



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



In the matter of:)
)
) ISCR Case No. 12-02878
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: Christopher Graham, Esq.

12/14/2012

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated foreign influence security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On September 5, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B (foreign influence) and C (foreign preference). The action was taken under Executive Order (EO) 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 answered the SOR on October 18, 2012, and requested a hearing before an administrative judge. The case was assigned to me on November 21, 2012. DOHA issued a notice of hearing on November 26, 2012, scheduling the hearing for

December 3, 2012. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on December 12, 2012.

Procedural and Evidentiary Rulings

Evidence

Government Exhibit (GE) 1 was admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through H, which were admitted without objection.

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about Iran. Applicant's objection to part of the request was overruled, and the request was approved. The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibit (HE) I. The facts administratively noticed are summarized in the Findings of Fact, below.

Motion to Amend SOR

Department Counsel moved to amend the SOR by withdrawing the allegations under Guideline C. The motion was granted without objection by Applicant.

Findings of Fact

Applicant is a 30-year-old employee of a defense contractor. She is applying for a security clearance for the first time. She has never been married, and she has no children.¹

Applicant was born in Iran to Iranian parents. Her father lived and worked in the United States in the 1970s. He married a U.S. citizen and had three children, who were born and have lived their entire lives in the United States. They are Applicant's half-siblings. Her father and his American wife divorced. He moved back to Iran and married Applicant's mother, who was Iranian. They had Applicant and two younger children. Applicant's father planned for the family to move to the United States, and the children learned English at an early age.²

Applicant received her bachelor's degree from an Iranian university. She immigrated to the United States with her family after college. She attended graduate school in the United States and earned a master's degree and a Ph.D. Her sisters are also well educated and attended U.S. institutions. Her father became a U.S. citizen

¹ Tr. at 17, 29; GE 1.

² Tr. at 18, 23-28; Applicant's response to SOR.

more than 10 years ago. Applicant, her mother, and her two siblings became U.S. citizens a few years ago.³

As discussed below, Iran continued to consider Applicant and her family as Iranian citizens after they became U.S. citizens, and it does not recognize their U.S. citizenship. Her parents own a property in Iran valued at about \$50,000. They have returned to Iran on a few occasions to facilitate the sale of the property. They used their Iranian passports on the trips. They will have to return to Iran to close the sale of the property. Once that is accomplished, they will no longer have a reason to return to Iran. Applicant does not believe that either of her siblings will return to Iran.⁴

Applicant's maternal and paternal grandparents have all passed away. She has some aunts, uncles, and cousins in Iran, but neither she nor her parents are close to those relatives. She is close to her half-siblings. Applicant returned to Iran for several visits before she became a U.S. citizen. She has not returned since she became a U.S. citizen. She relinquished her Iranian passport and does not plan to return to Iran.⁵

Applicant has a friend who is an Iranian citizen attending graduate school in the United States. Most of his family are U.S. citizens or U.S. permanent residents. He has applied for permanent residency, and he plans on becoming a U.S. citizen. It is unlikely that he will return to Iran as he is a member of a religion that has been subject to discrimination.⁶

Applicant does not own any foreign assets. She has a good job, and she has U.S. investments and assets. She volunteers in her community. She and her family enjoy the freedom and opportunities available in the United States. She credibly testified that her loyalty and allegiance are to the United States.⁷

Applicant submitted a number of character letters. The authors praised her excellent job performance, work ethic, honesty, compassion, trustworthiness, kindness, responsibility, loyalty, professionalism, judgment, and integrity.⁸

³ Tr. at 19-20, 25-28, 35, 40-43; Applicant's response to SOR.

⁴ Tr. at 20-23, 26-27, 41-43, 46-52; Applicant's response to SOR; AE A, C, D.

⁵ Tr. at 23, 30-32, 35, 41, 44-45, 49, 52-55; Applicant's response to SOR; AE H.

⁶ Tr. at 35-36, 53-58; Applicant's response to SOR.

⁷ Tr. at 33-39, 52, 58; Applicant's response to SOR; AE E, F.

⁸ AE G.

Iran

Iran is a constitutional Islamic republic with a theocratic system of government in which Shi'a Muslim clergy dominate the key power structures, and ultimate political authority is vested in a learned religious scholar. The United States has not had diplomatic relations with Iran since 1980, and nearly all trade and investment with Iran has been prohibited. Iran has sought to illegally obtain U.S. military equipment and other sensitive technology. The United States has defined the areas of objectionable Iranian behavior as:

- Iran's efforts to acquire nuclear weapons and other weapons of mass destruction (WMD);
- Its support for and involvement in international terrorism;
- Its support for violent opposition to the Middle East peace process; and
- Its dismal human rights record.

The United States has designated and characterized Iran as the world's leading state sponsor of terrorism. Iran provides critical support to non-state terrorist groups. Iran has sought to make the United States suffer political, economic, and human costs. Further, Iran has engaged in efforts to sow violence and undermine stability in Iraq and Afghanistan, including lethal support for groups that are directly responsible for hundreds of U.S. casualties.

The government of Iran has committed numerous, serious human rights abuses against the Iranian people. Abuses include political killings and incarceration; summary executions, including of minors; disappearances; religious persecution; torture; arbitrary arrest and detention, including prolonged solitary confinement; denial of due process; severe restrictions on civil liberties - speech, press, assembly, association, movement and privacy; severe restrictions on freedom of religion; official corruption; violence and legal and societal discrimination against women, ethnic and religious minorities, and homosexuals; trafficking in persons; and child labor.

The State Department continues to warn U.S. citizens to consider carefully the risks of travel to Iran. U.S. citizens who were born in Iran and the children of Iranian citizens, even those without Iranian passports who do not consider themselves Iranian, are considered Iranian citizens by Iranian authorities, since Iran does not recognize dual citizenship. Therefore, despite the fact that these individuals hold U.S. citizenship, under Iranian law, they must enter and exit Iran on an Iranian passport, unless the Iranian government has recognized a formal renunciation or loss of Iranian citizenship. U.S.-Iranian dual nationals have been denied permission to enter/depart Iran using their U.S. passport; they even had their U.S. passports confiscated upon arrival or departure. U.S.-Iranian dual citizens have been detained and harassed by the Iranian government. Iranian security personnel may place foreign visitors under surveillance. Hotel rooms, telephones and fax machines may be monitored, and personal possessions in hotel rooms may be searched.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines 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."

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 the 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.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern for foreign influence 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Three are potentially applicable in this case:

(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;

(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; and

(i) conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

Applicant's parents and siblings are dual citizens of Iran and the United States. Her friend is an Iranian citizen who is residing in the United States. Iran is a country that is clearly hostile to the United States.⁹ Iran is considered the world's leading state sponsor of terrorism; it commits espionage against the United States; and the government of Iran has committed numerous, serious human rights abuses against its people. Applicant's foreign friend and her family's dual citizenship create a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. It also creates a potential conflict of interest. Applicant's travel to Iran made her vulnerable to exploitation, pressure, and coercion by the Iranian government. AG ¶¶ 7(a), 7(b), and 7(i) have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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

⁹ See ISCR Case No. 05-03250 at 5 (App. Bd. Apr. 6, 2007).

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.; and

(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.

Applicant has been in this country since she began graduate school, and she has been a U.S. citizen for several years. Applicant's father lived in the United States and had an American family before he married Applicant's mother. Applicant is close to her three half-siblings who were born and live in the United States. All of Applicant's immediate family are U.S. citizens and residents. Applicant has not traveled to Iran since she became a U.S. citizen. She relinquished her Iranian passport and does not plan to return to Iran. Her siblings, like Applicant, are highly educated and accomplished. Applicant and her family value the freedom and opportunities provided in the United States that are not available in Iran. Her parents will likely return to Iran one final time to sell their property. I find that it is unlikely Applicant will be placed in a position of having to choose between the interests of the United States and the interests of the Iranian government, a terrorist organization, or her Iranian friend and family members. I further find there is no conflict of interest, because Applicant has such deep and longstanding relationships and loyalties in America, that she can be expected to resolve any conflict of interest in favor of the United States. AG ¶ 8(a) is partially applicable. AG ¶ 8(b) is applicable.

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

I considered the totality of Applicant's family ties to Iran, a country that is clearly hostile to the United States, and the heavy burden an applicant carries when he or she has family members in a hostile country. The nature of a nation's government, its relationship with the United States, 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, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism. Iran is the world's leading state sponsor of terrorism, conducts espionage against the United States, and has a dismal human rights record. Applicant was sincere, open, and honest at the hearing. Her friend and family members all live in the United States. Her family members are all U.S. citizens, and her friend will be applying to become a U.S. citizen. These facts minimize any potential for pressure, coercion, exploitation, or duress.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated 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:	For Applicant
Subparagraphs 1.a-1.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record 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.

Edward W. Loughran
Administrative Judge