



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



In the matter of:)
)
 -----) ISCR Case No. 11-03503
)
 Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

February 10, 2012

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke his eligibility for a security clearance to work in the defense industry. The action is based on foreign influence security concerns raised by Applicant’s family ties or connections to Iran, his country of birth, which he left in 1979 at the age of 21 and to which he has not returned. Applicant presented sufficient evidence to explain, extenuate, or mitigate the security concerns. For the reasons discussed below, this case is decided for Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on or about June 16, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) explaining it was unable to find that it was clearly consistent with the national interest to grant Applicant access to classified information. The SOR is similar to a complaint, and it detailed the reasons for the action under the security guideline known as Guideline B for foreign influence.

Applicant timely answered the SOR and requested a hearing. The case was assigned to another judge September 15, 2011, before it was reassigned to me October 14, 2011. The hearing took place November 2, 2011. The hearing transcript (Tr.) was received November 17, 2011.

At the close of the hearing, I kept the record open until November 23, 2011, to allow Applicant to provide additional documentary information. Applicant made a timely submission, and that matter is admitted, without objections, as Exhibit B.

Procedural Matters

I took administrative or official notice of certain facts concerning the country of Iran per Department Counsel's written request.² The essential facts about Iran are set forth below.

Findings of Fact

The SOR alleged that Applicant's mother, two brothers, and two sisters are citizens of and residents in Iran. He admitted the allegations in his reply to the SOR. His admissions are accepted and adopted and incorporated herein as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 53-year-old employee of a federal contractor. He is seeking to retain a security clearance previously granted to him. A native of Iran, he traveled to the United States on a tourist visa in 1979, after the fall of the Shah, to visit an older brother. Once in the United States, the then 21-year-old Applicant decided to seek political asylum. In time, he was granted resident alien status under the sponsorship of

¹ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

² Exhibit 3.

his brother. He became a naturalized U.S. citizen in 1990. He has not returned to Iran since his departure in 1979, and he has no intention of traveling to Iran in the future.

Applicant has worked in the defense industry as an engineer since about 1991. He obtained a master's degree in electronics engineering in 1993. He was initially granted a security clearance in 1991; he was subject to a periodic reinvestigation and allowed to retain a security clearance in 2002;³ and he completed his current security clearance application in September 2010.⁴ He has worked for the same company since 1996. A homeowner, he has lived at the same address since 1999. He currently works as a senior engineer for a company that provides microwave, radio frequency, power, and control solutions. He has a good employment record as verified by a highly favorable letter of recommendation and testimony from his supervisor.⁵ His supervisor described him as a dependable, knowledgeable, and trustworthy employee who has the full support of the company's executive leadership.

Applicant married for the first time in 1982 to a native-born U.S. citizen. That marriage ended in less than two years with a divorce. He married his current wife, a native of Armenia, in 1989. Of note, Applicant's family in Iran is ethnically Armenian, as opposed to Persian or Kurdish. He and his wife have one child, a 17-year-old son, who attends public schools. His wife immigrated to the United States as a young child, and she became a naturalized U.S. citizen in 1983. She works in the field of purchasing and procurement management, and she is currently employed by a major technology company.

In about 2004, after the passing of his father, Applicant obtained an Iranian passport as part of a process to decline any right he had to an inheritance of his father's estate in Iran. He obtained the passport solely for this inheritance or probate purpose; he did not use the passport for travel to Iran or any other country. The passport was valid until it expired in 2009. He disclosed the Iranian passport in his most recent security clearance application, and he delivered the passport to his company's facility security officer, who destroyed it in September 2010.⁶

Applicant was raised in a large family in Iran consisting of his parents and six siblings (four brothers and two sisters). Other than his wife, none of Applicant's family members know that he holds a security clearance because he closely guards this fact. His father passed away several years ago. He did not travel to Iran for funeral services. His mother was a full-time mother and homemaker. He had contact with her by

³ Exhibit 1 (Investigations and Clearance Record).

⁴ Exhibit 1.

⁵ Exhibit 4; Tr. 37–47.

⁶ Presumably, these circumstances explain why the Iranian passport matter was not alleged in the SOR. Because it is not alleged, it does not form any part of the decision in this case, but it is mentioned in the findings to show that Applicant acted in good faith by disclosing it to the Government.

telephone on average once every two to three months, and he saw her in person four to five times during the last 30-plus years when she traveled to the United States. His mother passed away recently in August 2011.⁷ He did not travel to Iran for funeral services.

Concerning Applicant’s siblings, two brothers immigrated to the United States, while the others remained in Iran. One of his brothers in the United States passed away due to cancer. None of his siblings in Iran are employed by, connected to, or affiliated with the Iranian government or military. None of his siblings in Iran have approached Applicant with a request or solicitation to provide classified, sensitive, or proprietary information. He provides no financial support to his siblings in Iran. The table below summarizes the relevant facts concerning his four siblings who are citizens of and residents in Iran.

| | |
|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Brother–born 1950. | Contact is via telephone on average once every two to three months. Occupation is owner of a clothing store. |
| Brother–born 1966. | Contact is via telephone on average once every six months and in person once during the last 30-plus years. Occupation is owner of a telephone connection store. |
| Sister–born 1942. | Contact is via telephone on average once every six months and in person three times during last 30-plus years. Occupation is retired seamstress and housewife. |
| Sister–born 1952. | Contact is via telephone on average once every two to three months and in person four to five times during the last 30-plus years. Occupation is housewife. |

All of Applicant’s financial interests are in the United States. He earns a six-figure salary, has a 401(k) retirement account, and owns residential real estate with his wife. He has no financial interests in Iran or any other foreign country.

Concerning his country of birth, the February 1979 fall of the Shah of Iran, then a key U.S. ally, opened a long rift in relations between Iran and the United States. On November 4, 1979, radical students seized the U.S. Embassy in Tehran, and then held hostages until shortly after President Regan’s inauguration on January 20, 1981. The United States severed relations with Iran on April 7, 1980, and the two countries have had no official dialogue since. In the United States, the Iranian Interest Section is

⁷ Exhibit B.

located in the Embassy of Pakistan. The U.S. protecting power in Iran is Switzerland. The U.S. Government prohibits most trade with Iran. And the U.S. Government has special concerns about four particular areas of Iranian behavior: (1) its efforts to acquire weapons of mass destruction (e.g., its nuclear program); (2) its support of and involvement with terrorism; (3) its support of violent opposition to the Middle East peace process; and (4) its dismal record of human rights. Recently, Iran has threatened to block shipping through the vital oil-trade route of the Strait of Hormuz if Western nations impose further sanctions over Iran's nuclear program.

Law and Policies

It is well-established law that no one has a right to a security clearance.⁸ As noted by the Supreme Court in *Department of Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁹ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹⁰ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹¹

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹² The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹³ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁴ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁵ In *Egan*, the Supreme

⁸ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

⁹ 484 U.S. at 531.

¹⁰ Directive, ¶ 3.2.

¹¹ Directive, ¶ 3.2.

¹² ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹³ Directive, Enclosure 3, ¶ E3.1.14.

¹⁴ Directive, Enclosure 3, ¶ E3.1.15.

¹⁵ Directive, Enclosure 3, ¶ E3.1.15.

Court stated that the burden of proof is less than a preponderance of the evidence.¹⁶ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹⁷

The AG set forth the relevant standards to consider when evaluating a person's security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.¹⁸ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access to classified information.

Discussion

The central issue here is whether Applicant's family ties to Iran, his country of birth, disqualify him from eligibility for a security clearance. Under Guideline B for foreign influence,¹⁹ the suitability of an applicant may be questioned or put into doubt due to an applicant's foreign connections and interests. The overall concern under the guideline is:

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.²⁰

Given the undisputed evidence of Applicant's family ties to Iran, a country that is clearly hostile to the United States, the Government has established its case under

¹⁶ *Egan*, 484 U.S. at 531.

¹⁷ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹⁸ Executive Order 10865, § 7.

¹⁹ AG ¶¶ 6, 7, and 8 (setting forth the security concern and the disqualifying and mitigating conditions).

²⁰ AG ¶ 6.

Guideline B. In reaching this conclusion, I considered the following disqualifying conditions under the guideline:

AG ¶ 7(a) contact with a foreign family member, business, or professional associate, friend, or other person who is a citizen of or a resident in a foreign country if that contact creates a heightened risk of foreign 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 classified information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

The guideline also provides that certain facts and circumstances may mitigate foreign influence security concerns. Given the evidence, I have considered the following 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 United States; and

AG ¶ 8(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 United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

Applicant has all the indicators of a mature, stable, responsible, and trustworthy person. He was articulate, serious, candid, and credible at the hearing. He has the strong support of his supervisor (and his company's executive leadership) who vouched for his trustworthiness. He exercises discretion in not disclosing the existence of a security clearance to his Iranian family members. During the time he has held a security clearance, his mother, two brothers, and two sisters lived in Iran, and there is no indication of attempts to exploit them. Applicant has not returned to Iran since his departure in 1979, and he does not intend to travel there in the future.

Nevertheless, Iran's hostility to the United States, and the heightened risk it creates, places a heavy burden on Applicant to show his family ties to Iran are mitigated. On this point, Applicant has the type of contact that is typical with adult family members who live great distances apart. He provides no financial support to his siblings in Iran. His siblings are not employed by, connected to, or affiliated with the Iranian government or military. In addition, his mother, the person he likely felt the strongest emotional connection to or sense of obligation toward, passed away several months

ago. Given these circumstances, his family ties to Iran are not particularly strong when compared with his ties to the United States.

Applicant has lived in the United States for more than 30 years, which is nearly all of his adult life and all of his working life as an engineer. He has been a naturalized U.S. citizen for more than 20 years. He has worked in the defense industry while holding a security clearance since 1991. He is married to a woman who became a naturalized U.S. citizen some years before he did, and their son is a native-born U.S. citizen. His financial interests are the United States. It is also evident that he sees the United States as his home, both for his career and for his wife and son. Considering the evidence as a whole, this is not a case of “divided loyalties”²¹ with an applicant who has one foot in the United States and one foot in his native country. On the contrary, the evidence shows Applicant has both feet firmly rooted in the United States. These facts and circumstances are unlikely to change, they weigh in his favor, and they lead me to conclude that Applicant can be expected to resolve any potential foreign influence or pressure by coercive or noncoercive means in favor of the U.S. interest. Looking forward, it is most probable that Applicant will properly handle and safeguard classified information, just as he has done for the last 20 years.

Following *Egan* and the clearly-consistent standard, I have no doubts or concerns about Applicant’s fitness or suitability for a security clearance. In reaching this conclusion, I gave due consideration to the whole-person concept.²² Applicant met his ultimate burden of persuasion to obtain a favorable clearance decision.

Formal Findings

The formal findings on the SOR allegations are as follows:

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|---------------------------|---------------|
| Paragraph 1, Guideline B: | For Applicant |
| Subparagraphs 1.a–1.b: | For Applicant |

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Michael H. Leonard
Administrative Judge

²¹ AG ¶ 6.

²² AG ¶ 2(a)(1)–(9).