



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



In the matter of:)
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Applicant for Security Clearance)

ISCR Case No. 11-14141

Appearances

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

11/29/2012

Decision

LYNCH, Noreen A., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence) and Guideline C (Foreign Preference). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on September 1, 2009. On August 13, 2012, the Defense Office of Hearings and Appeals (DOHA) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline B and Guideline C. DOHA acted 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) implemented by the Department of Defense on September 1, 2006.

Applicant received the SOR, and requested a hearing on the record. Department Counsel requested a hearing before an administrative judge. The case was assigned to me on October 9, 2012. DOHA issued a notice of hearing on October 12, 2012,

scheduling the hearing for November 9, 2012. Government Exhibit (GX) 1 was admitted in evidence without objection. Applicant testified and presented Applicant's Exhibits (AX) A-E. DOHA received the transcript (Tr.) on November 19, 2012.

Procedural Issue

The Government, through Department Counsel requested that I take administrative notice of certain facts with respect to Iran. Applicant through Counsel objected to documents VII through XVIII. A packet was labeled Hearing Exhibit I and entered into the record.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations in the SOR under Guideline B (Foreign Influence) and Guideline C (Foreign Preference) with explanations. He provided additional information to support his case. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Foreign Influence

Applicant was born in Tehran, Iran, and he attended high school in Iran. In 1978, Applicant came to the United States and completed his undergraduate studies in an American university. He has been with his current employer since 2005. His professional life in the United States has been in the engineering field. He is a senior chief electrical engineer or technical architect. His work throughout the years for two contractors has supported the U.S. Army. He became a naturalized U.S. citizen in 1998. (GX 1) Applicant has held a security clearance since 1999. Applicant is married to a naturalized U.S. citizen, who is a dual citizen of the United States and Iran. She has traveled to Iran with Applicant a few times on her Iranian passport. They have one son who is a U.S. citizen. (Tr. 27)

Applicant and his wife own a home in the United States. He also owns a rental property. His net worth is substantial. He and his wife have several mutual funds, a 401k and savings accounts. (Tr. 28) He has no bank accounts or investments in Iran.

Applicant's father is deceased. His mother is a citizen and resident of Iran. He maintains contact with her about once a month via the phone. He does not provide any financial support to his mother.

Applicant has two brothers who are citizens and residents of Iran. The older brother is semi-retired. His other brother is an artist and poet. (Tr. 35) Applicant maintains contact with them every few months. (Tr. 36)

Applicant's brother is a dual citizen of Iran and Germany, and currently resides in Germany. His brother is a telecommunication and electronics engineer. He travels to

the United States for work. Applicant maintains close contact with him through email and the phone. He sees him when his brother travels to the United States. (Tr. 37)

Applicant has a sister who is a citizen and a resident of Iran. She is a retired math and physics teacher. She is married to an engineer. Applicant maintains contact with her through his mother. (Tr. 38)

Applicant has another sister who is a dual citizen of Iran and Italy, who resides in Italy. She has lived in Italy since 1978. She is an artist and musician who travels to many countries including the United States. (Tr. 40)

Applicant's father-in-law is a citizen and resident of Iran. He is a rancher who lived in the United States but decided to return to Iran. His former wife and children are in the United States or other countries. Applicant's wife maintains little contact with him. She may speak to him once every six months. (Tr. 41)

Applicant's mother-in-law is a citizen of Iran who resides in the United States. She is a naturalized U.S. citizen. She has lived in the United States since 1978. Applicant maintains close contact with her. She owns a home in the United States.

Applicant has no financial interest in Iran. He does not provide any financial support to his family in Iran. He will inherit some property from his mother, but he does not have any interest in keeping it. (Tr. 42)

Applicant submitted a recommendation from a contractor who has known Applicant since 1999. He worked with Applicant on many projects before becoming his supervisor. He is a trustworthy individual and a hard worker. Applicant is described a very dependable. (AX E)

Applicant is active in the community and with several charitable organizations. He is involved with the Wounded Warrior Program. He works with schools to obtain used laptops. (Tr. 31) He stated that none of his family knows that he holds a security clearance.

Foreign Preference

In 1978, Applicant came to the United States. He became a naturalized U.S. citizen in September 1998. He possessed an Iranian passport which he has consistently used when traveling to Iran. Applicant obtained another Iranian passport in 2007 which has an expiration date of March 2012. He used his Iranian passport when he traveled to Iran every two or three years since 1991. He travelled to Iran in 2011 for his father's funeral after becoming a naturalized U.S. citizen. (Tr.49) He further noted that he carried his U.S. passport. He was never advised prior to this investigation that he should relinquish his Iranian passport. He acted in good faith when he used the Iranian passport. As an American citizen, he may not have been able to leave Iran. Applicant

submitted his Iranian passport recently (November 2012) to his Facility Security Officer (FSO). (AX A)

Applicant has travelled to Iran many times while holding his security clearance. He states that he always informed his FSO of the trip. He claims that he was never advised that he should not use the Iranian passport. The record does not contain any OPM subject interview. He does not intend to travel to Iran. He sincerely and credibly states that as far as his allegiance, he can only reaffirm that his entire professional career has been in the United States. He intends to stay in the United States.

Administrative Notice

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. The United States, by executive orders issued by the President as well as by congressional legislation, prohibits nearly all trade and investment with Iran. Sanctions have been imposed on Iran because of its sponsorship of terrorism, its refusal to comply with the International Atomic Energy Agency (IAEA) regulations regarding its nuclear program and its human rights violations.

In January 2012, the Director of National Intelligence expressed concern that the 2011 plot to assassinate the Saudi Ambassador to the United States shows that some Iranian officials – probably including Supreme Leader Ali Khamenei – have changed their calculus and are now more willing to conduct an attack in the United States in response to real or perceived U.S. actions that threaten the regime. He also expressed concern about Iranian plotting against U.S. or allied interests overseas. He assessed that Iran is keeping open the option to develop nuclear weapons, in part by developing various nuclear capabilities that better position it to produce such weapons, should it choose to do so.

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

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the

criteria listed therein and an applicant's security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline B, Foreign Influence

The security concern under this guideline is set out in AG ¶ 6:

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.

Two disqualifying conditions under this guideline are relevant. A disqualifying condition may be raised by "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." AG ¶ 7(a). In addition, AG ¶ 7(b) "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" is applicable.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Finally, friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation’s government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

Applicant has lived and worked in the United States since 1978. He is a naturalized U.S. citizen. Applicant’s wife is a dual citizen of Iran and the United States. Applicant shares living quarters with his wife who maintains contact with her parents. His mother-in-law has lived in the United States for many years.

Applicant’s father-in-law, mother, several brothers, and his sister live in Iran. “[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse.” ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at * 8 (App. Bd. Feb. 20, 2002). Applicant maintains some relationship with these family members.

After considering the totality of Applicant’s family ties to Iran as well as each individual tie, I conclude that Applicant’s family ties are sufficient to raise an issue of a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion. Based on all these circumstances, I conclude that AG ¶ 7(a) and 7(d) is raised.

Security concerns under this guideline can be mitigated by showing that “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(a).

Security concerns under this guideline can also be mitigated by showing “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.” AG ¶ 8(b).

Applicant came to the United States in 1978. He received his undergraduate education in the United States. His professional life is in the United States. He has held a clearance since 1999. He has supported the U.S. Army through his work with defense contractors. He married his wife who has dual citizenship. He has a son who was born in the United States. He has traveled to Iran many times since holding a security clearance. His mother still lives in Iran and he maintains contact with her. He has several brothers who are citizens and residents of Iran. He maintains some contact with them. He has siblings who do not live in Iran. His mother-in-law lives in the United States, but is an Iranian citizen. His father-in-law lives in Iran. Applicant has significant professional, personal, and financial ties to the United States. In light of Applicant's close ties to the United States, it is unlikely that he would choose his relatives in Iran over his life in the United States. His wealth and assets in the United States outweigh any inheritance assets in Iran. I find mitigating conditions AG ¶ 8(b) applies. Even if security concerns are not mitigated under 8(b), they are mitigated under the whole-person concept, *infra*.

Foreign Preference

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Dual citizenship standing alone is not sufficient to warrant an adverse security clearance decision. ISCR Case No. 99-0454 at 5, 2000 WL 1805219 (App. Bd. Oct. 17, 2000). Under Guideline C, "the issue is not whether an applicant is a dual national, but rather whether an applicant shows a preference for a foreign country through actions." ISCR Case NO. 98-0252 at 5 (App. Bd. Sep. 15, 1999).

A disqualifying condition may arise from "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." AG ¶ 10(a)(1). Applicant admitted that he renewed his Iranian passport after becoming a naturalized U.S. citizen because he wanted to visit his parents in Iran. He had no thought of the consequences for a future security clearance. Applicant claims that he informed his FSO about his trips to Iran. He has surrendered his Iranian passport to his FSO. The passport expired in March 2012. He will not be able to visit Iran again.

Security concerns under this guideline may be mitigated by evidence that "dual citizenship is based solely on parents' citizenship or birth in a foreign country." AG ¶ 11(a) Applicant was born to Iranian parents, but he chose to exercise his foreign citizenship by the continued possession of an Iranian passport. He receives mitigation under AG 11(e) "the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated."

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all 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.

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 have incorporated my comments under Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has been in the United States since 1978. He has spent a considerable amount of time in the United States both as a student, attending college and as a professional working as a contractor supporting the U.S. Army. He has held a security clearance since 1999. He is a naturalized U.S. citizen. His wife is a naturalized U.S. citizen, but also holds dual citizenship with Iran. His son is a U.S. citizen. He was articulate, candid, sincere, and credible at the hearing. Applicant's home is in the United States. Applicant has been successful in his work. Applicant is involved in community activities. He works with the Wounded Warrior Program. His current employer recommends him for his security clearance.

Applicant chose to leave his home and pursue his career in the United States. He is firmly established in the United States. The overwhelming majority of his assets are located in the United States. Applicant voluntarily relinquished his Iranian passport to his FSO. He will no longer be able to visit his mother in Iran. Although Applicant has some familial ties to Iran, I am convinced that he will resolve any issues in favor of the United States.

There is no evidence any of the individuals at issue are involved with, or under scrutiny, by interests antithetical to the United States. His family members in Iran do not know the specifics of his work.

Applicant has travelled frequently to Iran over the years since receiving his security clearance. He renewed his Iranian passport after becoming a U.S. citizen. He

surrendered his Iranian passport. He no longer intends to visit Iran. He stated that he wanted to visit his parents. His father died in 2011. He speaks to his mother by phone once a month.

Regarding Applicant's life in the United States, he is an American citizen, with a stable family, social, and professional life. His life is focused here. He has now only a U.S. passport. His Iranian passport expired in 2012. He has loyalty to the United States. His professional career has blossomed in the United States. There is no evidence indicating that he may be manipulated or induced to help a foreign power or interest.

After weighing the disqualifying and mitigating conditions under Guideline B, and Guideline C, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign influence and foreign preference. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegation in the SOR:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a-1.g:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraphs 2.a:	For Applicant

Conclusion

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

Noreen A. Lynch
Administrative Judge