



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-03781
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: B. Daniel Lynch, Esquire

December 1, 2008

Decision

MOGUL, Martin H., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on February 3, 2006. On June 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and C 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 replied to the SOR (RSOR) in writing on July 23, 2008, and requested a hearing before an Administrative Judge. I received the case assignment on August 11, 2008. DOHA issued a notice of hearing on September 16, 2008, and I convened the hearing as scheduled on October 20, 2008. The Government offered Exhibits 1 through 3, which were received without objection. Applicant testified on his own behalf and through counsel, he also submitted Exhibits A through E, which were admitted without objection. DOHA received the transcript of the hearing (Tr) on October 30, 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 relating to the country of Iran. The request and the attached documents were admitted into evidence as Exhibit 3. Applicant's counsel also submitted a request that I take administrative notice (Exhibit D). The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his RSOR, Applicant admitted SOR allegations 1.a. through 1.i., with explanations, with the exception of 1.e., which he denied. He also admitted 2.a. through 2.d. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, the testimony of Applicant, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 62 years old and was born in Iran in 1946. He moved to the United States in 1969. He moved back to Iran from 1975 to 1979, and he has lived in the U.S. since 1979. He became a naturalized United States citizen in 1994. Applicant received a Master of Science degree in 1971, and a Ph.D. degree in 1975 from a United States university. He also received his Bachelor's Degree from a U.S. university in Iran. Applicant has received 32 United States patents for projects that he has worked on in this country.

Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Paragraph 1 (Guideline B - Foreign Influence)

1.a. Applicant's stepfather is a citizen and resident of Iran. Applicant testified that his stepfather and he are very close with a very strong bond, as his biological father died when he was very young, and his stepfather came into his life when Applicant was eight. Applicant described him as more like a father than a stepfather. His stepfather is long retired, but previously he had been a businessman, and before the revolution in Iran, he was a postal clerk.

1.b. Applicant's sister is a citizen and resident of Iran. She is now retired, but she had been a school teacher. Her husband is a veterinarian. Applicant's relationship with his sister as close.

1.c. Applicant's half-sister is a citizen of Iran, residing in Germany. She is a housewife.

1.d. Applicant's other half-sister is a citizen and resident of Iran. She is also now retired, but she had been a school teacher. Her husband owns a store in Iran. Applicant also has strong bonds of affection to his half sisters.

1.e. Applicant's father-in-law is a citizen and resident of Iran. Applicant testified that his father-in-law is now deceased.

1.f. Applicant's sister-in-law is a dual citizen of Iran and Canada, residing in Canada.

1.g. Applicant's brother-in-law is a citizen and resident of Iran.

1.h. Applicant's wife is a dual citizen of Iran and the United States, residing in the United States. She works as a nurse.

1.i. Applicant's daughter and two sons are dual citizens of Iran and the United States, residing in the United States. They are dual citizens, because both of their parents are dual citizens.

Paragraph 2 (Guideline C - Foreign Preference)

1.a. After Applicant became a United States citizen on October 7, 1994, he renewed his Iranian passport, on more than one occasion, the most recent being February 5, 2007. He testified that he has used his Iranian passport to enter and exit Iran, because he is not sure what would happen if he used his U.S. passport.

1.b. Applicant currently possesses an Iranian passport that is not scheduled to expire until February 5, 2012. He plans to retain his Iranian passport until such time in the future when he does not feel that he needs it any longer.

1.c. Applicant has used his Iranian passport, rather than a United States passport, to travel to Iran on more than one occasion, after he became a United States citizen. Applicant has traveled to Iran in 1998, 1999, three times in 2003, three times in 2006, and once in 2008. For all these trips he used his Iranian passport (Exhibit 2). Applicant's wife and children also have current Iranian passports that they have used to enter and exit Iran.

1.d. After Applicant became a United States citizen on October 7, 1994, he voted in the 1997 Iranian presidential election. Applicant testified that he voted because the person running for president was more of a moderate, and Applicant believed it would be good for the world if he were elected. He has not voted in any other Iranian election.

Applicant also testified that at this time he has no intention to renounce his Iranian citizenship. When his stepfather is deceased he may then consider renouncing his citizenship and revoking his Iranian passport, but not before then.

Applicant estimated that his net value in the United States is approximately \$1 million. He submitted four letters of recommendation that described Applicant in very positive terms (Exhibit A). He also submitted many impressive awards, degrees and certificates that have been received by Applicant (Exhibit C).

Current Status of Iran

I take administrative notice of the following facts regarding Iran. Currently, Iran is considered one of the most dangerous adversaries to the interests of the United States. The U.S. has not had diplomatic relations with Iran since April 7, 1980, following the November 1979 Iranian student occupation of the American Embassy in Tehran and the hostage taking of 52 Americans, which was supported by Ayatollah Ruhollah Khomeini, Iran's leader at the time.

The United States Government's concerns with Iran's policies include, but are not limited to the following: (1) its clandestine efforts to acquire nuclear weapons of mass destruction, (2) its sponsorship of international terrorism, (3) its intervention into the internal affairs of Iraq, (4) its aggressive efforts to undermine the Middle East peace process, and (5) its human rights violation against its own people. As a result of these concerns, the U.S. prohibits most trade with Iran.

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

AG ¶ 6 expresses the security concern regarding foreign influence:

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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying (DC). Those that could be applicable in this case include the following: (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; (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 relatives, who are citizens and residents of Iran, a country whose interest is inimical to the United States, and who continue to have, by his

own admission, very close bonds to Applicant, make DC (a) and (d) concerns to the Government.

I do not find that any MC is applicable to this Applicant and this case. I therefore, conclude Guideline B against Applicant.

Guideline C, Foreign Preference

Under AG ¶ 9 the security concern involving foreign preference arises, “[W]hen 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.”

Applicant’s application, receipt and multiple use of an Iranian passport, and his voting in an Iranian election after becoming a U.S. citizen, raises foreign preference concerns under Disqualifying Condition DC 10 (a), the exercise of the privilege of foreign citizenship.

Since Applicant continues to maintain his Iranian passport, which he has used often in the past and plans to potentially use in the future, and he is not willing to renounce his Iranian citizenship to the proper Iranian authorities, I do not find that any MC under this guideline applies to this case. After considering all of the evidence of record on Guideline C, I conclude that the disqualifying evidence substantially outweighs the mitigating evidence.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited above as to why the Disqualifying Conditions apply, I find that the record evidence leaves me significant questions and doubts as to Applicant’s eligibility and suitability for a security clearance under the whole person concept. For all these reasons, I conclude Applicant has failed to mitigate the 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
Subparagraph 1.a. through 1.i.:	Against Applicant
Paragraph 2, Guideline C:	AGAINST APPLICANT
Subparagraph 2.a. through 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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul
Administrative Judge