



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



In the matter of:)	
)	
)	ISCR Case No. 10-00272
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro Se*

March 11, 2011

Decision

LAZZARO, Henry, Administrative Judge

Applicant failed to overcome the foreign influence security concern that arises from his close relationship with his mother-in-law who resides part-time in Iran. Clearance is denied.

On May 26, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.¹ The SOR alleges security concerns under Guidelines B (foreign influence) and C (foreign preference). Applicant’s response to the SOR was received by DOHA on July 21, 2010. He admitted all SOR allegations except that contained in SOR subparagraph 1.b, and he requested a hearing.²

¹ This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended (Directive), and revised adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

² Applicant’s unclear responses to the SOR allegations were clarified on the record (Tr. p. 15-17).

The case was assigned to me on August 31, 2010. A notice of hearing was issued on December 2, 2010, scheduling the hearing for January 12, 2011. The hearing was conducted as scheduled.

The Government submitted 18 documentary exhibits that were marked as Government Exhibits (GE) 1-18. GE 1-3 were admitted into the record without objection. Administrative notice was taken of the contents of GE 4-18 over Applicant's objection. Department Counsel submitted a document containing written comments on the contents of GE 4-18 for my consideration which was marked as Appellate Exhibit (App. Ex.) I, and made part of the record without objection. Applicant testified and submitted one documentary exhibit that was marked as Applicant Exhibit (AE) 1, and admitted into the record without objection. The transcript was received on January 20, 2011.

Findings of Fact

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, testimony and exhibits, I make the following findings of fact:

Applicant is a 50-year-old man who has been employed as a senior scientist by a defense contractor since May 2009. He previously worked for a different government contractor from November 1997 until April 2008. Applicant has possessed a security clearance at either the top secret or secret level since 1998. No previous action has been taken to downgrade or revoke his clearance for adverse reasons. His top secret clearance was downgraded to secret in either 2001 or 2002, solely because Applicant no longer required the higher clearance.

Applicant was born in Iran. He attended high school in Iran, and he then came to the U.S. on a student visa in 1978, at the age of 18, to attend a prestigious U.S. university. The U.S. university awarded Applicant a bachelor of science degree in electrical engineering in 1982, a master of science degree in electrical engineering in 1983, and a doctoral degree in electrical engineering in 1988. Applicant was employed as an assistant professor at another university from 1988 until 1997.

Applicant left his employment with the government contractor in April 2008, after his work schedule was reduced to part-time and in anticipation of being laid off due to a lack of work in the area in which he was assigned. He was employed as a principal technical consultant outside the defense industry from April 2008 until March 2009.

Applicant's mother, father, and the youngest of his two brothers first came to the U.S. in 1984 for a visit. They went back to Iran in or about 1984, but then returned to the U.S. in 1986. Applicant's father once again returned to Iran in 1989 or 1990, while his mother stayed in the U.S. She returned to Iran for a short period of time after her mother died in 1992, but she then again returned to the U.S.

The record does not disclose when Applicant's father returned to the U.S. However, he died in January 2001, before he could become a naturalized U.S. citizen, and he is buried in a cemetery in the U.S. Applicant adopted his youngest brother, who is 17 years his junior, to allow him to remain and obtain his education in the U.S.

Applicant became a naturalized U.S. citizen in August 1995. Applicant's mother became a naturalized U.S. citizen in 2002. Applicant's youngest brother is also a naturalized U.S. citizen, although the year he was naturalized is unknown.

Applicant's second brother fled Iran in either 1984 or 1985 to avoid serving in the Iranian military. He fled into Pakistan from where he was transferred to a United Nations refugee camp in Sweden. He was allowed to immigrate to Canada in or about 1987, where he obtained Canadian citizenship. He moved to the U.S. in 1989, and he has lived here since. He apparently has not sought U.S. citizenship.

Applicant's oldest brother is a senior vice president of a large U.S. bank. His younger brother is a software scientist employed as a manager of a consulting firm. Applicant's brothers and his mother reside together in the United States.

Applicant has been married since April 1999. He was introduced to his wife, who was living in Iran at the time, by relatives through telephone conversations about two years earlier. They frequently spoke by phone and Applicant traveled to Iran to meet her personally during the course of a Hajj (a pilgrimage to Mecca, Saudi Arabia) he made in 1999. Applicant used an Iranian passport to enter Saudi Arabia and Iran during the trip because he was advised he should only use a single passport for all travel connected with the Hajj and his visit to Iran.

