



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



In the matter of:)
)
) ISCR Case No. 09-07317
)
Applicant for Security Clearance)

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: *Pro se*

November 28, 2011

Decision

LYNCH, Noreen A., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on June 5, 2009. On July 6, 2011, the Defense Office of Hearings and Appeals (DOHA) sent him a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing security concerns under Guideline B. 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, timely answered the SOR, and requested a hearing before an administrative judge. The case was assigned to me on August 31, 2011. DOHA issued a notice of hearing on September 7, 2011, scheduling the hearing for

September 27, 2011. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified, and submitted Applicant's Exhibits (AX) A through H, which were admitted without objection. DOHA received the transcript (Tr.) on October 4, 2011.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Iran. The request and supporting documents are attached to the record as HX. Applicant did not object to the documents. (Tr. 8) I took administrative notice as requested by Department Counsel. The facts administratively noticed are set out below in my findings of fact.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations in the SOR under Guideline B (Foreign Influence) and offered explanations. He provided additional information to support his case. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a native of Iran. He is 48 years old. He completed high school in Iran and attended college for several years in the United States, but did not obtain his degree. (Tr. 41) He completed a mandatory service of two years in the military in Iran. He came to the United States in June 1987. He has approximately 14 years experience in the computer field, working as a federal contractor. Applicant has not held a security clearance. He became a naturalized U.S. citizen in 1999. (GX 1) Applicant's Iranian passport expired in 2008, and he did not renew it. (Tr. 48)

Applicant's mother (age 80 years) and father (age 90 years) have lived in the United States for almost 35 years. They are U.S. citizens who hold Iranian passports. His father is retired. His mother works in their home. They came to the United States before the Iranian revolution. (Tr. 43) They visited Iran a few months ago. (Tr. 52) Before that visit, they had not been in Iran for five years.

Applicant's wife is also a native of Iran. They were married in April 2000, and they have one son who was born in the United States. His wife is a naturalized U.S. citizen. Applicant's wife holds a valid Iranian passport. Her parents, who are retired, live in Iran. (GX 1) Applicant and his wife travelled to Iran in 2008. (GE 2) His wife speaks to her parents on the phone occasionally. Applicant does not speak to his in-laws. (Tr. 58)

Applicant's only living brother is a citizen of the United States. He attended an American university and has lived in the United States for almost 35 years. He has his own business. He has four children, who are citizens of the United States. He is divorced. He holds an Iranian passport. He traveled to Iran for a funeral about six years ago. He is not aware of Applicant's work or his application for a security clearance. (Tr.

33) He has no current affiliation with the Iranian government. Applicant speaks to him on the phone on occasion. (Tr. 50)

Applicant's oldest brother was killed by suicide bombers in Iraq in 2003. At the time, he worked for the United Nations. (AE A) His brother was praised by the Secretary General for his ten years of dedicated service to the United Nations. (AE E) He had lived in the United States for almost 30 years and was a naturalized U.S. citizen. (AE C)

Applicant's sister lives in the United States. She is also a naturalized citizen who holds an Iranian passport. She is an assistant teacher. She is married to a U.S. citizen. She does not know that Applicant is seeking a security clearance. Applicant has contact with her once a month by phone. (Tr. 34)

Applicant's other sister (age 58 years) lives in the United States. She is in the process of becoming a U.S. citizen. (Tr. 65) She holds an Iranian passport. (Tr. 54) She did not arrive in the United States with her mother and father and other siblings. (Tr. 55) She is married and has three children who are U.S. citizens. (Tr. 66)

Applicant and his wife own a home in the United States. The value of the home is approximately \$300,000. He and his wife have retirement accounts. (Tr. 47) Applicant's home is mortgage-free. (Tr. 66) Applicant has lived in his current community for six years. He volunteers with the Boy Scouts.

Applicant explained at the hearing that he came to the United States after his parents and other family members many years ago to start a life in the United States and to receive an education. He and his wife plan to live the rest of their lives in the United States. He has a ten-year-old son who was born in the United States. He would not do anything to jeopardize his son's future in the United States. Applicant has roots in the United States both professionally and personally. Applicant has worked his entire adult life in the United States and has deep and long-term relationships. He has not held a clearance, but has been involved with sensitive information, providing service to the U.S. Government through his work with government contractors. Applicant was credible when he explained that if in the unlikely situation that there would be pressure on him or his family, he would immediately contact a facility security officer. His own family has been touched by terrorism – he lost his brother to a suicide bomber in 2003. He is aware of the dangers facing those helping the United States.

Applicant expressed his love for the United States. (Tr. 16) He has no reason to return to Iran because his entire family lives in the United States. He did not renew his Iranian passport and has no intention to do so in the future. He recently had an uncle die in Iran and he did not attend the funeral. He realizes that he cannot "divorce" his relatives, but during his years in the United States, he has not contacted any friends or contacts in Iran. He is a law-abiding citizen who wants to live like any other American citizen.

I take administrative notice of the following facts. Iran is an Islamic Republic where ultimate authority is vested in a religious scholar, the Supreme Leader. The United States (U.S.) has not had diplomatic or consular relations with Iran since 1979, when the U.S. Embassy was seized by students. On November 12, 2010, President Obama continued the November 14, 1979 declaration of a National Emergency with respect to Iran “to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran.”

As noted in the State Department’s most recent Background Note on Iran, “The United States objects to Iran’s sponsorship of terrorism, its nuclear weapons ambitions, and its violations of human rights.” Iran has been designated a State Sponsor of Terrorism since January 1984, and remains the most active state sponsor of terrorism. Iran refuses to bring to justice senior al-Qa’ida members it has detained.

The Iranian government has a poor human rights record. Its abuses include politically motivated abductions, torture and severe punishment, arbitrary arrest and detention, lack of fair trials, and restrictions on civil liberties. It has been known to both monitor and conduct surveillance on its citizens, including interception of telephonic and internet communication. The government does not recognize dual nationality and will treat U.S.-Iranian dual nationals solely as Iranian citizens. Iranian authorities have prevented a number of American citizens, who have traveled to Iran for personal reasons, from leaving, and in some cases have detained and imprisoned them. Iranian security personnel may put visitors under surveillance and search hotel rooms, telephones and fax machines and personal possessions in hotel rooms.

Iran has for some time been seeking to illegally obtain U.S. military equipment and other sensitive technology. The *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage* identifies Iran as being involved in criminal espionage and export controls enforcement cases in 2008 and 2009.

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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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 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).

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 spouse is a dual citizen of the U.S. and Iran (¶ 1.a); Applicant’s mother is a dual citizen of the U.S. and Iran (¶ 1.b); Applicant’s father is a dual citizen of the U.S. and Iran (¶ 1.c); Applicant’s brother is a dual citizen of the U.S. and Iran (¶ 1.d); Applicant’s sister is a dual citizen of the U.S. and Iran (¶ 1.e); and Applicant’s sister is a citizen of Iran and resides in the United States (¶1.f). It also

alleges Applicant's father-in-law and mother-in-law are citizens and residents of Iran (1.g).

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

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.

Four disqualifying conditions under this guideline are relevant to this case. 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, 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." AG ¶ 7(b). Third, a security concern may be raised if an applicant is "sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion." AG ¶ 7(d). Fourth, a security concern also may be raised by "a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation." AG ¶ 7(e).

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, 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 United States, 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 United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

Applicant has lived and worked in the United States since 1987. He does not consider himself a dual citizen. He is a naturalized U.S. citizen. Applicant's wife, who is a U.S. citizen, resides in the United States. Applicant and his wife have a ten-year-old son who was born in the United States. His mother and father have lived in the United States for 35 years. They are United States citizens but also hold Iranian passports.

Applicant's brother and two sisters live in the United States. His wife's mother and father are citizens and residents of Iran. "[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at * 8 (App. Bd. Feb. 20, 2002). Applicant has not rebutted this presumption.

After considering the totality of Applicant's family ties to Iran, as well as each individual tie, I conclude that Applicant's family ties are sufficient to raise an issue of a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Based on all these circumstances, I conclude that AG ¶¶ 7(a), (b), and (d) are raised.

Security concerns under this guideline can be mitigated by showing that "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." AG ¶ 8(a). Iran engages in economic and industrial espionage, and it has been involved in incidents involving illegal importation of restricted, dual-use technology from the United States. Applicant's sister is a citizen of Iran, but lives in the United States, and is in the process of becoming a U.S. citizen. His oldest brother lives in the United States and is a U.S. citizen, but holds an Iranian passport. Applicant's parents have lived in the United States for 35 years, but hold Iranian passports. His sister is living in the United States, but holds an Iranian passport. Applicant's in-laws live in Iran. However, he does not talk to them, but his wife does on occasion, and has visited them. For these reasons, I conclude that AG ¶ 8(a) is partially established.

Security concerns under this guideline can be mitigated by showing "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." AG ¶ 8(b). Applicant has lived in the United States since 1987. He has worked with government

contractors during this time. Applicant's financial interests are totally in the United States. He and his wife have personal assets, including a home, in the United States. Applicant's parents, siblings, spouse, and child live in the United States. His mother and father have lived in the United States for almost 35 years. They are all U.S. citizens, except his one sister. Applicant surrendered his Iranian passport and uses his U.S. passport. Applicant's wife holds an Iranian passport and her parents live in Iran. Their son is a U.S. citizen. I conclude that Applicant would resolve any conflict between the interests of the United States and his in-laws in Iran in favor of the United States. Thus, I conclude that AG ¶ 8(b) is established.

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 relevant 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 naturalized U.S. citizen who has lived in the United States since 1987. He and his wife reside in the United States, and are both naturalized U.S. citizens. He was articulate, candid, sincere, and credible at the hearing. Applicant's home is in the United States. Applicant has been successful in the defense contracting business for many years. He has worked in the computer field without incident for more than 14 years. His current employer is sponsoring him for a security clearance.

Applicant chose to leave his home and emigrate from Iran in search of an education and career opportunities. He wants to provide for his family in the United States. He has worked hard in his chosen field. Applicant purchased a home. His family intends to remain in the United States. His entire family lives in the United States except for his in-laws. His family members are U.S. citizens save for his one sister who is in the process of becoming a U.S. citizen.

There is no evidence any of the individuals at issue are involved with, or under scrutiny by interests antithetical to the United States. Applicant's last visit to Iran was in 2008 and he has no future plans to return. Applicant realizes the dangers associated with those helping the United States. He is proud of his brother who was a victim of terrorism.

Regarding Applicant's life in the United States, he is an American citizen, with a stable family, social, and professional life. His life is focused here. He has lived in his current community for six years. He volunteers with the Boy Scouts. He and his wife intend to continue their lives in the United States. There is no evidence indicating that he may be manipulated or induced to help a foreign power or interest. He credibly stated he would report any attempts to influence him to security. In light of these facts and the country at issue, I find that Applicant successfully mitigated foreign influence concerns.

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 mitigated the security concerns based on foreign influence. Accordingly, I conclude he has 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):	FOR APPLICANT
Subparagraphs 1.a-1.g:	For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Noreen A. Lynch
Administrative Judge