



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 10-00049
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: *Pro se*

June 6, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing on May 16, 2009. (Government Exhibit 1.) On December 17, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

The Applicant responded to the SOR on January 17, 2011, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned Administrative Judge on March 2, 2011. Notices of hearing were issued on March 7, 2011 and March 23, 2011, scheduling the hearing for March 25, 2011. At the hearing the Government presented two exhibits, referred to Government Exhibits 1 and 2, which were admitted without objection. The Applicant presented ten exhibits,

referred to as Applicant's Exhibits A through J, which were admitted without objection. He also testified on his own behalf. The official transcript (Tr.) was received on April 7, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts concerning the current political conditions in Iran. (Tr. p. 17.) Applicant had no objection. (Tr. p. 20.) 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.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 45 years of age and has a Master's Degree in Industrial Engineering. He is employed as an Industrial Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

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 that could result in the compromise of classified information.

The Applicant was born in Tehran, Iran in 1965. As a result of the political turmoil in Iran, in 1979, at the age of fourteen, his family sent him to Germany to study at a boarding school. He lived with a German family for one year and then at a boarding school for three years. In 1983, his father advised him that it would be best to migrate to the United States to continue his education. (Applicant's Exhibit A.) He did so, finished high school, and completed both his bachelor's and master's degrees in the United States. Since 1983, he has lived in the United States and made it his permanent home. In 1987, he met his first wife and they were married from 1986 to 1996. In 1994, the Applicant became a naturalized United States citizen. In 2003, he married his current wife, and they are expecting their first child.

Since immigrating to the United States, the Applicant has traveled to Iran only two or three times for a two week period each time. (Tr. p. 58.) For the first fifteen years in the United States, the Applicant had no contact with his relatives in Iran that include his mother and three sisters. (Tr. pp. 57-58.) The Applicant's mother is a dual citizen of Iran and the United States. His three sisters are citizens and residents of Iran. His father, who passed away about ten years ago, was a physician. His mother, a housewife, acquired her United States citizenship because she wanted the freedom to

visit the United States whenever she wanted. (Tr. p. 60.) The Applicant contacts his mother in Iran by telephone a couple times a month, and his sisters about once a month. (Tr. pp. 61-62.) One of his sisters in Iran is a dentist, one is a stay home mom, and one is finishing up her Ph.D. in Chemistry. The dentist is married to a man who is retired. The stay home mom is married to an engineer, and the sister finishing up her Ph.D. has lived in England for the past three years, and is married to a man who is working on his Ph.D. in Mechanical Engineering. None of the Applicant's family is associated with or has any affiliation with the Iranian government in any way. (Tr. pp. 63-68.) Furthermore, they do not know who the Applicant works for. (Tr. pp. 70-71)

Since immigrating to the United States, the Applicant has never had the desire to return to live in Iran. (Tr. p. 55.) His wife is from Lithuania and has been in the United States for nine years. She also has a brother who lives in the United States. The Applicant and his wife plan to remain in the United States for the duration of their lives, to raised their family here, and retire here. The Applicant has bank accounts, investment accounts and retirement accounts in the United States. (Applicant's Exhibits D, E, F and G.) He plans to purchased a house in the United States soon. He has no assets of any kind in Iran.

In March 2009, he began working for his current employer. When requested, he immediately and without hesitation surrendered his Iranian passport. He states that although he cannot travel to Iran, it does not bother him at all. (Tr. p. 75.) He has a United States passport and he can travel wherever he wants to, except Iran. (Tr. p. 75.)

When asked by Department Counsel the hypothetical that if his family in Iran were threatened, would he turn over classified information to protect them, the Applicant stated, "I would never negotiate with terrorism. Period. And to follow through, you always follow with the authority, and that's what you do." (Tr. p. 72.) He stated that he would contact the authorities and report it.

Letters of recommendation from the Applicant's managers attest to his reliability, trustworthiness and honesty. He is meticulous, strives to improve efficiency of productivity, and works well with the team. He is described as a man with integrity, professionalism and an excellent work ethic. He is recommended for a position of trust. (Applicant's Exhibits B and C.)

Applicant's company security officer indicated that the Applicant voluntarily surrendered his Iranian passport and was witness to its destruction. She further states that the Applicant understood the ramification of its surrender and had no qualms about it whatsoever. (Applicant's Exhibit H.)

The Applicant has contacts with Iran. Accordingly, it is appropriate to discuss the situation in Iran at this time.¹ I have taken administrative notice of the current political conditions in Iran. These include the fact that Iran has no diplomatic relations with the United States, Iran's efforts to acquire nuclear weapons and other weapon of mass destruction, its support for and involvement in international terrorism, its support for violent opposition to the Middle East peace process, and its dismal human rights records. I have considered the fact that Iranian Government officials at all levels commit serious abuses of their power and authority. It is a Totalitarian Government, that supports terrorists activities, and it is rampant with crime and instability. The overall deteriorating security situation in Iran, the human rights abuses, and the government corruption elevates the cause for concern in the case. The United States may face no greater challenge from a single country than from Iran.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

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.

¹All of the following statements are supported by the documents submitted by the Department Counsel in support of his request for administrative notice and its attachments.

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:

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;

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 in the U.S. interest;

8.(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.

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 and surrounding circumstances;

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 extent to which the participation was voluntary;

f. The presence or absence of rehabilitation and other permanent behavioral changes;

g. The motivation for the conduct;

h. The potential for pressure, coercion, exploitation or duress; and

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 eligible for a security clearance. Eligibility for access to classified information is predicated 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.”

The Government must make out a case under Guideline B (foreign influence) that establishes doubt about a person’s judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant’s adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSION

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant’s credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

Under Foreign Influence, 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. However, Mitigating Conditions 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., 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 in the U.S. interest; and 8.(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 also apply.

The Applicant has lived in the United States for over thirty years and has made it his permanent home. He is married, and is expecting his first child soon. All of his assets of any kind are in the United States. His mother is a dual citizen of the United States and Iran, who resides in Iran, and his three sisters are citizens and residents of Iran. Over the years, he has maintained very little contact with them. For the first fifteen years that he lived in the United States, he had no contact at all with his family in Iran. Following a visit to Iran about eight years ago, the Applicant started minimal contact with his family in Iran. It is clearly, however, casual and limited. Their discussions involve how everyone is doing and do not extend beyond that. None of his relatives have worked for or been affiliated with the Iranian government in any way.

It is noted that the current political situation in Iran elevates the cause for concern in this case. However, the evidence shows that the Applicant has no bond and affection with his foreign family members or to any foreign individual, or to Iran, in any way that could potentially cause the Applicant to become subject to foreign exploitation, inducement, manipulation, pressure, or coercion. He has surrendered and destroyed his Iranian passport and has no intentions of ever returning to Iran again. There is no possibility of foreign influence that could create the potential for conduct resulting in the compromise of classified information. He has demonstrated that he can be trusted with sensitive classified information. I find that the Applicant is not vulnerable to foreign influence. Accordingly, I find for the Applicant under Guideline B (Foreign Influence).

I have also considered the “whole-person concept” in evaluating the Applicant’s eligibility for access to classified information. The Applicant is a 45 year old Industrial Engineer who has lived the American Dream. He is an immigrant from another country who has made the United States his own. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole-person assessment of good judgment, trustworthiness, reliability, candor, a willingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

This Applicant has demonstrated that he is sufficiently trustworthy, and that he clearly meets the eligibility requirements for access to classified information. Accordingly, I find for the Applicant under Guideline B (Foreign Influence).

On balance, it is concluded that the Applicant has overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 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: For the Applicant.
Subpara. 1.a.: For the Applicant
Subpara. 1.b.: For the Applicant

DECISION

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

Darlene Lokey Anderson
Administrative Judge