



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



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|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
| [Redacted]                       | ) | ISCR Case No. 15-01163 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

02/23/2017

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

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

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on January 15, 2014. On September 1, 2015, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline B. The DOD acted under Executive Order (Exec. Or.) 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 DOD on September 1, 2006. The guidelines are codified in 32 C.F.R. § 154, Appendix H (2006), and they replace the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR on October 14, 2015, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on March 18, 2016. On March 21, 2016, a complete copy of the file of relevant

material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. The FORM included a copy of the SOR (Item 1), Applicant's answer to the SOR (Item 2), his SCA (Item 3), summaries of two personal subject interviews (PSI) conducted in February and October 2014 (Items 4 and 5), and a request to take administrative notice of relevant facts about Iran, with supporting documentation (Item 6). Applicant received the FORM on October 14, 2015, and did not respond.<sup>1</sup> The case was assigned to me on February 2, 2017.

### **Findings of Fact<sup>2</sup>**

In his answer to the SOR, Applicant admitted the two allegations, which allege that his parents are citizens and residents of Iran. His admissions are incorporated in my findings of fact.

Applicant is a 38-year-old naturalized U.S. citizen seeking employment by a federal contractor as a linguist. He has never held a security clearance.

Applicant was born and educated in Iran. He received an associate's degree from an Iranian university in May 1998. He was exempt from mandatory military service in Iran because of vision problems. He came to the United States on a six-month tourist visa in August 1999 to obtain medical treatment for macular degeneration in his eye. He decided to stay in the United States and applied for an extension of his visa, which was denied. He remained in the United States illegally for about a year. His employer agreed to sponsor him for a work permit. At about the same time, he met his future wife, a U.S. citizen, and they married about six months later. After he married, he applied for and received a work permit, and about four months later he received a green card. He has worked in various retail sales jobs and has been a store manager since March 2005. He became a U.S. citizen in February 2008. (Items 3 and 5.) He registered with the Selective Service, but he has no military experience.

Applicant and his wife have four children, ages 13, 12, 10, and 9, who are native-born U.S. citizens. They purchased a home in the United States in June 2006. His wife is employed as a realtor. (Items 3 and 4.)

Applicant's mother and father are citizens and residents of Iran. His father is a retired chicken farmer, who now works for an architectural firm, obtaining government permits for the firm. His mother has never worked outside the home. (Item 5.) He talks

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<sup>1</sup> Department Counsel informed Applicant that he was entitled to make corrections, additions, deletions, and updates to Items 4 and 5. She also informed him he was entitled to object to consideration of Items 4 and 5 on the ground that they were not authenticated. His failure to respond to the FORM constitutes a waiver of any objections to Items 4 and 5. See ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016) ("Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive.")

<sup>2</sup> Applicant's personal information is extracted from his SCA (Item 3) unless otherwise indicated by a parenthetical citation to the record.

to his parents by telephone about two or three times a month and by text message once or twice a month. His mother visited him in the United States for three months in 2006. He has not traveled to Iran since he left in August 1999. (Items 3 and 5.) His parents do not know that he is seeking employment with a federal contractor.

During the October 2014 PSI, Applicant told the investigator that he does not intend to visit Iran at any time in the future. He also told the investigator that if his parents need care as they age, he will bring them to the United States, but he will not travel to Iran to care for them. (Item 5.)

Applicant does not have other family members, friends, or associates in Iran. He has a brother, who sought asylum in Norway after an encounter with Iranian authorities and is now a citizen of Norway. He talks to his brother by telephone about once a month and visited him once in May 2011. (Item 4.)

Applicant was financially sponsored by an uncle (his father's brother) and an aunt when he first came to the United States, and he visited them regularly. His uncle is now deceased.

Applicant speaks English at home. He reads a free internet website in Farsi to maintain his language skills. He refers to himself as an American Iranian. He socializes only with U.S. citizens, except for one childhood friend from Iran who now lives in the United States. In his October 2014 PSI and in his answer to the SOR, he stated that he wants to work as a linguist to repay the United States for the rights and freedom he enjoys. (Items 2 and 5.)

Department Counsel requested that I take administrative notice of relevant facts about Iran. I have granted the request and have taken notice of the facts set out below.

Iran is a theocratic Islamic republic dominated by Shia Muslim clergy, with ultimate political authority vested in a learned religious scholar. The Iranian government is generally hostile to the United States. Current U.S. concerns about Iran are based on its efforts to acquire nuclear weapons and weapons of mass destruction; development of ballistic missiles; development of cyber espionage and attack capabilities; aggressive programs to acquire U.S. dual-use technologies such as nanotechnology; support for and involvement in international terrorism; and support for violent opposition to the Middle East peace process.

Iran engages in serious human rights abuses, including summary executions, torture, arbitrary arrest and detention, and restrictions on civil liberties. Iran has provided guidance, training, and weapons to Shia political and militant groups in Iraq. It also provides encouragement, training, funding, and weapons to anti-Israeli terrorist groups in its efforts to undermine the Arab-Israeli peace process.

The United States has designated Iran as a state sponsor of terrorism. The United States broke diplomatic relations with Iran in April 1980, prohibits most trade with

Iran, and uses multilateral sanctions and diplomatic pressure to contain the threats posed by Iran.

Iran does not recognize dual citizenship. Iranian-born, naturalized U.S. citizens are considered solely Iranian citizens by the Iranian authorities, and they are subject to surveillance, search, harassment, arrest, and imprisonment while traveling or residing in Iran. Iran has detained, interrogated, and imprisoned other U.S. citizens such as academics, scientists, journalists, and others who have traveled to Iran for personal, cultural, or business reasons.

### **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 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. 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 and 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 that 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.” 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 as follows:

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 are relevant:

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.

Both disqualifying conditions are established by Applicant's admissions and the documentary evidence in the record. Iran's hostility to the United States is sufficient to establish the "heightened risk" in AG ¶ 7(a), and it places a "very heavy burden of persuasion" on Applicant to demonstrate that his immediate family members in Iran do not pose a security risk, and that he is unlikely to be forced to choose between loyalty to the United States and his family members. See ISCR Case No. 04-11463 at 4 (App. Bd. Aug. 4, 2006); ISCR Case No. 02-13595 at 3 (App. Bd. May 10, 2005).

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, we know 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 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, or the country is known to conduct intelligence operations against the United States. 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).

The following mitigating conditions under this guideline are potentially relevant:

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 and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

AG ¶ 8(a) is not established. Applicant is close to his parents, and one member of his family (his brother) has already experienced the repressive nature of the Iranian government. Applicant's father deals with Iranian government officials, obtaining permits for his employer.

AG ¶ 8(b) is not established. Applicant has strong ties to the United States. His wife and children are U.S. citizens, and his family home and place of employment are in the United States. The record does not reflect the extent of his involvement in his community, if any. His job as a store manager reflects his company's level of trust in him. He rejected the Iranian government and its values many years ago. However, the adjudicative guidelines recognize that individuals may act in unpredictable ways when faced with choices that could be important to a loved one, such as a family member. ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009). Applicant's statement that he would not travel to Iran to care for his parents was made in a theoretical setting and has not been tested in a real-world environment. His declarations of loyalty to the United States in the event of a conflict of interest are of limited value, unless there is evidence that he has acted in a similar manner in the past in comparable circumstances. See ISCR Case No. 07-06030 at 3 (App. Bd. Jun. 19, 2008.) Except for his decision in 1999 to remain in the United States, the record is devoid of evidence that he has experience in making hard choices with severe repercussions.

AG ¶ 8(c) is not established. There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). Applicant has not rebutted the presumption.

### **Whole-Person Concept**

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. In applying 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.

I have incorporated my comments under Guideline B in my whole-person analysis and considered the factors in AG ¶ 2(a). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his family connections to Iran. Accordingly, I conclude he has not 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 allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence): AGAINST APPLICANT

Subparagraphs 1.a and 1.b: Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman  
Administrative Judge