



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



In the matter of:)
)
) ISCR Case No. 10-02148
)
Applicant for Security Clearance)

Appearances

For Government: Phillip Katauskas, Esquire, Department Counsel
For Applicant: (Name Redacted), Personal Representative

03/22/2012

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, testimony, and exhibits, I conclude that Applicant has mitigated the security concerns related to foreign preference and foreign influence. Accordingly, his request for a security clearance is granted.

Statement of the Case

On September 28, 2011, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) that detailed security concerns under Guideline B (Foreign Influence) and Guideline C (Foreign Preference). This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992) as amended; and the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

In his Answer to the SOR, notarized on November 2, 2011, Applicant admitted all the factual allegations under Guidelines B and C, except for allegation 1.c under Guideline B. Department Counsel was prepared to proceed on December 12, 2011, and

the case was assigned to me on January 12, 2012. DOHA issued a Notice of Hearing on February 1, 2012, and I convened the hearing as scheduled on February 15, 2012.¹ The Government offered three exhibits, which I admitted into evidence as Government Exhibits (GE) 1 through 3. Applicant testified, presented the testimony of one witness, and offered two exhibits, admitted into evidence as Applicant's Exhibits (AE) A and B. DOHA received the transcript of the hearing (Tr.) on February 24, 2012.

Procedural Ruling

I took administrative notice of facts related to Iran, included in 15 U.S. Government documents provided by Department Counsel. The facts are limited to matters of general knowledge, not subject to reasonable dispute, and are set out in the Findings of Fact.

Findings of Fact

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

Applicant, 59 years old, was born in Iran. He came to the United States in 1977, and completed a bachelor's degree in electrical engineering at a U.S. university in 1980. He returned to Iran, and then moved to Canada, where he earned a master's degree. He holds Canadian citizenship. He moved to the United States in 1995. Once he was established in a job, he moved his wife and children from Canada to the United States in 1996. He became a naturalized U.S. citizen in 2007. Applicant has worked as a software engineer for the same federal contractor since 1995. (GE 1; Tr. 16, 26, 30, 43-44, 47-48)

Applicant's wife was born in Iran. They married in 1976. She holds Canadian, Iranian, and U.S. citizenship. She became a naturalized U.S. citizen in 2007. She earned a nursing degree in Canada, and a master's degree at a U.S. university. She works for a federal agency as a nursing educator. Applicant and his wife do not maintain a relationship with the few aunts and uncles who remain in Iran. His wife last traveled to Iran when Applicant's mother was dying in 2006. Most of her distant family lives in England and the United States. Her mother is a citizen of Iran and Canada. She is a retired librarian and lives in Canada. (GE 1, 2; Tr. 29, 31, 38, 46-47, 49-50)

Applicant and his wife have two adult daughters. The older daughter was born in Iran. She lived there for three years, and then moved to Canada, where she grew up. She became a naturalized U.S. citizen in 2007. She also holds Canadian citizenship. She attended a U.S. university and law school, and currently works as an attorney for a U.S. firm. Since leaving Iran as a child, she has visited three times, the most recent in 2006, to see her dying grandmother. She speaks to her uncle in Iran once a year, or

¹ Department Counsel informed Applicant of the hearing date by telephone on January 24, 2012. Applicant had sufficient notice of the date under the Directive, ¶E3.1.8. (Tr. 12)

less. (Tr. 27, 40) Applicant's younger daughter was born in Canada and also currently holds Canadian, Iranian, and U.S. citizenship. She attends a U.S. college. (GE 1; Tr. 26)

One of Applicant's brothers is a citizen and resident of Iran. He owned a copy shop, and was married with one child. The son developed a rare genetic disease, and passed away at the age of seven. Since then, Applicant's brother has been in a depressed state. He no longer owns the shop, and is unemployed. He and his wife divorced after his son died. He lives alone, and his ex-wife and daughter have moved to Canada. Applicant speaks with this brother three to five times per year, on holidays. Applicant most recently saw his brother in Iran when he visited in 2006 to see his dying mother. His brother has no connection with the Iranian government. Applicant has no plans to return to Iran, and surrendered his Iranian passport two years ago to his FSO. (Tr. 27, 28, 45, 46) Applicant's other brother is a citizen of Iran and Canada. He lives in the United States and is a student at a U.S. university. Applicant talks with this brother occasionally by telephone, and the brother visited Applicant on a holiday in November 2011. (GE 1, 3; Tr. 29, 45)

Applicant held a Canadian passport, but it expired, and he did not renew it because, he testified, he always uses his U.S. passport. He has no intention to return to Canada. (Tr. 46, 60-61) Applicant also held an Iranian passport. He used his U.S. passport for all other foreign travel. He was unaware that using a foreign passport represented a security risk. (GE 1; Tr. 60-61)

During his security interview in 2009, Applicant stated he is willing to renounce his Iranian citizenship. Applicant possessed an Iranian passport, which will expire in July 2012. He surrendered it to his current FSO approximately two years ago. At the time, the FSO told Applicant that surrendering the passport was equivalent to renouncing his Iranian citizenship. (GE 2; Tr. 54-56)

ADMIN. JUDGE O'BRIEN: So you thought that handing in your passport to her [FSO] was, in fact, renouncing your citizenship?

THE WITNESS: Right.

ADMIN. JUDGE O'BRIEN: And you went ahead and handed in your passport?

THE WITNESS: Yes.

Applicant voted in the 2009 Iranian presidential election. He opposes the current regime in Iran, and in 2009, he thought the opposition candidate had a chance to be elected. He voted at a local polling station to support the opposition, as a way to institute change, and to encourage democracy and to improve relations with the United States. He votes in U.S. elections. (Tr. 32-33, 41, 50-51)

Applicant has no property, bank accounts, investment accounts, or other financial ties to Iran or Canada. His three 401(k) accounts with a U.S. investment company are worth approximately \$1,000,000. His wife has a federal government Thrift Savings Plan (TSP), with a balance of approximately \$200,000. He owns two houses in the United States. He bought his first house in 2001, and he maintains it as a rental property. He purchased a second house in 2003, where he currently lives. He estimates the value of his current home at \$700,000. He is about to build two new houses to replace his current home. (GE 2, 3; AE A, B; Tr. 35, 43, 57-60)

Applicant has worked on military contracts since 1995, in support of U.S. forces. Before the Iraq war, he traveled to assignments at U.S. military bases in Qatar and Kuwait. Since the war began, he has traveled to the Netherlands and Kuwait multiple times in support of arms and materiel shipments for the war. His projects primarily involved software engineering, as well as transfer of military equipment from U.S. ships. (Tr. 44-49)

Administrative Notice

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.

The United States has not had diplomatic or consular relations with Iran since 1979. In 2010, the President declared the continuation of a 1979 declaration of a National Emergency with Respect to Iran in order "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."

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). A U.S. government assessment as of February 2011 noted that Iran has the scientific, technical, and industrial ability to eventually produce nuclear weapons. 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.

Iran has been designated as a state sponsor of terrorism since 1984, and remains one of the most active state sponsors of terrorism. According to the U.S. Department of State, it provides planning and financial support for terrorist attacks throughout the Middle East, Europe, and Central Asia. Iran trains, equips, and funds select Iraqi Shi'a militant groups. It has refused to bring to justice senior al-Qa'ida members it has detained. The United States is concerned about the possibility that terrorists could eventually obtain WMD from Iran.

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. The State Department also warns that U.S. citizens of Iranian origin may be subject to harassment or arrest while in Iran, and should carefully consider the risk of being targeted by Iranian authorities. 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, have their personal possessions in hotel rooms searched, and their telephones monitored.

Policies

Each security clearance decision must be a fair and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the 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 does not determine a conclusion for or against an applicant. However, specific applicable guidelines are 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.

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 that 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”

² Directive. 6.3.

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

⁴ See *Egan*, 484 U.S. at 528, 531.

standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁵

Analysis

Guideline C, Foreign Preference

The security concern under Guideline C, AG ¶ 9, states:

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:

(7) Voting in a foreign election.

In 2009, Applicant voted in the Iranian presidential election. He testified that he opposes the current regime, and believed that voting would assist in the election of the opposition candidate. AG ¶ 10(a)(7) applies. None of the mitigating conditions listed under AG ¶ 11 specifically apply to disqualifying condition AG ¶ 10(a)(7). However, the Concern under Guideline C is that an individual who engages in certain activities, such as voting in foreign elections, may be prone to provide information or make decisions that are harmful to the interests of the United States. Here, Applicant's history and conduct show that he is unlikely to make decisions that would harm the United States. On the contrary, he has spent 17 years assisting the Department of Defense in its efforts overseas. Applicant's voting did not express a preference for Iran, but showed his opposition to the current regime. He voted in 2009 to support the opposition because he thought the opposition candidate had a chance to be elected. Applicant has voted in U.S. elections.

Mitigating condition AG 11(b) (*the individual has expressed a willingness to renounce dual citizenship*) also applies. Applicant expressed his willingness to renounce his Iranian citizenship to the security agent at his 2009 security interview, and surrendered his foreign passport more than two years ago. At the time, he was informed by the FSO that this act would constitute a renunciation of his Iranian citizenship. He surrendered it with that belief demonstrating his preference for the United States over Iran.

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

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

(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.

The SOR alleges security concerns about several of Applicant's family members including his brother who is an Iranian citizen living in Iran; and Applicant's wife, brother, and mother-in-law. Other than his brother, none of these relatives live in Iran, but they hold multiple citizenships, including Iranian.

Family ties with a resident or citizen of a foreign country do not automatically disqualify an applicant from obtaining a security clearance; such ties are only disqualifying if they create a heightened risk of foreign exploitation or a potential conflict of interest. The country in question must be considered.⁶ Iran and the United States have had a hostile relationship. It has been designated a state sponsor of terrorism. The State Department warns that dual U.S-Iranian citizens who travel to Iran must exercise particular vigilance during travel. Such dual citizens have had their U.S. passports confiscated, and have been denied permission to exit Iran.

Here, Applicant shares living quarters with his wife, who is a citizen of Iran, Canada, and the United States. His brother is a citizen and resident of Iran. He is in

⁶ See ISCR Case No. 04-07766 at 3 (Ap. Bd., Sep 26, 2006) (the nature of the foreign government involved must be evaluated in foreign influence cases).

touch with his brother in Iran three to five times per year. He has not traveled to Iran since 2006, when his mother passed away. Applicant's family ties with Iran create a heightened risk of foreign exploitation. AG ¶¶ 7(a) and (d) apply.

I have considered the mitigating conditions under 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.

The primary family connection to Iran is Applicant's brother. However, he does not have a close relationship with his brother. They talk three to five times per year on holidays. He has not visited Iran since 2006, and he surrendered his Iranian passport to his FSO two years ago. He has no bank accounts, property, or any other financial interests in Iran that could be used to manipulate or pressure him. On the other hand, his connections with the United States include his U.S. citizenship, U.S. undergraduate education, his long-term residence here, two real estate properties, substantial investments in 401(k) accounts and a TSP, and his long service to the U.S. military through his employment with a federal contractor. Given these connections, it is unlikely that Applicant would choose his foreign sibling if a conflict of interest arose. Mitigating conditions AG ¶ 8(a) and (b) apply.

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):

(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.

Guideline B cases do not focus on an applicant's loyalty to the United States, and here, Applicant's loyalty is not in question. His ties to Iran consist of one brother there, and three relatives in the United States and Canada who have multiple citizenships with Iran, Canada, and the United States. Applicant has, at most, sparse contact with his brother in Iran. He has not traveled there in more than five years, has no plans to return in the future, and has surrendered his Iranian passport. He does not own property or have financial interests there. He votes in U.S. elections, and his one instance of voting in an Iranian election was in the hope of ending the current regime.

I have also considered Applicant's strong ties to the United States. He has made his life here for the past 17 years. He earned a bachelor's degree at a U.S. university. He worked steadily during his entire time in the United States to support the U.S. military. Given his substantial financial resources, it is unlikely he would be vulnerable to financial coercion. His wife is a U.S. citizen. She has earned a graduate degree here, and has been a federal government employee for years. Finally, Applicant has demonstrated his dedication to the United States through his contributions to U.S. military efforts both before and during the Iraq war, over the past 17 years. Given these U.S. ties, I conclude that Applicant would resolve any conflict of interest in favor of the United States.

For all these reasons, I conclude Applicant has 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 satisfied the doubts raised under the guidelines for foreign influence and foreign preference.

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	FOR APPLICANT
Subparagraphs 1.a – 1.d	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 1.a	For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge