



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-11799
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Department Counsel
For Applicant: *Pro se*

September 10, 2010

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on August 7, 2008. On August 6, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and C for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

The Applicant responded to the SOR in writing on September 2, 2009, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on July 23, 2010. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on July 29, 2010, and he submitted a reply. The case was assigned to the undersigned for resolution on August 19, 2010. Based upon a review of the case file, pleadings and exhibits, eligibility for access to classified information is denied.

REQUEST FOR ADMINISTRATIVE NOTICE

Department Counsel requested that I take administrative notice of certain facts concerning the current political conditions in Iran. (FORM at pp. 5 - 20 and attachments 1 through 16.) Applicant has no objection. The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

FINDING OF FACTS

The Applicant is 50 years old and married. He is employed by a defense contractor as an Architect, and is applying for a security clearance in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence, which could result in the compromise of classified information.

The Applicant was born in Tehran, Iran in 1959. He migrated to the United States in 1977, at the age of seventeen. He attended college from 1986 to 1989, and obtained a Bachelor's Degree. Over the next twenty-three years, he lived and worked in the United States and made it his permanent home. In September 1999, he became a naturalized United States citizen. In 2001, he obtained a United States passport. That same year, he married a native born United States citizen. He is a dual citizen of Iran and the United States. (Government Exhibit 4.)

His mother, father and sister are citizens of Iran. His parents reside in Iran. His mother is a 75 year old retired school teacher. His father is an 86 year old retired civil engineer. (Government Exhibit 5.) The Applicant maintains regular telephonic contact with them on a weekly basis. His sister currently resides in the United States but he has no contact with her. The Applicant states that neither his parents nor his sister are associated in any way with the Iranian government, nor are they aware that he is applying for a security clearance. The Applicant began working for his current employer in April 2008. (Government Exhibit 4.)

Paragraph 2 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant applied for and obtained an Iranian passport in 1976, for the purposes of traveling to Iran. After becoming a United States citizen in 1999, he renewed his Iranian passport in May 2004, and used it to enter and exit Iran in March or April 2005, during his travel to Iran to visit his parents. His Iranian passport expired in May 2009. When learning of DoD's policy concerning possession of a foreign passport,

the Applicant gave his passport to the security officer at his company for safekeeping, to be returned when needed. (See Government Exhibits 5 and 6.) He has not destroyed his Iranian passport. (See Government Exhibit 3 and Response to the FORM.) The Applicant states, "I have maintained my dual citizenships [sic] only to enable me to travel to Iran in cases of medical emergencies that may occur due to the aging of my parents". (Response to FORM at p. 3.) In fact, he indicates that he would not renounce his Iranian citizenship because he wants the ability to travel to Iran to visit his parents without being harassed by the Iranian government. (Government Exhibit 3.)

In the past, when the Applicant's previous security officer, to whom he had given his passport for safekeeping, terminated her position with the company, the Applicant's passport was returned to him. (Government Exhibit 3.)

The United States Government's concerns with Iran's policies include, but are not limited to the following: (1) its clandestine efforts to acquire nuclear weapons, and other weapon of mass destruction, (2) its sponsorship of international terrorism, (3) its intervention into the internal affairs of Iraq, (4) its aggressive efforts to undermine the Middle East peace process, and (5) its human rights violation against its own people. As a result of these concerns, the U.S. prohibits most trade with Iran. Also, the United States does not encourage travel to Iran.

POLICIES

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Guideline B (Foreign Influence)

6. *The Concern.* 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.

Condition that could raise a security concern:

7. (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

Conditions that could mitigate security concerns:

None.

Guideline C (Foreign Preference)

9. *The Concern.* 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.

Condition that could raise a security concern:

10. (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.

Conditions that could mitigate security concerns:

11. (a) dual citizenship is based solely on parent's citizenship or birth in a foreign country;

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

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The voluntariness of participation;
- f. The presence or absence of rehabilitation and other pertinent behavior changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress;
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to classified information.

The DoD Directive states, “The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination.” The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

CONCLUSION

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in foreign influence and foreign preference that demonstrates poor judgment or unreliability.

It is the Government’s responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant’s conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government’s case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

In this case the Government has met its initial burden of proving that the Applicant is subject to foreign influence (Guideline B) and has a foreign preference (Guideline C). This evidence indicates unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guidelines B and C of the SOR.

Under Foreign Influence, Guideline B, Disqualifying Condition 7(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion* applies. None of the mitigation conditions are applicable.

The Applicant is a dual citizen of Iran and the United States. Although he has lived in the United States for many years, has become a naturalized citizen, and is married to a native born American citizen, he has close, immediate family members in Iran that he has a strong emotional bond with. This is evidenced by his regular weekly telephonic contact with his parents in Iran. The nature of his relationship with his parents in Iran is not casual and/or infrequent, but clearly of a nature that is regular, consistent and ongoing. This deep emotional bond with his parents in Iran are foreign contacts that pose a security risk. Under the heightened scrutiny analysis, the Applicant's family in Iran pose a significant security risk. Accordingly, I find against the Applicant under this guideline.

Admittedly, the Applicant is a citizen of Iran by birth. However, he has exercised a right and privilege of a foreign citizen, by applying for and using an Iranian passport, after becoming a United States citizen. Although he has recently given his now expired Iranian passport to his company's security department, he has not "surrendered" the passport in a manner that satisfies the language, meaning and intent of the regulation. Since, he may retrieve it at any time, and renew it, it has not been surrendered. He has not destroyed it, nor does he intend to. It is apparent that he will use it in the future if he decides to travel to Iran. He has specifically indicated that he does not wish to renounce his Iranian citizenship because he would like to travel to Iran to visit his parents when he chooses.

Under Foreign Preference, Disqualifying Condition 10(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* applies. Mitigation Conditions 11(a) *dual citizenship is based solely on parent's citizenship or birth in a foreign country* and, 11(e) *the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated* are arguably applicable in this case, but are not controlling here. The Applicant is not willing to renounce his dual citizenship with Iran that clearly shows a foreign preference. Accordingly, I find against the Applicant under this guideline.

I have considered all of the evidence presented, including his favorable recommendations, however, it does not mitigate the negative effects of his foreign influence and foreign preference and the effects that it can have on his ability to safeguard classified information.

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the SOR.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.
Subpara. 1.a.: Against the Applicant.

Paragraph 2: Against the Applicant.
Subpara. 2.a.: Against the Applicant.

CONCLUSION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey-Anderson
Administrative Judge