



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 10-02922
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel

For Applicant: *Pro se*

September 21, 2011

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on October 29, 2009. (Government Exhibit 2.) On October 6, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines C (Foreign Preference) and 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 adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on October 29, 2010, and requested a hearing. Department Counsel was prepared to proceed on December 10, 2010. This case was assigned to another administrative judge on January 4, 2011. It was reassigned to me on January 18, 2011. DOHA issued a notice of hearing on January 4, 2011. I convened the hearing as scheduled on January 25, 2011. The Government offered Government Exhibits 1 through 4, which were admitted into evidence. Applicant testified, and submitted Applicant Exhibits A through I, which were admitted without objection. At the

request of Applicant, the record was left open for the receipt of additional documents. Applicant submitted Applicant Exhibit J on January 31, 2011, which was admitted without objection. DOHA received the transcript (Tr) of the hearing on February 3, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural Ruling

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the Islamic Republic of Iran (Iran). (Tr at 31-35.) The request and the attached documents were not admitted into evidence but were included in the record. I also took administrative notice of facts set forth in Applicant Exhibits H and I. (Tr at 29-31.) The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant was 47 at the time of the hearing and single. He has a son from his prior marriage. He has a master of science degree and is applying for a security clearance in conjunction with his employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference)

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in a way that shows a preference for another country instead of the United States. Applicant denied the general paragraph under this allegation, and sub-subparagraph 1.a.(1). He admitted subparagraph 1.a. and sub-subparagraph 1.a.(2).

Applicant was born and raised in Iran. He states, "I came to the US in 1976, as a 13 year old and have called it home ever since." (Applicant Exhibit A at 1.) He completed high school and received his bachelor and master's degrees from universities in the United States. Applicant became an American citizen in July 1994. (Government Exhibit 2 at Section 9.) (See Tr at 61-70.)

Applicant has a valid Iranian passport, which was issued in September 2006 and valid through September 2011. He also has a valid United States passport, which was issued in March 2006 and valid through March 2016. (Government Exhibit 3.) Applicant used his Iranian passport to travel to Iran in 2008. (Government Exhibit 3 at 37.) Applicant also testified that he has had various Iranian passports over the years while he has been a citizen of the United States. (Tr at 75-77.)

Applicant testified extensively concerning his continued possession and use of his Iranian passport. He has possessed and used an Iranian passport for several different reasons. First of all, he obtained and used an Iranian passport to attend to family affairs in Iran. Second, he obtained an Iranian passport in order to proceed with various property, probate and financial activities in Iran. Third, he states that his use of an Iranian passport shows prudence, and not preference. In that respect, he pointed to Applicant Exhibit I, a Travel Warning from the State Department. (Tr at 47-53, 76-78.)

No information was provided by Applicant showing that use of the Iranian passport was approved by the cognizant security authority. In addition, no information was provided showing that the passport has been destroyed or otherwise invalidated. Finally, Applicant testified about his decision not to surrender his Iranian passport to the cognizant security authority. (Tr at 78, 92-94.)

Applicant was asked by me, "Do you view yourself as a dual citizen of Iran and the United States?" He replied:

Basically to the extent that you know would I consider myself an American the answer is yes. Okay. I consider myself a citizen of this country and this is where I have made my home, this is where I'm going to be.

To the extent that I have relatives in Iran and as the eldest son of the family I feel a duty to essentially take care of them, I would like to keep if you will the privilege of going back and forth. Once the aunts and everybody else are passed and done essentially that's where my relationship with the country ends. I have no other person if you will. There nothing really to have any time with that country. (Tr at 94-95.)

Paragraph 2 (Guideline B - Foreign Influence)

The Government alleges in this paragraph that the Applicant is ineligible for a clearance because he has foreign contacts and interests that could lead to the exercise of poor judgment, unreliability or untrustworthiness on the part of the Applicant. Applicant admitted all of the allegations under this paragraph.

Applicant has a financial interest in several properties in Iran. Applicant and his two siblings are currently engaged in a probate dispute with his father's second wife concerning the division of assets from two of the properties. According to Applicant, the value of these properties is nominal compared to his assets in the United States. Applicant estimated his share of the property at approximately \$74,000. Once probate is completed, Applicant intends to sell the properties and transfer his share of any money to the United States. He wants to retain his Iranian passport to facilitate these actions. (Government Exhibit 4 at 4; Applicant Exhibit A at 2-3; Tr at 53-57, 81-87.)

Applicant's step-mother is a citizen and resident of Iran. Due to the probate battle, Applicant has no personal relationship with this person. (Tr at 56-57, 84-86.)

Applicant has four aunts and two cousins who are citizens and resident in Iran. Three of his aunts are retired employees of the Iranian government. According to Applicant, he has cordial relations with these people, contacting them three or four times a year. (Tr at 87-92.) Applicant testified that he would follow proper procedures if any of his relatives in Iran were threatened by the Iranian government in order to induce Applicant to reveal classified or sensitive information. (Tr at 101-105.)

Applicant has visited Iran four times since coming to the United States. His most recent trip to Iran was in 2008. For that trip he used his Iranian passport. (Government Exhibit 3 at 37.)

Applicant has connections to Iran. It is appropriate to look at the current situation regarding the United States and Iran.¹ Iran is an Islamic Republic where ultimate political authority is vested in a religious leader. The United States has not had diplomatic or cultural relations with Iran since November 1979. On November 12, 2009, President Obama continued the November 14, 1979 declaration of a National Emergency with Respect to Iran “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.” (Administrative Notice Document III.) Iran has been designated a State Sponsor of Terrorism since 1984, and remains the most active State Sponsor of Terrorism.

In addition to objecting to its sponsorship of terrorism, the United States also has specific objections to Iran’s nuclear weapons ambitions, and its violations of human rights. In addition to their troubling nuclear program, Iran has also sought to illegally obtain U.S. military equipment and sensitive technology. However, it must also be stated that the United States has allowed American companies to trade with Iran, despite a trade embargo. (Applicant Exhibit H.)

The Iranian Government has a poor human rights record. Human rights abuses included the following: 1) politically motivated violence including torture, beatings and rape, 2) severe officially sanctioned punishments, including death by stoning, amputation and flogging, 3) arbitrary arrests and detentions, 4) lack of judicial independence and of public fair trials, 5) severe restrictions on civil liberties, including freedoms of speech, press, assembly, association, movement and privacy, and 6) monitoring social activities of citizens.

“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.” (Applicant Exhibit I.) The Iranian government does not recognize dual nationality and will treat U.S.-Iranian dual nationals solely as Iranian citizens. As the United States does not have diplomatic or consular relations with Iran, it cannot provide protection or routine consular services to American citizens in Iran. Iranian authorities

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, or by Applicant Exhibits H and I.

have prevented a number of American citizens, who have traveled to Iran for personal reasons, from leaving, and in some cases have detained, interrogated and imprisoned them.

Mitigation

Applicant submitted letters of recommendation from work associates, including his current supervisor. That person, who supervised Applicant for four years, states, "It is my strong opinion that [Applicant] is of the highest character and is worthy of trust." (Applicant Exhibit C.) A former supervisor who has known Applicant over 20 years states that Applicant, "has always been mature, level headed, intelligent, responsible, and competent." (Applicant Exhibit E.) (See Applicant Exhibits B and G.)

Applicant's younger brother, who works for another organization of the Federal government, submitted a letter on Applicant's behalf. He states that Applicant is an honest person who shows "high morals and principles." (Applicant Exhibit D.)

Applicant has considerable financial assets in the United States. Including his house and some rental properties in the figure, Applicant puts the total value of his assets in the United States at \$550,000. (Applicant Exhibit J; Tr at 96-100.)

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used as appropriate 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based

on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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

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. Security clearance decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Finally, as emphasized in Section 7 of 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the applicant's conduct and the granting or continued holding of a security clearance. If such a case has been established, the burden then shifts to the applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

Paragraph 1 (Guideline C - Foreign Preference)

Applicant has not mitigated the Government's concerns about his continued holding of a current Iranian passport. The concern is stated thus under this Guideline at ¶ 9:

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.

In this case, the Government has met its initial burden of proving by substantial evidence that Applicant has an Iranian passport that will not expire until September 2011. In addition, Applicant has used his Iranian passport to travel to Iran in 2008. He specifically states he wishes to retain an active Iranian passport, and therefore Iranian citizenship, in order to facilitate and protect financial interests in Iran.

Accordingly, AG ¶ 10 applies to the facts of this case.

Conditions that could raise a security concern and may be disqualifying include:

(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:

(1) possession of a current foreign passport; and

(5) using foreign citizenship to protect financial or business interests in another country.

Under the facts of this case AG ¶¶ 11(d) and 11 (e) do not apply in that the “use of a foreign passport has not been approved by the cognizant security authority,” nor has “the passport been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.” None of the other mitigating conditions are applicable to this case. Guideline C is found against the Applicant.

Paragraph 2 (Guideline B - Foreign Influence)

The concern under Guideline B is styled as follows under ¶ 6:

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.* (Emphasis supplied.)

The Applicant has family connections in Iran. He most recently traveled to Iran in 2008 in connection with returning his father’s remains to Iran for burial. In addition, he has aunts and cousins that he feels an obligation to as the oldest son of his family, and

with whom he is in regular contact. In addition, Applicant has property interests in Iran that are not the equal of his American interests, but are substantial and include one property that he and his two siblings (both American citizens) hold together free and clear.

The following Disqualifying Conditions apply to this case:

AG ¶ 7(a) contact with a foreign family member . . . 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;

(b) connections to a foreign person . . . 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 . . . by providing that information; and

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to a heightened risk of foreign inducement, manipulation, pressure or coercion.

Applicant has not provided compelling evidence to show that the following Mitigating Conditions apply to this particular case, given his particular background:

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.;

(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;

(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; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant has not submitted sufficient evidence to show that his family and financial ties in the United States outweigh his relationship to Iran. While his son and

siblings are here, he has an emotional and familial responsibility to the members of his family living in Iran. In addition, while Applicant argues that his financial ties to Iran are not strong, he admits that one of the major reasons for retaining an active Iranian passport is to protect those property interests.

Based on my analysis of the available information, the Applicant has not overcome the adverse inference of his familial and property connections to Iran. Guideline B is found against the Applicant.

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 relevant circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. My Guideline B and C analysis is applicable to the whole-person analysis as well. The Applicant may very well be a patriotic American citizen. The problem here is that he is knowingly and consciously retaining his Iranian passport. In addition, he failed to present compelling evidence showing that his preference is for the United States and not Iran. It is the Applicant's burden to make such a case, and he has not done so. For those reasons, I cannot find that there is little or no "potential for pressure, coercion, exploitation, or duress" as set forth in AG ¶ 2(a)(8). Using the whole-person standard, the Applicant has not mitigated the security significance of his foreign preference and foreign connections. He is not eligible for a security clearance.

On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

Formal Findings

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

Paragraph 1, Guideline C:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a. through 2.e.:	Against Applicant

Conclusion

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

WILFORD H. ROSS
Administrative Judge