



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



In the matter of:)
)
) ISCR Case No. 08-08098
)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: Kevin M. Sherlock, Esq.

October 13, 2009

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated Foreign Preference concerns, but he has not mitigated Foreign Influence security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On March 12, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B and C, Foreign Influence and Foreign Preference. The action was taken under Executive Order (EO) 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 (DoD) for SORs issued after September 1, 2006.

Applicant answered the SOR on April 28, 2009, and requested a hearing before an administrative judge. The case was assigned to me on July 2, 2009. DOHA issued a notice of hearing on July 16, 2009, scheduling the hearing for August 5, 2009. The hearing was convened as scheduled. DOHA received the transcript of the hearing (Tr.) on August 13, 2009.

Procedural and Evidentiary Rulings

Notice

I advised Applicant of his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived his right to 15 days notice.

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about Iran. Applicant did not object and the request was approved. The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibit (HE) I. The facts administratively noticed are set out in the Findings of Fact, below.

Evidence

The government offered Exhibits (GE) 1 through 3, which were received without objection. Applicant testified on his own behalf, called two witnesses, and submitted Exhibits (AE) A through U, which were received without objection. The record was held open for Applicant to submit additional information. Applicant submitted three documents, which were marked AE V through X and admitted without objection. Department Counsel's memorandum is marked HE II.

Findings of Fact

Applicant is a 36-year-old engineer for a defense contractor. He is applying for his first security clearance. He is single and has no children. He was born in Kuwait. His parents were Iranian citizens living in Kuwait. Applicant has never lived in Iran, but as a child he would visit Iran with his family during his summer vacations. He attended an Iranian school in Kuwait until he was 11 years old, at which time he entered an English language school. English became his primary language. He cannot read or write Farsi and is not fluent speaking the language.¹

Applicant's parents brought him and his four siblings to the United States in the late 1980s. One of his siblings required medical attention for a rare genetic disorder. His father returned to Kuwait to attend to his business, but the rest of the family remained in the U.S. Applicant was enrolled in high school. He graduated high school with a high grade point average and numerous awards. He attended community college before

¹ Tr. at 22-26, 32, 35-39, 71, 73, 107-109, 140; Applicant's response to SOR; GE 1, 2; AE A, B.

transferring to a four-year university. He graduated with honors and obtained his bachelor's degree.²

Applicant's father was openly critical of the Iranian government. When Iraq invaded Kuwait in 1990, he went to Iran to avoid the Iraqi army. Because of his political opinions and outspoken criticism of the Iranian government, he was detained and incarcerated in Iran. His family lost touch with him for several years. His business in Kuwait was looted and destroyed by the Iraqi army. Applicant has had very limited contact with his father since Applicant came to live in the U.S.³

Applicant and the remainder of his family applied for political asylum in the U.S. in the early 1990s. They were denied asylum but were granted permanent resident status. Applicant became a U.S. citizen in 2006, and received a U.S. passport shortly thereafter.⁴

Applicant's four siblings are all U.S. citizens and residents. His mother is also a U.S. citizen. As discussed below, U.S. citizens who were born in Iran and the children of Iranian citizens are considered Iranian citizens by Iranian authorities. Under Iranian law, Applicant, his mother, and his siblings are considered Iranian citizens. All of his siblings are college graduates living in the same state as Applicant. Two of his siblings are married to U.S. citizens. One of his married siblings has a child who was born in the U.S.⁵

Applicant traveled to Kuwait in 2007. His mother met him in Kuwait a few weeks later. Applicant met his father in Kuwait by happenstance. His father divides his time living in Kuwait and Iran. His father was living in a house that required a lot of repairs. Applicant, although not close to his father, worked on his father's house for about three months. Applicant paid for many of the repairs on the house.⁶

After several months in Kuwait, Applicant traveled with his mother to Iran to visit extended family, sightsee, and for his mother to check on the status of her assets in Iran. He used his Iranian passport to enter Iran. Upon entry to Iran, Applicant was required to complete paperwork to establish his exemption from Iranian military service. While in Iran, Applicant was informed that his entry/exit permit had expired. He was unaware before then that he needed an entry/exit permit before he could depart Iran. He was told that he could obtain a one-way temporary permit to leave Iran if he filed the appropriate application forms. The application required his military exemption card and his Iranian passport. When he submitted his application, he was informed that his

² Tr. at 26-35, 40-41, 48-49; Applicant's response to SOR; GE 1, 2; AE C-H.

³ Tr. at 23, 111-113, 131; Applicant's response to SOR; GE 2.

⁴ Tr. at 32-34, 113, 132-134; Applicant's response to SOR; GE 1-3; AE I.

⁵ Tr. at 42-44; Applicant's response to SOR; GE 1, 2.

⁶ Tr. at 61-70, 96-97, 109-110, 113-118, 126; Applicant's response to SOR; GE 1-3; AE P.

