



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



In the matter of:)	
)	
)	ISCR Case No. 11-03426
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel

For Applicant: *Pro se*

December 20, 2011

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the security concerns raised under the guideline for foreign influence. Accordingly, his request for a security clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), signed on November 12, 2010. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

¹ Required by Executive Order 10865, as amended, and DoD Directive 5220.6 (Directive), as amended.

On August 9, 2011, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline B (Foreign Influence) of the Adjudicative Guidelines (AG).² Applicant signed a notarized Answer to the SOR on August 29, 2011, in which he admitted the allegations under Guideline B. He also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on October 6, 2011, and the case was assigned to me on October 24, 2011. DOHA issued a Notice of Hearing on November 9, 2011, and I convened the hearing as scheduled on December 1, 2011. I admitted two Government Exhibits, (GE) 1 and 2. Applicant testified, and did not offer exhibits or witness testimony. DOHA received the transcript (Tr.) on December 9, 2011.

Procedural Ruling

I granted Department Counsel's motion to amend the SOR to conform to the evidence by adding the following two allegations under Guideline B:

- f. Your two sisters and one brother are citizens and residents of Iran.
- g. Your three sisters-in-law and one brother-in-law are citizens and residents of Iran.

I take administrative notice of the facts relating to Iran set forth in 15 documents submitted by Department Counsel. The facts administratively noticed are limited to matters of general knowledge and not subject to reasonable dispute.

Findings of Fact

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

Applicant, 50 years old, was born in Iran. He completed high school there, and served the compulsory two years in the Iranian military. He married in Iran in 2001. He and his wife traveled back and forth between the United States and Iran several times while she waited to receive U.S. resident status. They have two sons: a nine-year-old born in Iran, and a six-year-old born in the United States. He attended a community college in the United States but did not complete a degree. He came to the United States in 1990 and became a naturalized citizen in 2002. This is his first application for

² Adjudication of this case is controlled by the Adjudicative Guidelines (AG), which supersede the guidelines listed in Enclosure 2 to the Directive. The AG apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

a security clearance. His position as a linguist for the defense contractor who is sponsoring him depends on his obtaining a security clearance. In March 2011, Applicant surrendered his valid Iranian passport to the company's facility security officer. (GE 1, 2; Tr. 23-32, 67)

Applicant's father, an Iranian citizen, died there in the 1980s. Applicant's sister came to the United States about 35 to 40 years ago and obtained resident status. She has traveled to Iran twice in the past ten years. She sponsored Applicant and their mother. His mother, who is 78 years old, later sponsored his siblings. Applicant's wife, sons, mother, three brothers and one sister are dual U.S.-Iranian citizens, living in the United States. They all maintain valid Iranian passports, which they use when they travel to Iran to visit family. Applicant's sister works for an insurance company, and his brothers are electricians. The spouses of his siblings are Iranian citizens, and most are awaiting approval of their status as legal U.S. residents. Applicant has weekly contact with his family in the United States. (GE 2; Tr. 23-39, 46, 53, 60)

Applicant also has two sisters, one brother, and six in-laws who are citizens and residents of Iran. He speaks with his sisters and brother by telephone about three or four times per year. His brother works in a food factory. His sisters are both homemakers. One of their husbands is an electrical engineer, and the other works in food purchasing. His sisters and brother visited the United States two or three years ago, but decided they did not wish to live here, and returned to Iran. Applicant's wife recently applied for resident status for her parents. Her father is a retired bank manager and her mother is a homemaker. Applicant's brother-in-law is an electrical engineer. One of his three sisters-in-law is a teacher, one works for a bank, and the other is a student. His wife speaks with her parents and sisters almost weekly. (GE 2; Tr. 39-40, 43-44, 48-49, 59-60, 68-70, 76)

Applicant's wife and sons visited Iran for one or two months in summer 2011, and stayed with her parents. Applicant did not join them. He traveled to Iran in 2006 and 2008, and has not been there since then. Although he was a U.S. citizen at the time, he used his Iranian passport for these trips to Iran. Now that he has given his Iranian passport to the FSO, he does not intend to travel to Iran because "... you go with [sic] American citizen, then you don't know what's going to happen to you. I'm not intending to go there. It's risky." (GE 2; Tr. 40-41, 44-45, 51-53, 58, 63-65)

Applicant's mother and brother also traveled to Iran for one month this year. Another brother traveled to Iran in November 2011 to bring his wife and two children to the United States, after they received U.S. visas. Neither Applicant nor his wife provides financial support to family members in Iran. All of his male relatives have served the compulsory two years in the Iranian military, with the most recent service occurring in the mid-1990s. None have government-related jobs. (GE 2; Tr. 40-41, 44-45, 51-53, 58, 63, 73)

Applicant currently lives in a rental unit. However, he owns a condominium, which he rents out. He estimates its value at \$80,000 to \$90,000. He does not own property in Iran. He has one U.S. bank account, and no foreign accounts. He does not own either U.S. or foreign investments. (Tr. 54-56)

Administrative Notice: Iran

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 have their personal possessions in hotel rooms searched, have their telephones monitored, and be placed under surveillance.

Policies

Each security clearance decision must be an impartial 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.³ Decisions also reflect consideration of the “whole person” factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of disqualifying or mitigating conditions does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be so measured, as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest⁴ for an applicant to 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. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it falls to applicants to refute, extenuate or mitigate the Government’s case. Because no one has a “right” to a security clearance, applicants bear a heavy burden of persuasion.⁵ A person who has access to classified information enters a fiduciary relationship based on trust and confidence. The Government has a compelling interest in ensuring that applicants possess the requisite judgment, reliability, and trustworthiness to safeguard classified information. The “clearly consistent with the national interest” standard compels resolution of any doubt about an applicant’s suitability for access to classified information in favor of the Government.⁶

Analysis

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

³ Directive §6.3.

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ See *Egan*, 484 U.S. at 528, 531.

⁶ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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.

I have considered all the conditions under AG ¶ 7 that could raise a security concern and may be disqualifying, 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;

(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; 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.

The possession of family ties to residents or citizens of a foreign country is not disqualifying under Guideline B, unless those ties create a conflict of interest or a heightened risk of foreign exploitation. Applicant lives with his wife and children, who are U.S. citizens, but also retain their citizenship with Iran. Moreover, he has frequent contact with his mother and siblings who are also dual U.S.-Iranian citizens. Although Applicant's last visit to Iran was three years ago, his wife and children traveled this year to spend time with family. The country in question must be considered.⁷ Iran and the United States have had a hostile relationship. It has been designated as a state sponsor of terrorism since 1984, and remains one of the most active state sponsors of terrorism. The State Department warns that dual U.S.-Iranian citizens who travel to Iran must exercise particular vigilance during travel. Such dual citizens have had their U.S. passports confiscated, and have been denied permission to exit Iran.

Applicant's testimony and the record evidence indicate that he has ties of affection to his family members who are dual U.S.-Iranian citizens, and to those who remain in Iran. Applicant's ties and contacts with his foreign family represent a heightened risk of foreign exploitation, and a potential conflict of interest between his

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

ties to his family and the requirement to protect classified information. AG ¶ 7(a), (b) and (d) apply.

I have also 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.;

(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; and

(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.

Given Applicant's relationships with his foreign family, he could be placed in a position that could force him to choose between U.S. and foreign interests. He is bound by ties of affection to his wife and children, his mother, and his siblings in the United States, who are dual U.S.-Iranian citizens. He also maintains a relationship with his foreign siblings and in-laws. All of his relatives are either Iranian citizens or dual U.S.-Iranian citizens. Iran abuses the rights of its citizens, provides planning and financial support for widespread terrorist attacks, and trains, equips and funds select Iraqi Sh'ia militant groups. AG ¶ 8(a) cannot be applied.

I also considered the extent of Applicant's U.S. ties, including his 20 years of living and working in the United States, the fact that several family members have obtained U.S. citizenship, and his property ownership. However, these facts must be weighed against his ties and ongoing relationships with foreign nationals who live in Iran. His contacts with his family are not casual, and his conduct demonstrates ties of affection to them. Given these ties, I cannot confidently conclude he would resolve a conflict of interest in favor of the United States. AG ¶ 8(b) and (c) do not apply.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and

all the relevant circumstances. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must 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.

Applicant's loyalty to the United States is not in question. He has been a U.S. citizen for almost ten years, and several family members have also become U.S. citizens. However, his foreign ties place him in a position where he might have to choose between his family's interests and the interests of the United States. Applicant's foreign ties raise security concerns because of his ongoing relationships. He is in touch with numerous family members in Iran, including three immediate family members, his siblings. Applicants face a heavy burden to overcome Iran's hostile relationship with the United States, and its long-standing designation as a state sponsor of terrorism. In addition, the U.S. State Department urges caution by dual U.S.-Iranian citizens traveling to Iran because of the possibility of being detained by authorities, and Applicant's wife, children, mother and brother, who are dual citizens, continue to travel to Iran. All of these facts represent a heightened and unacceptable security concern.

A fair and commonsense assessment of the available information shows Applicant has not satisfied the doubts raised under the guideline for foreign influence. Such doubts must be resolved in favor of the national security.

Formal Findings

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a – 1.g	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant's access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge