



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



In the matter of:

ISCR Case No. 16-00519

Applicant for Security Clearance

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel

For Applicant: *Pro se*

02/08/2018

Decision

WHITE, David M., Administrative Judge:

Applicant mitigated potential security concerns related to his three siblings, who are resident citizens of Iran, and his former possession and use of an Iranian passport to visit there. Based upon a review of the record as a whole, national security eligibility for access to classified information is granted.

History of Case

On March 24, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On June 6, 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 effective within the DoD after September 1, 2006.

Applicant answered the SOR in writing on August 23, 2016 (Answer 1), admitted the two Guideline B allegations concerning his siblings and requested a hearing before an administrative judge. On December 22, 2016, Department Counsel issued an amendment to the SOR to Applicant, adding an allegation under Guideline C (Foreign Preference). Applicant responded to this amendment in writing on December 26, 2016, and denied the single Guideline C allegation. (Answer 2). Pursuant to Directive ¶ E3.1.17, I granted this SOR amendment after explaining it to Applicant and ensuring that he understood it and had sufficient time to respond.

The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on February 13, 2017. DOHA issued a Notice of Hearing on May 2, 2017, setting the hearing for May 17, 2017. On that date, Department Counsel offered Government Exhibits (GE) 1 and 2 into evidence. Applicant testified but offered no documentary evidence. I took administrative notice of the facts concerning Iran that are set forth on pages 2 through 5 of the Government's Request for Administrative Notice, which is marked Hearing Exhibit (HE) II and included in the record. DOHA received the hearing transcript (Tr.) on May 26, 2017.

Findings of Fact

Applicant is 66 years old. He was born in Iran. He graduated from high school and attended one year of college there. He then served his mandatory enlistment in the Iranian army as a medic, primarily assisting an obstetric doctor. After completing his enlistment he moved to the United States in 1976. He earned an associate's degree from a community college in 1978, and a bachelor's of science degree in engineering from a state university in 1981. He became a naturalized U.S. citizen in March 1983, and has been employed by a major U.S. aerospace company since 1986. His employer asked him to apply for a security clearance to permit his assignment in support of defense contracts. (GE 1; GE 2; Tr. 6-7, 31-32, 56-58.)

Applicant's first wife, to whom he was married for more than 16 years, was born in the United States. He and his current wife, who is also a U.S. citizen, married in 2003. He has two adult children from his first marriage who were born, and have always lived, in the United States. They have never visited Iran. He and his wife recently sold the home they bought in 2003, and took possession of a new home that they built for their retirement years. They own that home free and clear, with no mortgage debt, and all of their other financial assets are in the United States. (GE 1; GE 2; Tr. 55-56, 67-69.)

Applicant's parents, who raised seven children, are both deceased. Applicant had three older brothers, two older sisters, and one younger sister. His eldest brother and his eldest sister, born in 1941 and 1945, are also deceased. His 68-year-old brother is also a naturalized U.S. citizen, and also works for a major U.S. aerospace company. (GE 1; GE 2; Answer 2; Tr. 61.)

Applicant's 74-year-old brother is an Iranian citizen and resident. He is a retired banker, who is in ill health. He was medically disqualified from military service, and

never worked for the Iranian government. His two daughters reside in Canada. Applicant speaks with him by telephone several times each year. Applicant's 70-year-old sister is a retired teacher whose husband is deceased. She is an Iranian citizen and resident, with whom he speaks by telephone every three or four months. His 61-year-old sister is an Iranian citizen and resident who has never worked outside the home. Her husband owns and operates a successful jewelry store. They also have infrequent contact by telephone. (Answer 1; GE 1; GE 2; Tr. 61-65.)

Since becoming a U.S. citizen in 1983, Applicant has made several trips to Iran to visit family members after obtaining U.S. State Department advice that it was safe to do so. His employer has been informed ahead of each such visit. Iranian law required him to obtain and use an Iranian passport for entry and exit from that country. (See HE II.) He did so but never used those Iranian passports for any other travel purposes, including exiting or entering the United States. His most recently issued Iranian passport expired in 2013, and his last visit to Iran was in 2012. (Answer 2; GE 1; Tr. 28-31, 58-61.)

I have taken administrative notice of facts contained in U.S. Government pronouncements concerning the Islamic Republic of Iran, as outlined on pages 2 through 5 of HE II, including the following: Iran is a designated state sponsor of terrorism with a history of human rights violations and non-compliance with international treaty obligations. Its intelligence and security services view the United States as a primary threat, and are active in the surveillance and collection of U.S. personnel, assets, and protected information. Threats of government-sponsored human rights abuse are high. (HE II.)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's national security 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(b) and 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 national security eligibility will be resolved in favor of the 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 avoided drawing inferences grounded on mere speculation or conjecture.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for national security eligibility seeks to enter 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 eligibility for access to classified information or assignment in sensitive duties. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides, “Any determination under this order adverse to an applicant shall be a determination 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

AG ¶ 6 expresses the security concerns regarding foreign influence:

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.

AG ¶ 7 sets out conditions that could raise a security concern and may be disqualifying. Two of them are potentially applicable:

(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;¹ 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.

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 is vulnerable to foreign government coercion or inducement. Iran is a designated state sponsor of terrorism, is overtly hostile to U.S. interests and policies, and is known to conduct intelligence collection operations against the United States. These facts place a significant burden of persuasion on Applicant to demonstrate that his connections and relationships with his brother and two sisters, who are resident citizens of Iran, do not create a heightened risk of foreign influence or pose a security risk. Applicant's immediate-family relationships are presumed to be close and loving, and Applicant offered no evidence to the contrary about his family. The evidence is sufficient to raise potential security concerns under AG ¶¶ 7(a) and 7(b).

The Government met its burden of production by raising the above disqualifying conditions and shifted the burden to Applicant to prove mitigation. AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns. Those with potential application in mitigating the security concerns in this case are:

(a) the nature of the relationship 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;

(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,

¹The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

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; and

(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 demonstrated that it is unlikely that he could be placed in a position of having to choose between the interests of a foreign individual or government and those of the United States as a consequence of his ongoing family ties in Iran. Except during a few personal visits surrounding significant family events or terminal illnesses since he immigrated to the United States in 1976, his contact with his brother and two sisters comprises only a few telephone calls per year. He has no current plans to visit Iran again, and no valid passport that would be required to do so. His siblings in Iran are elderly, are retired or unemployed, and have no connection to the Iranian government. Compared to Applicant's deep and longstanding family, financial, and professional ties to the United States, his connections and obligations to these siblings is so minimal that no significant potential for conflict of interest exists. Accordingly, Applicant established compelling mitigation under the conditions set forth in AG ¶¶ 8(a), (b), and (c).

Guideline C: Foreign Preference

The Foreign Preference guideline in effect at the time the SOR was issued included potentially disqualifying conditions relating to the exercise of rights or privileges of foreign citizenship, and possession or use of a foreign passport. The new Guideline C criteria, which came into effect on June 8, 2017, and control this national security eligibility determination, explicitly state that the exercise of any right or privilege of foreign citizenship (including holding a foreign passport) is not disqualifying without an objective showing that it is in conflict with U.S. national interests or the individual attempts to conceal such facts. No Guideline C foreign preference security concerns are raised or supported by substantial evidence in this case.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility 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 facts and circumstances surrounding this case. The Guideline B security concerns do not arise from any questionable conduct by Applicant, but rather circumstances that are normal and commendable results of his family situation. Applicant is a mature person, who has lived in the United States for more than 41 years, and has been a naturalized citizen since 1983. His spouse, former spouse, and two adult children are U.S. citizens. All of his financial assets and professional connections are in the United States, and he has no plans to visit Iran in the future. There is no evidence or allegation that he has ever taken any action that could cause potential harm to the United States. He takes his loyalty to the United States seriously. His only remaining contacts with Iran, comprising infrequent telephonic and very infrequent in-person communications with his three elderly siblings who reside there, create minimal, if any, potential for pressure, coercion, exploitation or duress.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, I conclude Applicant fully met his significant burden to mitigate the potential foreign influence security concerns. Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. National security eligibility for access to classified information is granted.

DAVID M. WHITE
Administrative Judge