



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



In the matter of:)	
)	
-----)	ISCR Case No. 10-02660
)	
Applicant for Security Clearance)	

Appearances

For Government: William T. O'Neil, Esquire, Department Counsel
For Applicant: *Pro se*

March 21, 2011

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On September 22, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing 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 (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In his October 12, 2010, response to the SOR, Applicant admitted the seven allegations raised under Guideline B and requested a hearing before an administrative judge. The case was assigned to me on November 19, 2010. Department Counsel and Applicant agreed to a February 1, 2011, hearing date. A Notice of Hearing was issued by DOHA on January 19, 2011, setting the hearing for that date.

The hearing took place as scheduled. Department Counsel submitted two exhibits (Ex.) which were accepted into the record as Exs. 1-2 without objection. I also accepted Department Counsel's memorandum requesting administrative notice of certain facts related to Azerbaijan and Iran. They were accepted without objection as

HE-1 and HE-2, respectively. Applicant gave testimony and referenced previously submitted materials. He was given until February 21, 2011, to submit any additional materials. The transcript (Tr.) was received on February 9, 2011. On February 28, 2011, the Government forwarded to me three letters which were timely received from Applicant. They were accepted into the record without objection as Exs. A-C, and the record was closed. Based upon a review of the exhibits and testimony, security clearance is denied.

Administrative Notice

The Government requested administrative notice of certain facts and materials regarding the Republic of Azerbaijan and the Islamic Republic of Iran. It referenced materials issued by U.S. Executive Branch entities, such as the U.S. Department of State, to support its summaries.¹ Those materials were attached to its summaries for fuller examination and assessment. Materials reflecting opposing or differing views were not offered.² Based on those materials and summaries, I note the following facts:

The Republic of Azerbaijan is a constitutional republic with a developing economy. It achieved independence from the former Soviet Union in 1991. It has extensive petroleum reserves and does substantial trade with Russia and Western Europe. Although Azerbaijan has been an active member of the United Nations and a U.S. partner in the global war on terrorism, relations have been recently strained on the subject of its continuing conflict with Armenia over the Nagorno Karabakh region.

The United States supports American investment in Azerbaijan. It is also committed to aiding a full transition to democracy in that country and aiding in its formation of an open market economy. The United States and Azerbaijan signed a bilateral trade agreement in 1995 that conferred to Azerbaijan the status of most favored nation. The United States has an abiding interest in helping Azerbaijan achieve a broad-based, market-driven economy, and has provided it with humanitarian assistance. The State Department recognizes that Azerbaijan, an emerging nation, retains some restrictions on its citizens that reflect poorly on its human rights record. Incidents of arbitrary arrest, detention, and judicial corruption have been noted, as have incidents related to the abridgement of the freedoms of religion, press, and peaceful assembly.

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 Iranian state authority. Shi'a Muslim clergy dominate the country's political structure. Ultimate power rests in a Shia religious scholar known as the Supreme Leader.

The United States has not had diplomatic or consular relations with Iran since 1979. In 2006, the President declared the continuation of a 1979 declaration of a

¹ See HE-1, attachments I-V (Azerbaijan), and HE-2, attachments I-XV (Iran).

² Applicant substantially agreed with the Government's summary of its documents with regard to Iran, noting that the Government documents were "true." See Tr. 54-55.

National Emergency with Respect to Iran because Iran poses an extraordinary threat to the national security, foreign policy, and economy of the United States.

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). 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 its people.

Iran is one of the most active state sponsors of terrorism, providing planning and financial support for terrorist attacks throughout the Middle East, Europe, and Central Asia. The United States is concerned about the possibility that terrorists could obtain WMD from Iran. Iran supports terrorists who attack Israel, as well as Shiite militias, who have encouraged, facilitated, and engaged in sectarian violence in Iraq.

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. Access to the U.S. Interests Section in Tehran may be denied. U.S.-Iranian dual citizens may be subject to harassment or arrest while in Iran. Such dual citizens have had their U.S. passports confiscated, and may have been denied permission to exit Iran. Visitors from abroad may be placed under surveillance.

Findings of Fact

Applicant is a 38-year-old language instructor who has worked for the same defense contractor since October 2010. He is currently supporting the U.S. military by providing linguistic services. He is married and has a minor child.

Born in Iran, Applicant is of Turkish descent. As a member of an oppressed minority, he was given limited education and opportunity in Iran, although he completed a college education there.³ He was arrested by Iranian police “many times on different occasions” for “reasons against the government.”⁴ In the mid-1990s, he was jailed for three months. During a three-day pass from prison, his family secretly helped him flee to Azerbaijan. While there, he burned his only Iranian passport in a protest at the Iranian Embassy.⁵ He remained in Azerbaijan to work and study until he moved to Turkey in 1997. In 1998, he was advised to leave Turkey because Turkey and Iran “had some

³ Tr. 20-21, 42. Contrasting the oppression he experienced as a Turk in Iran to his life in the United States, Applicant stated, “there is no way that a person like me, after . . . all these great opportunities in this country, . . . could even think of turning my back on this country.”

⁴ Tr. 18.

⁵ Tr. 36. Applicant was not arrested for this action.

agreement to exchange each others' opposition."⁶ He sought help through the United Nations and was granted refugee status in the United States in September 1998.⁷

As a recent U.S. immigrant, Applicant took menial jobs as he furthered his education and became acclimated to his new country. Since arriving in the United States, Applicant has thrived and been a law-abiding citizen.⁸ He avoids conflict and controversy. For the first three years in the United State, Applicant feared he might be under observation by forces from Iran, but he never had any proof his "feeling" was correct.⁹ He concedes that he may have overreacted and "exaggerated his feelings."¹⁰ He worked in three states before settling in his current region about five years ago. Fluent in three foreign languages, he has settled on a profession in linguistics.

In the mid-2000s, Applicant was shown the picture of a woman living in Azerbaijan by an acquaintance who is the woman's aunt. Applicant expressed an interest in the woman. Through the friend's recommendation, he met the woman in Azerbaijan in 2005. Interested in the woman, Applicant asked his parents to join him in Azerbaijan to meet his intended bride.¹¹ The couple were then engaged. In 2006, Applicant returned to Azerbaijan and the couple married. Applicant returned to the United States with his bride, who left behind her parents and a brother, all of whom are residents and citizens of Azerbaijan. Currently a stay-at-home mother and graduate student, Applicant's spouse is a legal U.S. resident. She will be applying for U.S. citizenship in a few months, when she is eligible to apply for citizenship.¹²

Applicant's mother, father, three sisters, and two brothers remain residents and citizens of Iran. None work for the Iranian government. Applicant's father is about to retire. He will soon receive a pension from his employer, a private railroad company that is an Iranian government contractor.¹³ Applicant's mother is a housewife, uneducated, and apolitical. Applicant's sisters would like to study in the United States, but that is not currently being explored as an option.

⁶ Tr. 19.

⁷ *Id.*

⁸ Tr. 21.

⁹ Tr. 37-38.

¹⁰ Tr. 38.

¹¹ Tr. 33. Since 2005, Applicant's family has been able to travel on an Iranian passport.

¹² Tr. 46.

¹³ Tr. 25-26.

Applicant's father and a brother have been arrested or received pressure from the Iranian government. In the mid-1990s, an unsuccessful attempt was made to have Applicant's father travel to Azerbaijan to make Applicant return to Iran.¹⁴ A few years later, Applicant's brother was dismissed from law school.¹⁵ His younger brother has been arrested "at least [ten] times," but for his own political views.¹⁶ The younger brother is the only family member that is politically active.¹⁷ Applicant's family knows that Applicant would not be vulnerable to pressures exerted on his family.¹⁸ They have accepted the fact Applicant cannot return to Iran and does not want to return to Iran, even to visit.¹⁹

Applicant maintains minimal contact with his family abroad, exchanging telephone calls about every two months "if there's a death, if there's a wedding or a birthday, or special occasions."²⁰ They do not write through the post or e-mail, although they have spoken to Applicant's wife and child through Skype.²¹ Applicant only speaks to his siblings if one is at his parents' home when he calls. Applicant is unable to return to Iran due to the nature of his departure in the mid-1990s.²² None of his family members have visited Applicant in the United States, although they have been free to travel since 2005. They do not know the nature of his work.²³ While he is the oldest child in the family, he has no expectation of any inheritance from his family.²⁴ Should any property be left to him, Applicant noted that he would be unable to visit Iran to collect any assets.²⁵

¹⁴ Tr. 26-27. When Applicant fled to Azerbaijan, he was on a three-day pass from jail, for the aforementioned incarceration that lasted three months. He never returned. For the next couple of years, Iran sought to seek his return, but it has since ceased its efforts. Tr. 28.

¹⁵ Tr. 29.

¹⁶ Tr. 30.

¹⁷ *Id.*

¹⁸ Tr. 29-30. Regarding whether Applicant would help his family if pressure was exerted on them, he noted, "they would not even ask that from me. . . . I have taken off. . . this is my country." Tr. 31.

¹⁹ Tr. 45.

²⁰ Tr. 22.

²¹ Tr. 39. Applicant does not use any form of social networking.

²² Tr. 36.

²³ Tr. 23.

²⁴ Tr. 40-41. In noting the "situation," Applicant explained that most of his siblings reside with his parents. As a result, any inheritance could be expected to flow to his siblings in Iran.

²⁵ Tr. 41-42.

In describing his family, Applicant noted that they are “very ordinary people. They are not even worth it for [sic] government to oppress them or pressurize them. And they have had enough because of me, but for [the] last 15, 16 years that I have not been able to go back to Iran, things have been loosening [and] . . . they are not under any pressure anymore.”²⁶ He also noted that “they have their very simple life, and I have my great life here. My new country, and my family. . . . I have almost zero connection with them.”²⁷

Neither of Applicant’s parents-in-law work for the government of Azerbaijan. His mother-in-law is a librarian and his father-in-law is a businessman.²⁸ Applicant’s brother-in-law is a student. All three are residents and citizens of Azerbaijan. Only the mother-in-law has visited the United States, when Applicant was working abroad on an assignment and his wife was expecting their child.²⁹ Applicant does not maintain contact with them, but his wife speaks with them by telephone every few weeks.³⁰

Applicant has purchased a home. He maintains an IRA, a 401(k), and a savings account. His wife has similar savings in the United States. The couple own their car. Applicant is active in the local linguistic organizations. He is “passionate” about languages and is fluent in English, Turkish, Azerbaijani, and Farsi.³¹ At work, he is a highly valued employee, noted for his language skills, loyalty, and responsibility.³²

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required in evaluating an applicant’s eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s over-arching adjudicative goal is a fair, impartial and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” All available, reliable information about the person, past and present, favorable and unfavorable, must be and were considered in making a decision.

²⁶ Tr. 21.

²⁷ Tr. 21-22.

²⁸ Tr. 34.

²⁹ Tr. 35.

³⁰ Tr. 46.

³¹ Tr. 48-49.

³² See Exs. A-C (References).

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.” In reaching my decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence submitted.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”³³ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.³⁴

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”³⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.³⁶ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.³⁷ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find Guideline B (Foreign Influence) to be the most pertinent to the case. Conditions pertaining to this AG that could raise a

³³ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

³⁵ *Id.*

³⁶ *Id.*

³⁷ Executive Order 10865 § 7.

security concern and may be disqualifying, as well as those which would mitigate such concerns, are discussed below.

Analysis

Guideline B – Foreign Influence

The concern under Guideline B is that 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. Consideration should be given to 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 U.S. citizens to obtain protected information or is associated with a risk of terrorism. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are discussed in the conclusions below.

The countries at issue are Azerbaijan and Iran, discussed above. Iran is specifically noted for its association with and sponsorship of terrorists and the fact that it engages in clandestine efforts to illegally obtain U.S. military equipment and other sensitive technology. Consequently, given the heightened risk associated with that country, a high degree of scrutiny is warranted.

Applicant maintains regular contact with his parents and, to a lesser extent, with his siblings. These individuals are citizens and residents of Iran, a sponsor of terrorist activity, a collector of sensitive industrial information, and a country with interests antithetical to those of the United States. In addition, Applicant's wife maintains regular contact with her parents and brother, who are citizens and residents of Azerbaijan. Such facts are sufficient to give rise to Foreign Influence Disqualifying Conditions AG ¶ 7(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 exploitation, inducement, manipulation, pressure, or coercion) and AG ¶ 7(b) (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). With disqualifying conditions thus raised, the burden shifts to Applicant to mitigate security concerns.

The Government provided documents describing Iran's sponsorship of terrorism and its interest in acquiring U.S. military-related industrial information. Applicant agreed with the contents of those documents, therefore, he is aware of the threat Iran represents. While Applicant provided credible testimony that his family in Iran is "very ordinary," he also explained that his father was once pressured to talk Applicant into

returning to Iran, that his brother was expelled from law school, and that his younger brother has been jailed on numerous occasions for his own political beliefs. Applicant also testified that he felt he was being monitored by Iranian forces for the first few years he lived in the United States. While both Applicant and his family are resolved that Applicant will neither return to nor aid Iran, and while they have successfully demonstrated their ability to resist Iranian coercion in the past, such incidents highlight the grave degree of risk for foreign influence or exploitation that exists. In contrast, there is scant evidence that his relationship with his in-laws currently poses genuine security concerns. Given these facts, Foreign Influence Mitigating Condition 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.) applies with regard to Applicant's in-laws, but not his Iranian relatives.

Applicant maintains regular telephonic contact with his parents in Iran, and only incidental contact with his siblings. They do not correspond, although his wife uses Skype to speak with his family. While none of his family has visited from Iran since receiving passports in 2005, they remain an emotionally significant part of his life, as evidenced by his invitation to them to meet his fiancée in 2005 and his continued, family-oriented conversations by telephone. Although Applicant and his Iranian family accept their situation, their contact demonstrates significant familial ties and interests. In contrast, Applicant has negligible contact with his in-laws in Azerbaijan, although his wife's regular contact with her family evidences a close bond. 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) does not apply.

While Azerbaijan may present issues of concern, none are directly related to the safety of U.S. citizens, the sensitivity of industrial security matters, or the sponsorship of terrorism. The same cannot be said of Iran, which poses a significant threat to the national security, foreign policy, and economy of the United States. Applicant, however, presents a relatively unique situation. He is a member of an Iranian minority that suffered from Iranian oppression. He was jailed repeatedly for his political beliefs. He fled Iran and resisted pressures extended through his father to return to jail in Iran. He has remained in the United States so long that, as a former inmate, he appears to no longer be wanted by Iran. At the same time, he has embraced the United States fully. He is a proud American who is happy to be living and raising a family in this country. He is resolved not to return to Iran under any circumstances, and his family knows that he cannot be relied upon to help them should they be pressured by their state. In addition, his sense of loyalty to Azerbaijan, which, if any, seems to have been transient due to his unique circumstances, appears to be minimal, especially when compared to his loyalty to the United States. Under these facts, AG ¶ 8(b) (there is no conflict of interest, either because the individual's sense of loyalty to 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) applies. In light of the SOR allegations, none of the other mitigating conditions apply.

As noted, Applicant's relationships with in-laws who are citizens and residents of Azerbaijan are clearly casual. While his wife maintains a relationship with her family, these facts do not sufficiently demonstrate that either Azerbaijan or Applicant's in-laws represent a significant security concern. The same cannot be said of Iran.

Iran represents an atypical extreme in terms of its threat to U.S. security and demands the highest level of scrutiny. Applicant credibly testified that he and his family are resolved in their situation. They do not know what kind of work he does, but they know he will not return to Iran. They endured one test in the mid-1990s when his father was used to try to get Applicant to return to jail. Over the years, Iran's desire to see Applicant imprisoned for his political beliefs has apparently waned.

Despite these facts, Applicant lives safely in the United States and now seeks access to sensitive information. His Iranian family are members of the Turk minority. His father works for an Iranian government contractor and his brother is an oft-jailed dissident. While a past incident of coercion was unsuccessful, it was aimed at retrieving a fleeing prisoner living in Azerbaijan, not a U.S. citizen with access to sensitive information. Applicant depicts his family as ordinary. Such facts, however, highlight that they have not lived below the radar of observation and scrutiny. Particularly now that his family is allowed to travel on an Iranian passport, they are even more vulnerable to manipulation by the Iranian government to exploit their ties to Applicant, despite Applicant's clear loyalty to the United States. Although Applicant mitigated security concerns about Azerbaijan, security concerns related to Iran remain unmitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the "whole-person" factors. Applicant is a credible and mature individual who has successfully risen from refugee to highly valued translator/linguist. He is a long-time critic of the Iranian regime and he has embraced the United States. Here, he has built a career, a home, and a family. All of his assets are in the United States. He has no desire to return to Iran, nor does he have the ability. He and his relatives accept the divide that has separated them and their circumstances. There is no question that Applicant's loyalty is with the United States.

At the same time, Iran engages in clandestine efforts to illegally obtain U.S. military equipment and other sensitive technology. It supports terrorism. It poses an extraordinary threat to the national security, foreign policy, and economy of the United States. While Applicant's family may be ordinary in many ways, they are members of the Turk minority. The family includes two sons, including Applicant, who are or have been openly dissident in their views about Iran's regime. Applicant is a former escapee of its penal system. His brother was expelled from law school for political reasons. The family was unable to travel on an Iranian passport until 2005. Should it become known that Applicant, who once thought his movements were monitored in the United States by Iranian authorities, had access to sensitive information, pressure could again be brought to bear on his family, with whom he maintains a genuine bond. Although security concerns related to Azerbaijan are mitigated, given the nature of Iran's current regime, genuine security concerns remain, despite Applicant's clear loyalty to the United States.

The protection of the national security is the paramount consideration in these cases. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. Any reasonable doubt concerning personnel being considered for access to classified information will be resolved in favor of national security, while any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. In light of these facts and the concerns raised by Iran, I find that Applicant failed to mitigate foreign influence security concerns.

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:	For Applicant
Subparagraphs 1.b-1.g:	Against Applicant

Conclusion

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

ARTHUR E. MARSHALL, JR.
Administrative Judge