



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



In the matter of:)
)
) ISCR Case No. 08-06551
)
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel
For Applicant: *Pro Se*

May 29, 2009

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline C, Foreign Preference, but failed to mitigate the security concerns under Guideline B, Foreign Influence. Applicant’s eligibility for a security clearance is denied.

On November 28, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and C. 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 answered the SOR in writing on December 19, 2008, and requested a hearing before an administrative judge. The case was assigned to me on April 6, 2009. DOHA issued a notice of hearing on April 8, 2009. I convened the hearing as scheduled on April 30, 2009. The government offered Exhibits (GE) 1 through 4. Applicant did not

object and they were admitted. The Government also requested administrative notice be taken on exhibits marked as Hearing Exhibit (HE) I through XVIII. I have taken administrative notice of HE I through XVII. I have not taken administrative notice of HE XVIII, but will consider it as a brief in support of the Government's case. Applicant testified and offered Exhibits (AE) A through C. Department Counsel did not object and they were admitted. DOHA received the transcript of the hearing (Tr.) on May 7, 2009.

Findings of Fact

Applicant's admitted all of the allegations in the SOR. His admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 29-year-old information technology consultant who has worked for a federal contractor since 2006. He has earned a bachelor of science degree, a master's degree and is a PhD candidate. Applicant was born in the U.S. His mother was born in the U.S. His father was born in Iran, immigrated to the U.S. in the 1960s, and later became a naturalized U.S. citizen. In accordance with Iranian law, Applicant is considered an Iranian citizen because his father was born there. Applicant's father has relatives that live in Iran whom he visits.¹

In 2000, Applicant traveled to Turkey with his family to meet a woman from Iran who was a relative of an Iranian family who lived in the U.S. They met and the families arranged for them to be married while in Turkey. They were married in Turkey a couple of weeks after they met. Applicant's wife returned to Iran and he returned to the U.S. In 2001, Applicant obtained an Iranian passport so he could travel to Iran and make arrangements for his wife to accompany him to the U.S. They decided the families were not compatible and in September 2003 they were divorced in the U.S.²

Applicant used his Iranian passport to travel to Iran in 2001, 2002 and 2004. He stayed with his cousin in 2001. He did not visit his wife when he was in Iran as the marriage was irreconcilable. While in Iran, Applicant visited his father's two sisters, and his father's brother and cousins. During his trip in 2002 he met his second wife through their families. Sometime later he proposed marriage to his second wife and applied for a fiancée visa for her to come to the U.S. In 2004, she completed the necessary requirements and obtained a temporary resident card for entry to the U.S. She returned with Applicant to the U.S. in June 2004 and they were married in July 2004. She was issued a permanent resident card and completed the requirements to apply to be a naturalized citizen. Applicant's wife became a naturalized U.S. citizen in April 2009.³ She retained her Iranian passport and has not obtained a U.S. passport, but intends to. Applicant and his wife have a nine-month-old son. His wife worked for the same federal

¹ Tr. 31-33, 57-58.

² Tr. 40-56.

³ AE C.

contractor as Applicant, but has taken time off with their son and has not returned to work. She is a college graduate and works as a computer programmer.⁴

Applicant stated in order for him to travel to Iran he was required to obtain an Iranian passport. He stated this requirement was dictated by Iranian law and due to his parents' Iranian citizenship. Applicant's mother was born in the U.S. and has no Iranian heritage. She applied for and was granted an Iranian passport in 2000. She was entitled to obtain the passport due to her marriage to an Iranian citizen. She traveled to Iran using her Iranian passport in 2001 and 2004. Her passport has expired. Applicant stated he only uses his Iranian passport for entry and exit from Iran.⁵

Applicant's Iranian passport expired on December 6, 2006. In the SOR ¶ 1.c dated November 28, 2008, it was alleged "As of August 28, 2008, you intend to renew your Iranian passport." Applicant's answer dated December 19, 2008, to the SOR was: "I admit that as of August 28, 2008, I intend to renew my Iranian passport. Clarification: This is necessary to safely enter and exit Iran per the clarification provided [i]n subparagraph [1]a above."⁶

Applicant failed to include in his answer to the SOR that he had already renewed his Iranian passport in October 2008 and was days from using it to travel with his wife and son to Iran for three weeks over the December holidays to visit her family. His wife and son stayed for six weeks. He had also obtained an Iranian passport for his son. He stated he renewed his passport after his son was born so his wife and son could visit Iran. He explained he did not think it was relevant to explain in his answer to the SOR that he had already renewed his Iranian passport and was due to travel to Iran at the time. He stated he was asked to admit or deny the SOR allegations and that is what he was trying to do. Applicant also provided clarification to his answers, but did not include that he had already renewed his passport.⁷

Applicant did not list on his security clearance application (SCA) that he had visited Iran in 2001 and 2002. He did list his 2004 trip. He stated it was not his intention to omit this information. He stated he fully disclosed this information during his interview and interrogatories.⁸

On April 29, 2009, Applicant surrendered to the Embassy of Pakistan, Interests Section of the Islamic Republic of Iran, his Iranian passport that was to expire on

⁴ Tr. 29-30, 37-40, 56-70, 81-95.

⁵ Tr. 29, 57-59, 95-97.

⁶ Answer to SOR dated December 19, 2008.

⁷ Tr. 81-94, 118-122.

⁸ Tr. 74-75. I have not considered this omitted information for disqualifying purposes, but have considered it when analyzing the whole person.

September 10, 2013, and requested it be canceled or destroyed.⁹ On the form required to be signed for relinquishing the passport he indicated the request was due to his work. Applicant stated he was waiting until his wife was a U.S. citizen before surrendering the passport, which he did.¹⁰

Applicant's wife's family lives in Iran. She visited them each year from 2005 to 2008. Her family's visa request to visit her in the U.S. was denied. They are hoping her family can obtain a different visa so they can visit. Both he and his wife intend to sponsor her parents' immigration to the U.S. and support them when they come to live in the U.S. All of his wife's family lives in Iran. Applicant stated when interviewed that he was not willing to renounce his Iranian citizenship because of the difficulty his mother had obtaining her Iranian citizenship.¹¹

Applicant's wife, at the time of hearing, was in Iran and planned to stay for approximately six weeks. He has traveled one time to Iran since 2004. He visited his family while there.

Applicant's wife's parents are citizens and residents of Iran. His wife also has two sisters that are citizens of Iran. One sister is 26 years old and married to an Iranian citizen. They live in Malaysia. The younger sister is 17 years old and is a resident of Iran. His wife's father is retired from construction and her mother owns a seamstress school. His father-in-law receives a pension from the construction company.¹²

Applicant's wife contacts her family in Iran two to three times a week by telephone. Their conversations are family oriented. Applicant converses with them minimally because he does not have a strong command of their language and they do not have a strong command of the English language.¹³

Applicant has not voted in an Iranian election. He was unsure if his wife had voted in the past. He stated his wife may inherit family property. He does not own any property in Iran and all of his assets are in the U.S.¹⁴

Applicant's father travels to Iran and at the time of the hearing was visiting Iran for approximately six weeks. He visits his brothers and sister who reside in Iran. Applicant's sister is also a dual citizen of Iran and the U.S. and is a resident of Saudi Arabia. She is married to a Sudanese man whom she met while residing in the U.S.

⁹ AE A and B.

¹⁰ Tr. 27-28, 84-88.

¹¹ Tr. 70-72, 75-77, 99-105; GE 3 at page 1.

¹² Tr. 60-63, 114-117.

¹³ Tr. 30, 109-111.

¹⁴ Tr. 34-37, 123, 126.

They were married in 2001 and have a daughter. Applicant does not know what his sister's husband does for employment. He has never met his brother-in-law, but has met his niece when his sister returns to the U.S. They visit periodically. Applicant talks with his sister about once a month.¹⁵

Iran¹⁶

Iran is a theocratic Islamic republic in which Shi'a Muslim clergy dominate the key power structures. Iran engages in clandestine efforts to acquire nuclear weapons and other weapons of mass destruction (WMD), sponsors international terrorism, intervenes in the internal affairs of Iraq, undermines the Middle East peace process, and violates the human rights of the Iranian people. The United States and its allies are attempting to block Iran's goals of obtaining nuclear weapons and other WMD and to counter Iran's efforts to destabilize Iraq and other Middle East countries.

Iran is one of the most active state sponsors of terrorism. The United States is concerned about the possibility that terrorists could eventually obtain WMD from Iran. Iran supports terrorists who attack Israel and Shiite militias who encourage, facilitate and engage in sectarian violence in Iraq.

Iranian born, naturalized U.S. citizens, should carefully consider the risks of travel in Iran because they are still considered Iranian citizens by Iranian authorities. Iran does not recognize dual citizenship. The Iranian government has harassed and detailed dual citizens of the United States and 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.

¹⁵ Tr. 106-108, 111-117, 123-124.

¹⁶ HE I to XVII.

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

AG ¶ 9 expresses the security concern involving 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.

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying. I have specifically considered the following:

(a) exercise of any right, privilege or obligation of 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, and

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

Applicant is a U.S. citizen by birth. He applied for Iranian citizenship and was granted it because he is the child of an Iranian citizen. Applicant's father is a dual citizen of Iran and the U.S. Applicant applied for, used, and renewed an Iranian passport so he could travel to Iran. I find both of the above disqualifying conditions apply.

I have considered all the mitigating conditions applicable to this guideline. Specifically I have considered AG ¶ 11:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship;

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor; and

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant was born in the U.S. and is a U.S. citizen. His father was born in Iran. Iran considers Applicant a citizen of its country due to his father's citizenship. However, Applicant exercised dual citizenship by applying for and using an Iranian passport to travel to and from Iran, thereby exercising rights of an Iranian citizen. I find mitigating conditions (a) and (c) do not apply.

Applicant was not willing to renounce his Iranian citizenship, so mitigating condition (b) does not apply. Applicant has surrendered his Iranian passport to appropriate authorities. Hence, mitigating condition (d) applies.

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. I have considered all of them and especially considered 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;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information;

(c) 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; and

(e) 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.

Applicant's wife and son are dual citizens of Iran and travel to Iran regularly for extended periods of time to visit her relatives who are citizens and residents there. Applicant's wife communicates two to three times a week with her family there. Although Applicant's wife is a new citizen of the U.S. she retains strong ties to Iran. Obviously Applicant shares living quarters with his wife and he facilitates and supports her travel and his son to Iran to visit her family. He also traveled to Iran to visit family. His first marriage was arranged for him with an Iranian woman. While visiting Iran he met his second wife. Applicant does not know what his brother-in-law does for a living.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. Applicant's wife is a dual citizen of Iran as is his

son and they travel to Iran to visit her family. Applicant is hoping her family will get visas to visit them in the U.S. However, his wife still travels there. This close relationship with his wife and her relationship with her family create a heightened risk of foreign pressure or attempted exploitation because Iran and the United States' relationship is not friendly. Applicant's connections with his wife and her relationship with her Iranian family also creates a conflict of interests because his relationship with her and her family are sufficiently close to raise a security concern about his desire to help his wife's Iranian family. Therefore, I find disqualifying conditions (a), (b) and (c) apply. It appears Applicant's wife may be entitled to an inheritance in the future; at present she does not have financial interests or business interests in Iran and disqualifying condition (e) does not apply. There is no evidence that Applicant's sister, who is a dual citizen of Iran, has visited Iran or maintains any type of contact with relatives there. I find no disqualifying conditions apply to her.

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8 and especially considered the following:

(a) the nature of the relationship 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 and interests of the U.S.;

(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 interests in favor of the U.S. interests; and

(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 has traveled to Iran to visit his family and in-laws. His wife maintains close communication with her family in Iran, calling them several times a week and visiting them annually. Applicant has not met his burden of establishing that it is unlikely he will be placed in a position of having to choose between the interests of his wife and her family living in Iran and the interests of the U.S. Their frequent contacts with family in Iran could potentially force him to choose between the two.

The nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the foreign government, or the country is

known to conduct intelligence operations against the U.S. Iran's hostility to the U.S. places a very heavy burden of persuasion on Applicant to demonstrate that his wife and her family in Iran do not pose a security risk, and he is not in a position to be forced to choose between loyalty to the U.S. and his family members. With its adversarial stance and its negative human rights record, it is conceivable that Iran would target any citizen in an attempt to gather information from the U.S. I find mitigating condition (a) does not apply.

Applicant is a U.S. born citizen, who has ties to Iran. He actively pursued obtaining an Iranian passport so he could travel to Iran. He participated in an arranged marriage with an Iranian woman. He again traveled to Iran to visit his side of the family and met his second wife in Iran. He and his wife returned to Iran to visit her relatives. His son is a dual citizen of Iran. Although he recently surrendered his Iranian passport it does not negate his past contact and actions regarding Iran. I find under the circumstances there could be a conflict of interest and mitigating condition (b) does not apply.

Security concerns are reduced where contact and correspondence with foreign citizens are casual and infrequent because the risk of foreign exploitation or pressure is less. Applicant's wife maintains regular contact with her family in Iran. Applicant also maintains regular contact with them. They both, along with their son, were in Iran in December 2008 visiting her relatives. They both hope to sponsor her family to the U.S. He speaks with his sister, a dual citizen of Iran, monthly. These contacts are not casual and infrequent. I find mitigating condition (c) does not apply.

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) the 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 common sense 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. Applicant is a young man who recently surrendered his Iranian passport after his wife became a U.S. citizen. She and their son are dual citizens of Iran and the U.S. Applicant has family ties through his wife to her family in Iran and through his father. His wife continues to be an active dual citizen. Her family has been denied a visa to the U.S. so she visits them in Iran. Applicant and his wife's contact with family in Iran create a heightened security risk. Iran is a country of concern due to their animosity toward the U.S., their approval of state sponsored terrorism and their human rights record. Applicant has been an active dual citizen of Iran and recently surrendered his passport, thereby mitigating the foreign preference concerns. However, Applicant has not met his heavy burden of persuasion regarding the foreign influence security concerns. Overall, the record evidence leaves me with serious questions and 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 Foreign Preference, but failed to mitigate 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
Subparagraphs 1.a-1.e:	For Applicant
Paragraph, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a-2.c.	Against Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge