



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-00744
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

June 22, 2010

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns under Guideline B (Foreign Influence) raised by Applicant's family ties to Iran. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on August 1, 2008. On August 20, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing security concerns under Guidelines B and C. DOHA acted 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) implemented by the Department of Defense on September 1, 2006.

Applicant received the SOR on August 27, 2009; answered it on August 31, 2009; and requested an administrative determination on the record without a hearing before an administrative judge. DOHA received the request on September 3, 2009. On January 8, 2010, Applicant changed his mind and requested a hearing. Department Counsel was ready to proceed on February 12, 2010, and the case was assigned to me on February 19, 2010. DOHA issued a notice of hearing on February 24, 2010, scheduling the hearing for March 25, 2010. I convened the hearing as scheduled. The Government withdrew the Guideline C allegations at the hearing. Government Exhibits (GX) 1 and 2 were admitted in evidence without objection. Applicant testified, presented the testimony of five witnesses, and submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. DOHA received the transcript (Tr.) on April 2, 2010.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Iran. The request and the documents attached as enclosures were not admitted in evidence but are attached to the record as Hearing Exhibit (HX) I. I took administrative notice as requested by Department Counsel. (Tr. 20.) The facts administratively noticed are set out below in my findings of fact.

Findings of Fact

In his answer to the SOR, Applicant admitted all the allegations in the SOR. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 51-year-old computer systems analyst for a federal contractor. He has worked for his current employer since August 2007. He has never held a security clearance. He previously applied for a clearance with another agency, but his application was denied because he had an active Iranian passport. (Tr. 47-48.)

Applicant was born in Iran. He came to the United States in December 1978, when he was 19 years old. He was accompanied by his aunt. He received a bachelor's degree in industrial technology in 1986. (Tr. 36-39.) He became a U.S. citizen in January 1992. (GX 1 at 7.)

Applicant worked for another federal contractor from November 1998 until he was hired by his current employer. He married a U.S. citizen in May 1983 and divorced her in January 1986. He married another U.S. citizen in October 1994. He has two children from his current marriage, ages 11 and 9. (GX 1 at 13-18; Tr. 48-49.)

Applicant obtained an Iranian passport in April 1997 to visit his ailing father in Iran. He visited his father for two weeks. His father passed away a few months later. His Iranian passport expired in April 2007, and he has not renewed it.

Applicant's parents are deceased. His only sibling is a sister who is a citizen and resident of Iran. He has telephonic contact with his sister about 12 times a year. (GX 2

at 3.) In September 2004, he filed a petition for his sister to immigrate to the United States. His sister is a homemaker, married to an Iranian, and has one daughter. Applicant does not know what his sister's husband does for a living, but he knows her husband is not connected to the Iranian government or military. (Tr. 55-56.) Applicant has seen his sister for only two weeks in the last 31 years, when he went to Iran to visit his dying father. His sister will be required to leave her family behind if she comes to the United States. (Tr. 59-60.) Applicant was notified in January 2010 that the U.S. Citizenship and Immigration Service had approved the petition. The notification does not grant any immigration status and does not guarantee that his sister will be eligible for a visa. (AX A.)

Applicant has telephonic contact about once a year with the aunt who accompanied him to the United States in 1978. She is a retired university professor. A second aunt with whom he maintained contact recently passed away. (Tr. 61-63.)

Applicant has telephonic contact about five times a year with a cousin who is an Iranian citizen but lives in Canada. He has telephonic contact about five times a year with a nephew who is a citizen of Iran but lives in the United Kingdom. All his other relatives (an uncle, his uncle's wife, and a cousin) are naturalized citizens and residents of the United States. (GX 2 at 3.)

Applicant has no real estate or other assets in Iran. He owns a home in the United States worth about \$700,000, a second home worth about \$300,000, and a vacation time share worth about \$7,000. He has retirement accounts worth \$229,700, personal property worth \$50,000, and savings of \$137,000. (AX B.)

Applicant testified that his loyalty is to the United States, and that he has no loyalty to Iran. He is devoted to the United States, his spouse, and his children. (Tr. 31-32.)

Applicant's sister-in-law has known him since he and her sister began dating in the early 1990s. She described Applicant as a "very honorable, honest man." She testified that Applicant would never do anything to hurt someone he cares about. If anyone tried to coerce Applicant, he would report the effort to the appropriate authorities. (Tr. 73-75.)

A coworker testified he does not regard Applicant as a security risk. The coworker was not familiar with the SOR, but he is aware that Applicant has a sister and an elderly aunt in Iran, and that Applicant's family is close knit. (Tr. 79-80.)

Two of Applicant's close friends who have known him for 20 years testified that they do not regard Applicant as a security risk. They are aware that Applicant has a sister in Iran and is sponsoring her for immigration to the United States. (Tr. 83-84, 87-89.)

Applicant's spouse testified that Applicant is a very devoted husband and father. He is close to his sister in Iran, but they do not talk about his work, and his sister is unaware of his work. She testified that Applicant's life revolves around his spouse and children. She is confident that if anyone attempted to coerce him through his sister, he would report it immediately. (Tr. 91-96.)

I have taken administrative notice that Iran is a theocratic Islamic republic dominated by Shia Muslim clergy, with ultimate political authority vested in a learned religious scholar. Current U.S. concerns about Iran are based on its efforts to acquire nuclear weapons and weapons of mass destruction; support for and involvement in international terrorism; support for violent opposition to the Middle East peace process; and its human rights abuses, including summary executions, torture, arbitrary arrest and detention, and restrictions on civil liberties. Iran has provided guidance, training, and weapons to Shia political and militant groups in Iraq. It also provides encouragement, training, funding, and weapons to anti-Israeli terrorist groups in its efforts to undermine the Arab-Israeli peace process (HX I at 1-5).

I also have taken administrative notice that the U.S. has designated Iran as a state sponsor of terrorism. The U.S. broke diplomatic relations with Iran in April 1980, prohibits most trade with Iran, and uses multilateral sanctions and diplomatic pressure to contain the threats posed by Iran (HX I at 3).

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline B, Foreign Influence

The SOR alleges Applicant’s sister, aunts, and cousins are citizens and residents of Iran (SOR ¶¶ 1.a-1.b), and he traveled to Iran “at least” in July 1997 (SOR ¶ 1.c). The evidence establishes that Applicant has a sister and one elderly aunt living in Iran. He has two cousins who are Iranian citizens, but one resides in Canada and the other in the United Kingdom. All his other relatives are naturalized citizens and residents of the United States. He traveled to Iran in July 1997 for two weeks to visit his dying father, and has not returned to Iran since the death of his father.

The security concern under this guideline is set out in AG ¶ 6 as follows:

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.

Two disqualifying conditions under this guideline are relevant. First, a disqualifying condition may be raised by “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.” AG ¶ 7(a). Second, a disqualifying condition may be raised by “connections to a foreign person . . . 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 . . . by providing that information.” AG ¶ 7(b).

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, 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, or the country is known to conduct intelligence operations against the U.S.

Iran’s hostility to the United States places a “very heavy burden of persuasion” on Applicant to demonstrate that his family members in Iran do not pose a security risk, and he is not in a position to be forced to choose between loyalty to the United States and his family members. See ISCR Case No. 02-13595 at 3 (App. Bd. May 10, 2005) (stating an applicant has “a very heavy burden of persuasion to overcome the security concerns” when parents and siblings live in Iran). See *also* ISCR Case No. 04-11463 at 4 (App. Bd. Aug. 4, 2006) (articulating “very heavy burden” standard when an applicant has family members living in Iran).

The nature of Iran’s government, its quest for sensitive information, its deplorable human rights record, and its hostility to the United States create the “heightened risk”

contemplated by AG ¶ 7(a) and the “potential conflict of interest” contemplated by AG ¶ 7(b). Both disqualifying conditions are raised by the evidence, shifting the burden to Applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Two mitigating conditions under this guideline are relevant:

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.; and

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’s sister and aunt are not connected to the Iran government. Nevertheless, the nature of that government, its abuse of its citizens, and its hostility to the United States preclude application of AG ¶ 8(a).

The application of AG ¶ 8(b) is a closer question. Applicant undoubtedly has strong ties to the United States, but his witnesses also testified that Applicant, his sister, and his aunt are members of a close-knit family. His aunt accompanied him to the U.S. in 1978. His sister-in-law testified he is the kind of person who would never do anything that would hurt someone close to him.

Applicant testified that his loyalty is solely to the United States, his spouse, and his children, and that he has no loyalty to Iran. His witnesses testified that he would resist and report attempts to coerce him. This testimony is of limited value, however, “unless there is record evidence that the applicant has acted in a similar manner in the past in comparable circumstances, or that the applicant has a previous track record of complying with security regulations and procedures in the context of dangerous, high-risk circumstances in which he made a significant contribution to the national security.” ISCR Case No. 07-06030 at 3 (App. Bd. Jun. 19, 2008). Mindful of my obligation to decide close questions in favor of national security, I conclude that AG ¶ 8(b) is not established.

Applicant’s one trip to Iran to visit his dying father in July 1997 has no independent security significance. See ISCR Case No. 02-26978 (App. Bd. Sep 21, 2005). Accordingly, I resolve SOR ¶ 1.c in his favor.

Guideline C, Foreign Preference

At the beginning of the hearing, Department Counsel withdrew the Guideline C allegations. (Tr. 21.) Accordingly, I resolve all the allegations under Guideline C for Applicant.

Whole-Person Concept

Under the whole-person concept, an 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. An 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 have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a mature adult who has spent most of his adult life in the United States. He is deeply devoted to his family and his love for the United States is unquestionable. He has pursued and attained the American dream. On the other hand, he comes from a close-knit Iranian family. He has never been required to resolve the kind of conflict of interest that AG ¶ 8(b) contemplates. It is unlikely that the conflict of interest raised by his family ties to Iran will be resolved quickly. It took more than five years for his sister's immigrant application to be approved, and there is no indication that his sister will receive a visa in the near future.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on foreign influence. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence): AGAINST APPLICANT

 Subparagraphs 1.a-1.b: Against Applicant
 Subparagraph 1.c: For Applicant

Paragraph 2, Guideline C (Foreign Preference): FOR APPLICANT

 Subparagraphs 2.a-2.c: For Applicant (withdrawn)

Conclusion

In light of all of the circumstances, 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.

LeRoy F. Foreman
Administrative Judge