



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



In the matter of:)	
)	
)	ISCR Case No. 10-01273
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

May 31, 2011

Decision

CURRY, Marc E., Administrative Judge:

Applicant’s mother, a dual U.S./Iranian citizen, has traveled to Iran nearly every year for the past ten years and intends to return in the future. This generates a security concern for Applicant that he failed to mitigate. Clearance is denied.

Statement of the Case

On September 10, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B, Foreign Influence. 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).

Applicant answered the SOR on November 12, 2010, admitting the allegations, and requesting a hearing. On January 25, 2011, I received the case assignment. DOHA

issued a notice of hearing on February 16, 2011, scheduling it for March 9, 2011. I held the hearing as scheduled. During the hearing, I received two Government exhibits, marked as Government Exhibits (GE) 1 and 2, seven Applicant exhibits marked as Applicant Exhibits (AE) A through G, and Applicant's testimony. Also, at the Government's request, I took administrative notice of the adjudicative facts set forth in 12 documents, marked as Hearing Exhibit (HE) I through XV. I denied the Government's request to take administrative notice of adjudicative facts listed in three exhibits marked HE VII through HE IX. DOHA received the hearing transcript (Tr.) on March 17, 2011.

Findings of Fact

Applicant is a 30-year-old single man with no children, who is a consultant for an information technology firm that contracts with several DoD agencies. He earned a bachelor's degree in management information systems in 2003, and worked for a municipality during his first two years after graduation. Since then, he has worked for his current employer.

Applicant is highly respected on the job. His supervisor characterizes him as "one of the most well rounded consultant that [he has] had the pleasure to work with." (AE F) His second line supervisor describes him as "an excellent consultant, employee, and developer," who is "a team player . . . always willing to help others and go the extra mile." (AE C) According to a coworker, Applicant excels at all of his tasks and frequently performs duties that [are] outside of the realm of his job duties. (AE D)

Applicant is an Iranian-American, born and raised in the United States. His parents immigrated to the United States from Iran after the Iranian Revolution in 1979. Both are naturalized U.S. citizens. (GE 1 at 31, 32) The Iranian government considers Applicant to be an Iranian citizen by virtue of his father's Iranian citizenship. (Tr. 43) Applicant's father was a pilot in the Iranian Air Force during the Shah's regime. He received training in the United States. (AE G) After the Revolution, he, along with much of the Iranian Air Force, remained supportive of the Shah and friendly toward the United States. As the architects of the Revolution consolidated power and began purging dissenters, Applicant's father fled the country and moved to the United States. (Tr. 24)

After Applicant's father immigrated to the United States, he initially sought to work for the U.S. military. Later, he worked as a computer programmer for several years, then worked as a gas station mechanic. About 20 years ago, he purchased a convenience store and operated it until he and Applicant's mother divorced approximately ten years ago. Since the divorce, Applicant's contact with his father has been sporadic. (Tr. 45) His father continues to live in the United States.

Applicant lives with his mother, sister, nephew, half-sister, and brother-in-law. (Tr. 44) Applicant's mother is a hair stylist. (Tr. 55) She became a naturalized U.S. citizen in the early 1990s. (Tr. 51) She has no Iranian property interests. (Tr. 55) She travelled to Iran nearly every year over the past decade to visit her family. (Tr. 47) She has not visited since 2008 because of the political instability. (Tr. 47) She intends to return in the

future. Applicant travelled with his mother to Iran in 2003 and 2008 to visit relatives and sightsee.

Applicant's sister was born in Iran and was five years old when her parents immigrated to the United States. She is a naturalized U.S. citizen. She has worked at various retail jobs over the years. She has not returned to Iran since immigrating to the United States with her parents. (GE 2 at 8) She is divorced and has a son, Applicant's nephew.

Applicant has a half-sister whom he did not grow up with. (Tr. 53) She immigrated to the United States from Iran in 1997. (Tr. 53) She works various odd jobs in the retail industry. (Tr. 66) Since immigrating to the United States, she has visited Iran once, to attend her father's funeral in 2010. (Tr. 67)

Applicant's brother-in-law, his half-sister's husband, is an Iranian citizen with permanent U.S. residency status. (GE 1 at 29; Tr. 61) He and Applicant's half-sister married before immigrating to the United States. (Tr. 61) Because of health problems, he did not have to fulfill Iran's mandatory military requirement. He works at an airport directing travellers to the proper security lines. (Tr. 65) He travelled to Iran in 2010 to attend his mother's funeral. (Tr. 65) This is the only time he has travelled to Iran since immigrating to the United States.

Applicant's maternal grandmother lives in Iran. She is a homemaker who is in her mid-eighties. Applicant travelled to Iran with his mother in January 2003 and February 2008 to visit his grandmother and other relatives. (Answer) Applicant talks to his grandmother once per year. (Tr. 70)

Applicant has five maternal uncles living in Iran.¹ U1 is a retired carpenter who currently runs a school for orphans. (Tr. 93) Applicant saw him in 2008 when he visited his grandmother. Applicant only talks to him approximately once per year, if his mother calls him and Applicant happens to be at home. (Tr. 71)

U2 is retired from the Iranian Air Force. Applicant last saw him during his trip to Iran in 2003. (Tr. 72) U2 worked briefly as a test pilot for a private Iranian company after retiring from the Iranian Air Force. (Tr. 73) Like Applicant's father, he did not support the Revolution.

Applicant met U3 during his 2003 Iranian trip. He has no contact with him and knows nothing about him. (Tr. 75)

U4 is a captain of a private shipping company and U5 works for a real estate investment company. (Tr. 75) Applicant has neither spoken to, nor seen U4 and U5 since 2003. (Tr. 75-77)

¹ For ease of reference, I will refer to the uncles as U1, U2, U3, U4, and U5.

Applicant has several cousins who are either living in Iran or are Iranian citizens living elsewhere. He is acquainted with six of them.² C1 completed his mandatory military requirement, then moved to the United Kingdom (U.K.) where he has permanent residency status. Although Applicant has never met him, they are social networking friends. (Tr. 82) They exchange e-mails on birthdays and special occasions.

C2 is the sibling of C1. She is a student living in Iran who is currently attempting to immigrate to the U.K. Applicant keeps abreast of what she is doing through his mother. Applicant is not in touch with C3 and does not know what she does for a living. C4 is a high school student, and C5 and C6 own boutique clothing stores. (Tr. 83) Applicant could not recall C6's name. (Tr. 83) Applicant only talks to these cousins approximately once per year, if they call for his mother and he happens to be at home.

Iran is a brutally repressive theocracy that is virulently anti-American, and seeks to dominate the Middle East through sponsoring terrorism, fomenting unrest in other countries, and developing weapons of mass destruction. (*see generally*, administrative notice documents) The United States has not had diplomatic or consular relations with Iran since November 1979 when militant Iranian students occupied the U.S. Embassy and held 52 Americans hostage for 444 days. (HE II at 10) Iran has the largest inventory of ballistic missiles in the Middle East and it continues to expand the scale, reach, and sophistication of these missiles. (HE VI at 13) Iran's government employs draconian methods such as torture, rape, flogging, and amputations of dissenters to instill fear and retain power. (HE VI) Since 2007, several U.S. citizens have been detained by the Iranian government and held without consular access. (HE XIII)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the potentially disqualifying and mitigating conditions listed in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or

² I will refer to the cousins as C1 through C6.

mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Guideline B, Foreign Influence

Under this guideline, “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 the U.S. interests, or is vulnerable to pressure or coercion by any foreign interest” (AG ¶ 6). Moreover, “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” (*Id.*).

Applicant’s contact with his relatives who are citizens and/or residents of Iran, a country that is both intensely authoritarian and hostile to the United States, raises the issue of whether the following disqualifying conditions apply:

AG ¶ 7(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or a resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, and

AG ¶ 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.

Although friendly countries can engage in activities involving coercion, persuasion or duress of an individual to gather classified information as readily as hostile countries, the risk of such activity is heightened with hostile countries because such countries are “not likely to have scruples about pressuring one of its citizens” to obtain classified information.³

Applicant’s sister left Iran when she was five years old and has not returned. The disqualifying conditions listed above apply to neither her nor her 10-year old son, Applicant’s nephew.

Although Applicant’s half-sister and his brother-in-law grew up in Iran, they have been living in the United States for nearly 15 years. Since then, neither have traveled to

³ ISCR Case No. 02-04786 at 5 (App. Bd. June 27, 2003).

Iran more than once. The above disqualifying conditions do not apply to these relatives, either.

Although Applicant's mother has been living in the United States for more than 30 years, she travels to Iran frequently and intends to return. AG ¶¶ 7(a) and 7(d) apply to Applicant's relationship to his mother and AG ¶ 7(a) applies to his relatives in Iran.

Applicant has not seen his grandmother since 2008 and only talks to her approximately once per year. AG ¶ 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," applies to their relationship.

Applicant only talks to U1 and U2 approximately once per year. Although he met U3 in 2003, he has no relationship with him. Applicant has neither spoken to, nor seen U4 and U5 since 2003. Applicant's contact with C1 is limited to social networking and he only talks to his other cousins if they call for his mother and he happens to be home. AG ¶ 8(c), also applies to these relationships.

Although Applicant's contact with his relatives living in Iran is casual and infrequent, his mother travels to Iran nearly every year and intends to return. Because Iran is a country where U.S. travellers have been detained over the years, Applicant's mother's trips to Iran generate a security concern.

Iran's hostile and repressive nature renders AG ¶ 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.," inapplicable.

Applicant was born and raised in the United States, and has only visited Iran twice in his life. He is a U.S. college graduate who has built a solid career since graduating, and is well-respected by his employer and coworkers. These attributes, however, are unable to overcome the heavy burden that applicants must overcome who have relatives from hostile countries such as Iran. AG ¶ 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 of the U.S. interest," does not apply.

Whole-Person Concept

Under the whole-person concept, the 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.

Applicant is an impressive individual who testified in an engaging manner. Given the frequency of his mother's trips to Iran, and the nature of the Iranian government, the burden is simply too high for him to overcome. Applicant has failed to mitigate the foreign influence security concern.

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 - 1.i:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY
Administrative Judge