



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-07251
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

July 31, 2009

Decision

CURRY, Marc E., Administrative Judge:

Applicant, a naturalized United States citizen originally from Iran, failed to mitigate the foreign preference and foreign influence concerns generated by his relationship with his mother, an Iranian citizen and resident, and his intention to renew his currently expired Iranian passport to visit her in the future. Clearance is denied.

On November 20, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines C, foreign preference, and B, foreign influence. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; 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 on December 12, 2008, admitting all of the allegations and requesting a hearing. The case was assigned to me on May 15, 2009, after having been transferred from another administrative judge. On May 22, a Notice of Hearing was issued scheduling the case for June 8, 2009. It was held as scheduled. At the hearing, I received two government exhibits, 15 Applicant exhibits, and Applicant's testimony. The transcript was received on June 16, 2009.

Ruling on Evidence

Department Counsel requested I take administrative notice of the facts set forth in 16 exhibits that I marked and identified as Exhibits I through XVI. I took administrative notice of the facts set forth in Exhibits I through XIII, and reserved on those set forth in Exhibits XIV through XVI. Upon reviewing Exhibits XIV through XVI, I have declined to take administrative notice of their encapsulated facts. The following is a summary of the adjudicative facts:

1. Iran is hostile to the interests of the United States, and the State Department has designated it as a state sponsor of terrorism;
2. Iran is attempting to acquire weapons of mass destruction;
3. Iran has an abysmal human rights record. The abuses include summary executions, lack of fair public trials, arbitrary arrest and detention, and severe restrictions on civil liberties including speech, press assembly, association, movement, and privacy;
4. Iranian security forces have at times monitored the social activities of its citizens, entered homes and offices, monitored phone conversations, and opened mail without court authorization; and,
5. Iran provides lethal support to Iraqi militant groups that have targeted U.S. troops and killed innocent Iraqi civilians.¹

Findings of Fact

Applicant is a 51-year-old married man with two children, ages 18 and 21. He was born and raised in Iran. His wife and children are United States citizens by birth. His wife is a high school French teacher, and his children are students.

Applicant emigrated to the United States in 1975 to pursue higher education (Tr. 52). He earned a bachelor of science in nuclear engineering in 1979, a master of science degree in materials engineering in 1982, and a PhD in materials engineering in 1987 (Exhibit A). After earning his PhD, Applicant conducted post-doctoral research for two years, focusing on physics (*Id.*).

¹See generally, Hearing Exhibits I-XIII.

Since 1989, Applicant has worked for a defense contractor . He is an internationally renowned expert in this field (Exhibits B and C). During his career, his research has resulted in the issuance of 15 U.S. patents (Exhibit A at 5; Tr. 49). Since 2004, he has been the company's director of research and development (Exhibit 1 at 11). His former supervisor, who recently retired, characterized Applicant as one of the most talented individuals he ever encountered during his 30-year career (Exhibit B at 2).

Applicant is actively involved in his community, among other things, working with municipal officials on a task force aimed at promoting math and science education in the city's public high schools; serving on the board of directors for a foundation that sponsors medical research and provides support for families of individuals afflicted with a rare, debilitating disease; and coaching youth soccer (Tr. 77-78). During the past two U.S. presidential elections, he actively campaigned. Also, Applicant gives frequent lectures about Iranian culture and history at local public libraries as part of an educational program that his municipality sponsors (Tr. 50).

Applicant became a naturalized U.S. citizen in 2005. He has two sisters who are both naturalized U.S. citizens, neither of whom live in Iran.

Applicant's mother is an Iranian citizen and resident (Answer). He does not support her financially because she is financially independent (Tr. 67). She is a homemaker. She spends approximately six months per year living in the United States with either of Applicant's sisters (Tr. 63).

Applicant's father is deceased. He was (Tr. 67). After the Revolution, Applicant's father became a prominent dissident (Tr. 71). In 1980, he was imprisoned and executed. That year, the Iranian government also executed several other relatives of Applicant, (Tr. 72).

Applicant's mother remarried in 1993 (Tr. 68). Her current husband worked for a government customs agency before retiring. Now he performs consulting work for an import/export business (Tr. 64).

Applicant has an uncle who is an Iranian citizen and resident. He is involved in the import and export of commercial goods, primarily consisting of glass for cars (Tr. 84). Several years ago, the uncle asked Applicant "if there was an interest, a commercial interest, regarding a technology" (*Id.*). Applicant contacted his company's attorney who told him that his company could not conduct business with an Iranian company because of the relationship between the two respective governments (Tr. 85). Applicant informed his uncle, and "that was the end of that" (*Id.*).

In 1979, Applicant voted in an Iranian election through a U.S. consulate office (Tr. 62). He has not voted in an Iranian election since becoming a U.S. citizen in 2005. In

1979, when visiting Iran, Applicant participated in a protest espousing freedom of the press (Tr. 74). He was attacked by government supporters (*Id.*).

Applicant continued to protest the Iranian government during the 1980s (Tr. 75). In 1983, a pro-Iranian government militant threatened him during a protest in the U.S. (Tr. 90).

Applicant has visited his family in Iran twice in the past six or seven years (Tr. 86). His most recent trip was in 2004. He used his Iranian passport (Answer). It expired in 2008. He plans to return in the future. His wife and children have obtained Iranian passports in anticipation of their next visit (Exhibit 1 at 19). Applicant intends to renew his Iranian passport for use in future travel to Iran (Tr. 61). He prefers to travel to Iran with his Iranian passport because “the current state of relation between [his] country of origin and [his] adopted country” would render it nearly impossible to travel to Iran expeditiously in the event of an emergency (*Id.*).

Applicant owns no property in Iran. All of his assets are in the U.S. including, but not limited to, a \$700,000 life insurance policy (Exhibit L), brokerage accounts collectively valued at \$225,000 (Exhibit H), and a \$241,000 retirement plan (Exhibit J).

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 overarching adjudicative goal is a fair, impartial and commonsense 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.”

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.

Analysis

Guideline C, Foreign Preference

Under this guideline, “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 ¶ 9). Applicant’s intent to renew his Iranian passport to travel to Iran in the future, raises a foreign preference security concern.

SOR subparagraph 1.d alleges Applicant used an Iranian passport instead of his U.S. passport to travel to Iran. Although he used it for travel to Iran, the government did not establish that any of the travel occurred after he became a naturalized U.S. citizen. Applicant does not possess a valid Iranian passport. I resolve SOR subparagraph 1.d in Applicant’s favor.

Applicant voted in an Iranian election after immigrating to the U.S. However, he did so more than 20 years ago, before he became a naturalized U.S. citizen. AG ¶ 10(a), “exercise of any right, privilege, nor obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member [including] but . . . not limited to: (1) possession of a current foreign passport; [and] (7) voting in a foreign election,” does not apply.

An applicant’s conduct need not have a sinister motive to be disqualifying under Guideline C. Moreover, the negative security significance of acts indicative of a foreign preference is not negated or diminished merely because an applicant engages in those acts for personal reasons or for personal convenience (*See, e.g.*, ISCR Case No. 99-0295 (October 20, 2000) at p. 4; ISCR Case No. 98-0252 (September 15, 1999) at p. 8). Consequently, Applicant’s intent to renew his Iranian passport to expedite travel to Iran in the event of a family emergency constitutes an example of a foreign preference security concern to which AG ¶ 10(a) applies.

Applicant intends to continue exercising his dual citizenship to facilitate future travel to Iran. Consequently, none of the mitigating conditions apply.

Guideline B, Foreign Influence

Under this guideline, “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” (AG ¶ 6).

Applicant's mother is a citizen and resident of Iran, a brutal, totalitarian dictatorship that seeks to project its power throughout the Middle East through sponsoring terrorists, developing weapons of mass destruction, and undermining civil society in Iraq. In the 30 years since this Iranian government seized power, it has executed Applicant's father and several other relatives. Further, Applicant himself was once attacked for participating in a demonstration in Iran, and he was threatened by a pro-Iranian government militant during a protest in the U.S. 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," applies.

Applicant is close to his mother, as demonstrated by his refusal to rule out renewing his Iranian passport in the event he needed to visit her during an emergency. Because Iran is hostile to the U.S., Applicant bears a heavy burden to show that his ties to his mother do not pose a security risk (see e.g., ISCR Case No. 03-09053 (App. Bd. Feb 22, 2008) at p. 4).

Because Applicant's mother spends half of her time living in the U.S., the opportunity for exploitation is reduced. The possibility of the Iranian government exploiting her through her finances is reduced because she is financially independent. Given Applicant's heavy burden, as described above, these facts are insufficient to trigger the application of 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."

Applicant is an internationally renowned scientist and innovator. He is a pillar of his community, highly active in civic, political, and humanitarian affairs. His wife and children are native-born U.S. citizens, he has lived in the U.S. for more than 30 years, and all of his financial interests are in the U.S. These appear to be the type of ties to the U.S. that would be critical in assessing whether AG ¶ 8(b), "there is no conflict of interest, either because the individual's sense of loyalty or obligation to a 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." The Appeal Board, however, has concluded that such ties have little probative value (ISCR Case No. 06-25202 (App. Bd. Feb 22, 2008) at p. 6). In the same decision, the Appeal Board also reaffirmed precedent pre-dating the 2006 revision to the Guidelines, asserting that what applicants would do in a hypothetical situation involving coercion by a foreign power has little probative value unless such a situation had occurred in the past (*Id.*). Consequently, AG ¶8(b) applies, but has little security significance.

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.

I have considered the whole person factors in my evaluation of the security concerns. Applicant's respect for, and promotion of his cultural heritage is commendable, as is his close relationship with his mother. I cannot reconcile these positive attributes with the vulnerability to coercion generated by his mother's Iranian citizenship and residence. 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 C:	AGAINST APPLICANT
Subparagraphs 1.a - 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a - 2.b:	Against Applicant

Conclusion

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

MARC E. CURRY
Administrative Judge