Applicant and his wife were married in Iran. She followed him to the U.S. several months after they were married, and she has resided in the U.S. since. Applicant's wife became a naturalized U.S. citizen in or about 2004.

Applicant and his wife have two children who were born in the U.S. and are U.S. citizens. Applicant's daughter is eight years old, and his son is six months old. Applicant registered his daughter with the Iranian Interest Section in the U.S. in 2002, to comply with Iranian procedures that will allow her to travel to Iran in the future if she so desires. He has not registered his son because he no longer has a valid Iranian passport which is a prerequisite for him to register the child. He and his wife are exploring other avenues to get that child registered.

Applicant's mother-in-law, an Iranian citizen, has resided with him and his wife for approximately six to seven months each year since she first came to the U.S. in 2005. She resides in Iran the remainder of the year. She is a permanent resident alien of the U.S., but, due to her inability to learn the English language, she has not applied for U.S. citizenship.

Applicant traveled to Iran in 1979 and 1982, before he became a U.S. citizen. He traveled to Iran in 1999, 2001, and 2005, after he became a U.S. citizen. Applicant visited Iran for about four or five weeks in 2001 because his wife was homesick. His wife returned to Iran in 2005 with their daughter for an extended visit of about six months, and he joined them there for about four weeks. As required to comply with Iranian entrance requirements for Iranian citizens, Applicant used an Iranian passport for all travel to Iran. Applicant notified the appropriate security officials of his employer of each of his foreign travels and he was never made aware that such travel or the use of a foreign passport might create a security concern.

Applicant twice renewed his Iranian passport after he became a U.S. citizen to allow him to travel to Iran. His Iranian passport expired in December 2008. During an interview conducted in March 2010, he stated he would have to renew his Iranian passport if he planned to travel to Iran in the future. He explained at the hearing that is a correct statement because the only way he could travel to Iran would be on an Iranian passport. However, he clarified that he does not intend to renew his Iranian passport or travel to Iran in the future now that he is aware such travel creates a security concern.

In response to an amnesty offer to person's who had illegally fled the country, the older of Applicant's two brothers traveled to Iran in 2008. He was detained at the airport in Iran for about 12 hours, and he was not allowed to return to the U.S. for about four or five weeks. When Applicant was notified of his brother's detention, he contacted the Iranian Interest Section in Washington, D.C. to protest the detention.

U.S. Department of State publications provide the following information:

As of August 5, 2010, Iran was identified by the U.S. to be the most active state sponsor of terrorism.

Iran's financial, material, and logistic support for terrorist and militant groups throughout the Middle East and Central Asia had a direct impact on international efforts to promote peace, threatened economic stability in the Gulf and undermined the growth of democracy. (GE 8)

The Department of State warns U.S. citizens to carefully consider the risks of travel to Iran. Dual national Iranian-American citizens may encounter difficulty in departing Iran. . . .

Some elements in Iran remain hostile to the United States. As a result, American citizens may be subject to harassment or arrest while traveling or residing in Iran. Since 2009, Iranian authorities have prevented the departure of a number of Iranian-American citizens, including journalists, who traveled to Iran for personal or professional reasons, in some case for several months. Iranian authorities also have detained or imprisoned Iranian-American citizens on various charges, including espionage and posing a threat to national security. Americans of Iranian origin should

consider the risk of being targeted by authorities before planning travel to Iran. Iranian authorities deny access to the U.S. Interests Section in Tehran to dual nationals because Iranian authorities consider them to be solely Iranian citizens. (GE 18)

The government's poor human rights record degenerated during the year (2009). . . . The government executed numerous persons for criminal convictions as juveniles and after unfair trials. Security forces were implicated in custodial deaths and the killings of election protestors and committed other acts of politically motivated violence, including torture, beatings, and rape. The government administered severe officially sanctioned punishments, including death by stoning, amputation, and flogging. Vigilante groups with ties to the government committed acts of violence. Prison conditions remained poor. Security forces arbitrarily arrested and detained individuals, often holding them incommunicado. Authorities held political prisoners and intensified a crackdown against women's right reformers, ethnic minority rights activists, student activists, and religious minorities. . . . (GE 14)

Policies

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying and mitigating conditions for each applicable guideline. Clearance decisions must be fair and impartial decisions based upon relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guidelines B (foreign influence) and C (foreign preference), with their disqualifying and mitigating conditions, are most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.³ The government has the burden of proving controverted facts.⁴ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁵ although the government is required to present substantial evidence to meet its burden of proof.⁶ "Substantial evidence is more than a scintilla, but less than a

³ ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

⁴ ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

⁵ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

⁶ ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

preponderance of the evidence.”⁷ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁸ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁹

No one has a right to a security clearance¹⁰ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹¹ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹²

Analysis

Guideline B, Foreign Influence

Foreign contacts and interests may be a security concern if the individual has divided loyalties or 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.

Applicant’s brother was detained at the airport in Iran when he attempted to enter that country in 2008, and he was prohibited from exiting the country and returning to the U.S. for several weeks thereafter. Applicant contacted the Iranian Interest Section in the U.S. solely to protest the detention of his brother. The record does not contain any information from which to conclude that Applicant’s brother will travel to Iran in the future. This incident does not create any independent security concern other than to highlight the risk that exists from Applicant’s mother-in-law’s travels to and part-time residency in Iran.

Iran is a country with interests inimical to those of the U.S. It actively supports terrorism and is repressive to its own citizens. Applicant’s mother-in-law, despite having obtained permanent resident alien status in the U.S., divides her time almost equally

⁷ ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

⁸ ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

⁹ ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

¹⁰ *Egan*, 484 U.S. at 528, 531.

¹¹ *Id* at 531.

¹² *Egan*, Executive Order 10865, and the Directive.

between residing in Iran and with Applicant and his family in the U.S. Disqualifying Conditions (DC) 7(a): *contact with a foreign family member . . . or other person who is a citizen of or resident in a foreign country it that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*: and DC 7(d): *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* apply.

I have considered all mitigating conditions and find that none apply. Specifically, Mitigating Condition (MC) 8(a): *the nature of the relationships with foreign persons, the country in which these persons are located . . . 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 . . . and the interests of the U.S.* does not apply because of the obvious close relationship between Applicant and his wife and her mother and the nature and history of the Iranian Government.

Applicant's mother-in-law regularly travels to and resides in Iran. Further, Applicant's actions in registering his daughter and attempting to find ways to register his son so they can travel to Iran in the future if they desire indicates that there is and will be a continuing likelihood that persons who are extremely close to Applicant will travel to Iran and be exposed to the threat that will exist when and if they enter that country. It is impossible to predict what Applicant would do were his mother-in-law or other relative detained by Iranian officials in the future. Accordingly, MC 8(b): *there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person . . . 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.* does not apply.

MC 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* obviously does not apply because Applicant's mother-in-law resides with him for about six or seven months every year. The remaining mitigating conditions have no applicability to the facts of this case.

Guideline C, Foreign Preference

Foreign preference is a concern because 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.

Applicant exercised his Iranian citizenship rights by using an Iranian passport to travel to Iran on three occasions after he became a U.S. citizen. He notified his employer's security officials each time he traveled to Iran and they voiced no objection to such travel. Applicant credibly testified he did not realize that use or possession of a valid Iranian passport created a security concern and that he has no intention of

obtaining an Iranian passport in the future or traveling to Iran. Applicant's use of an Iranian passport was mandated by Iranian law and not by any preference he had for Iran over the U.S.

Applicant registered his daughter with the Iranian interest section in the U.S. solely to allow her to exercise her option to travel to Iran in the future if she desired to do so. He made clear in his testimony that he has no loyalty to Iran and the act of registering his daughter was exclusively to permit her the freedom to make travel choices connected to her heritage. I have considered all potential disqualifying conditions and conclude none apply under the particular facts of this case.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." In this case, there is no reason to doubt that Applicant is a loyal American citizen or suspect he would ever consider doing harm to the interests of the United States. Still, his continuing contacts with Iran as a result of his mother-in-law's travel to Iran and her part-time residency in that country, the potential for his immediate family members to travel to Iran in the future, and the nature of the Iranian Government and its relationship with the U.S. create a security concern that has not been overcome.

Considering all relevant and material facts and circumstances present in this case, the whole-person concept, the factors listed in ¶ 6.3.1 through ¶6.3.6 of the Directive, and the applicable disqualifying conditions, Applicant has failed to mitigate the foreign influence security concern that exists in this case. He has failed to overcome the case against him in this regard or satisfy his ultimate burden of persuasion. Guideline B is decided against Applicant. It is not clearly consistent with the national interest to grant Applicant a security clearance.

Formal Findings

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a :	Against Applicant
Subparagraphs 1.b and 1.c:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraphs 2.a-d:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Henry Lazzaro
Administrative Judge

