



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ICSR Case No. 11-10411
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: Richard J.R. Raleigh, Jr. Esquire

05/31/2012

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted. Applicant mitigated security concerns for foreign influence.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on March 16, 2011, to obtain a security clearance required for her employment with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Defense Office of Hearings and Appeals (DOHA) issued interrogatories to Applicant to explain potentially disqualifying information in her background. After reviewing the results of the background investigation and Applicant's responses to the interrogatories, DOHA could not make the preliminary affirmative findings required to issue a security clearance. DOHA issued a Statement of Reasons (SOR), dated January 9, 2012, to Applicant detailing security concerns for foreign influence. 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).

Applicant answered the SOR on January 20, 2012. She admitted the three factual allegations under Guideline B of the AG with a detailed explanation. She requested a hearing. Department Counsel was prepared to proceed on February 21, 2012, and the case was assigned to me on March 13, 2012. DOHA issued a Notice of Hearing on March 14, 2012, for a hearing on March 19, 2012. I convened the hearing as scheduled. The Government offered four exhibits, which I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 4. Applicant testified, and offered two documents which I marked and admitted into the record without objection as Applicant Exhibits (App. Ex.) A and B. DOHA received the transcript (Tr.) of the hearing on March 27, 2012.

Procedural Issues

Department Counsel requested that administrative notice be taken of certain facts concerning Iran (Gov. Ex. 4). I have considered the request and the documents provided by Department Counsel. Administrative notice is taken of the facts pertaining to Iran as noted below in the Findings of Fact.

Applicant received the Notice of Hearing a few days before the hearing. She and her counsel discussed the hearing date with Department Counsel prior to the mailing of the Notice of Hearing on March 14, 2012. Applicant is entitled to 15 days advance notice of a hearing. (Directive E3.1.8.). Applicant was ready to proceed at the hearing on March 19, 2012, and she and her counsel had sufficient time to prepare. Applicant waived the 15-day notice requirement. (Tr. 6-7)

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 52 years old and a project analysis for a defense contractor. Applicant was born in Iran and left there to pursue her college education in the United States in 1978. She received her college degree from a United States university in 1982, and a master's degree from a United States university in 1992. She became a United States citizen on November 30, 1994. She married in 1994. Her husband was also born in Iran but is now a United States citizen. She moved to her present residence in the United States in 1994 with her husband so he could pursue his education. She has three children who were all born in the United States and are United States citizens. She is seeking a security clearance for the first time. (Tr. 14-17, 20-21; Gov. Ex. 1, e-QIP, dated March 16, 2011; Gov. Ex. 2, Response to Interrogatory, dated November 4, 2011; Gov. Ex. 3, Response to Interrogatory, dated November 4, 2011)

Applicant was 17 years old when she came to the United States on a student visa in 1978. The pro-western regime was still in power and had not yet been overthrown. She entered the United States using her Iranian passport. This passport was last renewed in 2006. Her intent was to receive a medical education and practice in the United States. She did not intend to return to Iran. Her parents were citizens and

residents of Iran, but are now both deceased. She has two brothers and four sisters who are still citizens and residents of Iran. She is the next-t- youngest sibling. Most of her siblings are many years older than her. She was the sibling that wanted to go to school, get an education, and have a career. She did not interact much with her siblings because of the age difference and her desire for an education. Her mother-in-law is approximately 85-years-old and a resident and citizen of Iran. (Tr. 15-20, 40-42; Gov. Ex. 2 and 3, Response to Interrogatory, dated November 4, 2011)

Applicant visited Iran three times since her departure in 1978. She first returned in 1992 to visit her family for 40 days. She had two children at the time and wanted to introduce them to her family. She stayed with her mother-in-law. She returned again in 1998 for 40 days when her mother died. The security investigator did not ask her about these trips in their interview on May 18, 2011, but she volunteered the information to the investigator so the number of trips she took to Iran would be clear.

Her third visit was in August 2010. She and her husband planned a trip to Paris. Her husband told her after arriving in Paris that he arranged for them to visit his elderly mother in Iran. He made all of the travel arrangements, and only informed her of the plans after arriving in Paris. She traveled to Paris using her U. S. passport, but her husband had her Iranian passport with him. When they went to Iran, she showed both her U. S. passport and her Iranian passport. She was admitted by Iranian officials on her Iranian passport. This visit lasted 28 days, and they stayed at her mother-in-law's house. Her mother-in-law has visited them three times in the United States. Her relationship with her mother-in-law is very formal.

At the time of her visit to Iran in August 2010, Applicant was not working and was taking care of her family at home. She did not protest or object to the trip arranged by her husband because the situation would not change. Her husband already made the decision and arrangement. She questioned him as to why he did not tell her of the trip. His response was that he wanted to surprise her. In her culture, you are required to follow the husband's decisions. (Tr. 21-29, 33-36, 38-40, 45-47; App. Ex. B, Response to SOR, dated January 20, 2012)

Applicant has six siblings. One brother is retired, and the other is a glass cutter for a window company. Two of her sisters are housewives, and the other two are nurses. None of her siblings work for the government of Iran. On her trip to Iran in August 2010, Applicant called one of her siblings to tell them she was in Iran. Her brothers and three sisters came to her mother-in-law's house to visit her. The visit lasted approximately three hours. That was the only time she saw her siblings during her visit. She has only seen them on occasion when she visited Iran. In the past, one sister came to the United States and visited her for approximately 30 days. She is involved with her siblings merely because they are her siblings. She wishes good things for them like she would for anyone. Applicant talks to her siblings in Iran occasionally by telephone. Their relationship now is based merely on her telephone communications with one or two of her sisters. They talk about family matters and common information like the weather. The sisters usually initiate the calls about every two weeks. Applicant does not initiate the calls. Applicant does not communicate by e-mail with her siblings. She has never

sent them money and she has no financial interests in Iran. All of her interests and friends are in the United States. (Tr. 26-28, 32-33, 36-38, 44-45)

When Applicant started working for the defense contractor in March 2011, she gave her Iranian passport to the facility security officer, realizing for the first time that the possession of an Iranian passport was a security concern. Prior to her working for the defense contractor, she never had a concern about the Iranian passport since she was never employed in a position requiring a security clearance. She contacted the Iranian interest section to determine the procedure for denouncing her Iranian citizenship and relinquishing her passport. Her facility security officer sent her passport along with a letter from Applicant denouncing her Iranian citizenship to the Iranian embassy. It has not been returned. (Tr. 15-20, 27-31, 43-44, 48-57; App. Ex. A, Letter and Postal Receipt, dated January 4, 2012; See, App. Ex. B, Response to SOR, dated January 20, 2012)

Applicant has no intention to return to Iran in the future. She has been in the United States for over 33 years, and her life is here. She wants to have a job so she can break free of the culture that the husband makes all of the decisions. She no longer wants to be dependent on him. If she has concerns about security issues or if approached by Iranian interests about classified information, she would contact her facility security officer. (Tr. 20-23, 25-24, 28-30, 34-39)

Iran is a country that has been hostile to the United States since the 1979 revolution that overthrew the former pro-western government. Iran's support for terrorist groups has long concerned the United States. Iran's human rights practices are also a concern to the United States. The Iranian theocratic government has repressed its people, pursued weapons of mass destruction, initiated a nuclear program that may include nuclear weapon, and continues to support terrorism in the Middle East and around the world. Iran is known to conduct intelligence operations and economic espionage against the United States. There is no direct evidence in the record concerning Iranian espionage activity towards or within the United States, but the hostile relationship supports the inference that Iran would seek to damage or counter United States military capabilities by seeking to obtain classified or sensitive information when possible. The U.S. Department of State warns U.S. citizens, particularly U.S. citizens of Iranian origin, to consider carefully the risks of travel to Iran. Iran does not recognize renunciation of citizenship by those born there, and has detained and harassed naturalized U.S. citizens traveling there. The continued support for terrorism and human rights violations contribute to the designation of Iran as one of the "Axis of Evil." Iran is a nation whose interests are inimical to the United States. (Gov. Ex. 4, Request for Administrative Notice and Documents concerning Iran)

Policy

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

disqualifying conditions and mitigating conditions, which must be considered 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 conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, 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 this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline B: Foreign Influence

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 the U.S. interest, 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 consideration 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 ¶ 6)

All of Applicant's siblings are citizens and residents of Iran. Her mother-in-law is also a resident and citizen of Iran. Applicant left Iran in 1978 to pursue her education in the United States. She received a bachelor's and a master's degree from United States universities. She became a U.S. Citizen in 1994. She married another person born in Iran who became a U. S. citizen in 2005. She has three children who were born in the United States and are U.S. citizens. She visited Iran in 1992, 1998, and 2010. Applicant's siblings visited her in Iran during her 2010 visit. She now only has limited contact with them by telephone. No matter how limited and infrequent, contacts and relationships with family members in Iran are a security concern and raise 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 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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information). Applicant's visit to Iran in August 2010, at the direction and insistence of her husband, a United States citizen, raises AG ¶ 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).

The mere existence of foreign relationships and contacts is not sufficient to raise the above disqualifying conditions. The nature of Applicant's contacts and relationships must be examined to determine whether it creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. "Heightened" is a relative term denoting increased risk compared to some normally-existing risk that can be inherent anytime there are foreign contacts and relationships. One factor that heightens the risk in Applicant's case is the hostile relationship between the United States and Iran, and Iran's record of detentions, harassment, repressions, and operational and economic espionage against the United States.

Applicant raised facts to mitigate the security concerns arising from her family in Iran. I have considered 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) (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 AG ¶ 8(c) (contact or communication with foreign citizens is so casual or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation).

Under the old adjudicative guidelines, a disqualifying condition based on foreign family members could not be mitigated unless an applicant could establish that the

family members were not “in a position to be exploited.” The Appeal Board consistently applied this mitigating condition narrowly, holding that its underlying premise was that an applicant should not be placed in a position where he or she is forced to make a choice between the interest of the family member and the interest of the United States. (See, ISCR Case No. 03-17620, App. Bd. Apr. 17, 2006; ISCR Case No. 03-24933, App. Bd. Jul. 28, 2005; and ISCR Case No. 03-02382, App. Bd. Feb. 15, 2005). Thus, an administrative judge was not permitted to apply a balancing test to assess the extent of the security risk. Under the new guidelines, however, the potentially conflicting loyalties may be weighted to determine if an applicant can be expected to resolve any conflict in favor of the U.S. interest.

Applicant’s family members in Iran place a heavy burden on her to mitigate the disqualifying conditions and the security concerns. Applicant visited Iran only three times since she left over 34 years ago. She has seen or been with most of her siblings for only limited periods during her visits. Applicant has contact with some of her siblings when they initiate telephone calls every few weeks. While the contacts are not frequent, the mere existence of the contacts under the circumstances shows that the family relationships are close and not casual.

The nature of the government of Iran, its disregard for human rights, its hostility to the United States, and its intent to seek information on United States technology place a heavy burden on Applicant in mitigating the disqualifying conditions and the security concerns. Applicant has a close relationship with her siblings. She does not have such a close relationship with her mother-in-law. The siblings or mother-in-law do not have any contacts or relationships with the Iranian government. However, there could be a circumstance where Applicant is placed in a position of having to choose between the interests of her family members and the interest of the United States because of the nature of the Iranian government. It is clear from the information that the relationship between Applicant and her siblings is not causal or infrequent. Applicant considers it close. Since these relationships are not causal or infrequent, AG ¶¶ 8(a) and 8(c) do not apply.

Applicant left Iran for a better life, and returned infrequently for a limited time. She has no allegiance or sense of loyalty to the government of Iran. She spent only her early years in Iran, and came to the United States as a young student. She developed a profound sense of belonging and obligation to the United States. She has lived in the United States for over 34 years, thus spending over two-thirds of her life living here. She became a United States citizen, married another person from Iran who also became a United States citizen, and gave birth to three children who are residents and citizens of the United States. She has been a United States citizen for as long as she lived in Iran. She has no property or financial interests in Iran. Her trip to Iran in August 2010 was at the insistence of her husband and not something she intended. The trip took place before she started working for a defense contractor in March 2011, before she had a need for a security clearance, and before knowing a visit to family members in Iran would be a security concern. As soon as she started working for the defense contractor about nine months after her trip to Iran, she took steps on her own to learn how to renounce her Iranian citizenship and return her Iranian passport. Her actions are a

further indication of her loyalty to the United States and lack of loyalty to Iran. I am convinced by her testimony that if her husband presented her with the same scenario for a trip to Iran today, she would be more concerned with the security consequences of the trip and she would not go to Iran. Her loyalties and obligations are to the United States and not to Iran or her family members in that country.

She established by her testimony that she has a deep sense of loyalty and admiration for the United States and its way of life. She sees the United States as offering her freedom, justice, and tolerance with an opportunity to reach her potential. Her sense of loyalty and obligation is not to Iran but to the United States. A conflict of interest in this case is extremely unlikely. Applicant can be expected to resolve any conflict of interest in favor of the United States because of her strong ties to the United States. Applicant's family members in Iran will not place her in a position to choose between them and the interests of the United States. In balancing all of the factors mentioned and considered above, I am satisfied Applicant's loyalty to the United States is such that she can be expected to resolve any conflict of interest in favor of the United States interest. Accordingly, Applicant has met her heavy burden to show that her siblings and mother-in-law in Iran and her trips to Iran do not cause a security concern.

I conclude Applicant has mitigated security concerns for foreign influence arising from relatives in and trips to Iran. In balancing all of the factors mentioned and considered above, I am satisfied Applicant's loyalty to the United States, and her minimal contact with his family are such that she can be expected to resolve any conflict of interest in favor of the United States. AG ¶ 8(b) applies.

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):

- (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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for access to sensitive information 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. I carefully considered all of the

circumstances discussed above in regard to disqualifying and mitigating conditions as well as the following factors in light of the whole person concept. The “whole person concept” requires consideration of all available information about Applicant, not a single item in isolation, to reach a commonsense determination concerning Applicant’s security worthiness. Applicant has a relationship with her siblings and mother-in-law in Iran. This simple fact alone might be sufficient to raise security concerns over Applicant’s vulnerability to coercion, exploitation, or pressure. However, mere family ties with people in foreign countries are not, as a matter of law, disqualifying under Guideline B. Whether an applicant’s family ties in a foreign country pose a security risk depends on a commonsense evaluation of the overall factors and circumstances of the family ties.

I considered that Applicant left Iran to seek her education and have a better life. She became a United States citizen, raised her family, and became a productive member of our society. She has strong loyalties to the United States and a strong lack of loyalty for Iran. She has minimal contacts with her family in Iran. Applicant's strong loyalty and allegiance to the United States, and lack of allegiance to Iran counters any contacts and relationships she has with her family members in Iran. Overall, the record evidence leaves me without questions or doubts about Applicant’s eligibility and suitability for access to classified information. For all these reasons, I conclude Applicant has met the heavy burden of mitigating all potential security concerns for foreign influence arising from her family in Iran. Applicant is granted access to classified information.

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 B:	FOR APPLICANT
Subparagraphs 1.a – 1.c:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge