



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



In the matter of:)	
)	
)	ISCR Case No. 11-14079
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

03/14/2013

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the security concerns generated by his relatives who are citizens of Afghanistan living in Iran. Clearance is denied.

Statement of the Case

On August 22, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the adjudicative guidelines (AG).

Applicant answered the SOR on December 10, 2011, admitting all of the allegations except subparagraph 1.a, and requesting a decision on the record. On October 19, 2012, the case was converted to a hearing at Department Counsel's request. On December 4, 2012, I received the case assignment. DOHA issued a notice

of hearing on January 11, 2013, scheduling it for January 31, 2013. I held the hearing as scheduled. During the hearing, I received two Government exhibits, marked as Government Exhibits (GE) 1 and 2, and Applicant's testimony. At the Government's request, I took administrative notice of the adjudicative facts set forth in 18 documents, marked as Hearing Exhibit (HE) I to VII, IX to XIV, and XVI to XX. (Tr. 20-21) I denied the Government's request to take administrative notice of adjudicative facts listed in two exhibits marked HE VIII and HE XV.

At the end of the hearing, Applicant moved to leave the record open to allow him to submit additional exhibits. Department Counsel did not object, and I granted the motion. Within the time allotted, Applicant submitted 15 exhibits that I received as Applicant's Exhibit (AE) A through O. DOHA received the hearing transcript (Tr.) on February 15, 2013.

Findings of Fact

Applicant is a 52-year-old married man with two children, ages 18 and 16. He was born and raised in Afghanistan. He earned an undergraduate degree in 1982 from a college in Afghanistan, majoring in English. (AE O) After finishing college, he fled the violence and instability in Afghanistan and immigrated to Iran. (Tr. 32) He lived in Iran from approximately 1982 to 1988. Through a United Nations program that assists refugees, Applicant then immigrated to Italy in 1989. Later that year, he immigrated to the United States. (Tr. 29) He has been a naturalized U.S. citizen since 1994.

Applicant visited Iran in 1991 to get married. His wife then immigrated to the United States. She is also a naturalized U.S. citizen. Both of their children were born and raised in the United States. Applicant's mother is originally from Afghanistan. She lives with him. She became a naturalized U.S. citizen in June 2012. (Answer at 2)

Applicant is currently working as a tailor in a department store. According to Applicant's supervisor, "he is a very dedicated, hardworking employee, respected by both the team he manages and the peers he serves." (AE D) From May 2011 to October 2011, he worked as a translator in Afghanistan. (Tr. 52) He is seeking to return to Afghanistan in another translator position.

Applicant has one sister who lives in Sweden, and three sisters and two brothers who reside in Iran. Also, he has one sister-in-law and two brothers-in-law who are Afghan citizens that live in Iran. Applicant's family emigrated from Afghanistan "for the sake of their lives and for the safety of their families." (Answer at 2) Like many Afghan refugees, Applicant's family found a safe haven in Iran, a country with a similar religion, culture, and language. (Tr. 54)

Applicant's sister, now living in Sweden, moved from Afghanistan to Iran in 2010 after her husband was killed in sectarian fighting. She immigrated to Sweden approximately later that year through a U.N. program that assists "widowed refugees." (GE 2) Applicant has spoken to her twice since she moved to Sweden. (GE 2 at 1)

One of Applicant's sister's (S1) living in Iran is a homemaker. She is married to a pediatrician. S2 is homemaker. She is also married to a doctor. Applicant talks to S1 and S2 approximately 6 to 12 times per year. (GE 2 at 2; Tr. 38-40) S3 is a homemaker. Her husband is a day laborer. Applicant talks to her approximately once per year. (GE 2 at 2) One of Applicant's brothers living in Iran recently experienced a stroke and is disabled. (Tr. 38) His wife is a homemaker. Applicant's other brother who lives in Iran is a day laborer. Applicant talks to this brother approximately twice per year. Applicant last visited his family in Iran in July 2009 to attend his sister's funeral (S4). (Tr. 44; GE 1 at 25)

Iran is a brutally repressive theocracy that is virulently anti-American. It seeks to dominate the Middle East through sponsoring terrorism, fomenting unrest in other countries, and developing weapons of mass destruction. (*see generally*, administrative notice documents) The United States has not had diplomatic or consular relations with Iran since November 1979 when militant Iranian students occupied the U.S. Embassy and held 52 Americans hostage for 444 days. (HE I) Iran is a state sponsor of terrorism. (He III) Iran's government employs draconian methods such as torture, rape, flogging, and amputations of dissenters to instill fear and retain power. (HE V) Since 2007, several U.S. citizens have been detained by the Iranian government and held without consular access. (HE XVIII)

Policies

In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. 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."

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 for obtaining a favorable security decision.

Analysis

Guideline B, Foreign Influence

Under this guideline, “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. interests, or is vulnerable to pressure or coercion by any foreign interest” (AG ¶ 6). Moreover, “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” (*Id.*).

Applicant’s mother is now a naturalized U.S. citizen, and she lives in the United States with Applicant’s family. I resolve SOR subparagraph 1.a for Applicant. Although parts of Afghanistan remain violent and chaotic, there is minimal evidence that its various warlords, militias, or terrorists have been targeting, or have the capacity to target, specific Afghan citizens living in distant countries, such as Applicant’s sister living in Sweden, as referenced in subparagraph 1.d. I resolve subparagraph 1.d in Applicant’s favor.

The Iranian regime is both intensely authoritarian and hostile to the United States. Although friendly countries can engage in activities involving coercion, persuasion or duress of an individual to gather classified information as readily as hostile countries, the risk of such activity is heightened with hostile countries because such countries are “not likely to have scruples” about pressuring one of their citizens or residents to obtain classified information.¹ Consequently, Applicant’s contacts with his relatives who are Iranian residents trigger the application of 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.”

Applicant has lived in the United States for 23 years. He is well-respected on his job, and performed admirably in his previous stint as a translator in Afghanistan. These attributes, however, are unable to overcome the heavy burden that applicants who have relatives living in hostile countries such as Iran must overcome. Neither 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.,” nor 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

¹ISCR Case No. 02-04786 at 5 (App. Bd. June 27, 2003).

the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest,” apply.

Whole-Person Concept

Under the whole-person concept, 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.

After escaping violence and persecution in Afghanistan, Applicant’s relatives found safe haven in Iran, a country with a similar language, religion, and culture. However accommodating the country of Iran may have been to Afghan refugees, it has been, and remains intensely hostile to the United States. Under these circumstances, Applicant’s relatives residing in Iran generate a burden that is simply too great for Applicant to overcome. Applicant has failed to mitigate the foreign influence security concerns.

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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.c:	Against Applicant
Subparagraph 1.d:	For Applicant

Conclusion

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

MARC E. CURRY
Administrative Judge