



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



In the matter of:)	
)	
-----)	ISCR Case No. 11-01888
)	
Applicant for Security Clearance)	

Appearances

For Government: Philip J. Katauskas, Esquire, Department Counsel
For Applicant: Christopher Graham, Esquire

02/29/2012

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On September 14, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline C (Foreign Preference) and Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In an October 8, 2011, response to the SOR, Applicant admitted with explanations the two allegations raised under Guideline C and the three allegations raised under Guideline B. He also requested a hearing. I was assigned the case on November 18, 2011. The parties agreed to a hearing date of January 24, 2012, and a notice to that effect was issued on December 15, 2011. On January 24, 2012, the hearing was rescheduled and moved to February 9, 2012, to permit the parties to explore a jurisdictional issue. With that issue resolved, the hearing was convened as scheduled.

During the hearing, Applicant gave testimony. Department Counsel introduced two exhibits and a set of documents constituting a request for administrative notice regarding the country of Iran. The two exhibits were accepted without objection as exhibits (Exs.) 1-2. The specific country materials were accepted as hearing exhibit (HE) 1 over objection by Applicant that they did not apply directly to him. The transcript (Tr.) was received on February 17, 2012, and the record was closed. Based upon a review of the exhibits and testimony, security clearance is granted.

Administrative Notice

The Government requested administrative notice of certain facts and materials regarding the Islamic Republic of Iran. It referenced materials issued by U.S. Executive Branch entities, such as the U.S. Department of State, to support its summaries.¹ Those materials were attached to its summaries for fuller examination and assessment. Materials reflecting opposing or differing views were not offered. Based on those materials and summaries, I note the following facts:

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 Iranian state authority. Shi'a Muslim clergy dominate the country's political structure. Ultimate power rests in a Shia religious scholar known as the Supreme Leader.

The United States has not had diplomatic or consular relations with Iran since 1979. In 2006, the President declared the continuation of a 1979 declaration of a National Emergency with Respect to Iran because Iran poses an extraordinary threat to the national security, foreign policy, and economy of the United States.

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). 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 its people.

Iran is one of the most active state sponsors of terrorism, providing planning and financial support for terrorist attacks throughout the Middle East, Europe, and Central Asia. The United States is concerned about the possibility that terrorists could obtain WMD from Iran. Iran supports terrorists who attack Israel, as well as Shiite militias, who have encouraged, facilitated, and engaged in sectarian violence in Iraq.

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. Access to the U.S. Interests Section in Tehran may be denied. U.S.-Iranian

¹ See HE-1, attachments 1-15.

dual citizens may be subject to harassment or arrest in Iran, may have their U.S. passports confiscated, and may be denied permission to exit Iran.

Findings of Fact

Applicant is a 54-year-old naturalized U.S. citizen. He is married and has two children. He is currently a senior system engineer working for a defense contractor. Applicant has worked in his present position for that contractor since October 2011. He has a bachelor's degree in electrical engineering and computer science, and completed graduate courses complementing his earlier studies.

Applicant arrived in the United States in 1977. He received a green card and was briefly married in the 1980s. He remarried in 1991, the same year he became a U.S. citizen. The couple has built a life in the United States, where they both work.

Never having had children of their own, Applicant and his wife decided to adopt two young Iranian children in 2009. Applicant approached his security officer about obtaining an Iranian passport he had previously surrendered in 2008, when he first received a security clearance. He was told the passport had been destroyed. He informed his security officer of his plans to adopt and discussed his situation with his employer. With its consent, in January 2010, Applicant applied for and received a new Iranian passport to facilitate his transit in and out of that country to adopt the children.² He kept his employer fully informed of his plans in relation to the adoption, and notes were added to his security record regarding those activities.³ He had approval from the Department of Homeland Security and U.S. Citizenship and Immigration Services regarding his preliminary plans to visit and adopt the Iranian children. In March through April 2010, Applicant visited Iran to complete the adoption process. After his return through Turkey, he worked with his employer to report his activities. He then tendered his Iranian passport. That passport was then destroyed in May 2010.⁴ The children are now attending school, have learned English, and have adapted to their new lives. Their adoptions were completed in Applicant's state of residence.

When Applicant immigrated to the United States, he left behind his mother, a brother, and three sisters, all of whom are citizens and residents of Iran. Applicant has another brother who is a citizen of Iran but a resident of the United States, and two other brothers who are U.S. citizens residing in the United States. All his siblings are considerably older than he is; his mother is in her 90s and incapable of travel.

² Tr. 27-30; Attachments to Response to the SOR.

³ *Id.*

⁴ Attachments to Response to the SOR.

Applicant's mother is in poor health and has mobility difficulties. She receives care from Applicant's brother and sister who still live in Iran. Applicant's mother is a widow and these Iran-based siblings are married and have their own families. His brother in Iran is a business owner and part-time chemistry teacher; his wife is a homemaker. Applicant's sisters in Iran are homemakers. One sisters' husband owns a clothing store; the husbands of the other two sisters are retired. None of these relations have any involvement with the Iranian government or military.

Of Applicant's three brothers living in the United States, two are U.S. citizens. One is a cab driver, although he also has a college degree, while the other has a café. Both are married to homemakers. The brother who lives in the United States but remains an Iranian citizen has a green card, owns his own business in the United States, and is raising two college students, both of whom are U.S. citizens. He has thus far declined to become a U.S. citizen because he is "too busy" with his company.⁵ His wife is a daycare provider and part-time pharmacy clerk.

Applicant has monthly telephonic contact with his aged mother. She is the only foreign family member with whom Applicant maintains regular contact. Their conversations are brief and are his way of maintaining contact with her. He has annual telephonic contact with his two siblings in Iran.⁶ Applicant has some form of contact with his brothers in the United States about once a month. Applicant and his siblings maintain little contact because each is too busy with their own immediate families, jobs, and social lives. While apparently cordial, he only appears to be particularly close with one brother, a U.S. citizen, who also has a younger child.

Since coming to the United States in the 1970s, Applicant has never been approached by any representative of the government of Iran or other foreign entity. He had no difficulties in adopting his children due to his U.S. citizenship. Applicant considers himself to be a U.S. citizen. He and his family are happy in the United States and plan on remaining here.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are required 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

⁵ Tr. 37.

⁶ Tr. 41. Applicant noted that, like himself, these siblings are busy with their own families and lives. Time, distance, and competing immediate familial interests have diminished his relationships with these much older siblings.

conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." All available, reliable information about the person, past and present, favorable and unfavorable, must be and were considered 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." In reaching my decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence submitted.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ⁷ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant. ⁸

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

Section 7 of Executive Order 10865 provides that decisions shall be "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). "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹⁰ The decision to deny an individual a security clearance is not necessarily

⁷ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁸ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁹ *Id.*

¹⁰ *Id.*

a determination as to the loyalty of an applicant.¹¹ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find Guideline C (Foreign Preference) and Guideline B (Foreign Influence) to be the most pertinent to the case. Conditions pertaining to these AGs that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are discussed below.

Analysis

Guideline C – Foreign Preference

The concern regarding foreign preference is that when an individual acts in such a way as to indicate a preference for a foreign country over the U.S., then she may be prone to provide information or make decisions that are harmful to the interests of the U.S.¹² Conditions that could raise a security concern and may be disqualifying include 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.¹³

Applicant admitted that he applied for and received a new Iranian passport after tendering his former Iranian passport to his security officer in 2008. He subsequently traveled to Iran on the new passport. Therefore, Foreign Preference Disqualifying Conditions AG ¶ 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*) and AG ¶ 10(b) (*action to acquire or obtain recognition of a foreign citizenship by an American citizen*). With foreign preference disqualifying conditions raised, the burden shifts to Applicant to mitigate security concerns.

In obtaining his Iranian passport, Applicant openly worked with his employer and security officer and explained his reasons for wanting to visit Iran. His reasons and the facts regarding his adoption were equally disclosed to the Department of Homeland Security and other U.S. agencies. After he finished the Iranian adoption, Applicant reported to his company and tendered his passport to his security officer. That passport was then destroyed. These facts are sufficient to raise AG ¶ 11(e) (*the passport has*

¹¹ Executive Order 10865 § 7.

¹² AG ¶ 9.

¹³ AG ¶ 10(a).

*been destroyed, surrendered to the cognizant security authority, or otherwise invalidated).*¹⁴

Guideline B – Foreign Influence

The concern under Guideline B is that 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. Consideration should be given to 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 U.S. citizens to obtain protected information or is associated with a risk of terrorism. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are discussed in the conclusions below. Moreover, the country at issue is Iran. In light of the facts administratively noted, heightened security risks are an issue close scrutiny is warranted.

Applicant has a mother and two siblings who live in and are citizens of Iran. He also has a sibling in the United States who remains an Iranian citizen. Such facts are sufficient to give rise to Foreign Influence 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 resident in a foreign country if that contact creates a heightened risk of exploitation, inducement, manipulation, pressure, or coercion*) and AG ¶ 7(b) (*connections to a foreign person, group, government, or country 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, group, or country by providing that information*). With disqualifying conditions thus raised, the burden shifts to Applicant to mitigate security concerns.

Applicant maintains monthly telephonic contact with his aged mother in Iran, although he left Iran 35 years ago. His contact with his siblings in Iran is negligible, consisting of an annual phone call to relations who are as busy with their own immediate affairs as Applicant is. Applicant's contact with his brothers in the United States is monthly. None of those domestic brothers, however, seem to maintain connections with Iran. Rather, they are entrenched in the lives they have built here in the United States. His brother in the United States who remains an Iranian citizen has only avoided becoming a U.S. citizen because he is too busy with his own work. None of Applicant's relations are involved with the government, military, or other entity

¹⁴ While not specifically addressed at hearing, the available facts also tend to give rise to AG ¶ 11(a) (dual citizenship is based solely on parents' citizenship or birth in a foreign country) and AG ¶ 11(b) (the individual has expressed a willingness to renounce dual citizenship).

representing a foreign nation. All are at or over retirement age and have no demonstrable ties to Iran.

In contrast, Applicant has been in this country for many years, since he was about 20. Now 55, Applicant and his wife have built their lives here and gone to such measures as foreign adoption to maintain their current lifestyle and home. Like his siblings, Applicant is too busy with his own life here, his work, and his family, to concentrate on any foreign ties. Foreign Influence Mitigating Conditions 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.*), AG ¶ 8(b) (*to the foreign person, group, government, or country is so minimal, or there is no conflict of interest, either because the individual's sense of loyalty to or obligation 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*), and ¶ 8(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*) apply.

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 circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is a mature man who is educated, has lived in the United States for nearly 35 years, and has maintained a security clearance since 2008. In the interim, he has completed his post-secondary education, made a career, maintained a marriage for over 20 years, adopted two young children, and built a life for himself in the United States. Applicant only obtained a valid Iranian passport to facilitate the adoption of his two children. Convenience of transport is not a valid reason for obtaining or maintaining a foreign passport. However, Applicant's reasons and documented procedures in executing those adoptions were completely open and in keeping with the dictates of his company, his security officer, and the Department of Homeland Security. Moreover, he tendered that passport for destruction shortly after his return from Iran.

In contrast, Applicant's ties with Iran are minimal. His only regular contact is with his mother, who is in her 90s and infirm. At best, he has yearly telephonic contact with

his two siblings in Iran. In the United States, he maintains cordial monthly contact with three brothers. One of those brothers remains an Iranian citizen. However, he is a busy and established businessman who has had little time to pursue U.S. citizenship. None of these siblings have a nexus with a foreign power, and all are near or over retirement age with no clear connection with or interest in Iran. In sum, I agree with the Government that there are legitimate family relationships at issue, and I note that Iran is a problematic country in terms of security. In weighing Applicant's nexus to the United States against these concerns, however, I also agree with the Government that Applicant has mitigated related concerns.¹⁵ Applicant's interests here in the United States clearly outweigh his tenuous connections with Iran.

The ultimate burden of persuasion is put squarely on the Applicant in these cases. Any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security. Here, Applicant has mitigated such concerns. Clearance is granted.

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:	FOR APPLICANT
Subparagraph 1.a-1.b:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a-2.c:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance granted.

ARTHUR E. MARSHALL, JR.
Administrative Judge

¹⁵ Tr. 51. The Government noted that Applicant mitigated "the concerns in the Statement of Reasons. . . ."