



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



In the matter of:)	
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SSN: -----)	ISCR Case No. 08-05314
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: Robert G. Schwalls, Personal Representative

June 24, 2009

Decision

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings, exhibits and testimony, Applicant's request for eligibility for a security clearance is denied.

On July 3, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his employment with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant two sets of interrogatories¹ to obtain clarification of and/or additional information about potentially disqualifying information in his background. After reviewing the results of the background investigation and his responses to the interrogatories, DOHA adjudicators were unable to make a preliminary affirmative

¹ Authorized by DoD Directive 5220.6 (Directive), Section E3.1.2.2.

finding² that it is clearly consistent with the national interest to allow Applicant access to classified information. On November 10, 2008, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the revised Adjudicative Guidelines³ under Guideline B (foreign influence).

On December 15, 2008, Applicant responded to the SOR and requested a hearing. On January 14, 2009, Department Counsel made a pre-hearing submission through which the government asked that administrative notice be taken of certain facts germane to the issues presented by the pleadings. The submission consisted of a nine-page memorandum supported by 17 enclosed documents (Attachments I - XVII).

The case was assigned to me on February 23, 2009, and I convened a hearing on April 1, 2009. DOHA received the transcript of hearing (Tr.) on April 10, 2009. The parties appeared at the hearing as scheduled. The government presented three exhibits – Applicant's e-QIP (Gx. 1) and his responses to interrogatories (Gx. 2 and 3). They were admitted without objection. Applicant testified in his own behalf and presented one witness.

I also granted the government's pre-hearing administrative notice request. The entire administrative notice request is included in the record as Judicial Exhibit (Jx. 1); however, for reasons discussed at the hearing (Tr. 16 - 19), I have not considered the information contained in Jx. 1, Attachments XII and XXIV - XVII.

Findings of Fact

Under Guideline B, the government alleged that Applicant's mother (SOR ¶ 1.a), four sisters (SOR ¶ 1.b), two brothers (SOR ¶ 1.c), fiancée (SOR ¶ 1.d) and her immediate family members (SOR ¶ 1.e) are all citizens of and reside in Iran. It was also alleged that Applicant traveled to Iran in 2000, 2001, 2004, and 2007 (SOR ¶ 1.f), and that Applicant has in Iran a bank account containing about \$30,000 and a vested real estate interest worth about \$20,000 (SOR ¶ 1.g). Applicant admitted with explanation each of these allegations. In addition to the facts established by Applicant's admissions in response to the SOR, I make the following findings of relevant fact.

Applicant is 49 years old and has been employed since October 1998 by a large defense contractor for work in the satellite communications field. He has worked in that field for almost 20 years, but his work has not required a security clearance until now. His Facility Security Officer (FSO) has known Applicant for about 10 years. He recommends Applicant for a position of trust based on daily contact with him over the entire time Applicant has worked for their company. (SF 86; Tr., 55, 62)

² Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

³ Adjudication of this case is controlled by the revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, these guidelines supercede those contained in Enclosure 2 to the Directive.

Applicant was born and raised in Iran. In 1978, he came to the United States for his undergraduate degree. However, in 1980, out of concern about Iranian government actions that might affect his father after Iran's 1979 revolution, Applicant returned to Iran. Before he could leave the country to complete his college education in the United States, Applicant was required to complete two years of military service required of all Iranian citizens. He served in the Iranian Army from 1982 until 1984. He returned to the United States in 1985. (Gx. 1; Gx. 2; Gx. 3; Tr. 45)

Applicant was naturalized as a U.S. citizen in June 2006. He has a U.S. passport, but also maintains an Iranian passport that he has held since 1978.⁴ (Gx. 1; Gx. 2; Gx. 3) He married a native-born U.S. citizen in June 1986. The marriage produced two sons (now ages 19 and 13), but ended in divorce in January 2006. Applicant's children were both born in the United States and have never been to Iran. The older child attends a U.S. college on a military Reserve Officer Training Corps (ROTC) scholarship. (Answer to SOR; Gx. 1; Gx. 2; Gx. 3; Tr., 12)

Applicant's mother and six siblings are Iranian citizens. With one exception, they all live in Iran, as do his extended family members (cousins, aunts, uncles, etc.). Applicant has one older brother and two older sisters, and two younger sisters and one younger brother. His younger brother recently came to the United States and is now a permanent resident alien here. (Gx. 1; Gx. 2; Gx. 3; Tr. 51) Applicant's mother is an elderly widow who still lives in the house where she and her late husband raised their children. She has visited Applicant in the United States and has Permanent Resident Alien Status. However, her last visit was in 2001 and for health reasons she is not likely to travel outside of Iran. Applicant speaks to his mother by phone two or three times monthly. (Tr., 24 - 25, 26)

When Applicant's father died in 2000, Applicant received a per capita interest in the family house. He also received a monetary bequest worth about \$30,000. Applicant estimates the combined inheritance is worth about \$50,000, which is less than half his annual income in the U.S.. Applicant estimates the current net worth of his assets and liabilities in the U.S. to be about \$700,000. The money he received from his father is kept in an Iranian bank. Applicant does not need the money, but he understands that it is difficult to transfer funds out of the country and possibly illegal to transfer it to the United States. He has left it in an Iranian bank for his family to draw on when necessary. (Answer to SOR; Gx. 1; Gx. 2; Gx. 3; Tr., 27 - 30, 53 - 54)

Applicant re-married in March 2009. His wife was born and raised in Iran and is an Iranian citizen. She arrived in the United States in January 2009 on a fiancée visa and has applied for permanent resident alien status. Applicant and his wife were introduced through family members in March 2007 and met for the first time in Iran in May 2007. Applicant's wife's parents, siblings and extended family are all citizens of and reside in Iran. She contacts her parents by phone or e-mail a few times each month.

⁴ The government did not allege this fact under Guideline C (AG 9 - Foreign Preference), ostensibly because Applicant's FSO has custody of Applicant's Iranian passport and has agreed to notify the government if Applicant asks for its return so he can travel to Iran. (Tr., 42 - 43, 55 - 57)

Applicant's contact with them is less frequent. None of his or his wife's family are employed by or have any official ties to the Iranian government. (Gx. 2; Tr., 25, 39 - 41)

Applicant travels to Iran to visit his mother and the rest of his family about every three years. His last visit was in 2007. He intends to return to Iran to see his mother. His wife also intends to travel to Iran to see her family. (Gx. 3; Tr., 42 - 43, 46)

In 1979, the Shah of Iran was overthrown in favor of a theocratic government based on Islamic law. Despite occasional gains by more moderate Muslim clerics in the government, the Islamic Republic of Iran (IRI) remains under the control of fundamentalists dedicated to a repressive form of government in furtherance of strict adherence to the Koran. Iran's regime has amassed a dismal human rights record. Government entities have been involved in an increased number of abductions, summary executions, disappearance, torture, and other unacceptable practices designed to preserve the government's hold over its citizens. The State Department has also advised U.S. citizens not to travel to Iran, and has noted instances whereby dual U.S.-Iranian citizens have been singled out for special monitoring and detention. (Jx. I, Attachments I - VI) Applicant and his FSO both testified that they are aware of the adverse relationship between Iran and the United States. His FSO has concerns about security risks associated with travel to Iran. (Tr., 65, 73)

Iran's global interests are directly antithetical to those of the U.S.. To further their regional and global goals, Iran has become an active collector of economic information and has an active espionage service which targets U.S. interests and information. Iran is also an active sponsor of terrorism, which targets the interests of the U.S. and its allies. Finally, the development and proliferation of nuclear weapons and other weapons of mass destruction by Iran is seen by the U.S. as a major threat to regional and possibly global stability. (Jx. I, Attachments VII - XI, XIII)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policy in the revised Adjudicative Guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole person" concept, those factors are:

- (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) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation

⁵ Directive. 6.3.

for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under AG ¶ 6, Guideline B (Foreign Influence).

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁶ for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.⁷

A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Thus, the government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.⁸

Analysis

Foreign Influence.

The government presented sufficient information to support all of the factual allegations in the SOR. Those allegations, which Applicant also admits, raise security concerns about Applicant's personal relationships and other interests in Iran. Specifically, as stated in AG ¶ 6,

[f]oreign 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

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

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.

The facts presented through SOR ¶¶ 1.a - 1.e require application of the disqualifying condition at AG ¶ 7(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*). With the exception of his younger brother, who is a U.S. permanent resident alien, Applicant's entire family are citizens of and reside in Iran. His wife's entire family are also citizens of and reside in Iran. Applicant's wife is an Iranian citizen who arrived in the U.S. in January 2009 and is in the U.S. solely on a fiancée/spouse visa. These facts must be considered together with information that shows Iran to be hostile to U.S. interests, a state sponsor of international terror aimed at U.S. interests, an active aggressive collector of U.S. economic and industrial information, and that Iran's poor human rights record includes state targeting of U.S. - Iranian citizens traveling in Iran. All of the available information bearing on this issue shows that Applicant's family ties in Iran create a heightened risk under AG ¶ 7(a).

As to SOR ¶ 1.g, available information supports this allegation, but the security significance of Applicant's partial interest in the family home and the money he has left in an Iranian bank account is minimal. It is not certain that Applicant will both outlive his mother and/or that he will actually take possession of any part of the family home. As to the bank account, Applicant does not need the funds and it makes sense, given the probable difficulty or illegality of trying to transfer that money out of Iran, to leave it in an account for his family to use. Further, the amount in question is insignificant when compared to Applicant's estimated net worth. To be disqualifying, it must be shown that these interests constitute "a *substantial* business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, *which could subject the individual to heightened risk of foreign influence or exploitation.*" (AG ¶ 7(e); emphasis added) While it may be the case that Applicant is concerned about Iranian pressure against his family should he try to move the money from his account to the U.S., it is more likely that the decision to leave the money in an Iranian bank was borne more of practicality than anything else. SOR ¶ 1.g is concluded for the Applicant.

Of the mitigating conditions listed under AG ¶ 8, only AG ¶ 8(a), AG ¶ 8(b), AG ¶ 8(c), and AG ¶ 8(f) are potentially applicable to these facts. As to ¶ AG 8(a) (*the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country 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, group, organization, or government and the interests of the U.S.*), none of Applicant's or his wife's family have any official ties to or are employed by the Iranian government. However, I have also considered the aggressive nature of the Iranian government against U.S. interests and, at times, against its own people. When coupled with the obvious closeness of Applicant's family ties in Iran,

these facts present an unacceptable risk that Applicant could be forced to choose between his obligation to protect U.S. classified information and the interests of his family in Iran. Thus, this mitigating condition does not apply.

As to AG ¶ 8(b) (*there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest*), Applicant has longstanding relationships and loyalties in the U.S. He has been here on a permanent basis for about 25 years, and he has two U.S.-born children from a 20-year marriage to a native-born American. He has worked in U.S. industry for about 20 years, and his financial interests in the United States far exceed his Iranian financial interests. However, these interests are directly counterbalanced by Applicant's close ties in Iran, his maintenance of an Iranian passport for future travel, and the new ties of affection he has established through his recent marriage to an Iranian citizen. While the government's information about Applicant's foreign travel (SOR ¶ 1.f) is not by itself disqualifying, it is evidence of the influence of his relationship with his family in Iran. On balance, Applicant has not satisfied his burden of persuasion with respect to application of AG ¶ 8(b).

Further, Applicant has not presented sufficient information to warrant application of AG ¶ 8(c) (*contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation*). Applicant's ties to his family and, by virtue of his affection for his wife, to her family are presumed to be close. Also, Applicant and his wife have frequent contact each month with their parents, and they have and will likely continue to travel to Iran periodically to visit in person. These facts preclude application of AG ¶ 8(c).

Finally, for the reasons discussed above regarding Applicant's Iranian bank account and property interest, it is unnecessary to consider AG ¶ 8(f) (*the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual*). In summary, the government's information about Applicant's personal contacts in Iran is sufficient to raise reasonable security concerns about whether Applicant's ability to protect the U.S. national interest unhindered by foreign influences. In response, Applicant failed to meet his burden of showing either that those contacts do not pose a risk of undue pressure, coercion or manipulation by their presence in Iran, or that his interests, relationships and loyalties in the United States sufficiently outweigh that risk. With the exception of his financial interests in Iran, I conclude Applicant has not met his burden. Accordingly, having considered all of the available information bearing on the issue of possible foreign preference, Applicant has failed to mitigate this security concern.

Whole Person Concept.

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines B. I have also reviewed the record before me in the context of the whole person factors listed in AG ¶ 2(a). Applicant is a mature,

responsible, and highly accomplished 49-year-old employee of a defense contractor with several years of experience in the satellite communications industry. He has lived, studied and worked in the U.S. for most of the past 30 years. His children and his ex-wife of 20 years are native-born in the U.S. and most of his financial and personal interests are in the United States. However, throughout his life in the United States, Applicant has actively maintained his family ties in Iran through his travel and other frequent contact. He has also recently added new foreign ties through his second marriage, this time to an Iranian citizen who has only recently moved to the U.S. Those ties to Iranian citizens are presumed to be close as well. Future travel to Iran in furtherance of his family ties is likely and indicates a continued division of personal interests between the U.S. and Iran, a country hostile to the U.S..

There has been no misconduct here. Nor is there anything inappropriate or illegal about Applicant's interests overseas. However, in the context of deciding whether to allow him access to classified information, Applicant's circumstances place on him the heavy burden of demonstrating that he would not be vulnerable to coercion by the Iranian government or that he would not be compromised by conflicting interests in Iran. Insofar as it is unlikely that Applicant's circumstances will change in the foreseeable future, a fair and commonsense assessment⁹ of all available information shows Applicant has not overcome the doubts these circumstances raise about his suitability for access to classified information. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the government.¹⁰

⁹ See footnote 5, *supra*.

¹⁰ See footnote 8, *supra*.

Formal Findings

Formal findings 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 2.a - 2.f:	Against Applicant
Subparagraph 2.g:	For Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge