



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-07165

Appearances

For Government: Chris Morin, Esq., Department Counsel

For Applicant: *Pro se*

02/22/2017

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline B, foreign influence. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On April 1, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on April 22, 2016, and requested a hearing before an administrative judge. The case was assigned to me on October 5, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 19, 2016. I convened the hearing as scheduled on January 24, 2017. The

Government offered exhibits (GE) 1 and 2, which were admitted into evidence without objection.¹ Applicant testified and did not offer any exhibits. DOHA received the hearing transcript (Tr.) on February 1, 2017.

Request for Administrative Notice

Department Counsel submitted a written request, with supporting documents,² that I take administrative notice of certain facts about Iran. Applicant did not object, and I have taken administrative notice of the facts contained in the request that are supported by source documents from official U.S. Government publications. The facts are summarized in the Findings of Fact, below.

Findings of Fact

Applicant admitted both allegations in the SOR. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 33 years old. He was born in Iran. He attended college in Iran, but was denied a diploma because he did not complete mandatory military service. He met his wife, a U.S.-born dual citizen of Iran and the United States, when she visited her aunt in Iran in 2002. Applicant's stepmother is his wife's aunt. His wife was living in the United States at the time. In 2004, they married in Iran. After they married, Applicant went to Turkey and was interviewed by U.S. authorities. He was granted permanent residence status in the United States. He came to the United States in July 2005. He became a naturalized citizen in December 2008. He began community college in 2008 and transferred to a university in 2009. He earned a bachelor's degree in 2012. His wife is a registered nurse and owns a franchise sandwich store. They have two children, ages five and three, both born in the United States.³

Applicant's father, stepmother, and sister are citizens and residents of Iran. His mother is deceased. He has no immediate family living in the United States, other than his wife and children. In his security clearance application (SCA), Applicant disclosed he talks with his father and his stepmother by telephone about once a week. They communicate via telephone, skype, and text. His father is an engineer. At his hearing, Applicant testified he spoke with his father every two to three weeks. If his stepmother is present when he calls, he may talk with her. In 2011, Applicant sponsored his father for permanent residency status in the United States. He was approved and his father received a green card. His father traveled to the United States in 2012 and stay around 40 days before returning to Iran. His father returned for his son's graduation in May 2012 for about 40 days, again returning to Iran. In 2013, Applicant's father lived with him

¹ Hearing Exhibit (HE) I is the Government's discovery letter.

² HE II is the Government's memorandum request for administrative notice and supporting documents.

³ Tr. 15-25, 31.

in the United States for about five months, again returning to Iran. His father was unable to find a job in the United States and decided to stay in Iran where he could work and to be close to his daughter. His father owns his own business. He let his green card expire and does not intend to return to the United States.⁴

Applicant talks with his sister about once a year. She is married with three children. Her marriage was arranged. She is a housewife. She and her husband have marital problems and she often takes the children and stays with her father and stepmother.⁵

Applicant testified that his father is financially well off. He owns his own house and four to five other properties in Iran. Applicant does not anticipate inheriting his father's property because of Applicant's failure to serve in the Iranian military. He stated his lack of service renders him ineligible to inherit property. Applicant testified that the Iranian government is aware that he did not serve in the military.⁶

Applicant visits his father in Turkey. His grandfather owned a house in Turkey. When he passed away, Applicant's uncle inherited the house. This is where Applicant meets his family. He last visited his father in May 2015. He has also visited his grandmother and an uncle there in 2014. His grandmother does not have a telephone so he does not have regular contact with her, but asks about her. He has no intention of returning to Iran. Applicant has never returned to Iran since leaving in 2005. He is concerned if he were to return to Iran he would be arrested or detained. He is concerned he could be held by the Iranian government as a hostage and exploited. In the future, he intends to continue visiting his Iranian family in Turkey. Applicant's father provides his grandchildren gifts for special occasions.⁷

Applicant's father-in-law is a dual citizen of Iran and the United States and resides in the United States. Applicant sees him about once a week. His mother-in-law was born in the United States. His father-in-law and sister-in-law hold Iranian passports and visit Iran every few years. Applicant's wife held an Iranian passport, but it expired. She can reapply for a new Iranian passport. He testified that she has no desire to return to Iran.⁸

Applicant has five uncles who are citizens and residents of Iran. He contacts one uncle once or twice a week. He contacts three uncles once or twice a month and he does not have regular contact with the fifth uncle. He has minimal contact with his aunts, except for one whom he visited in Turkey. Applicant's grandfather had cancer in

⁴ Tr. 25-30, 38-40, 43-44.

⁵ Tr. 30-33.

⁶ Tr. 33-34.

⁷ Tr. 40-43, 50-51.

⁸ Tr. 35-37.

2013-2014. There were strict sanctions imposed by the United States against Iran, and it was difficult for Applicant's family to obtain medicine for the grandfather. Applicant was able to get the medicine and send it to his family. He will help his family when they need something they cannot obtain in Iran. He last provided medicine in 2014.⁹

Applicant has friends who are citizens and residents of Iran. He maintains contact with them through social media, such as Facebook or different phone applications. He has had contact with about six or seven Iranian friends during the past year. None of the friends have ever visited him in the United States.¹⁰

Applicant held an Iranian passport from 2008 until it expired in 2015. He did not use it to travel. He did not destroy it because he believed at the time he would use it to travel to Iran. As the political climate declined he decided he would not return. He obtained a new Iranian passport that expires in 2025. It is held by his employer. He testified that he renewed his Iranian passport because it was the only way he would be able to go to Iran to visit his family. He is ineligible to obtain a visa to travel to Iran because he was born there. Applicant testified that even if he no longer holds an Iranian passport, if he were to go to Iran, he could be arrested. He believes traveling there is too risky for him. He is aware that Iran may hold U.S.-Iranian citizens as hostages.¹¹

Applicant's wife purchased their house in 2005 for about \$180,000. The house is held jointly. They have about \$20,000 to \$30,000 left to pay on the mortgage. They have about \$10,000 in cash, an investment account worth about \$15,000, and he has a 401K retirement account worth about \$20,000. His wife also has accounts associated with her business. The business is solely in her name.¹²

Applicant testified he votes in American elections. He has paid his student loans. He is taking classes towards a master's degree. He pays his taxes. He testified that he loves the United States.¹³

Iran

Iran is a theocratic Islamic republic dominated by Shia Muslim clergy, with ultimate political authority vested in a learned religious scholar. Current U.S. concerns about Iran are based on support for and involvement in international terrorism; support for violent opposition to the Middle East peace process; and its 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

⁹ Tr. 37-38, 45.

¹⁰ Tr. 51-52.

¹¹ Tr. 52-55.

¹² Tr. 55-60.

¹³ Tr. 61-63.

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. Iran's intelligence operations against the United States, including cyber-intelligence capabilities, have dramatically increased in depth and complexity during the past few years. Iran has aggressive programs for collecting U.S. dual-use technologies and advanced materials development, especially in the area of a nanotechnology.

The Director of National Intelligence assessed that Iran is an unpredictable actor in the international arena. Its development of cyber espionage or attack capabilities might be used in an attempt to either provoke or destabilize the United States or its partners. It also assessed that Iran very likely values its cyber program as one of the many tools for carrying out asymmetric but proportional retaliation against political foes, as well as sophisticated means of collecting intelligence. Iran has been implicated in attacks against U.S. financial institutions and a Las Vegas casino.

Iran has adopted the Joint Comprehensive Plan of Action (JCPOA) and will now begin taking all of the necessary steps outlined in the JCPOA to restrain its nuclear program and ensure that it is exclusively peaceful going forward. Nonetheless, the International Atomic Energy Agency (IAEA), will continue to investigate if there is reason to believe Iran is pursuing any covert nuclear activities in the future, as it had in the past.

The current government of Iran continues to be hostile to the United States. It is an ongoing threat to U.S. national interests because of its support to the Assad regime in Syria, promulgation of anti-Israeli policies, and development of advanced military capabilities.

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.

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 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, 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 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

SOR ¶ 1.a alleged that Applicant’s father, stepmother, and sister are citizens and residents of Iran. SOR ¶ 1.b alleged that Applicant has other relatives and friends who are citizens and residents of Iran. 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 under this guideline are relevant to this case:

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.

AG ¶¶ 7(a) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government.

An applicant with foreign family ties to a country that is hostile to the United States has a very heavy burden of persuasion to show that neither he nor his family members are subject to influence by that country. ISCR Case No. 11-01888 (App. Bd. Jun. 1, 2012), citing ISCR Case No. 07-00029 (App. Bd. Dec. 7, 2007). The totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

Iran's hostility to the United States 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 he is not in a position to be forced to choose between loyalty to the United States and his family members. See ISCR Case No. 02-13595 at 3 (App. Bd. May 10, 2005) (stating an applicant has "a very heavy burden of persuasion to overcome the security concerns" when parents and siblings live in Iran). See *a/so* ISCR Case No. 04-11463 at 4 (App. Bd. Aug. 4, 2006) (articulating "very heavy burden" standard when an applicant has family members living in Iran). With its adversarial stance and its negative human rights record, it is conceivable that Iran would target any citizen in an attempt to gather information from the United States.

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).

Based on the citizenship and place of residence of Applicant's father, stepmother, and sister who are citizens and residents of Iran, his regular contact with his father and some contact with his stepmother, contact with his uncle and his grandmother, the hostility of Iran to the United States, and Iran's abysmal human rights record, I conclude that the "heightened risk" in AG ¶ 7(a) and the potential conflict of interest in AG ¶ 7(b) are established by substantial evidence. Thus, the "heavy burden" of mitigating the facts is shifted to Applicant. I find that his minimal contact with some uncles, aunts, and friends in Iran, does not create the same issues and rise to the level of "heightened risk" in AG ¶ 7(a) and potential conflict of interest in AG ¶ 7(b).

Three 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.

Applicant's relationship with his father, stepmother, sister, grandmother, and uncle, and the nature of the Iranian government preclude application of AG ¶ 8(a). Although he has less contact with his sister, she and her children frequently stay at their father's home, creating a vulnerability. I am unable to conclude that it is unlikely Applicant will be placed in a position of having to choose between the interests of his sister and the interests of the United States.

I have considered that Applicant has been a naturalized citizen of the United States since 2008. He and his wife have children born in the United States and he earned a college degree here. His wife is a dual citizen of Iran and the United States and owns her own business. They have assets in the United States. However, Applicant maintains close contact with his father and some contact with his stepmother, who is his

wife's aunt. Although he does not visit them in Iran, he makes accommodations to visit them in Turkey, along with his uncle and grandmother. Applicant disclosed that the Iranian government is aware that he failed to serve in their military. His family relationships in Iran as noted above create a potential conflict of interest. I am unable to conclude that these relationships are so minimal that he can be expected to resolve a potential conflict of interest in favor of the United States. AG ¶ 8(b) is not established.

AG ¶ 8(c) is not established, because Applicant has strong bonds of affection and obligation to his father, stepmother, sister, uncle, and grandmother, notwithstanding the infrequency and nature of his communications with some of them. Applicant has not rebutted the presumption that contacts with family members in a foreign country are not casual. See ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002).

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.

Applicant is a 33-year-old naturalized citizen of the United States. His wife and children were born in the United States and his wife is a dual citizen of Iran. He maintains close contact with family members in Iran. He makes arrangements to visit his father, grandmother, and uncle in Turkey because he does not want to take the risk of returning to Iran. He disclosed that the Iranian government is aware that he did not serve in its military. Although Applicant has strong ties to the United States, he also has strong ties to his family in Iran. 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 ties 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

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
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Subparagraphs 1.a-1.b:	Against Applicant
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Conclusion

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

Carol G. Ricciardello
Administrative Judge