



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



In the matter of:)
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)
Applicant for Security Clearance)

ISCR Case No. 11-00447

Appearances

For Government: Raashid Williams, Esquire, Department Counsel
For Applicant: Christopher Graham, Esquire

05/22/2012

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, testimony, and exhibits, I conclude that Applicant has mitigated the security concerns related to foreign preference and foreign influence. Accordingly, his request for a security clearance is granted.

Statement of the Case

On October 7, 2011, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) that detailed security concerns under Guideline B (Foreign Influence) and Guideline C (Foreign Preference). This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992) as amended; and the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

In his Answer to the SOR, signed and notarized on November 23, 2011, Applicant admitted all the factual allegations under Guidelines B and C. Department Counsel was prepared to proceed on February 7, 2012, and the case was assigned to me on February 21, 2012. DOHA issued a Notice of Hearing on March 29, 2012, and I convened the hearing as scheduled on April 19, 2012. The Government offered three exhibits, which I admitted into evidence as Government Exhibits (GE) 1 through 3. Applicant testified, presented the testimony of two witnesses, and offered twelve exhibits, admitted into evidence as Applicant's Exhibits (AE) A through L. DOHA received the transcript of the hearing (Tr.) on April 27, 2012.

Procedural Ruling

I take administrative notice of facts related to Iran, included in 15 U.S. Government documents provided by Department Counsel. The facts are limited to matters of general knowledge, not subject to reasonable dispute, and are set out in the Findings of Fact.

Findings of Fact

Applicant's admissions in response to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the evidence, I make the following additional findings of fact.

Applicant, 48 years old, was born in Iran. He left Iran in 1979 at the age of 15, and continued his schooling in South Africa. He came to the United States in 1989. He completed a bachelor's degree in biology at a U.S. university in 1990, and a master's degree in ecology in 1996. He completed a second master's degree in 2004 at a different U.S. university. He became a naturalized U.S. citizen in December 2003. He married a U.S. citizen in 1996, and they divorced in 2006. He has no children. Applicant taught high school from 1996 to 2005. His wife was then transferred to Afghanistan by the U.S. government as part of her job with a federal agency. Applicant moved with her and worked there as the regional director of a telecommunications company for about 18 months. He returned to the United States in 2006 and was unemployed for almost one year. He was a federal employee of the Department of State from 2007 to 2008. He worked as an information management technical specialist, and was granted a top secret security clearance. He began his current position as a technical trainer for a federal contractor in 2008. He trains military members in network systems. (GE 1, 2; Tr. 45-46, 55-57, 94-95, 104-105)

Applicant's parents were born in Iran. His father was a doctor and worked for the department of health during the Shah's regime. Members of the Baha'i faith, like Applicant's family, were denied their rights.¹ Under the Shah, Applicant's father was

¹ On August 12, 2010, the U.S. Department of State (DOS) issued a statement on the persecution of religious minorities in Iran, and specifically those of the Baha'i faith. The DOS condemned the sentencing of seven Baha'i leaders, who were incarcerated for two years without due process, and then sentenced to 20 years imprisonment. Secretary of State Hilary Clinton stated that the United States is deeply

exiled to the Kurdistan area of Iran. He worked as a doctor and remained there for about 20 years. After the revolution in 1979, members of the Baha'i faith could not hold government positions, and Applicant's father was forced to leave his job. He moved to a small farm he owned and raised food to support his family. Applicant's mother worked as a teacher for about three years, and then worked exclusively at raising the children. Between 2000 and 2006 Applicant made short trips to Iran to check on his parents' health. In 2005 and 2006, he visited to help his father, who had an accident, and also to start preparations for his parents' move to the United States. He used his Iranian passport, because he could not enter or exit Iran on a U.S. passport. Applicant's parents arrived in the United States in 2008. They are now in their 90's, and live with him. Applicant testified that they enjoy their life here, and have no interest in returning to Iran. They are both U.S. permanent legal residents. They will apply for U.S. citizenship when they become eligible in about one year. (GE 1; AE A, B, C; Tr. 41, 48-50, 77-78, 82-84, 110-111)

Applicant has four brothers. One of his brothers is a citizen of Iran, and formerly a resident of Iran. He is an engineer. He and his wife now reside in the United States. He was the last of Applicant's brothers to move from Iran. He has put his house in Iran up for sale. Applicant's brother and sister-in-law both applied for U.S. permanent legal residence on October 3, 2011. His wife has received her "green card." As of the hearing date, Applicant's brother was awaiting the arrival of his card. Their daughter is a U.S. citizen and resides in the United States. Applicant is in contact with his brother almost daily. Applicant's brother and sister-in-law intend to apply for U.S. citizenship when they are eligible. (AE D, E, G, H; Tr. 50-53, 64-70, 81, 90)

Applicant's remaining three brothers are dual citizens. One is a citizen of Iran and Oman, and resides in the Philippines with his wife and children. He owned optical shops in Oman, but is now retired. Applicant talks with him most days. He has lived in the Philippines for the past four or five years. Applicant's third brother is a citizen of Iran and South Africa. He is an architect and has lived there with his wife since the 1970s. Applicant talks with him once or twice per week by Skype. Applicant's fourth brother is a dual citizen of Iran and the United States. He resides in the United States and is employed as a car salesman. (Tr. 53-55, 71, 91-93)

Applicant's 90-year-old uncle and a few cousins remain in Iran. He has never met either his uncle or the cousins and has no contact with them.² Applicant testified that, as members of a minority group without rights, his family members sought to leave Iran as soon as they were able, and most of his family members moved to other countries. They left when they were young, and none of them have remaining ties to Iran. (Tr. 55, 72-73, 80, 108)

concerned with the Iranian government's continued persecution of Baha'is and other religious minority communities in Iran. (AE J)

² The Appeal Board has held that there is a presumption of close family ties to immediate family members, which include parents, siblings, and children. However, there is no presumption that cousins fall in this category. See ISCR Case No. 02-26978 at 5 (App. Bd. Sep 9, 2005).

Applicant had an Iranian passport that had expired.³ He traveled to many other foreign countries between 2005 and 2009 for business and pleasure, and used his U.S. passport. He did not travel to Iran after 2006. However, in 2011, in light of his elderly parents' possible future medical needs, Applicant considered renewing his Iranian passport. He first checked with his facility security officer (FSO), asking if there were travel restrictions to Iran. He was told the restrictions had been lifted, but was not told that having a foreign passport was a security concern. He renewed his passport in 2011 because he thought he might have to escort his parents to Iran if they became seriously ill. They are not yet eligible for Medicare. They would not be able to afford U.S. medical care, and might need to receive care in Iran, where it is cheaper. He never used the passport. Shortly after he obtained it, he completed his DOHA interrogatories in March 2011, and learned that the passport was a security issue. He stated in his interrogatory response that he was willing to surrender it, noting, "But after I found out that I could not hold two passports, I offered my passport to be held by my FSO or other authorities as deemed appropriate by DoD." Eventually, he was told he could surrender it. He surrendered it to his current FSO on November 3, 2011. Applicant provided a letter from the FSO indicating that she and the company's senior vice president witnessed the destruction of his passport at that time. He has never had a security violation, and has always reported foreign travel to his security officer. Applicant does not believe Iran has a process to renounce citizenship. He testified, "The only thing you can do is not renew the passport or shred it." (GE 2, 3; AE F; Tr. 57-59, 62, 76-79, 96-103)

Applicant volunteers in his community, working with senior citizens through his church and a local retirement community. Applicant has no property or other financial interests in Iran. He has no intention to return to Iran. He owned a house in the United States when he was married, which he subsequently sold. He currently owns a home worth approximately \$550,000. He has a 401(k) account of about \$60,000, bank accounts worth about \$190,000 and stocks worth about \$12,000 in the United States. He briefly operated his own business when he returned from living in Afghanistan. (GE 1; Tr. 60-63, 80, 93-94)

Applicant's friend of 16 years testified. He is a university professor, and was Applicant's colleague when they taught high school together for about seven years. He recommends Applicant for a security clearance "without hesitation." He has an in-depth knowledge of Applicant's character, and describes him as a "person of high moral character and integrity." (AE I; Tr. 38-43)

One of Applicant's co-workers also testified. He retired honorably after 20 years in the Air Force, and has held a top secret security clearance for more than 10 years. He has known Applicant for three years. He describes him as a trusted colleague who has shown complete dedication to his unit's mission and the Air Force, who would protect any information that could damage the national security. He recommends Applicant for a security clearance because he is one of the most honest and forthright people whom he has met. The manager of Applicant's unit provided a letter attesting that Applicant

³ Applicant's security clearance application indicates his Iranian passport was valid from 2000 to 2010. (GE 1) However, he testified that he thought it was valid until 2006. (Tr. 95-96)

“appreciates American values” and “loyally serves this country on a daily basis.” He describes him as someone who “would never engage in any activity which would be counter to the interest of the United States of America.” (AE I; Tr. 24-31)

Administrative Notice⁴

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 the authority of the Iranian state. Shi’a Muslim clergy dominate the country’s political structure, and ultimate political power rests in a Shi’a religious scholar, who is called the Supreme Leader.

The United States has not had diplomatic or consular relations with Iran since 1979. In 2010, the President declared the continuation of a 1979 declaration of a National Emergency with Respect to Iran in order “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.”

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). A U.S. government assessment as of February 2011 noted that Iran has the scientific, technical, and industrial ability to eventually produce nuclear weapons. 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 the Iranian people.

Iran has been designated as a state sponsor of terrorism since 1984, and remains one of the most active state sponsors of terrorism. According to the U.S. Department of State, it provides planning and financial support for terrorist attacks throughout the Middle East, Europe, and Central Asia. Iran trains, equips, and funds select Iraqi Shi’a militant groups. It has refused to bring to justice senior al-Qa’ida members it has detained. The United States is concerned about the possibility that terrorists could eventually obtain WMD from Iran.

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. The State Department also warns that U.S. citizens of Iranian origin may be subject to harassment or arrest while in Iran, and should carefully consider the risk of being targeted by Iranian authorities. Such dual citizens have had their U.S. passports confiscated, and have been denied permission to exit Iran. Visitors from abroad may be placed under surveillance, have their personal possessions in hotel rooms searched, and their telephones monitored.

⁴ The information for administrative notice appears in the U.S. government documents included in Hearing Exhibit I.

Policies

Each security clearance decision must be a fair and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.⁵ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole-person” concept. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guidelines B and C.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁶ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government’s case.

Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁷ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring that each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or his own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.⁸

Analysis

Guideline C, Foreign Preference

The security concern under Guideline C, AG ¶ 9, states:

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

⁵ Directive. 6.3.

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

provide information or make decisions that are harmful to the interests of the United States.

Under AG ¶ 10, the following disqualifying condition is relevant:

(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

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

Applicant possessed and used a foreign passport after he became a U.S. citizen in December 2003. In 2005 and 2006, he used his Iranian passport several times to visit his parents in Iran because he could not enter or exit using his U.S. passport. He was working in Afghanistan, and traveled to Iran for weekend visits to check on his father's health after an accident. AG ¶ 10(a)(1) applies. In 2011, he obtained recognition of his Iranian citizenship when he applied for and received an Iranian passport. AG ¶ 10(b) applies.

AG ¶ 11 contains factors that can mitigate disqualifying conditions. I have considered all the mitigating conditions, especially the following:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship; and

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

Applicant's dual citizenship stems from his birth in Iran, and his naturalization as a U.S. citizen in 2003. In 2005 and 2006, when his parents were still living in Iran, he used his foreign passport to visit them. Iran does not permit those of Iranian descent to enter or exit Iran on any other country's passport. He did not use his foreign passport for any other foreign travel after becoming a U.S. citizen. He last traveled to Iran six years ago. He did not use the foreign passport after 2006.

In 2011, Applicant's parents had been living in the United States for several years. He worried that they might have to travel to Iran for medical reasons, and he would need to accompany them. He applied for an Iranian passport. He followed security procedures by checking first with his FSO about foreign travel, but she did not inform him that possessing a foreign passport would raise security concerns. When Applicant later learned the security implications, he surrendered the foreign passport to

his FSO. She provided a letter stating that it has been destroyed. Applicant testified that Iran provides no way to renounce citizenship formally, and he believed the only way to do so was to shred his passport. With that understanding, he surrendered his Iranian passport for destruction. His documented actions indicate his willingness to renounce Iranian citizenship. AG ¶ 11(a), (b), and (e) apply.

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern under Guideline B:

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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all the disqualifying conditions, especially the following:

(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

(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.

Family ties with a resident or citizen of a foreign country do not automatically disqualify an applicant from obtaining a security clearance; such ties are only disqualifying if they create a heightened risk of foreign exploitation or a potential conflict of interest. The country in question must be considered.⁹ Iran and the United States have had a hostile relationship. It has been designated a state sponsor of terrorism. Iran engages in clandestine efforts to illegally obtain U.S. military equipment and sensitive technology, sponsors international terrorism, and violates human rights.

Applicant shares living quarters with his parents, who are citizens of Iran. One of Applicant's brothers remains a citizen of Iran. Applicant sees his parents daily, and his brother almost as often. Three of his brothers have dual citizenships with Iran and other

⁹ See ISCR Case No. 04-07766 at 3 (App. Bd., Sep 26, 2006) (the nature of the foreign government involved must be evaluated in foreign influence cases).

countries. Applicant's family ties create a heightened risk of foreign exploitation. AG ¶¶ 7(a) and (d) apply.

I have considered the mitigating conditions under AG ¶ 8, especially the following:

(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.; and

(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.

Although Iran represents a heightened risk of exploitation, Applicant has not lived there in 33 years. His parents and brothers no longer live there. The last immediate family member who had been living in Iran, one of Applicant's brothers, has moved permanently to the United States. His wife moved here as well; their daughter lives here and is a U.S. citizen. Applicant's brother and sister-in-law applied for U.S. legal permanent residency at approximately the same time, and his wife has received her "green card." Applicant's brother was awaiting his card as of the hearing date. Applicant's parents live with Applicant. They have lived in the United States for four years, and are U.S. legal permanent residents. They will be applying for U.S. citizenship in about one year, when they become eligible. The few remaining family members in Iran include an uncle and cousins, who are not immediate family members. Applicant has never met them and has no contact with them. With all of Applicant's immediate family members residing outside of Iran, it is unlikely his ties to them would place him in a position of having to choose between Iranian and U.S. interests. AG ¶ 8(a) applies.

Applicant has no sense of loyalty to Iran or anyone residing there. He has not visited Iran since 2006. He has no intention of returning, and has surrendered his Iranian passport to his FSO. He has no bank accounts, property, or any other financial interests in Iran that could be used to manipulate or pressure him. On the other hand, his connections with the United States include his U.S. citizenship; U.S. undergraduate and graduate education; his long-term residence here; more than \$800,000 in property, investments, and bank accounts; and his service to the Government through his work at the State Department and with a federal contractor. Given these connections, I conclude Applicant would choose the United States, were a conflict of interest to arise. Mitigating conditions AG ¶ 8(b) applies.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the relevant circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited guidelines. I have also reviewed the record before me in the context of the whole-person factors listed in 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guidelines, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Guideline B and C cases do not focus on an applicant's loyalty to the United States, and here, Applicant's loyalty is not in question. Applicant had one immediate family member—a brother—residing in Iran when the SOR was issued, but that brother has now moved to the United States and is about to become a legal permanent resident. Applicant's other brothers maintain dual citizenships with Iran and other countries. Applicant's family members are all members of a religious faith that is denied rights in Iran. His three brothers left the country many years ago because of that fact, and no longer have ties to Iran. Applicant has not been in Iran in more than five years, and has no plans to return. He showed his adherence to security requirements when he questioned his FSO before applying for a foreign passport. Once he realized the passport was a security concern, he surrendered it. He did so believing that he was renouncing his foreign citizenship. He does not own property or have financial interests in Iran.

With his parents now living in the United States, and holding legal permanent residency, and his brother here permanently as well, Applicant has no ties to Iran. In contrast, he has strong ties to the United States through education, investments, and employment, developed during his 23 years living here. Given his substantial financial resources, it is unlikely he would be vulnerable to financial coercion. I conclude that Applicant would resolve any conflict of interest in favor of the United States.

For all these reasons, I conclude Applicant has mitigated the cited security concerns. A fair and commonsense assessment of the available information bearing on

Applicant's suitability for a security clearance shows he has satisfied the doubts raised under the guidelines for foreign influence and foreign preference.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1, Guideline B	FOR APPLICANT
Subparagraphs 1.a – 1.e	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 1.a	For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge