



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-03798
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

September 22, 2009

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Questionnaire for Sensitive Positions, (SF-86) on December 4, 2006. (Government Exhibit 1). On March 24, 2009, 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 April 25, 2009, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on May 27, 2009. A notice of hearing was issued on June 5, 2009, scheduling the hearing for June 30, 2009. At the hearing the Government presented

four exhibits, referred to as Government Exhibits 1 through 4, that were admitted without objection. The Applicant presented one exhibit, referred to as Applicant's Exhibit A, that was admitted without objection. He also testified on his own behalf. The record remained open to allow the Applicant to submit additional documentary information. The Applicant submitted four Post-Hearing Exhibits, referred to as Post-Hearing Exhibits A through D. The official transcript (Tr.) was received on July 10, 2009. 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. The Applicant had no objection. (Tr. p. 22). 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 57 years of age and has a Master's Degree in Electrical Engineering. He is employed as a Aerospace Systems 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 1952. With his father's urging, the Applicant served in the Iranian Navy, attending the Iranian Military Academy for about three months before deciding that the military was not for him. The Iranian Government allowed the Applicant to take an examination to enter the Navy and/ or study abroad. He elected to attend college in the United States. In 1972, he immigrated to the United States at the age of nineteen, and entered on a student visa. He stayed in the United States because he liked the culture and the freedoms of thought, speech, and religion. (Government Exhibit 3). In 1982, he became a naturalized United States citizen. He has worked for the defense industry since the late 1970's, and has held an active security clearance since 1997. (See Government Exhibit 1). He has returned to Iran on only one occasion in the summer of 2000, to visit his ailing mother. He is married to a native born United States citizen, and they have two native born American children.

The Applicant also has five siblings, three sisters and two brothers who are citizens of Iran. Three of them, two sisters and one brother, reside in Iran. All of his siblings are professionals. His mother and father have since passed away. His mother,

was a housewife her entire life, supported by her husband's pension. She passed away several months ago. The Applicant's father was a colonel in the Army in the Shah's regime, and passed away in 1997.

The Applicant's oldest sister is 59 years old and is a pediatrician in private practice. Her husband is also a physician. They are both citizens and residents of Iran. The Applicant has applied for residency for his oldest sister. (Tr. p. 63). His next sister in birth order is 58 years old, a dual citizen of Iran who lives in England. She is a high school teacher. The Applicant's next brother is 55 years old, and is a citizen and resident of Iran. He is also a physician. The next brother in birth order is 53 years old, and is a dual citizen of Iran and the United States and resides here. He is an engineer. The Applicant's youngest sister is 50 years old, and is a citizen and resident of Iran. She is an architect. She spent about six months in the United States before going to school in England. She has since moved back to Iran. The Applicant spoke to her last weekend to see if she was safe. (Tr. p. 56). The Applicant communicates with each of his family members in Iran from one to three times a year. They know that he is an engineer, but do not know that he is applying for a security clearance. Over the years, several of his siblings have come to the United States to visit the Applicant.

The Applicant testified that he is ashamed that he did not go back for his mother's funeral. He could not find his Iranian passport. (Tr. p. 58, and Government Exhibit 2). He chose not to travel using his United States passport in fear that he might be given a hard time. (Tr. p. 58). He feels bad and ashamed that he has not kept in closer contact with his siblings in Iran. (Tr. p. 60). He loves his siblings in Iran very much. (Tr. p. 60 - 61). The Applicant indicates that at the present time he has no intentions of going back to Iran. (Tr. p. 58).

A letter of appreciation from a Program Director who has worked closely with the Applicant on a particular program attests to the Applicant's hard work, support, and dedication to ensuring that the mission was a success. (Applicant's Exhibit A).

A letter of commendation dated November 13, 2007, from a Program Director and a Commander reflects that the Applicant has shown superb professionalism and outstanding commitment in the performance of his job. (Applicant's Post-Hearing Exhibit C).

Applicant received a Certificate of Appreciation dated November 13, 2007, for outstanding support, professionalism and service to a program. (Applicant's Post-Hearing Exhibit B).

Applicant's Performance Appraisal for the period from January 1, 2007, through December 31, 2007, reflects an overall rating that "exceeds performance requirements". (Applicant's Post-Hearing 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 violent opposition to the Middle East peace process, and its dismal human rights records, have been noted. I have considered the fact that Iranian Government officials at all levels commit serious abuses of their power and authority. Iran's totalitarian government is rampant with terrorists activities, 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.

Condition that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct
- 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 extent to which participation is voluntary
- f. The presence or absence of rehabilitation and other permanent behavioral changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress; and
- 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 has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. 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. None of the mitigating conditions apply. Applicant did not show that his emotional connection to the United States is greater than that to Iran.

It is acknowledged that the Applicant has lived in the United States for thirty years. During this period, he has held a security clearance and worked for the defense industry. He has a wife and two sons who are native born United States citizens. However, tipping the scales on the other side is the fact that the Applicant has five siblings, who are citizens of Iran, three of whom reside in Iran, with all of whom he maintains a close and continuing relationship. He loves his siblings in Iran and maintains regular ongoing contact with them by telephone between one and three times a year. With three siblings in Iran, he talks to at least one of them on an average of once a month. Although there is no evidence that any of 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 immediate family. This bond and affection with his family could potentially cause the Applicant to become subject to foreign exploitation, inducement, manipulation, pressure, or coercion. Moreover, the current political situation in Iran elevates the cause for concern in this case. The possibility of foreign influence exists that could create the potential for conduct resulting in the compromise of classified information. It is the Applicant's burden to show that he is eligible for a security clearance, not the Government's to show that he is not. I find that the Applicant is vulnerable to foreign influence.

I have also considered the "whole person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the

totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole person assessment of poor judgement, untrustworthiness, unreliability, a lack of candor, and an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may properly safeguard classified information. 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

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