



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-13739
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 December 4, 2006. On February 8, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines 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 February 6, 2008, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on April 25, 2008. A notice of hearing was issued on May 2, 2008, scheduling the hearing for May 28, 2008. At the hearing the Government presented three exhibits. The Applicant called one witness, presented three exhibits and testified

on his own behalf. The official transcript (Tr.) was received on June 11, 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. 10). 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 51 years of age and has a Bachelor's Degree in Electrical Engineering. He is employed as an Engineer 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 1957. He immigrated to the United States in January 1979, and started attending college that same year. In 1984/1985 he married an Irish citizen who possesses an Irish passport. She recently initiated her application for United States citizenship. They have two children who are native born American citizens. The Applicant became a United States citizen in June 1990. He possesses an Iranian passport that was issue to him in June 2001. Although his Iranian passport became invalid, he validated it each time he traveled to Iran. In April 2001, he validated his Iranian passport in order to travel to Iran to see his father who was ill. In 2005, when his mother passed away, he again traveled to Iran using his Iranian passport. A copy of this Iranian passport indicates that it is currently invalid. (Government Exhibit 3).

The Applicant's father passed away two months before the hearing. Prior to his death, he was a retired government railroad worker, who received a government pension. With respect to whether he will travel to Iran again, the Applicant stated, " No. It is not obligatory. I may just again to pay a visit to my father's grave this time, but it is not - - I don't have a passport; so, I guess I can't." (Tr. pp. 43). When asked whether he had any intentions of validating his Iranian passport, he stated, "Not at this time, no". (Tr. p. 44).

The Applicant has a sister, nephew and uncle who reside in and are citizens of Iran. The Applicant and his sister grew up close, but he cannot say for sure how close he is to her now. He contacts his family in Iran about once a month to see how they and are doing. His sister is a homemaker who is supported by her husband, who is also a government railroad worker. They have one child, the Applicant's nephew, who recently moved back in with his mother. His nephew is about 29/30 years old and is in business for himself, but the Applicant is not sure what he does. He recently purchased a computer and is now corresponding with the Applicant by e-mail. The Applicant is considering sponsoring his nephew to come to the United States. (Tr. p. 54). The Applicant's uncle is a retired government civil engineer who traveled from Iran to the United States for the Applicant's wedding. He and the Applicant are in contact with each other about every two months or so. Each of these family members know that the Applicant is an Engineer but they do not know where he works or what he does.

Over the years, the Applicant has occasionally sent money to his family in Iran for emergency purposes, such as to cover the expense of his parents' funerals. (Tr. p. 47). He has also sent money when he feels his family in Iran is in need. At times, he has sent between \$1,000.00 and \$2,000.00 to his sister by way of a friend who may be traveling to Iran who can get the money for her when they arrive in Iran and then the Applicant reimburses them. The purpose for this process is to avoid the problem of the restriction on how much money can be brought into the country. The Applicant believes that since he has been living in the United States, he has sent no more than \$10,000.00 to his family in Iran. When his mother died, the Applicant gave all of his rights of inheritance in Iran to his sister. (Tr. p. 46).

Besides his children, the Applicant has no relatives in the United States. (Tr. p. 56). His net worth in the United States is approximately \$700,00.00. He is involved in the community, and has volunteered as coach for his daughter's club soccer team. (Applicant's Exhibit A).

With respect to his Irish family members, besides his spouse, he has a mother-in-law, sister-in-law and brother-in-law who are Irish citizens. His sister-in-law lives in France, and his brother-in-law lives in England. The Applicant's wife has contact with her mother in Ireland, and her sister in France about every other week. She contacts her brother in England about once a month. The Applicant's other sister-in-law resides in the United States and was for several years, a private nurse for a United States dignitary. The Applicant's father-in-law has passed away.

The Applicant's supervisor, who has known the Applicant for thirteen years and managed him for the last eight years, testified that the Applicant is a leading Engineer in the field who has successfully held a security clearance for about ten years. His expertise is critical, and his skill is very hard to find in the industry. He is reliable, provides excellent analysis, and is willing to share his knowledge with other Engineers. He has never committed a security violation. Out of sixteen employees, he is ranked in the top four. (Tr. pp. 22-29)

Performance evaluations of the Applicant for 2006, 2007, and 2008 reflect that the Applicant's overall rating always "exceeds expectations". (Applicant's Exhibit B).

A letter from the Applicant's neighbor for the past eleven years indicates that the Applicant is trustworthy and responsible. On a number of occasions the neighbor has asked the Applicant to watch over their home while they are away. (Applicant's Exhibit C).

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, 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.

The Government presented no evidence on the current political conditions in Ireland. Accordingly, I find that the foreign contacts the Applicant has in Ireland do not pose a security risk.

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.

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 in this case. None of the mitigation conditions are applicable.

The Applicant is a dual citizen of Iran and the United States. His wife and her family are citizens of Ireland. Besides his two children who are United States citizens, the Applicant has no family in the United States. However, he has significant ties of affection in Iran. His sister, nephew and uncle are citizens and residents of Iran with whom he maintains a close and continuing relationship. Although he does not want to admit it, the Applicant is very close to his family in Iran. The Applicant has deep and abiding ties in Iran. His only sister, with whom he grew up, is very special to him. His nephew is also special to him as he is considering sponsoring him to come to the United States, which is not an easy task. He is also very close to his uncle, his father's brother. He contacts his sister, nephew or uncle at least once a month or so by telephone and most recently receives e-mail from his nephew. He sends them money when they need it. There is strong evidence of a close bond and affection. After becoming a United States citizen, he traveled to Iran using his Iranian passport on two occasions for family matters. It does not go unrecognized that for the past thirty years he has worked hard to establish himself as a responsible, educated, American citizen. However, he has not cut all ties from Iran.

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.: For the Applicant
- Subparas. 1.b.: For the Applicant
- Subparas. 1.c.: Against the Applicant
- Subparas. 1.d.: For the Applicant
- Subparas. 1.e.: Against the Applicant
- Subparas. 1.f.: Against the Applicant
- Subparas. 1.g.: For the Applicant
- Subparas. 1.h.: For 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