



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



In the matter of:)
)
 -----, a/k/a) ISCR Case No. 14-03086
 -----)
)
 Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: Doris J. Dabrowski, Esq.

11/21/2015

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny him a security clearance to work in the defense industry. A 57-year-old engineer, Applicant is a native-born citizen of Iran who immigrated to the United States in 1978 and became a naturalized U.S. citizen in 1992. He has strong and long-standing family, employment, and financial ties to the United States. But those ties do not outweigh and overcome the security concern stemming from his family ties to Iran, a country that is hostile to the United States. In addition, his possession and use of an Iranian passport during 1998–2013 are problematic. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 Format) on June 14, 2013.¹ After reviewing the application and information gathered during a background investigation, the Department of Defense (DOD),² on February 17, 2015, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information.³ The SOR is similar to a complaint. It detailed the reasons for the action under the security guidelines known as Guideline B for foreign influence and Guideline C for foreign preference. He answered the SOR in writing on March 3, 2015, and he requested a hearing.

The case was assigned to me on July 8, 2015. The hearing was held as scheduled on July 28, 2015. The transcript of the hearing (Tr.) was received on August 5, 2015.

Findings of Fact

Applicant is a 57-year-old employee who is seeking to obtain a security clearance for the first time. His educational background includes earning a bachelor's degree in engineering from a U.S. university in 1983. He has been employed by a technology and communications company since 2010. Based on the testimony of two witnesses and documentary evidence, he has a good if not outstanding employment record.⁴

1. Applicant's background in Iran and immigration to the United States

Applicant was born in Iran and raised in a large family, the oldest of nine children, although one of his sisters is now deceased. He completed high school in Iran in 1977. He immigrated to the United States on a student visa in 1978, and he studied for his engineering degree during 1978–1983. He stated that after the 1979 Iranian revolution,

¹ Exhibit 1 (for ease of understanding, it will be referred to as a security clearance application or simply an application).

² The SOR was issued by the DOD Consolidated Adjudications Facility, Fort Meade, Maryland. It is a separate and distinct organization from the Defense Office of Hearings and Appeals, which is part of the Defense Legal Services Agency, with headquarters in Arlington, Virginia.

³ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006).

⁴ Tr. 23–43; Exhibits A, B, and I.

he concluded that he could not return to Iran and live under the ruling regime.⁵ He also stated that he considered formally renouncing his Iranian citizenship, but after looking into the matter he determined the requirements for doing so were too impractical and burdensome.⁶

Applicant was allowed to remain in the country for one year after his graduation. During that time he found employment and married a native-born U.S. citizen whom he had dated while a college student. He and his wife have remained married to this day.

2. Applicant's family ties to Iran and the United States

Applicant became a naturalized U.S. citizen in 1992. His most recent U.S. passport was issued to him in 2011. Applicant and his wife did not have children, but they did serve as foster parents for five children over a period of years. Based on her marriage to an Iranian-born citizen, Applicant's wife obtained Iranian citizenship and an Iranian passport in 2012 to facilitate travel to Iran to visit Applicant's family.⁷ To date, she has not traveled to Iran. Applicant and his wife bought their current home for about \$600,000 in 2013.⁸

Applicant's father is deceased, having passed away several years ago. Applicant's mother is now more than 90 years old. As one would imagine with nine children, she was a stay-at-home mother who was responsible for managing the household while her husband was a career military officer in the Iranian Army, retiring many years ago (before 1979) at the rank of colonel. Based on his military service, Applicant's mother continues to receive a monthly pension payment, which is supplemented by financial support from her numerous children.

Applicant has three sisters who are citizens of and residents in Iran, and four siblings are in the United States. Of those three sisters, two were educated in the United States and then returned to Iran. The first sister recently received a so-called green card, and she intends to travel to the United States to join her husband, daughters, and grandchildren. The second sister is the primary caregiver to her elderly mother. She is also retired from a career working as an auditor for the Iranian tax authority. The third sister is the secondary caregiver to her elderly mother, and she has lived with her husband and had three children. In addition to his three sisters, Applicant has an extended family in Iran.

Applicant has regular (once per week or once every other week) telephone conversations with the sister who is the primary caregiver and less frequent

⁵ Tr. 48–49.

⁶ Tr. 49–50; Exhibits G and H.

⁷ Exhibit 1 at page 21 of 75.

⁸ Exhibit J.

conversations with his other two sisters. He also has telephone conversations with his mother, although they are often one-sided conversations.

Applicant stated that during the 37 years he has lived and worked in the United States, no Iranian authorities or officials have contacted him or his family members in an effort to determine his activities in the United States.⁹ Likewise, during his four trips to Iran (discussed below), he has never been contacted by Iranian authorities or officials, nor has he experienced any problems or difficulties while in Iran.¹⁰

Applicant has three sisters and one brother who are citizens of and residents in the United States. He also has several nieces and nephews in the United States. His three sisters and one brother immigrated to the United States from Iran and became naturalized U.S. citizens. Applicant has regular (weekly) telephone conversations with his U.S. siblings, and he also speaks frequently to his various nieces and nephews.

3. Applicant's possession and use of an Iranian passport

After becoming a U.S. citizen, Applicant possessed and used an Iranian passport to travel to Iran on four occasions in 1998, 2006, 2011, and 2013.¹¹ His trip in 1998 was the first time he returned to Iran since departing there in 1978. His trip in 2006 was due to the passing of his father. His trips in 2011 and 2013 were to visit his mother and sisters. The Iranian passports are apparently valid for five years, as his most recent Iranian passport was issued in May 2011 with an expiration date of May 2016.¹² Other than those four trips, Applicant has used his U.S. passport for all other foreign travel.

In April 2013, a few months before he completed his security clearance application, Applicant surrendered the Iranian passport to his company's facility security officer (FSO).¹³ The FSO agreed to hold the passport until termination of Applicant's employment or until Applicant requested return of the passport.

In July 2015, shortly before the hearing in this case, Applicant instructed his company's FSO to destroy the Iranian passport and provide a statement attesting to its destruction.¹⁴ The FSO destroyed the passport as requested and provided Applicant a copy of the front pages (containing his photograph, identifying information, and place of

⁹ Tr. 69.

¹⁰ Tr. 53.

¹¹ Tr. 81–82.

¹² Exhibit F.

¹³ Exhibit C.

¹⁴ Exhibit D.

issue) and the last pages (containing entry and exit stamps from his trips to Iran in 2011 and 2012) of the passport.¹⁵

Concerning future use of an Iranian passport, Applicant's feels a sense of obligation to his mother, and he expressed a degree of uncertainty whether he would travel to Iran when his mother passes away.¹⁶ At the same time, he expressed willingness not to make the trip.¹⁷ He further stated that if he did travel to Iran, he would report his actions to security officials.¹⁸

4. Applicant's financial interests in Iran and the United States

Applicant has no financial, business, or pecuniary interests in Iran, and all such interests are in the United States. He has a potential future interest as one of several beneficiaries of his mother's estate, but he stated that he intends to gift it to his sister who is the primary caregiver to his mother. Applicant and his wife have enjoyed successful careers in their chosen fields of work. In addition to their earned incomes, they have a net worth in excess of \$2 million.¹⁹

5. Applicant's credibility during the hearing

Applicant was businesslike, polite, and respectful throughout the hearing, and he answered questions in an open and honest way. I was favorably impressed by Applicant, and I had no concerns about his credibility or truthfulness.

6. Background information on Iran

Concerning Iran, also known as Persia, officially known as the Islamic Republic of Iran since 1980, I took administrative notice of the facts as set forth in Department Counsel's written request.²⁰ The 1979 fall of the Shah of Iran, then a key U.S. ally, opened a long and ongoing rift in diplomatic relations between the United States and Iran. The U.S. Government has designated Iran as a state sponsor of terrorism, and it has special concerns about four particular areas of Iranian behavior: (1) its efforts to acquire weapons of mass destruction (e.g., its nuclear program); (2) its support of and involvement with terrorism; (3) its support of violent opposition to the Middle East peace process; and (4) its dismal record of human rights. Because Iran does not recognize

¹⁵ Exhibits E and F.

¹⁶ Tr. 90.

¹⁷ Tr. 96–97.

¹⁸ Tr. 97.

¹⁹ Exhibits J and K.

²⁰ Exhibit 3.

dual citizenship, Iranian-born naturalized U.S. citizens are considered solely Iranian citizens by Iranian authorities, and they are required to enter and exit Iran using an Iranian passport. When in Iran, they may be subject to surveillance, search, harassment, arrest, and detention or imprisonment.

Law and Policies

It is well-established law that no one has a right to a security clearance.²¹ As noted by the Supreme Court in *Department of Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²² 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.²³ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²⁴

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²⁵ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²⁶ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²⁷ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁸

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²⁹ The DOHA Appeal Board has followed the Court’s

²¹ *Department of 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).

²² 484 U.S. at 531.

²³ Directive, ¶ 3.2.

²⁴ Directive, ¶ 3.2.

²⁵ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²⁶ Directive, Enclosure 3, ¶ E3.1.14.

²⁷ Directive, Enclosure 3, ¶ E3.1.15.

²⁸ Directive, Enclosure 3, ¶ E3.1.15.

²⁹ *Egan*, 484 U.S. at 531.

reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.³⁰

The AG set forth the relevant standards to consider when evaluating a person's security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.³¹ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Discussion

1. The foreign influence concern

The gravamen of the SOR under Guideline B is whether Applicant's family ties to Iran disqualify him from eligibility for access to classified information. Under Guideline B for foreign influence,³² the suitability of an applicant may be questioned or put into doubt due to foreign connections and interests. The overall concern is:

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.³³

The guideline contains several disqualifying conditions. Given the evidence of Applicant's family ties to Iran, I have considered the following disqualifying conditions:

³⁰ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

³¹ Executive Order 10865, § 7.

³² AG ¶¶ 6, 7, and 8 (setting forth the security concern and the disqualifying and mitigating conditions).

³³ AG ¶ 6.

AG ¶ 7(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of a 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 classified information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

The guideline also contains several mitigating conditions. Given the evidence here, I have 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, 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; 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 being a mature, responsible, and trustworthy person. And I found him to be sincere, serious, and credible at the hearing. Due to his birth in Iran, Applicant remains a citizen of Iran in the eyes of that country, notwithstanding his departure from there in 1978, his unwillingness to return there after the 1979 revolution, and his naturalization as a U.S. citizen in 1992. Since his arrival here, he pursued higher education and worked steadily to improve his position and station in life. As a member of a large family and extended family residing in both Iran and the United States, he has regular contact with those family members. Since 1998, he has made four trips to Iran for family purposes, and (as discussed below) a future trip to Iran cannot be ruled out. He duly reported his Iranian citizenship, Iranian passport, travels to Iran, and contacts with Iran in his security clearance application and during his background investigation. He and his wife have worked hard and enjoyed professional and financial success, and their wealth is located in the United States. Indeed, Applicant appears to be a model immigrant who is fully invested in the United States in various

ways (e.g., education, employment, foster children, financial, etc.), and those circumstances are unlikely to change in the foreseeable future.

The security clearance process is not a zero-risk program, because nearly every person presents some risk or concern. Many cases come down to balancing that risk or concern. Here, Applicant has obvious family ties to Iran based on his birth in that country and his immediate family members who live there. Those circumstances require careful scrutiny because Iran is a country that is hostile to the United States and poses a serious security concern. With that said, Applicant is a long-time resident and citizen of the United States, and he has substantial ties to the United States, which includes a large extended family. In other words, his ties to the United States are strong. Nevertheless, Iran's indisputable hostility to the United States and the heightened risk it creates place a heavy burden on Applicant to show his ties to Iran are mitigated. Considering the facts and circumstances as a whole, I cannot conclude that it is unlikely that Applicant will be placed in a position of compromise or conflict in a security clearance context. The situation in Iran is too uncertain and unstable and risky to reach that conclusion.

2. The foreign preference concern

The gravamen of the SOR under Guideline C is whether Applicant's possession and use of an Iranian passport disqualify him from eligibility for access to classified information. Under Guideline C for foreign influence,³⁴ the suitability of an applicant may be questioned or put into doubt due to actions that indicate a foreign preference. The overall concern is:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.³⁵

Applicant's possession of an Iranian passport for many years, and his use of it on four occasions to travel to Iran, is an indication of a foreign preference and a serious concern.³⁶ His most recent Iranian passport was obtained in May 2011 with an expiration date of May 2016, he surrendered it to his company's FSO (although he could still retrieve it) in April 2013, and he had it destroyed in July 2015, shortly before the hearing in this case. Those actions constitute mitigating circumstances.³⁷ Nevertheless, I remain concerned about the probability or likelihood that Applicant will obtain another Iranian passport for travel he deems necessary, such as the passing of

³⁴ AG ¶¶ 9, 10, and 11 (setting forth the concern and the disqualifying and mitigating conditions).

³⁵ AG ¶ 9.

³⁶ AG ¶ 10(a)(1).

³⁷ AG ¶ 11(e).

his mother or some other family-related event. At the hearing, he was less than firmly decided or certain on that point. My concern is heightened by Applicant's spouse who obtained an Iranian passport in 2012.³⁸ That is an interesting circumstance, and it suggests additional travel to Iran is as likely as it is not. Looking forward, I am not persuaded that Applicant will refrain from exercising his Iranian citizenship by obtaining another Iranian passport and using it for travel to Iran. Accordingly, Guideline C is decided against Applicant.

Following *Egan* and the clearly-consistent standard, the record evidence as a whole leaves me with doubt about Applicant's suitability for a security clearance. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. Indeed, Applicant presented evidence that is quite favorable. I also gave due consideration to the whole-person concept.³⁹ Having done so, I conclude that Applicant has not met his ultimate burden of persuasion to obtain a favorable clearance decision.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline B:	Against Applicant
Subparagraphs 1.a and 1.b:	Against Applicant
Paragraph 2, Guideline C:	Against Applicant
Subparagraph 2.a:	Against Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information.

Michael H. Leonard
Administrative Judge

³⁸ Because his spouse's Iranian citizenship and passport were not alleged in the SOR, I considered those matters for the limited purpose of assessing "the likelihood of continuation or recurrence" of Applicant's possession and use of an Iranian passport. Directive, Enclosure 2, ¶ 2(a)(9).

³⁹ AG ¶ 2(a)(1)-(9).