



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 11-00416
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: *Pro se*

March 15, 2012

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on August 3, 2010. (Government Exhibit 1.) On September 8, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B, C and E for Applicant. 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 in writing on September 28, 2011, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on December 16, 2011. A notice of hearing was issued on December 19, 2011, scheduling the hearing for January 23, 2012. At the hearing, the Applicant presented no documentary exhibits, but testified on his own behalf. The Government presented six exhibits referred to as Government Exhibits 1 through 6, which were received without objection. The record remained open until close of business on February 2, 2012, to allow the Applicant to submit additional documentation. The Applicant submitted one Post-Hearing Exhibit, consisting of two pages, referred to as Applicant's Post-Hearing Exhibit A, which was admitted without

objection. The transcript of the hearing (Tr.) was received on February 6, 2012. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

REQUEST FOR ADMINISTRATIVE NOTICE

Department Counsel requested that I take administrative notice of certain facts concerning the current political conditions in Iran. (Tr. pp. 26-27) Applicant had no objection. (Tr. pp. 34-35.) The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

FINDING OF FACTS

The Applicant is 50 years old and married. He is employed by a defense contractor as a Test Engineer, and is applying for a security clearance in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence, which could result in the compromise of classified information.

The Applicant was born in Iran in 1961. He was raised by his grandparents, who are now deceased. In 1977, at the age of sixteen, he immigrated to the United States to continue his education. He completed his bachelor and masters degrees in the United States. He was initially planning on returning to Iran after completing his education, but with the revolution and the overthrow of the Shah, he decided to stay. He became a naturalized United States citizen in 1989. He started working for his current employer in January 1996. That same year, he met his wife while visiting in Iran, they continued to maintain contact, and in August 1999, they were married. The Applicant's wife is a dual citizen of Iran and the United States.

The Applicant's mother, father and three brothers are citizens and residents of Iran. His father is a retired teacher, and his mother is a homemaker. He contacts his parents by telephone once a week on Saturday evenings. (Tr. p. 51.) In 1993, his parents immigrated to the United States, but moved back and forth between the United States and Iran until 2000, and then finally returned to Iran because someone had sold his father's properties. The Applicant's father returned to Iran and eventually got all of his property back. The Applicant's three brothers also reside in Iran. One is a teacher at a university in Iran, one is studying law, and the other is being support by the Applicant's parents, and is the handyman of the house. All of his brothers are married and have children who are also citizens and residents of Iran. The Applicant contacts his brothers by telephone about once a month. (Tr. p. 56.)

His father-in-law is also a citizen and resident of Iran. His father-in-law is a retired banker. His mother-in-law has passed away. (Tr. p. 58.) The Applicant's wife maintains regular contact with her father in Iran, and also monitors his health as she is a physician.

The Applicant claims that he is not close to his family in Iran. He has no financial assets in Iran. His net worth in the United States is approximately \$500,000, which includes retirement accounts.

Paragraph 2 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant applied for and received a United States passport as soon as he got his citizenship in 1989. In 1996, the Applicant applied for and obtained an Iranian passport for the purposes of traveling to Iran. He traveled to Iran in 1999 and 2000 a couple of times. His most recent trip to Iran was in 2000. (Tr. p. 48.) The Iranian passport he used was valid until 2001. After becoming a United States citizen in 1989, with the urging of his wife, the Applicant renewed his Iranian passport in 2009, which is valid until 2014. His wife also wanted to visit her parents in Iran and to ensure that she did not have problems exiting the country. The Applicant explained that in rare occasions Iranian law requires women to have permission from their husbands to leave Iran. When learning of DoD's policy concerning possession of a foreign passport, the Applicant gave his passport to the security officer at his company and she shredded it. (Tr. p. 64.)

The United States Government's concerns with Iran's policies include, but are not limited to, the following: (1) its clandestine efforts to acquire nuclear weapons, and other weapon of mass destruction; (2) its sponsorship of international terrorism; (3) its intervention into the internal affairs of Iraq; (4) its aggressive efforts to undermine the Middle East peace process; and (5) its human rights violation against its own people. As a result of these concerns, the U.S. prohibits most trade with Iran. Also, the United States does not encourage travel to Iran.

Paragraph 3 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he has engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

In his response to DOHA interrogatories dated April 4, 2011, the Applicant was asked a number of questions. Question 2 asked him if he had any Security violations within the last three years. The Applicant answered, "NO". (Government Exhibit 3.) This was a false answer. Question 3 asked him if there has been any mishandling of Protected Information by him within the last four years. The Applicant answered, "NO." (Government Exhibit 3.) This was a false answer. Question 4 asked him if there has been any Misuse of Information Technology by him within the last four years. The Applicant answered, "NO." (Government Exhibit 3.) This was a false answer.

As to why he responded the way he did, the Applicant testified that he completely forgot about the security violation he received in February 2011 for downloading a file that was supposed to be Secret onto an unclassified server. (Government Exhibits 4 and 5.) He stated that because he runs thousands of tests and handles hundreds of documents; and because the process was improved as a result of his mistake; and because it was not something that was done intentionally, he forgot all about it. (Tr. p. 65.) He further stated that he did not mean to deceive the government or lie to the investigator in any way. (Tr. p. 67.) The Applicant received no ramifications from his company for this violation.

A letter of recommendation from the Applicant's work center lead dated January 30, 2012, indicates that the Applicant is a hard worker who is dedicated to the program, and has made their team extremely efficient. The Applicant is described as thorough, responsible and committed to finishing the job. (Applicant's Post-Hearing Exhibit A.)

POLICIES

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Guideline B (Foreign Influence)

6. *The Concern.* 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.

Condition that could raise a security concern:

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 foreign exploitation, inducement, manipulation, pressure, or coercion; and

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.

Conditions that could mitigate security concerns:

None.

Guideline C (Foreign Preference)

9. *The Concern.* When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then she or he may be prone to provide information or make decisions that are harmful to the interests of the United States.

Condition that could raise a security concern:

10. (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.

Conditions that could mitigate security concerns:

11. (a) dual citizenship is based solely on parent's citizenship or birth in a foreign country;

11. (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Guideline E (Personal Conduct)

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Conditions that could raise a security concern:

None.

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;

- d. The individual's age and maturity at the time of the conduct;
- e. The voluntariness of participation;
- f. The presence or absence of rehabilitation and other permanent behavior changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in 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."

CONCLUSION

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in foreign influence, foreign preference and dishonesty that demonstrates poor judgment or unreliability.

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 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 a security clearance.

This evidence indicates unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility. Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guideline B of the SOR.

Under Foreign Influence, Guideline B, Disqualifying Condition 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 foreign exploitation, inducement, manipulation, pressure, or coercion* applies. None of the Mitigating Conditions are applicable.

The Applicant is a dual citizen of Iran and the United States. Although he has lived in the United States for most of his life and has become a naturalized United States citizen, except for his wife, his entire family resides in Iran. He has close and continuing contact with his immediate family members in Iran and maintains a strong emotional bond with them. This is evidenced by his regular weekly telephonic contact with his parents in Iran. The nature of his relationship with his parents in Iran is not casual and/or infrequent, but clearly of a nature that is regular, consistent and ongoing. He also maintains regular and continuing contact with his three brothers in Iran. This is evidenced by his regular monthly telephone calls to them. Multiple family members who maintain close communication with the Applicant, and who may be influenced by the Iranian Government, in some way is of utmost concern here. Therefore, this deep emotional bond with his parents and brothers in Iran are foreign contacts that pose a security risk. Under the heightened scrutiny analysis, the Applicant's family in Iran pose a significant security risk. Accordingly, I find against the Applicant under this guideline.

Turning to Guideline C, Foreign Preference. With regard to his Iranian passport, it is no longer an issue. The Applicant has recently given his Iranian passport to his company's security officer who has destroyed it. Therefore, it is apparent that the Applicant will not use it in the future.

Under Foreign Preference, Disqualifying Condition 10(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 applies. Mitigating Conditions 11(a) *dual citizenship is based solely on parent's citizenship or birth in a foreign country* and, 11(e) *the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated* are applicable in this case. Accordingly, I find for the Applicant under this guideline.

Under Personal Conduct, I find that the Applicant did not intentionally falsify his responses to his DOHA interrogatories dated April 4, 2011. He simply forgot about the

one and only security violation he ever received. Accordingly I find for the Applicant under this guideline.

I have also considered the “whole-person concept” in evaluating the Applicant’s eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole-person assessment of poor judgement, untrustworthiness, unreliability, a lack of candor, an unwillingness to comply with rules and regulations, or other characteristics indicating that the person maynot properly safeguard classified information. I have also considered his favorable evidence, including his favorable letter of recommendation. The evidence does not mitigate the negative effects his foreign influence can have on his ability to safeguard classified information.

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the SOR. Paragraphs 2 and 3 are found for the Applicant.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

- Paragraph 1: Against the Applicant.
- Subpara. 1.a.: Against the Applicant.
- Subpara. 1.b.: Against the Applicant.
- Subpara. 1.c.: Against the Applicant.
- Subpara. 1.d.: Against the Applicant.
- Subpara. 1.e.: Against the Applicant.

- Paragraph 2: For the Applicant.
- Subpara. 2.a.: For the Applicant.
- Subpara. 2.b.: For the Applicant.

- Paragraph 3: For the Applicant.
- Subpara. 3a.: For the Applicant.

CONCLUSION

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

Darlene Lokey-Anderson
Administrative Judge