Iranian passport needed to be replaced with a new passport. He applied for and received a new Iranian passport.⁷

Applicant and his mother stayed at his mother's house while they were in Iran. His cousin, who is a citizen and resident of Iran, stayed with them while they were in Iran. Applicant and his mother left Iran for about two weeks to visit another country and then returned to Iran. Their total time in Iran was about five months. Their stay in Iran was extended to attend a wedding of a cousin and a funeral of a distant relative. Applicant was briefed and debriefed by his facility security officer (FSO) before and after his trip.⁸

Applicant's mother has been involved in an extended legal dispute with her brother over property in Iran. The assets in the dispute are valued at about \$1,000,000. The brother forged some documents to essentially steal her property. Applicant saw some of his uncle's actions and is a potential witness in the legal case. Applicant's mother has been in Iran for more than a year working on her case. She was still in Iran at the close of the record, but hoped to permanently return to the U.S. as soon as possible.⁹

Applicant's cousin has continued to assist Applicant's mother while she is in Iran, with things such as driving her to see her lawyer and to get her groceries. He is interested in the possibility of a relationship with Applicant's youngest sister. Applicant does not believe the potential relationship will develop because of the large cultural and language differences between his sister and his cousin.¹⁰

Applicant's grandmother is a citizen and resident of Iran. Applicant does not have contact with his grandmother because she has taken his uncle's side in the legal dispute with his mother.¹¹

Applicant has other extended family members who are citizens of and residents in Iran. He is not close to any of them. None of Applicant's family members have any direct connection to the government of Iran.¹²

Applicant initially indicated that he was keeping his Iranian passport so that he could travel to Iran to be a witness in his mother's legal case. He decided not to keep the passport. The Iranian passport was given to his FSO, who destroyed it on August 5,

⁷ Tr. at 70-76; Applicant's response to SOR; GE 1-3; AE S, U.

⁸ Tr. at 71-72, 76, 98, 121-124, 144; Applicant's response to SOR; GE 1-3; AE O, T.

⁹ Tr. at 76-93, 127-128; Applicant's response to SOR; GE 1-3; AE Q, R, V-X.

¹⁰ Tr. at 99-104, 126-127; Applicant's response to SOR.

¹¹ Tr. at 97-98, 125; Applicant's response to SOR; GE 1.

¹² Tr. at 104-106, 125-127; Applicant's response to SOR.

2009. Applicant has no desire to return to Iran. He is willing to renounce his Iranian citizenship.¹³

Applicant does not own any foreign assets. He has transferred a potential interest in a property inherited by him and his siblings to his mother. He has done well financially and has substantial assets in the U.S.¹⁴

Two witnesses, including the FSO and a senior executive at Applicant's company, testified on his behalf. Numerous character letters and commendatory material were also submitted. Applicant is described as an outstanding engineer, honest, trustworthy, intelligent, capable, dependable, dedicated, hardworking, loyal, responsible, and a man of integrity. He is considered a good citizen, who is very loyal to the United States. He is highly recommended for a security clearance.¹⁵

Iran

Iran is a constitutional Islamic republic with a theocratic system of government in which Shi'a Muslim clergy dominate the key power structures, and ultimate political authority is vested in a learned religious scholar. The U.S. has not had diplomatic relations with Iran since 1980. In 2008, President Bush stated that "[t]he actions and policies of the Government of Iran are contrary to the interests of the United States in the region and pose a continuing unusual and extraordinary threat to the national security, foreign policy, and economy of the United States." The United States has defined the areas of objectionable Iranian behavior as:

- Iran's efforts to acquire nuclear weapons and other weapons of mass destruction (WMD);
- Its support for and involvement in international terrorism;
- Its support for violent opposition to the Middle East peace process; and
- Its dismal human rights record.

The U.S. has designated and characterized Iran as the world's leading state sponsor of terrorism. Iran provides critical support to non-state terrorist groups. Iran has sought to make the United States suffer political, economic, and human costs. Further, Iran has engaged in efforts to sow violence and undermine stability in Iraq and Afghanistan, including lethal support for groups that are directly responsible for hundreds of U.S. casualties.

The government of Iran has committed numerous, serious human rights abuses against the Iranian people. Abuses include political killings and incarceration; summary executions, including of minors; disappearances; religious persecution; torture; arbitrary

¹³ Tr. at 81-83, 93-96, 129, 136-137, 145-155; Applicant's response to SOR; GE 2; AE U-X.

¹⁴ Tr. at 59-60, 106-107, 129-131; Applicant's response to SOR; AE N.

¹⁵ Tr. at 141-160; AE J-M.

arrest and detention, including prolonged solitary confinement; denial of due process; severe restrictions on civil liberties - speech, press, assembly, association, movement and privacy; severe restrictions on freedom of religion; official corruption; violence and legal and societal discrimination against women, ethnic and religious minorities, and homosexuals; trafficking in persons; and child labor.

The State Department continues to warn U.S. citizens to consider carefully the risks of travel to Iran. U.S. citizens who were born in Iran and the children of Iranian citizens, even those without Iranian passports who do not consider themselves Iranian, are considered Iranian citizens by Iranian authorities, since Iran does not recognize dual citizenship. Therefore, despite the fact that these individuals hold U.S. citizenship, under Iranian law, they must enter and exit Iran on an Iranian passport, unless the Iranian government has recognized a formal renunciation or loss of Iranian citizenship. U.S.-Iranian dual nationals have been denied permission to enter/depart Iran using their U.S. passport; they even had their U.S. passports confiscated upon arrival or departure. U.S.-Iranian dual citizens have been detained and harassed by the Iranian government. Iranian security personnel may place foreign visitors under surveillance. Hotel rooms, telephones and fax machines may be monitored, and personal possessions in hotel rooms may be searched.

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 to be used 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, administrative judges apply the guidelines 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." 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 the 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 adverse 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

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. Two are potentially applicable in this case:

(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 possessed and used an Iranian passport while a U.S. citizen. AG ¶ 10(a) applied at one point. The renewal of his Iranian passport while a U.S. citizen could raise concerns under AG ¶ 10(b), as an action to obtain recognition of his Iranian citizenship.

Conditions that could mitigate Foreign Preference security concerns are provided under AG ¶ 11. Three are potentially applicable:

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

Iran continued to consider Applicant an Iranian citizen after he was naturalized as a U.S. citizen. As such, he was required to use an Iranian passport to enter Iran. He has surrendered the passport to his company's FSO, who destroyed it. To the extent that Iran considers him an Iranian citizen, he is willing to renounce that citizenship. AG ¶ 11(a) is partially applicable. AG ¶¶ 11(b) and (e) are applicable.

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 7:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Three are potentially applicable in this case:

- (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;

(i) conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

Applicant's grandmother, cousin, and extended family members are citizens of and residents in Iran, a country that is clearly hostile to the United States.¹⁶ His father is a citizen of Iran and divides his time living in Kuwait and Iran. His mother is a dual citizen of Iran and the United States. She lives permanently in the United States, but has been in Iran for more than a year. Iran is considered the world's leading state sponsor of terrorism, and the government of Iran has committed numerous, serious human rights abuses against its people. His family members' presence in Iran creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. It also creates a potential conflict of interest. Applicant's travel to Iran and interaction with the government of Iran made him vulnerable to exploitation, pressure, and coercion by the Iranian government. AG ¶¶ 7(a), 7(b), and 7(i) have been raised by the evidence.

Conditions that could mitigate Foreign Influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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.;

(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; 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 was an Iranian citizen by birth, but he was born and raised in Kuwait. He has been in the United States for more than 20 years and has been a U.S. citizen since 2006. He is not close to his cousin and extended family in Iran. AG ¶¶ 8(a), 8(b), and 8(c) are applicable to the security concerns related to those family members. He is currently estranged from his grandmother because of her siding with his uncle in the property dispute with his mother. The familial bonds with the uncle are almost certainly irrevocably severed. However, the dispute with the grandmother is more likely to be

¹⁶ ISCR Case No. 05-03250 at 5 (App. Bd. Apr. 6, 2007).

resolved. AG ¶¶ 8(a), 8(b), and 8(c) are partially applicable to the security concerns related to Applicant's grandmother.

Applicant's Iranian passport was destroyed. He is no longer vulnerable to exploitation, pressure, and coercion by the Iranian government because of his 2007 trip to Iran. AG ¶¶ 8(a), 8(b), and 8(c) are applicable to the security concerns related to that trip.

Applicant's mother is a dual citizen of the United States and Iran. She has been in Iran for more than a year fighting an extensive legal case over more than \$1,000,000 in assets. His father is a citizen of Iran and splits his time between living in Kuwait and Iran. Applicant and his father have not been close in many years because of their separation. Applicant chose to spend three months laboring and spending his own money on his father's house in Kuwait. They may not be close, but there are still some ties of obligation. Applicant is clearly a loyal U.S. citizen with no allegiance to the government of Iran. However, because of his close family ties to Iran and the nature of the government of Iran, I am unable to find any of the mitigating conditions to be fully applicable to the security concerns related to his mother and father.

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 commonsense 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. I have incorporated my comments under Guidelines C and B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant was born and raised in Kuwait to Iranian parents. He has been in the United States for more than 20 years and has been a U.S. citizen since 2006. He and his siblings have thrived in this country. He is highly regarded personally and professionally.

I considered the totality of Applicant's family ties to Iran, a country that is clearly hostile to the United States, and the heavy burden an applicant carries when he or she has family members in a hostile country. 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 government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism. Iran is the world's leading state sponsor of terrorism and has a dismal human rights record. Applicant's mother is currently in Iran, and his father splits his time between Iran and Kuwait. Applicant is obviously an intelligent, honest, trustworthy, and loyal U.S. citizen. Unfortunately, through no fault of his own, he was unable to mitigate the considerable security concerns raised by his family in Iran.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated Foreign Preference concerns, but he has not mitigated Foreign Influence 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:	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	Against Applicant
Subparagraphs 2.d-2.h:	For 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge