



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 09-02394
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: Francisco J. Mendez, Jr., Esquire, Department Counsel
For Applicant: *Pro se*

February 26, 2010

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 3 June 2009 the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B, Foreign Influence, and C, Foreign Preference.¹ Applicant answered the SOR 24 June 2009 and requested a hearing. DOHA assigned the case to me 29 July 2009 and I convened a hearing 25 August 2009. DOHA received the transcript (Tr.) 1 September 2009.

¹DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (RAG) effective within the DoD on September 1, 2006.

Findings of Fact

Applicant admitted the SOR allegations. He is a 39-year-old lead information systems engineer employed by a defense contractor since November 2007. He has not previously held a clearance.

Applicant was born in Iran in March 1970. In 1986, he fled Iran illegally with his mother, stepfather, and sister and came to the U.S., because they believed it unsafe for them to remain in Iran. Applicant's aunt had been executed by the government for anti-revolutionary activity when he was 12 years old, and his mother had been briefly detained a year later. Applicant's stepfather was a legal permanent resident of the U.S., and was able to sponsor the family for legal residence in the U.S. Applicant, his mother, and his sister became naturalized U.S. citizens in October 1992. He has voted in every election since.

Applicant was in high school when he fled Iran. He completed high school in the U.S. and went on to college, eventually obtaining undergraduate, master's, and doctoral degrees. He has worked in the U.S. since obtaining his undergraduate degree. He owns three homes, the one he lives in and two rental properties. His real estate holdings are worth nearly one million dollars. He has no financial interests or property in Iran.

Applicant's father and stepmother are resident citizens of Iran, neither of whom are employed in any government-related position. His stepfather is a dual citizen of the U.S. and Iran, whose business travel occasionally takes him to Iran. He and Applicant's mother divorced in 1997. Applicant has little contact with him out of deference to his mother, but considers him more of a father to him than his birth father.

Applicant's parents divorced when he was two, and his father was not involved in his life growing up. He provided no financial support to Applicant or his sister. Consequently, Applicant and his father are not close. Applicant has seen his father twice since fleeing Iran. In 1998, Applicant visited his father and stepmother in Turkey for two weeks to, as he put it, "give him his 15 minutes of fatherhood." [Tr 43] He also saw his father briefly in 2000, when his father visited the U.S. Applicant continues to have sporadic telephone contact with his father.

In 2001, Applicant learned that his father was seriously ill and might die. In contemplating that he might travel to Iran to see his father before he died, Applicant obtained an Iranian passport in June 2001. He knew he would not be able to go to Iran on his U.S. passport. However, both his mother and sister warned him against returning to Iran, citing the possible repercussions. Applicant reconsidered, and decided not to go to Iran. He never used the Iranian passport, which expired in June 2006. His mother has possession of the passport. His father recovered.

Applicant's character references, superiors and coworkers from his current and previous employers, uniformly praise his work, his trustworthiness, and his integrity. Each of them hold, or have held, security clearances, and so are aware of the

requirements for access and handling of protected material. Each strongly recommends Applicant for his clearance.

Iran is a fundamentalist Islamic republic with a poor human rights record. Its relations with the U.S. are confrontational and unlikely to improve given Iran's efforts to acquire nuclear weapons, its sponsorship of, support for, and involvement in, international terrorism, and its support for violent opposition to the Middle East peace process. Although Iran is a known collector of U.S. intelligence and sensitive economic information, it is not known to target U.S. citizens to obtain protected information.

Travel to Iran remains problematic. The Department of State's July 2009 Travel Warning continues to warn U.S. citizens to carefully consider the risks of travel to Iran, noting that dual national Iranian-American citizens may encounter difficulty in departing Iran. Some elements of the Iranian government and population remain hostile to the U.S. Consequently, American citizens may be subject to harassment or arrest while traveling or residing in Iran. Americans of Iranian origin are urged to consider the risk of being targeted by authorities before planning travel to Iran. In addition, Iranian authorities may deny dual nationals access to the U.S. Interests Section in Tehran, because they are considered to be solely Iranian citizens. Large-scale demonstrations have taken place in various regions throughout Iran over the past several years as a result of a sometimes volatile political climate. U.S. citizens who travel to Iran despite the travel warning are urged to exercise caution.

The U.S. government does not currently have diplomatic or consular relations with the Islamic Republic of Iran, and, therefore, cannot provide protection or routine consular services to American citizens in Iran. The Swiss government, acting through its Embassy in Tehran, serves as protecting power for U.S. interests in Iran. Neither U.S. passports nor visas to the United States are issued in Tehran. The Iranian government does not recognize dual citizenship and generally does not permit the Swiss to provide protective services for U.S. citizens who are also Iranian nationals. In addition, U.S. citizens of Iranian origin who are considered by Iran to be Iranian citizens have been detained and harassed by Iranian authorities.

Policies

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an applicant's suitability for access to classified information. Administrative judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial commonsense consideration of the factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against an applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline B (Foreign Influence) and Guideline C (Foreign Preference).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.²

Analysis

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications 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, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.³ Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.⁴ Security concerns may also be raised if there are 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.⁵

²See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

³Revised Adjudicative Guidelines, ¶ 6.

⁴Revised Adjudicative Guidelines, ¶ 7(a).

⁵Revised Adjudicative Guidelines, ¶ 7(b).

Applicant has virtually no contact with his father, even less with his stepmother. And, neither of them are connected in any way to the Iranian government. He did not travel to Iran in 2001 because of concerns over the consequences to him. He now understands the potential consequences for his clearance if he travels to Iran. Under Guideline B, the mere existence of a foreign family member is not sufficient. The nature of Applicant's contact with the family member must be examined to determine whether it creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. "Heightened" is a relative term denoting increased risk over some normally existing risk that can be said to be inherent anytime a family member lives subject to a foreign government. One factor that heightens the risk in Applicant's case is the nature of the Iranian government and its hostility towards the United States.

In assessing Applicant's potential for foreign influence, I have considered 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 interest of the U.S.⁶ I have also considered whether 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.⁷

Under the old adjudicative guidelines, a disqualifying condition based on foreign family members could not be mitigated unless an applicant could establish that the family members were not "in a position to be exploited." Thus, an administrative judge could not apply a balancing test to assess the extent of the security risk. Under the new guidelines, however, the potentially conflicting loyalties may be weighed to determine if an applicant can be expected to resolve any conflict in favor of the U.S. interest.

The nature of the government of Iran, its disregard for human rights, and its pursuit of nuclear weapons place a heavy burden on Applicant in mitigating the disqualifying conditions and the security concerns. Applicant has little relationship with his father and stepmother. Further, given their lack of connection to the Iranian government, it is highly unlikely that there could be a circumstance where Applicant is placed in a position of having to choose between the interests of his family and the government of Iran or interests of the United States because of the nature of the Iranian government. Applicant's relationship with his stepfather has been deeper than with his father, but their contact has been sharply curtailed since he divorced Applicant's mother in 1997. In addition, it does not appear that he is permanently resident in Iran or has any connection to the Iranian government. It is highly unlikely that he could be the focus of efforts to manipulate or pressure Applicant.

⁶Revised Adjudicative Guidelines, ¶ 8(a).

⁷Revised Adjudicative Guidelines, ¶ 8(b).

Applicant's sense of loyalty is demonstrably to the U.S. He has little if any sense of loyalty to Iran or to his father. He left Iran for to escape persecution over 23 years ago, and has established his roots in the U.S. He fled Iran because of fear of prosecution, and does not return for the same reason. His fears are well-founded, as his family has personally experienced persecution. He fled Iran at an early age, and has spent the better part of his adolescence, and all of his adulthood, here. He completed his education here and purchased property here. His sense of loyalty or obligation is not to Iran but to the United States. A conflict of interest in this case is extremely unlikely. In balancing all of the factors mentioned and considered above, I am satisfied Applicant's loyalty to the United States is such that he can be expected to resolve any conflict of interest in favor of the United States. Accordingly, Applicant has met his heavy burden to show that his contacts with his family in Iran do not cause a security concern. I conclude Applicant has mitigated security concerns rising from his contact with his family in Iran. I resolve Guideline B for Applicant.

The government also established a case for disqualification under Guideline C by showing that Applicant obtained an Iranian passport after becoming a U.S. citizen in October 1992, when he contemplated travel to Iran to see his dying father. However, he did not make the trip, and did not use the passport, which expired in June 2006.⁸ Thus, the passport is not current.

Applicant has mitigated the Guideline C security concerns. Although he has been a dual citizen of Iran and the United States since his naturalization as a U.S. citizen, his Iranian citizenship would have little security significance if based solely on his parents' citizenship. For his conduct to fall within the security concerns of Guideline C, he must have acted in a way to indicate a preference for a foreign nation over the United States. However, inimical intent or detrimental impact on the interests of the United States is not required before the government can seek to deny access under Guideline C. The government has a compelling interest in ensuring those entrusted with this nation's secrets will make decisions free of concerns for the foreign country of which they may also be a citizen.

Strictly speaking, Applicant does not fully meet the mitigating conditions (MC) for foreign preference. His dual citizenship is largely based on his parents' citizenship, but is based partly on his active exercise of dual citizenship after being born a U.S. citizen, however unwitting it may have been.⁹ He has not expressed a willingness to renounce his foreign citizenship.¹⁰ However, the Iranian requirements for renouncing citizenship are onerous and raise an individual's profile more than taking no action to renounce. All

⁸Revised Adjudicative Guidelines, ¶ 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. This included but is not limited to: (1) possession of a current foreign passport;

⁹Revised Adjudicative Guidelines, ¶ 11(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

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

exercise of dual citizenship occurred after he obtained U.S. citizenship, while he was an adult.¹¹ However, the passport is expired and retained by his mother.¹² And he never used the passport, having reconsidered his notion of going to Iran to see his—as he believed—his dying father. As with traveling to Iran, Applicant understands the potential consequences for his clearance should he ever renew his Iranian passport. On balance, Applicant has demonstrated that he can be counted on to always act in preference to the United States. Indeed, a commonsense reading of the record reveals multiple reasons to view his attachments to the U.S. as overwhelmingly stronger than his attachments to Iran. All his financial and personal interests are in the U.S. I resolve Guideline C for Applicant.

Formal Findings

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph a-d: For Applicant

Paragraph 2. Guideline C: FOR APPLICANT

Subparagraph a: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR
Administrative Judge

¹¹ ¶ 11(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;

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