



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 15-07472

Appearances

For Government: Charles Hale, Esq., Department Counsel

For Applicant: *Pro se*

08/03/2017

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for access to classified information. The action is based on foreign influence concerns due to Applicant's family ties to Iran via his marriage to an Iranian citizen who is living and working in the United States as a lawful immigrant. For the reasons discussed below, this case is decided for Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 Format) on February 19, 2015. This document is commonly known as a security clearance application. Thereafter, on June 16, 2016, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant her eligibility for access to classified information. The SOR is similar to a complaint. It detailed the factual reasons for the action under the security guideline known as Guideline B for foreign influence. The sole

allegation concerned his cohabitation with his then girlfriend who is an Iranian citizen living in the United States on a student visa.

Applicant answered the SOR on June 25, 2016; he admitted the allegation; he explained that he married his girlfriend in February 2016; and she had applied to have her immigration status adjusted to permanent resident alien, commonly referred to as a green card. He also requested a hearing before an administrative judge.

The hearing took place as scheduled on December 7, 2016. The hearing transcript was received on December 15, 2016. Post-hearing, Applicant submitted additional documentation showing that his spouse had obtained a green card on March 1, 2017. Without objection, that documentation is admitted as Exhibit E.

Procedural Matters

I took administrative or official notice, which is similar to judicial notice, of certain facts concerning the country of Iran per Department Counsel's written request.¹ The essential facts about Iran are discussed below.

Findings of Fact

Applicant is a 51-year-old engineer/technician employed by a federal contractor. He is seeking to obtain a security clearance of the first time in the defense industry. He has worked for the same federal contractor since October 2009. He was born in Cuba and immigrated to the United States as a young child with his parents. He became a naturalized U.S. citizen in 1987. His educational background includes an electronics technician diploma awarded in 1990 and a bachelor's degree in applied science and technology (with a concentration in engineering technology) awarded in 2001. His employment history includes honorable military service in the U.S. Army during the 1980s. His first marriage ended in divorce in 2009.

In his February 2015 security clearance application, Applicant disclosed that he was cohabitating with a woman who is a citizen of Iran.² He explained that she was residing in the United States lawfully on a student visa. He provided additional information about her during the March 2015 background investigation.³

Applicant and the woman married in February 2016.⁴ Based on the marriage, in March 2016, Applicant and his spouse applied to have her immigration status adjusted to permanent resident alien as well as to obtain employment authorization.⁵ Immigration

¹ Exhibit 3.

² Exhibit 1.

³ Exhibit 2.

⁴ Exhibit A.

⁵ Exhibits B, C, and D.

authorities approved the request granting her permanent resident alien status as of March 1, 2017.⁶ She intends to apply for U.S. citizenship as soon as allowed by law.⁷

Both Applicant and his spouse testified at the hearing, and I found their testimony to be credible and worthy of belief. Applicant's spouse, age 38, explained that she entered the United States in August 2013 on a student visa to pursue a MBA degree with a focus on health-care and information management. Previously, she obtained a bachelor's degree in industrial engineering from an Iranian university. She then worked in Iran for a multinational oil and gas corporation as well as a multinational pharmaceutical corporation.

Applicant met his future spouse in-person during July 2014 at a social event for singles. After dating for a period, they began living together in February 2015. She completed the MBA program in May 2015 and then had an internship with a software company working in the health-care industry. She is now working on her own start-up company in the health-care industry. She has not returned to Iran since her departure in 2013.⁸ She had planned to visit her parents in Iran in about September 2016, but she decided not to do so in light of her pending immigration petition.⁹ She does not intend to travel to Iran in the future due to her understanding of security issues, and she will instead meet her parents somewhere in between, such as Italy since she has a brother living there.¹⁰

Applicant's spouse's father, mother, brother, and sister are citizens of Iran. Both her mother and father are retired and living in Iran. Her mother, age 59, had her own business. Her father, age 74, was a mathematics teacher in a local high school. From time to time, her father helps her sister who is an architect working in real estate development. Her sister is married to a civil engineer employed by a communications company, although he is also involved in the same real estate development business. Her brother is pursuing a Ph.D. at a university in Italy, he is married to an Iranian citizen, and they are seeking Italian citizenship. She described her family as small-town people who are not in favor of the current regime in Iran, nor were they in favor of the last regime. She communicates with her parents in Iran via Skype, speaking with her father almost every other day and her mother about once a week. Finally, she stated she is not a religious person, and she does not support the current Iranian government.¹¹

⁶ Exhibit E.

⁷ Exhibit E.

⁸ Tr. 68.

⁹ Tr. 68-69.

¹⁰ Tr. 69.

¹¹ Tr. 59-61.

Applicant has never traveled to Iran, nor has he met his spouse's immediate family members. His contact has been limited to saying hello while his wife is speaking with her father or mother via Skype. Applicant expressed a good understanding of the security concern based on his spouse's family ties to Iran.¹² He understands his obligation to protect classified information, including his duty to report any attempt to obtain classified information based on his spouse's family ties to Iran.¹³ He also stated that he and his spouse have discussed traveling to Iran, and the intention is that she will not travel to Iran to visit her family.¹⁴

Concerning the country of Iran, the February 1979 fall of the Shah of Iran, then a key U.S. ally, opened a long rift in diplomatic relations between Iran and the United States. On November 4, 1979, radical Iranian students seized the U.S. Embassy in Tehran, and then held hostages until shortly after President Reagan's inauguration on January 20, 1981. The United States severed relations with Iran on April 7, 1980. As a result, in the United States, the Iranian Interest Section is located in the Embassy of Pakistan, and the U.S. protecting power in Iran is Switzerland. The U.S. Government has a number of special concerns regarding Iranian behavior as outlined in Department Counsel's written request.¹⁵ The concerns include Iran's efforts to acquire weapons of mass destruction; its support for violent opposition to the Middle East peace process; its ongoing support of the Assad regime in war-torn Syria; and its dismal human-rights record. In 2015 the U.S. Department of State reaffirmed its 1984 designation of Iran as a state sponsor of terrorism.

Law and Policies

This case is adjudicated under Executive Order (E.O.) 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.¹⁶

It is well-established law that no one has a right to a security clearance.¹⁷ As noted by the Supreme Court in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the

¹² Tr. 93-95.

¹³ Tr. 97-100.

¹⁴ Tr. 97-98.

¹⁵ Exhibit 3.

¹⁶ The 2017 AG are available at <http://ogc.osd.mil/doha>.

¹⁷ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

side of denials.”¹⁸ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹⁹ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²⁰

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²¹ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²² An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²³ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁴

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.²⁵ The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.²⁶

Discussion

The central issue here is whether Applicant’s ties to Iran, the country of his wife’s birth, disqualify him from eligibility for access to U.S. classified information. Under Guideline B for foreign influence, the suitability of an applicant may be put into doubt due to an applicant’s foreign contacts and interests. The overall concern under the guideline is:

Foreign contacts and interests, including but not limited to business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern

¹⁸ 484 U.S. at 531.

¹⁹ Directive, ¶ 3.2.

²⁰ Directive, ¶ 3.2.

²¹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²² Directive, Enclosure 3, ¶ E3.1.14.

²³ Directive, Enclosure 3, ¶ E3.1.15.

²⁴ Directive, Enclosure 3, ¶ E3.1.15.

²⁵ *Egan*, 484 U.S. at 531.

²⁶ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.²⁷

The starting point for the analysis is the country of Iran. Suffice it to say, the U.S. Government views the behavior of the Iranian government as presenting a serious national security concern. Given the evidence of Applicant's ties to Iran, a country that is plainly hostile to the United States, the Government has established its case under Guideline B. In reaching this conclusion, I considered the following disqualifying conditions:

AG ¶ 7(a) contact, regardless of method, 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 classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and

AG ¶ 7(e) shared 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.

The guideline also provides that certain facts and circumstances may mitigate foreign influence concerns. Given the evidence here, I considered the following 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 United States;

AG ¶ 8(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such

²⁷ AG ¶ 6.

deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

AG ¶ 8(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country.

Applicant has multiple indicators of a mature, stable, responsible, and trustworthy person. He was articulate, serious, candid, and credible at the hearing. He reported his contacts with his then Iranian girlfriend in 2015, when he completed his security clearance application. He provided additional information about her during his background investigation. Because the adjudicative process is predicated upon individuals providing relevant information about their background, he receives substantial credit in mitigation for providing the information about his then girlfriend and now spouse. Overall, I conclude that he voluntarily reported the information about his spouse on his security clearance application, and he was truthful and complete in responding to questions during his background investigation and during his hearing. His willingness to provide such information suggests that he will report any adverse security information even when doing so is not necessarily in his own self-interest, which is exactly what the Defense Department expects of a cleared individual.

In addition, Applicant has a good understanding of the security issues based on his spouse's family ties to Iran. His spouse has not traveled to Iran since her entry into the United States in 2013. Together, they have expressed an intention not to travel there in the future. It is clear that Applicant's spouse, with a MBA from a U.S. university, intends to pursue a career here, as she is currently working to establish a start-up company in the U.S. health-care industry.

Nevertheless, Iran's hostility to the United States and the heightened risk it presents places a heavy burden on Applicant to show that his ties via his marriage to Iran are mitigated. On this point, Applicant, purely in his personal capacity, has essentially no contacts or interests in Iran. His contacts with his spouse's family members are limited to a simple greeting during a call. His spouse has the type of contacts that are normal and typical with adult family members who live great distances apart. The frequency of her calls with her father are greater than with her mother, as she described her father as "more mom-like" than her mother.²⁸ Neither Applicant nor his spouse provide financial support to family members in Iran; both her parents are retired; and her siblings appear to be financially self-sufficient. In addition, the sister living in Iran is not employed by, connected to, or affiliated with the Iranian government or military, and her brother is a university student living in Italy. None of her immediate family members are in a sensitive, high-level, or high-profile position where they could easily come to the attention of Iranian authorities. Given these circumstances, his ties to Iran, while not benign, are not overly strong when compared with his ties to the United States.

²⁸ Tr. 76-77.

Applicant has lived in the United States since he was a young child when he and his family arrived here from Cuba. He has been a naturalized U.S. citizen for about 30 years. He attended U.S. schools and served honorably in the U.S. armed forces. His financial and employment interests are in the United States. His ties to Iran are a mere fortuity, based on a chance meeting of a woman who happens to be an Iranian citizen. Further, she is now a lawful U.S. resident based on her marriage to a U.S. citizen, she intends to pursue both her business and personal interests here, and she intends to become a U.S. citizen as soon as allowed by law. Considering the evidence as a whole, this is not a case of “divided allegiance”²⁹ with an applicant who has one foot in the United States and one foot in a foreign country. On the contrary, the evidence shows Applicant has both feet firmly planted in the United States. These facts and circumstances are unlikely to change in the future, they weigh in his favor, and they lead me to conclude that Applicant can be expected to resolve any potential foreign influence or pressure in favor of the U.S. interest. Looking forward, I am persuaded that Applicant can be expected to properly handle and safeguard classified information as well as promptly report any potential incidents of foreign influence or pressure.

Following *Egan* and the clearly consistent standard, I have no doubts or concerns about Applicant’s reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept. Accordingly, I conclude that he met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline B:	For Applicant
Subparagraph 1.a:	For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant access to classified information.

Michael H. Leonard
Administrative Judge

²⁹ AG ¶ 6.