



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



In the matter of:)
)
) ISCR Case No. 10-09421
)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

03/22/2012

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the security concerns generated by his possession of a valid Iranian passport and his relationship with his family members who are Iranian citizens and residents. 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 Guidelines B, foreign influence, and C, foreign preference. 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) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on December 10, 2011, admitting the allegations, and requesting a hearing. On January 25, 2012, I received the case assignment. DOHA issued a notice of hearing on January 18, 2012, scheduling it for February 7, 2012. I held the hearing as scheduled. During the hearing, I received two Government exhibits, marked as Government Exhibits (GE) 1 and 2, and Applicant's testimony. At the Government's request, I took administrative notice of the adjudicative facts set forth in 11 documents, marked as Hearing Exhibit (HE) I through VI, and XI 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 February 14, 2012.

Findings of Fact

Applicant is a 61-year-old married man with two adult children. He was born and raised in Iran. After earning a bachelor's degree in economics and a master's degree in political science from Iranian universities, Applicant took a job with an airline company. He was highly successful; however, after the 1979 Iranian Revolution, the Government began replacing executives from businesses across the country with revolutionaries. (Tr. 31) Consequently, Applicant and his family immigrated to the United States in 1984. He became a naturalized U.S. citizen in 1998. (Tr. 33)

In 1990, Applicant joined an information technology company. After a few years, he was promoted to the company's director of finance. (Tr. 31) In 1998, he left this job and took a job as a chief financial officer (CFO) for another company. Applicant worked for the company for ten years before leaving and taking his current job. (Tr. 32) Currently, he is the CFO of the company and a minority shareholder. He seeks a security clearance because he wants to be the company's facility security officer.¹

Applicant's wife is an accountant. She is also from Iran, and she is a naturalized U.S. citizen. (GE 1 at 27) She met Applicant in college, and they got married in 1975. She is a dual Iranian citizen. Her parents are deceased, and she has no siblings living in Iran.

Applicant and his wife's oldest child was born in Iran, and the younger child was born in the United States. The oldest child is a naturalized U.S. citizen.

Applicant has five sisters (S1, S2, etc.) and four brothers-in-law who are citizens and residents of Iran. S1 is a housewife. Applicant talks with her approximately once per month. Her husband is a retired fabric dealer. Applicant talks with him approximately once per year. (GE 2 at 15)

S2 is a housewife. Her husband is deceased. Applicant talks with her approximately twice per year. (GE 2 at 16)

¹Applicant and the other company executives concluded that it would save money for the company if, rather than hiring a facility security officer, Applicant served in a dual role as CFO and facility security officer.

S3 is a retired high school teacher. Applicant talks with her approximately twice per year. Her husband is a retired colonel. He served during the Shah's regime, then retired after the revolution. (GE 2 at 17)

S4 is a retired middle school teacher. Applicant talks with her approximately once per month. Her husband is a retired geologist. (GE 2 at 18)

S5 is a housewife. She recently travelled to the United States to attend Applicant's daughter's wedding. She stayed with Applicant during her visit. (GE 2 at 19) Her husband is a physician, who operates a medical laboratory.

Applicant has an Iranian passport. He maintains it to facilitate travel to Iran. He has travelled to Iran four times in the past ten years. His most recent trip was in 2010. (GE 2 at 41) He prefers to keep his passport, in part, because it facilitates travel to Iran to manage his property interest.

Applicant has a partial interest in three parcels of land, collectively less than half an acre, that he inherited from his parents. It is worth approximately \$50,000 USD. His 2010 Iranian trip was for the purpose of signing papers related to the real estate. Applicant and the other co-owners of the land, his sisters, are attempting to sell the property. (GE 2 at 41-42) Applicant's net worth is approximately 2.2 million dollars. (GE 2 at 9) All of his assets, other than the Iranian property, are in the United States.

Applicant earned a master's degree in business administration in 2006. In addition to the property interest in Iran, he owns two U.S. properties, his primary residence, and a condominium that he rents to a tenant. He is active in the community. Among other things, he frequently participates in blood drives.

Iran is a brutally repressive theocracy that is virulently anti-American. It 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 I, HE III at 9) Iran is a state sponsor of terrorism. (HE IV) 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 XIV)

Policies

In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. 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 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.*).

The Iranian regime is both intensely authoritarian and hostile to the United States. 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.² Consequently, Applicant’s relationship with his wife, a dual U.S./Iranian citizen, and his contacts with his relatives who are Iranian citizens and residents, trigger the application of the following 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 a resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

²ISCR Case No. 02-04786 at 5 (App. Bd. June 27, 2003).

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 Applicant's wife is a dual Iranian citizen, none of her relatives live in Iran. Consequently, Applicant is not subject to vulnerability through his wife. I conclude her dual citizenship status does not generate a security concern, and resolve subparagraph 1.c in Applicant's favor.

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 has been living in the United States for nearly 30 years. He has enjoyed a successful career, earned a postgraduate degree, and raised his children in the United States. These attributes, however, are unable to overcome the heavy burden that applicants who have relatives from hostile countries such as Iran must overcome. 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.

Guideline C, Foreign Preference

Under this guideline, "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." (AG ¶ 9) Applicant's possession of a valid Iranian passport triggers the application of AG ¶ 10(a)(1), "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 [such as] possession of a current foreign passport."

Applicant contends that he maintains his Iranian passport merely to facilitate travel into the country. However, the negative security significance of possessing a foreign passport "is not negated or diminished because an applicant engages in these acts for personal reasons or for personal convenience" (ISCR Case No. 99-0424 (App. Bd. (February 8, 2001))).

None of the mitigating conditions apply. Applicant has failed to mitigate the foreign preference security concerns.

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 depth of his contacts with his relatives living in Iran, his possession of an Iranian passport, 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 and foreign preference 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
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline C:	AGAINST APPLICANT
Subparagraph 2.a-2.b:	Against 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