



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-04057
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer Goldstein, Esquire, Department Counsel
For Applicant: Thomas M. Abbott, Esquire

January 5, 2009

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on December 22, 2006. On August 20, 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 acknowledged receipt of the SOR on September 2, 2008. He answered the SOR in writing on September 17, 2008, and requested a hearing before an Administrative Judge. DOHA received the request soon thereafter. This case was assigned to another Administrative Judge in the Washington Hearing Office on October 27, 2008. However, the Applicant, through counsel, asked for a change of venue; and

as such, it was reassigned to the undersigned in the Western Hearing Office on October 30, 2008. DOHA issued a notice of hearing on November 5, 2008, and I convened the hearing as scheduled on November 19, 2008. The Government and Applicant's Counsel stipulated to Government Exhibits (GXs) 1 through 4, and Applicant Exhibits (AppXs) A through P. Applicant testified on his own behalf. DOHA received the transcript of the hearing (TR) on December 1, 2008. I granted Applicant's request to keep the record open until December 19, 2008, to submit additional matters. On December 15, 2008, he submitted AppXs Q through V, which were received without objection. The record closed on December 19, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Iran. The request was granted. 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

In his Answer to the SOR, Applicant admitted the factual allegations in Subparagraphs 1.a, 1.c, 1.d, 2.a. and 2.e.~2.h. of the SOR, with explanations. He denied the factual allegations in Subparagraphs 1.b, 1.e, 2.b. and 2.c. of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

The Applicant was born in Iran, but immigrated to the United States in 1978 at the age of 17 (TR at page 14 lines 6~13, and at page 16 line 22 to page 19 line 8). He attended college in the U.S., from which he graduated in 1981, and he became a naturalized citizen in 1996 (TR at page 16 line 22 to page 19 line 8, and GX 1 at pages 5~6 and 8). He lives in a foreign country with his wife, where he works for a U.S. Government contractor (TR at page 14 line 14 to page 15 line 10, and GX 1 at page 7). The country is not Iran (*Id*).

Guideline C - Foreign Preference

1.a. The Applicant is a dual national of the U.S. and Iran (GX 1 at page 5~6). He has expressed a genuine intention to renounce his Iranian citizenship (TR at page 54 lines 2~18, at page 57 line 5 to page 59 line 16, and AppX U, *see also* AppXs Q~T). "Department Counsel [DC] is satisfied with Applicant's stated efforts to renounce his dual citizenship" (DC's Response to Applicant's Supplemental Information).

1.b.~1.e. and 2.h. Despite being naturalized in 1996, the Applicant, who still held an Iranian passport, obtained a new Iranian passport in 2002, and renewed that passport in 2007 (GX 2). He used this passport to travel to Iran in 2002, in 2005 and in 2007 (TR at page 49 line 14 to page 51 line 13, and at page 66 line 24 to page 67 line 5). Each visit, he was required to pay a \$42 fee, in order to leave Iran without being subject to its compulsory military service (TR at page 47 line 8 to page 49 line 13, and AppX H).

The Applicant's 2002 visit was his first visit in 24 years, and he stayed for a month (TR at page 49 line 14 to page 51 line 13). In 2005, the Applicant introduced his new wife to his family, and stayed about three weeks (*Id*, and TR at page 66 line 24 to page 67 line 5). His last visit was in 2007, when his father passed away, and Applicant stayed about two weeks (*Id*). In November of 2008, the Applicant turned over his Iranian passport to his Facility Security Officer (FSO) and it was "immediately destroyed," as evidenced by a letter from that FSO (AppX G).

Guideline B - Foreign Influence

2.a.~2.c. The Applicants spouse is a dual national of Iran and France (TR at page 25 line 8 to page 29 line 25, and GX 1 at pages 12~13). They met through an Iranian-American website (GX 2). She left Iran and immigrated to France when she was ten or eleven years old (TR at page 62 line 14 to page 63 line 24). She has every intention of applying for U.S. citizenship; but as they live in a third country, she can not yet satisfy the six month U.S. residency requirement, in order to make such an application (AppXs E and K).

2.d. and 2.e. The Applicant's mother is a citizen and resident of Iran (TR at page 30 line 14 to page 34 line 11, and GX 1 at pages 13~14). She is 70 years old, has always been a housewife, and lived in the U.S. in the 1990s as permanent resident alien (*Id*, and TR at page 36 lines 7~21, and at page 37 line 7 to page 39 line 12).

2.f. The Applicant has two brothers and one sister who are citizens and residents of Iran (GX 1 at pages 15~18). His 50 year old sister has no permanent employment, and lives with his mother (TR at page 30 line 14 to page 34 line 11, and at page 36 lines 23~23). He and his sister are not close (*Id*). One brother lived in the U.S. for nearly 30 years, but returned to Iran to take care of their mother when their father passed away in 2007 (TR at page 39 line 15 to page 41 line 5). The Applicant is not close to this brother (*Id*). The other brother "has an electronics shop" (TR at page 41 line 6 to page 42 line 1). The Applicant is also not close to this brother (*Id*). None of the Applicant's siblings have any connection with the Iranian government (TR at page 42 lines 21~24). The Applicant would not be subject to coercion vis-a-vis his Iranian relatives (TR at page 43 line 12 to page 44 line 1).

2.g. The Applicant's parents-in-law are citizens of Iran and France, and reside in France (TR at 64 line 13~21). Neither in-law works for any government (*Id*).

As the Applicant's mother and siblings are Iranian and live in Iran, I must also consider the country of Iran. Iran is a state that sponsors terrorism. The U.S. has not had diplomatic relations with Iran since 1980. It is a theocratic Islamic republic in which Shi'a Muslim clergy dominate the key power structures, and ultimate political authority is vested in a learned religious scholar. Iran's dismal and worsening human rights record presents a further threat to the U.S., as a large number of Iranians emigrated to the U.S. in 1979, after their Islamic revolution. These immigrants often left behind family members in Iran. Iran's security forces often target family members of political prisoners for harassment purposes.

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 C - Foreign Preference

Paragraph 9 of the new adjudicative guidelines sets out the security concern relating to Foreign Preference: “When 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.”

Subparagraph 10(a)(1) is applicable: “*exercise of any right, privilege or obligation of a foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport.*” Here, the Applicant, a naturalized citizen, used an Iranian passport to enter that country on three separate occasions. This is clearly countered, however, by the mitigating conditions found under Subparagraphs 11(b) and 11(e). Subparagraph 11(b) notes that where “*the individual has expressed a willingness to renounce dual citizenship,*” this is mitigating. I find that Applicant’s renunciation intention to be genuine. Furthermore, under Subparagraph 11(e), the Applicant’s “*passport has been destroyed [by] . . . the cognizant security authority,*” his FSO.

Guideline B - Foreign Influence

Paragraph 6 of the new adjudicative guidelines sets out the security concern relating to Foreign Influence: “Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign 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 a foreign interest.”

Here, Paragraph 7(a) is applicable: “*contacts with a foreign family member . . . 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.*” The Applicant’s mother, two brothers and sister are citizens of and reside in the Iran. His in-laws and wife are also dual nationals with Iran. This is clearly countered, however, by the first mitigating condition, as “*the nature of the relationships with foreign persons, the country in which these persons are located . . . 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 . . . and the interests of the U.S.” None of the Applicant’s Iranian relatives have any connection with the Iranian government. Furthermore, the Applicant can not be coerced by the government of Iran or any other government.

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.

He has the unqualified support of those who know and have worked with the Applicant (AppXs A~D and F). Of particular note are the comments of a retired Brigadier General, who avers, in part, the following:

Finally, through my 32 years of military experience I consider that I have become an accurate judge of people whom I consider to be reliable and trustworthy. I have total confidence in . . . [the Applicant] and he has proved over 10 years that he can be fully trusted to hold a US Security Clearance. I believe that he is a loyal and committed American. I would not hesitate at all in recommending that . . . [the Applicant] hold a position of trust and responsibility, or that he be granted a national security clearance. Hence, I urge you to recognize his loyalty to hold a security clearance. I gladly vouch for him (AppX A at page 2).

I have considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Overall, the record evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his alleged Foreign Preference and Foreign Influence.

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 C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	For Applicant
Subparagraph 2.f:	For Applicant
Subparagraph 2.g:	For Applicant
Subparagraph 2.h:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge

