



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ICSR Case No. 11-15235
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Esq. Department Counsel
For Applicant: *Pro Se*

01/15/2014

Decision

CREAN, Thomas M., Administrative Judge:

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

Statement of the Case

On June 19, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance for her employment as an interpreter with a defense contractor. (Item 4) After an investigation conducted by the Office of Personnel Management (OPM), the Department of Defense (DOD) issued Applicant interrogatories to clarify information in her background. (Item 6) After reviewing the results of the background investigation and Applicant's responses to the interrogatories, DOD could not make the affirmative findings required to issue a security clearance. DOD issued Applicant a Statement of Reasons (SOR), dated April 8, 2013, detailing security concerns for foreign influence. (Item 1) 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) effective in the DOD on September 1, 2006.

Applicant answered the SOR on May 6, 2013. She admitted the two factual allegations concerning foreign influence attaching a detailed statement explaining her responses. Applicant elected to have the matter decided on the written record. (Item 2) Department Counsel submitted the Government's written case on July 30, 2013. Applicant received a complete file of relevant material (FORM), and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely provided additional information in response to the FORM by a sworn statement dated October 4, 2013. The case was assigned to me on October 23, 2013.

Procedural Issues

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

Findings of Fact

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

Applicant is 57 years old and has been a linguist for the U.S. Forces in Afghanistan since June 2011. She was born in Afghanistan in 1956, and moved to Iran for one year in 1979 where she met her husband who was born in Iran. In 1980, Applicant and her husband moved back to Afghanistan for a short period until immigrating to Germany. They had refugee status in Germany where Applicant worked as a nurse. Applicant and her husband remained in Germany for four years as refugees because of the war between Iraq and Iran and the political situation in Afghanistan. They came to the United States as refugees in 1984 under a special immigration program. She and her husband both became United States Citizens in 1992.

Applicant has three children who are also United States citizens. Applicant, her husband, and her children went to Iran in October 1993 to care for her husband's parents. Applicant left Iran in April 1994 with the children to return to the United States, but her husband remained in Iran until June 1994. Applicant and her family returned to Iran in July 1996 again to care for her in-laws. Applicant and her family returned to the United States in October 1999. (Item 4 and Item 5)

Applicant's father was a general in the Afghan military but is now deceased. Her oldest brother is disabled and resides in Germany. Her youngest brother and his wife are residents and citizens of Australia. One of Applicant's sisters is a doctor and a citizen and resident of the Netherlands. Her six other sisters are married. The sisters and their family members are residents and citizens of the United States. (Item 5)

Applicant's husband is a dual citizen of Iran and the United States. He has current Iranian and U.S. passports. He uses his Iranian passport to facilitate his travels to Iran every few years to visit his family. Applicant's husband's in-laws are now deceased. However, he has ten siblings who are residents and citizens of Iran. They do not work for the government but are in the rug sales and cleaning business. Applicant's husband talks to them every few months and visits them every few years. Applicant has not talked to her husband's siblings in over four years. (Item 2, Response to SOR) In her response to the FORM, Applicant stated that she has no contact with her husband's family. She only provides them occasional social greetings as she is required to do by her culture. Her last greeting was to one of her sisters-in-law over four years ago. (Response to FORM, dated October 4, 2013)

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 for the United States. The Iranian theocratic government has repressed its people, pursued weapons of mass destruction, initiated a nuclear program that may include nuclear weapons, and continues to support terrorism in Iraq 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 this 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 United States Department of State warns United States citizens, particularly United States 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 United States citizens traveling there. The continued support for terrorism and human rights violations contributed to President Bush's strong criticism of Iran in his 2002 State of the Union message and his designation of Iran as one of the "Axis of Evil." Iran is a nation whose interests are inimical to the United States.

Policies

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)

Applicant’s siblings and their family members are citizens and residents of the United States, the Netherlands, and Australia. They are not security concerns. Her parents, who are now deceased, were also citizens and residents of the United States. However, Applicant’s husband, who is a U.S. citizen, has ten siblings who are citizens and residents of Iran. He has telephone contact with them every few months and visits them in Iran every few years. He has both Iranian and U.S. passports. He uses his Iranian passport to facilitate his visits to Iran. It is also noted that when Applicant’s husband’s parents were alive, Applicant, her husband, and her children went to Iran for extensive periods to care for her husband’s parents.

Applicant has contact and connection with citizens and residents of Iran through her husband raising Foreign Influence Disqualifying Condition 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). Applicant's husband's family members in Iran can create a heightened risk of foreign inducement, manipulation, pressure, or coercion raising security concerns under 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); 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).

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 relationship between the United States and Iran, and the threats of violence, harassment, repressions, and terrorism.

Applicant raised facts to mitigate the security concerns arising from her husband's family members 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).

The nature of the Iranian government, the threats from terrorist organizations operating in the country, the disregard for human rights, and the hostility to the United States, place a heavier burden on Applicant in mitigating the disqualifying conditions and the security concerns. Applicant's husband has strong ties to his family in Iran. He talks to them by telephone frequently and visits every few years using an Iranian passport. Applicant also has connection to her husband's family. She went to Iran and lived there for a period of time with her husband and children to care for her husband's parents. This trip indicates a strong connection to her husband's relatives in Iran. While her husband's family telephone contacts and occasional visits appear to be minimal, the mere existence of continued contacts with his family members shows that the family relationships are close and not casual. The ties to her husband's family in Iran are so strong as to place Applicant in a position to have to choose between his family

members and the interests of the United States. This connection, through her husband, to family in Iran creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. It is likely that Applicant could be placed in a position to choose between her sense of loyalty or obligation to her husband's family members in Iran and her sense of loyalty or obligation to U.S. interests. In balancing all of the factors mentioned and considered above, I am not 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. These factors present an unacceptable risk to the national interest if Applicant has access to classified information. AG ¶ 8(a), (b), and (c) do not apply.

Applicant has not met her heavy burden to show that her husband's family in Iran does not cause a security concern. I conclude that Applicant, who shares living quarters with her husband, has not mitigated security concerns for foreign influence arising from her husband's family in Iran. I am not satisfied Applicant's loyalty to the United States is sufficient to offset her husband's family ties to his siblings in Iran. I resolve the Guideline B security issues against Applicant.

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 lives with her husband and he has a relationship with family in Iran. This simple fact alone might be sufficient to establish 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 came to the United States as a refugee, and she and her immediate family members became United States citizens. I also considered that she has volunteered for and is serving as an interpreter for the U.S. Forces in Afghanistan. While Applicant appears to be a loyal U.S. citizen, her husband has conflicting loyalty between the U.S. and Iran. Since Applicant shares living quarters with him, it is not clear that Applicant can be expected to resolve any conflict of interest in favor of the United States. Decisions under these circumstances do not assign blame or presume misconduct by Applicant. The Government has a compelling interest in protecting sensitive information. This requires that any doubt about the risks associated with Applicant's foreign contacts be resolved in favor of the Government. Applicant's husband's frequent contact and connection to his family in Iran, places an unacceptable risk on her that must be resolved in favor of the Government. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for access to classified information. Applicant has not met the heavy burden to mitigate the potential security concerns for foreign influence arising from her husband's family in Iran. Applicant is denied 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:	AGAINST APPLICANT
Subparagraphs 1.a – 1.b:	Against 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 access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge