



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



In the matter of:)
)
) ISCR Case No. 09-04388
)
)
Applicant for Security Clearance)

Appearances

For Government: Jennifer I. Goldstein, Esquire, Department Counsel

For Applicant: *Pro se*

January 29, 2010

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the case file, pleadings, and exhibits, I conclude that Applicant has not mitigated the security concerns raised under the guidelines for foreign influence and foreign preference. Accordingly, his request for a security clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on December 18, 2008, to request a security clearance required as part of his employment with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals

(DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request.

On August 31, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline B (Foreign Influence) and Guideline C (Foreign Preference) of the Revised Adjudicative Guidelines (AG).

Applicant received the SOR on September 9, 2009. He submitted a signed Answer to the SOR, notarized on September 29, 2009, and requested a decision without a hearing. In his Answer, Applicant admitted all allegations in the SOR. On November 6, 2009, DOHA Department Counsel submitted a file of relevant materials (FORM) in support of the government's preliminary decision to deny Applicant's request for a security clearance. The FORM contained five documents, identified as Items 1 through 5. The FORM and attached Items were forwarded to Applicant on November 11, 2009, and he received the package on November 18, 2009. Applicant was given 30 days from the date he received the FORM to respond. He did not respond to the FORM. The case was assigned to me on January 19, 2010, for an administrative decision based on the record.

Procedural Ruling

Department Counsel requested that I take administrative notice of certain facts relating to the Islamic Republic of Iran (Iran). The facts are summarized in the FORM at pages 2 through 8, and supported by 16 documents pertaining to Iran (Items I – XVI). The documents are included to provide elaboration and context for the summary. The facts administratively noticed are limited to matters of general knowledge not subject to reasonable dispute, and included in government reports. They are set out in the Findings of Fact.

Findings of Fact

Applicant's admissions in response to the SOR are admitted as fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the FORM, I make the following additional findings of fact.

Applicant, 45 years old, earned a bachelor's degree in computer science at a U.S. university in 1992. He became a naturalized U.S. citizen the following year. Applicant married in 1995 in Iran. His wife was born in Iran, and became a naturalized U.S. citizen in 2001. They have two children, six and ten years old, both born in the United States. Applicant is an engineer, and has been employed by a defense contractor since 2005. He completed his first security clearance application in December 2008 (Item 4).

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

Applicant's mother, three brothers, and one sister are citizens and residents of Iran. His mother is 83 and frail. He speaks with her by telephone several times per month, but as often as several times per week if she is ill. He is devoted to his family in Iran. He traveled to Iran when his father died, and to see a sister before she died. He talks with his brothers six to seven times per year. One brother owns a cosmetics business. The other two co-own a clothing factory. Applicant sometimes speaks to their wives, who are all housewives. He last saw these family members during his most recent visit to Iran in 2007. None of his foreign family members, or any friends or associates, have been employed or affiliated with the Iranian government. Applicant's in-laws are citizens of Iran. Both are registered U.S. aliens. His mother-in-law and father-in-law live in the United States with Applicant and his wife (Items 1, 5).

In his response to DOHA interrogatories, Applicant indicated that he has not received medical, educational, retirement, or other financial benefits from Iran. He has not voted or held political office there, and has not served in its military forces. He has no financial interests in Iran, but does have substantial financial assets in the United States (Item 5).

After attaining U.S. citizenship in 1993, Applicant obtained an Iranian passport in 1997. When it expired in 2007, he renewed it. He currently possesses this valid Iranian passport, which will expire in 2012. Applicant travels to Iran to see his mother, brothers and sister, and "there is no other reason except for family matters which are very important to me." He traveled to Iran on month-long visits to his family in 2002, 2003, 2004, 2006, and 2007. He used his Iranian passport to enter and exit Iran on each visit. When he completed DOHA interrogatories in July 2009, Applicant stated, "I haven't destroyed or surrendered my passport and I don't intend to do so." He is not willing to destroy, surrender or invalidate his Iranian passport because, "If I give up my Iranian passport, it would be almost impossible for me to travel there using my United States passport." (Items 4, 5).

Iran

Iran is a constitutional, theocratic, Islamic republic, founded in 1979 after a revolution that removed the Shah as head of state. Islamic law is the basis for the authority of the Iranian state. Shi'a Muslim clergy dominate the country's political structure, and ultimate political power rests in a Shi'a religious scholar, who is called the Supreme Leader (Item I).

The United States has not had diplomatic or consular relations with Iran since 1979. In 2006, the President declared the continuation of a 1979 declaration of a National Emergency with Respect to Iran because of Iran's "extraordinary threat to the national security, foreign policy, and economy of the United States." (Items IV, V).

Iran engages in clandestine efforts to illegally obtain U.S. military equipment and other sensitive technology, and to acquire nuclear weapons and other weapons of mass destruction (WMD). Additionally, Iran sponsors international terrorism, intervenes in the

internal affairs of Iraq and Afghanistan, undermines the Middle East peace process, and violates the human rights of the Iranian people (Items V, VI, VII, XVI).

Iran is one of the most active state sponsors of terrorism, providing planning and financial support for terrorist attacks throughout the Middle East, Europe, and Central Asia. The United States is concerned about the possibility that terrorists could eventually obtain WMD from Iran. Iran supports terrorists who attack Israel, as well as Shiite militias who have encouraged, facilitated and engaged in sectarian violence in Iraq (Items V, VIII, IX, X).

The U.S. State Department warns U.S.-Iranian dual citizens to consider carefully the risks of travel to Iran. Iranian authorities do not recognize dual citizenship, and consider Iranian-born, naturalized U.S. citizens and their children to be solely Iranian citizens. Access to the U.S. Interests Section in Tehran may be denied. U.S.-Iranian dual citizens may be subject to harassment or arrest while in Iran. Such dual citizens have had their U.S. passports confiscated, and have been denied permission to exit Iran. Visitors from abroad may be placed under surveillance (Items I, III).

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines (AG).² Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole person” concept. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guidelines B and C.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest³ for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government’s case.

² Directive. 6.3.

³ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁴ A person who has access to classified information enters 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 judgment, reliability and trustworthiness of one who will protect the national interests as his or his 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.⁵

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern under Guideline B:

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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all the disqualifying conditions, and find that the following are relevant to the 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; and

(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.

The mere possession of close family ties with a resident or citizen of a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an Applicant has frequent, non-casual contacts

⁴ See *Egan*, 484 U.S. at 528, 531.

⁵ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.⁶

Moreover, the country in question must be considered. In particular, the nature of its government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion. Since 1979, the United States has had no diplomatic or consular relations with Iran. Iran seeks nuclear weapons, sponsors terrorism, and intervenes against U.S. interests in Iraq and Afghanistan. It seeks to obtain, through illegal means, U.S. military equipment and other sensitive technology. Iran is hostile to U.S. interests and actively works to undermine them. Further, it targets its own citizens and violates their human rights in order to advance its own ends. For these reasons, American citizens with immediate family members who are citizens or residents of Iran are at heightened risk of coercion, exploitation, or pressure.⁷

Applicant has immediate family members who are citizens and residents of Iran, including his mother, brothers and sister. He keeps in touch with his siblings by telephone about every other month. He has an even closer relationship with his mother and speaks with her a few times per month, and more often if she is ill. He has visited his family in Iran every year between 2002 and 2007, except for 2005. He admits that keeps his Iranian passport to facilitate these visits. His close relationship with his immediate family members in Iran creates a heightened risk of exploitation or coercion. Moreover, Applicant's ties of affection and obligation to his foreign family create a potential conflict of interest between his desire to protect them, if they were threatened or coerced by Iranian authorities, and the obligation he would have to protect classified information, were he to hold a security clearance. AG ¶ 7(a) and (b) apply.

I have considered the mitigating conditions under Guideline B (AG 8), especially the following:

(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

(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

⁶ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

⁷ ISCR Case No. 07-02485 at 4 (App. Bd. May 9, 2008).

(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.

It cannot confidently be predicted that Applicant would not be placed in a position that could force him to choose between U.S. and foreign interests. He is bound by strong ties of affection to his mother and siblings, citizens of a country that targets U.S. interests to obtain sensitive information, and violates the rights of its people. There is no record evidence showing that Applicant's foreign relatives could not be subject to coercion that would force him to choose between their interests and those of the United States. AG ¶ 8 (a) cannot be applied.

In evaluating mitigation under AG ¶ 8(b), I considered Applicant's ties to the United States, including his many years of life here, his degree from a U.S. university, his service to the government through employment with a defense contractor, and the U.S. citizenship of his wife by naturalization and his children by birth. However, Applicant's foreign ties must be evaluated as well. His ties to his family in Iran are strong, as demonstrated by his frequent contact and his own statements that his family is very important to him. The fact that he has chosen to retain his foreign passport to ensure his ability to travel to Iran, though it undermines his ability to obtain a security clearance, indicates the high value he places on his foreign relationships. I cannot confidently conclude, based on these facts, that Applicant would resolve any potential conflict of interest in favor of the United States. AG ¶ 8(b) does not apply.

Mitigation under AG ¶ 8(c) is also unavailable. As discussed, Applicant's contacts with his foreign family are frequent and their relationship is, by his own admission, close. He has placed his ability to travel to see them above his desire to obtain a security clearance, as he has declined to surrender or invalidate his foreign passport. Given the nature of his strong family ties, the risk of foreign influence cannot be ruled out. I find against Applicant on Guideline B.

Guideline C, Foreign Preference

AG ¶ 9 expresses the security concern under Guideline C:

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.

Under AG ¶ 10, the following disqualifying condition is relevant:

(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.

Applicant is a dual citizen of Iran and the United States. Dual citizenship, in and of itself, is not disqualifying.⁸ However, conduct that constitutes an *exercise* of foreign citizenship, after becoming a U.S. citizen, is disqualifying. After becoming a U.S. citizen in 1993, Applicant exercised the rights of an Iranian citizen by obtaining a foreign passport in 1997, and again by renewing his foreign passport in 2007. He continues to exercise his status as an Iranian citizen by possessing a valid foreign passport. AG ¶ 10(a)(1) applies.

I considered the following relevant mitigating conditions under AG ¶ 11:

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a United States citizen or when the individual was a minor; and

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

Applicant obtained a foreign passport in 1997, and renewed the passport in 2007. He took both of these actions after he had become a U.S. citizen in 1993. In addition, Applicant uses his foreign passport. But for one year, Applicant traveled to Iran annually between 2002 and 2007. He used his foreign passport during these trips to enter and exit Iran because he believes he cannot use his U.S. passport to travel to Iran. Applicant's exercise of his Iranian citizenship by using his foreign passport occurred numerous times since he attained U.S. citizenship. AG ¶ 11(c) cannot be applied.

Applicant was on notice that his valid foreign passport represented a security concern since July 2009, when he received the DOHA Interrogatory. It indicated several acceptable methods to mitigate the concern: destruction, invalidation, or surrender of his passport to a cognizant security authority. Applicant declined to exercise any of the options. AG ¶ 11(e) is not available to mitigate Applicant's possession of a foreign passport. I find against Applicant on Guideline C.

Whole Person Concept

Under the whole person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the relevant circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited guidelines. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a):

⁸ ISCR Case No. 99-0454 at 5 (App. Bd. Oct 17, 2000).

(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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. Under the cited guidelines, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant is a mature, responsible adult who acquired U.S. citizenship in 1993. He has solid ties to the United States, having pursued higher education here and earned a degree at a U.S. university. His wife is a naturalized U.S. citizen, and both of his children are U.S. citizens by birth. However, Applicant also has strong foreign family ties. He has several immediate family members who are citizens and residents of Iran, including his mother. Between 2002 and 2007, he traveled to Iran five times to see his relatives. There is every indication that the relationship with these family members will continue, as Applicant has chosen to retain his Iranian passport to facilitate trips to Iran. Applicant's devotion to his family is understandable and commendable. Nevertheless, given the country involved, it raises security concerns. Iran is a country that targets the United States for sensitive information and ignores the individual rights of its people and of foreign travelers, creating a serious risk of exploitation. Finally, Applicant has chosen not to mitigate his possession of a valid foreign passport by surrendering or invalidating it.

For all these reasons, I conclude Applicant has not mitigated the cited security concerns. A fair and commonsense assessment of the available information bearing on Applicant's suitability for a security clearance shows he has not satisfied the doubts raised under the guidelines for foreign influence and foreign preference. Such doubts must be resolved in favor of the government.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1, Guideline B:	AGAINST Applicant
Subparagraphs 1.a. – 1.d.	Against Applicant
Paragraph 2, Guideline C	AGAINST Applicant

Subparagraphs 2.a. – 2.d. Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge