



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



In the matter of:)
)
) ISCR Case No. 11-00251
)
Applicant for Security Clearance)

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: *Pro se*

October 4, 2011

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the security concerns posed by his Russian wife, Russian mother-in-law, and a friend, an Iranian citizen and resident. Clearance is denied.

Statement of the Case

On May 16, 2011, 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) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on June 1, 2011, admitting all of the allegations, and requesting a hearing on the record. On June 27, 2011, Department Counsel submitted a

File of Relevant Material (FORM). Applicant received the FORM on July 27, 2011, and submitted a response on August 8, 2011. DOHA received the response on August 11, 2011, and on August 16, 2011, the case was assigned to me. The FORM included a request that administrative notice be taken of facts encapsulated within Items 7 through 31. I took administrative notice of these facts as Department Counsel requested.

Findings of Fact

Applicant is a 32-year-old married man. He has no children. He has a bachelor of science degree in computer science and a master's degree in information systems management. (Item 4 at 10-11; Item 5 at 8)

Applicant was born and raised in Iran. His parents met and married in the mid-1970s when they both were living in the United States. They moved back to Iran in the late 1970s before Applicant was born and did not return to the United States until 20 years later. Currently, both parents are naturalized U.S. citizens living in the United States. (Item 5 at 4-7)

Applicant moved from Iran to the United States in 1999 with his parents. (Item 5 at 2) He has been a naturalized U.S. citizen since 2005.

Since immigrating to the United States, Applicant has visited Iran approximately every other year. (Item 5 at 6) His last visit was in 2008 when he visited his ailing grandmother, who has since passed away. (Item 5 at 6)

Applicant has two high school friends from Iran with whom he remains in touch. Currently, one of these friends is a permanent U.S. resident who is married to a U.S. citizen. (Response at 4) He contacts him approximately once per week via a social media network. (Item 5 at 607)

Applicant's other high school friend lives in Iran. He is an operations manager for an Iranian company that mass-produces snack foods. Applicant has contact with this friend via a social networking site whenever Iran's Internet filters are not active. (Item 5 at 6) He last visited his friend during his trip to Iran in 2008. (Item 5 at 6)

Applicant has an Iranian passport. It is unclear from the record when it was originally issued. He used it for all of his trips to Iran, including a trip after obtaining his U.S. passport. (Answer at 1) He renewed his Iranian passport in 2008. (Response at 2) Applicant is unwilling to relinquish his passport for fear of being prevented from entering Iran or being detained upon exit from Iran on a future trip. (Item 5 at 6) Although he loves the United States, he remains loyal to his native culture and he values his dual Iranian citizenship over his clearance. (Item 5 at 4)

Applicant's wife is a Russian citizen who lives with him and has permanent U.S. residency status. She is a graduate student and has never been fully employed. (Item 5 at 5)

Applicant's mother-in-law is a citizen and resident of Russia. She is an ecologist who works for a private company. She visits her daughter and Applicant twice a year and stays approximately seven to ten days per trip. (Item 5 at 5)

Applicant's father-in-law left his family when Applicant's wife was seven years old. She has had no contact with him since then and does not know his whereabouts. (Item 5 at 5)

Iran is hostile to the interests of the United States and the State Department has designated it as a state sponsor of terrorism. (Items 7, 10) Iran is attempting to acquire and develop weapons of mass destruction. (Item 9 at 7-8) Iran has an abysmal human rights record. (Item 12 at 1) The abuses include summary executions, lack of public trials, arbitrary arrest and detention, and severe restrictions on civil liberties. (See *generally*, Item 12)

Russia is one of a core group of countries that target U.S. information and technology. (Item 22 at 43) In June 2010, the U.S. Department of Justice arrested ten Russian spies who had been carrying out long-term deep cover assignments in the United States. (item 25) The following month, all 10 defendants pleaded guilty to conspiracy to act as an agent of a foreign government within the United States, and were immediately expelled. (Item 26)

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 in conjunction 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. . . ." Applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

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 interest of the United States.” Applicant’s possession and use of a valid Iranian passport triggers the application of AG ¶10(a), “exercise of any right, privilege, or obligation of foreign citizenship after becoming a U.S. citizen . . .”

Applicant is unwilling to surrender his Iranian passport and values his dual Iranian citizenship over his security clearance. None of the mitigating conditions apply.

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 U.S. interests, or is vulnerable to pressure or coercion by any foreign interest.” (AG ¶ 6) Iran is hostile, aggressive, and inimical to the interests of the United States. Russia, though no longer overtly antagonistic, nevertheless remains a strategic competitor that actively conducts espionage against the United States. Consequently, the presence of friends and/or relatives in both countries generates a security concern under 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 create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.” Applicant’s wife, as a Russian citizen living with him, triggers the application of 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.”

Applicant has no immediate family members living in Iran. However, he has a friend with whom he communicates through a social media network that is periodically filtered by the Iranian government. Moreover, Applicant intends to visit Iran in the future and does not want to relinquish his Iranian passport. Under these circumstances, he has not met the heavy burden to establish that his contact with his Iranian friend does not pose a security risk. None of the mitigating conditions apply.

Applicant has never met his father-in-law, and his wife has no relationship with him. This relationship generates no security concern. Conversely, Applicant’s Russian mother-in-law visits Applicant and his wife twice per year staying with them approximately seven to ten days per trip. None of the mitigating conditions apply to this relationship.

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.

This decision does not hinge on a negative assessment of Applicant's character. Respect for one's cultural heritage is commendable. However, expressing cultural affinity for a country like Iran by maintaining an Iranian passport generates an unmitigated security concern, and underscores Applicant's vulnerability to coercion through his friend who is an Iranian citizen and resident. Upon considering this case in the context of the whole-person concept, I conclude that Applicant has failed to mitigate the 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 C:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a - 2.c:	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