, "If it jeopardizes my life here, it won't happen. If there is some emergency happen - - like I say my father is 77 years old and he is very sick - - if something happens, then I have to do something. Otherwise, I have no intention to go back there." (Tr. p. 52).

Other than the two year mandatory military service required by the Iranian Government, the Applicant has no relatives in Iran who are associated with, or employed by the Iranian Government. The Applicant indicates although he stands to inherit something from his father when he passes away, the Iranian Government goes through the assets first and will probably audit it and take it.

The Applicant further stated:

One other thing I just thought, everybody, including the President of the United States is talking about the family values and what I do, the contact I have with my family, that are in Iran or other countries, is basically because of the family value that I have. And I am not going to lose that. That is not going to affect my job and the job - - the kind of job I do here - - either. But I guess I have been brought up, you know, that family is important and, you know, you have to respect that. But it should not - - you should not affect what you do and how you do it. (Tr. pp. 64 - 65).

The Vice President of Engineering and Program Management, who has been the Applicant's direct supervisor for about three years, testified that the Applicant's work

product is highly rated. His special capabilities involve his mechanical background that provides a special skill for the company that is not easy to obtain. The company is currently training others to replace him but it takes a long time to establish his level of expertise. (Tr. pp. 67-68).

A letter of recommendation from another Vice President of Engineering, who was at one time the Applicant's direct supervisor, indicates that the Applicant is a very capable, knowledgeable mechanical engineer and manager. He has always delivered safe and reliable products to the customer and his abilities, integrity and loyalties are of the highest standard. (Applicant's Exhibit B).

A letter of recommendation from a Senior Mechanical Engineer who worked with the Applicant for ten years, between 1990-2000, indicates that the Applicant is honest and forthright, careful, respectful of the rules regarding the handling of classified materials. He is proud to be a citizen of the United States and has consistently strived to meet its highest ideals. (Applicant's Exhibit C).

A letter from the Facility Security Officer indicates that he is in possession of the Applicant's Iranian passport and that the company will notify DOHA in the event the Iranian passport is returned to the Applicant for any reason. (Government Exhibit 3).

Performance evaluations of the Applicant for 2005 and 2006 reflect that his work performance always "meets standards". (Applicant's Exhibit D).

I have taken administrative notice of the current political conditions in Iran. The fact that Iran has no diplomatic relations with the United States, Iran's efforts to acquire nuclear weapons and other weapon of mass destruction, its support for and involvement in international terrorism, its support for violent opposition to the Middle East peace process, and its dismal human rights records. I have considered the fact that Iranian Government officials at all levels commit serious abuses of their power and authority. Its Totalitarian Government and the fact that Iran supports terrorists activities, and is rampant with crime and instability. The overall deteriorating security situation in Iran, the human rights abuses, and the government corruption elevates the cause for concern in the case. The United States may face no greater challenge from a single country than from Iran.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense.

Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Influence

6. *The Concern.* 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.

Condition that could raise a security concern:

7. (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risks of foreign exploitation, inducement, manipulation, pressure, or coercion.

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes

- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to classified information.

The DoD Directive states, “The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

The Government must make out a case under Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

The Applicant is a dual citizen of Iran and the United States. He has significant family ties in Iran and there is strong evidence of a close bond and affection with his family in Iran. His mother, father, brother, sister, wife, step-son, father-in-law, mother-in-law and brother-in-law are all citizens of Iran. His mother, father, brother and in-laws all reside in Iran. He maintains close and continuing contact with them, as he contacts them at least once a month. Although he is going through a divorce with his wife, and his contact with her, his step-son and his in-laws is much less than it has been in the past, he still has some contact with them. Furthermore, after becoming a United States citizen, he traveled to Iran using his Iranian passport on at least five occasions for family matters. It does not go unrecognized that for over twenty five years he has worked hard to establish himself as a responsible, educated, American citizen. However, he has not cut all ties from Iran.

Under Foreign Influence, Disqualifying Condition 7(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risks of foreign exploitation, inducement, manipulation, pressure, or coercion* applies. None of the mitigation conditions apply.

It is noted that the current political situation in Iran elevates the cause for concern in this case. Although there is no direct evidence that his family members in Iran are associated in any way with the Iranian government, there is evidence of a close bond and strong evidence of affection with his family in Iran. This bond and affection with his family could potentially cause the Applicant to become subject to foreign exploitation, inducement, manipulation, pressure, or coercion. Therefore, the possibility of foreign influence exists that could create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is vulnerable to foreign influence. Accordingly, I find against the Applicant under Guideline B (Foreign Influence).

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

- Subparas. 1.a.: Against the Applicant
- Subparas. 1.b.: Against the Applicant
- Subparas. 1.c.: Against the Applicant
- Subparas. 1.d.: Against the Applicant
- Subparas. 1.e.: Against the Applicant
- Subparas. 1.f.: Against the Applicant
- Subparas. 1.h.: Against the Applicant
- Subparas. 1.i.: Against the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge