



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



In the matter of:)
)
) ISCR Case No. 12-11935
)
Applicant for Security Clearance)

Appearances

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

01/24/2018

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On June 30, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B (foreign influence), C (foreign preference), and F (financial considerations). Department Counsel later withdrew the foreign preference and financial considerations allegations under SOR ¶¶ 2.a and 3.a. Applicant responded to the SOR on September 27, 2016, and elected to have the case decided on the written record in lieu of a hearing. On October 14, 2016, Department Counsel requested a hearing before an administrative judge.

The case was assigned to me on August 16, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 17, 2017, scheduling the hearing for September 19, 2017. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on September 27, 2017.

Procedural and Evidentiary Rulings

Evidence

Government Exhibit (GE) 1 was admitted in evidence without objection. Applicant testified, but he did not submit any documentary evidence.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts about Iran. Applicant did not object to the request, and it 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 are summarized in the written request and will not be repeated verbatim in this decision. Of particular note is that the U.S. Government has designated Iran as a state sponsor of terrorism. It conducts cyber espionage and attacks and more traditional espionage against U.S. interests and allies. It does not recognize Israel and has hindered the Middle East peace process, including in Syria. It has a dismal human rights record. Iran does not recognize dual nationality and will treat U.S.-Iranian dual nationals solely as Iranian citizens subject to Iranian laws. U.S.-Iranian dual nationals have been denied permission to enter or depart Iran using their U.S. passport. 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.

Findings of Fact

Applicant is a 55-year-old engineer for a defense contractor. He has worked for his current employer since 2010. He has a bachelor's degree, which was awarded in 1992. He is married with three children.¹

Applicant was born in Iran to Iranian parents. He was about 17 years old during the 1979 revolution. His hopes for positive change never materialized, and a number of his friends were victimized by the new regime. He came to the United States as a student in 1984. He completed college, remained, and became a U.S. citizen in 2004. His wife is a native-born U.S. citizen who works for the federal government as an engineer. His three children were born in the United States.²

Applicant's parents are elderly. His father is a U.S. citizen. His mother has U.S. permanent residence status. They used to spend about half the year in the United States and half in Iran. Applicant's father lives in the United States, but his mother is in

¹ Tr. at 19-20; GE 1.

² Tr. at 17, 35-40; GE 1.

Iran. She is now too elderly to make the semi-annual trips. His father visits her in Iran. Applicant contacts his mother about once a month.³

Applicant has seven siblings. Four of his siblings are U.S. citizens living in the United States. Three of his siblings are citizens and residents of Iran. Applicant has contact with his siblings about four to six times a year. None of his siblings have any direct connection to the Iranian government.⁴

Applicant last visited Iran in 2015. His Iranian passport is expired, and he does not intend to renew it. He owns his home in the United States. He does not have property or other assets in Iran.⁵

Applicant professed his love for the United States. He appreciates the freedoms and opportunities available to him and his family here. He is a youth sports coach and referee. The big events for his family are the Fourth of July, Halloween, Thanksgiving, Christmas, and the Super Bowl. He proudly displays the U.S. flag, and his oldest child intends to join the U.S. military. He credibly testified that he would report any attempt to use his family in Iran against him.⁶

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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

³ Tr. at 18, 26-28; Applicant's response to SOR; GE 1.

⁴ Tr. at 18, 29-34; Applicant's response to SOR; GE 1.

⁵ Tr. at 21, 25, 34-36, 41.

⁶ Tr. at 17, 38-41.

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 national security eligibility will be resolved in favor of the 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).

Guideline B, Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

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 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.

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

- (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; and
- (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.

Applicant's mother and three of his seven siblings are citizens and residents of Iran, a country that is clearly hostile to the United States.⁷ It is a leading state sponsor of terrorism; it conducts cyber espionage and attacks and more traditional espionage against U.S. interests and allies; and the government of Iran has committed numerous, serious human rights abuses against its people. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a) and 7(b) 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 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; and
- (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 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.

Applicant has lived in this country since 1984. His wife is a native-born U.S. citizen who works for the federal government as an engineer. His three children were born in the United States. His father and four of his siblings are U.S. citizens living in the United States. He credibly professed his love for the United States and that he would report any attempt to use his family in Iran against him. I find that it is unlikely Applicant

⁷ See ISCR Case No. 05-03250 at 5 (App. Bd. Apr. 6, 2007).

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 his Iranian family members. I further find there is no conflict of interest, because Applicant has such deep and long-standing relationships and loyalties in America, that he 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.

Analysis

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(d):

(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.

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 a leading state sponsor of terrorism, conducts espionage against the United States, and has a dismal human rights record.

Applicant's family members have no direct connection to the Iranian government and have no reason to raise Applicant's profile with the Iranian government. Applicant

was sincere, open, and candid at the hearing. In the unlikely event that his family members were subjected to coercion or duress from the Iranian government or terrorist groups, I find that because of his deep and long-standing relationships and loyalties in the United States, including his uncompromising commitment to this country and his wife and children, that Applicant would resolve any attempt to exert pressure, coercion, exploitation, or duress in favor of the United States.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the 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.b:	For Applicant
Paragraph 2, Guideline F:	Withdrawn
Subparagraph 2.a:	Withdrawn
Paragraph 3, Guideline C:	Withdrawn
Subparagraph 3.a:	Withdrawn

Conclusion

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