



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



In the matter of:)	
)	
)	ISCR Case No. 14-03947
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: Sean M. Bigley, Esquire

May 12, 2015

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on April 2, 2013. On December 12, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines C and B for Applicant. The action was taken under Executive Order 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 adjudicative guidelines (AG), effective within the Department of Defense after September 1, 2006.

Applicant acknowledged receipt of the SOR on December 30, 2014. He answered the SOR in writing on December 30, 2014, and requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter, and I received the case assignment on February 24, 2015. DOHA issued an initial notice of hearing on February 19, 2015 (this matter having been originally assigned to another administrative judge); but as Applicant

retained counsel soon thereafter, a second notice of hearing was issued on March 17, 2015, and I convened the hearing as rescheduled on April 13, 2015. The Government offered Exhibit (GX) 1, which was received without objection. Applicant testified on his own behalf and submitted Exhibit (AppX) A, which was received without objection. DOHA received the transcript of the hearing (TR) on April 21, 2015. I granted Applicant's request to keep the record open until April 27, 2015, to submit additional matters. On April 18, 2015, he submitted Exhibit B, which was received without objection. As the undersigned was on sick leave from April 27th through April 29th, the record closed on April 30, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the Islamic Republic of Iran (Iran). The request was granted. The request, and the attached documents, were not admitted into evidence, but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in all the Subparagraphs of the SOR, with explanations.

Guideline C - Foreign Preference

1.a. The 59 year-old Applicant immigrated to the United States in 1995, and became a naturalized U.S. citizen in 2001. (TR at page 19 line 22 to page 20 line 17, and GX 1 at page 5.) Under Iranian law, he is unable to renounce his Iranian citizenship, however, he would renounce it if could. (TR at page 29 line 18 to page 32 line 9, at page 61 line 24 to page 62 line 3, and AppX A at pages 6~11.)

Applicant retained his Iranian passport after becoming a U.S. citizen, extending it in 2004, and renewing it in 2008. (TR at page 48 line 25 to page 50 line 23.) He used this passport once, in the 20 years he has lived in the United States, to visit his ailing uncle in 2010. (TR at page 50 line 24 to page 51 line 14.) Applicant's uncle passed away soon after this visit, and Applicant has no intention of ever returning to Iran. (*Id.*) In August of 2013, more than a year prior to the issuance of the SOR, Applicant "surrendered his Iranian passport for destruction " to his Facility Security Officer, as evidenced by a letter from the "CEO" of the corporation where Applicant is employed. (AppX A at page 5.) He has no intention to visit Iran in the future. (TR at page 29 lines 13~17.)

1.b.¹ Applicant co-owns with his brother, through an inheritance, an apartment in Iran valued at about \$60,000. (TR at page 34 line 10 to page 37 line 6.) His share is about \$20,000. (*Id.*) By a Grant Deed, he has recently granted “any and all interest . . . in the property” to his brother. (AppX A at pages 1~4.) Applicant’s net worth in the United States is between \$400,000~\$500,000. (TR at page 23 line 9 to page 24 line 9.)

1.c. Applicant’s wife co-owns, along with her mother, her brother, and two sisters, through an inheritance, an apartment in Iran valued at about \$70,000. (TR at page 34 line 10 to page 37 line 6.) She has “given . . . [her] brother living in Iran the complete control and benefit of . . . [this her] inheritance” (AppX B at page 1.) Again, Applicant’s net worth in the United States is between \$400,000~\$500,000. (TR at page 23 line 9 to page 24 line 9.)

Guideline B - Foreign Influence

2.a. Applicant’s 50 year-old wife is a dual national with the United States and with Iran. (GX 1 at page 21.) She immigrated to the United States in 1995 with Applicant, is “a dental assistant,” became a U.S. citizen about the same time as did Applicant, and does “not have any affiliation, obligation, or tendency to have [any] connection whatsoever to the government of Iran.” (*Id.*, and AppX B at page 1.) She travels to Iran to visit her sickly mother, “who obtained [a] U.S. Green card [and] used to live in the United States,” “several times.” (AppX B at page 1.) Applicant’s wife uses her Iranian passport to enter Iran and her U.S. passport to exit Iran. (*Id.*) She avers that, “If possible . . . [she] will certainly renounce [her] Iranian citizenship in a formal way.” (AppX B at page 1.)

2.b. Applicant’s children are dual nationals with the United States and with Iran. (GX 1 at pages 33~37.) His son is a PhD candidate at an American university, and his daughter attends an American junior college. (*Id.*, and TR at page 39 line 15 to page 40 line 11.) They would both willingly renounce their Iranian citizenship if Iran permitted it. (AppX B at pages 4~6.)

2.c. Applicant’s brother is a dual national with the United Kingdom (UK) and with Iran. He has lived in the UK for “25 to 30 years,” used to teach “English in colleges,” but is currently undergoing “cancer treatment.” (TR at page 40 line 12 to page 41 line 6.)

2.d. Applicant’s two half-sisters are citizens and residents of Iran. (TR at page 41 line 7 to page 42 line 3.) They are housewives, in their 60s, and he has little contact with them. (*Id.*)

2.e. and 2.f. Applicant’s mother-in-law (who is also his aunt as he married a cousin), his brother-in-law, and two sisters-in-law are citizens and residents of Iran. (TR

¹Subparagraphs 1.b. and 1.c. concern property interests in Iran; and as such, seem to the undersigned to be more relevant to Foreign Influence than to Foreign Preference. However, as the Government has chosen not to amend the SOR, I will follow the Government’s lead in this regard and discuss them under Foreign Preference.

at page 42 line 4 to page 45 line 2, and at page 58 line 10 to page 59 line 9.) His mother-in-law is terminally ill, and Applicant has little connection with his siblings in-law. (*Id.*)

I also take administrative notice of the following facts. The U.S. Government does not have diplomatic relations with Iran. The United States has long standing concerns over Iran's nuclear program, sponsorship of terrorism, and human rights. The U.S. Government prohibits nearly all trade and investment with Iran by U.S. persons. Iran continues to act assertively abroad in ways that run counter to U.S. interests and worsen regional conflicts. The Iranian government does not recognize dual nationality and will treat U.S.-Iranian dual nationals solely as Iranian citizens subject to Iranian laws.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching 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 avoided drawing 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining 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 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 Executive Order 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 C - Foreign Preference

Paragraph 9 of the adjudicative guidelines sets out the security concern relating to Foreign Preference:

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.

Subparagraph 10(a)(1) is applicable: “*exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport.*” Here, the Applicant, a naturalized citizen, used an Iranian passport to enter that country in 2010. This is countered, however, by the mitigating conditions found under Subparagraph 11(e), the Applicant’s “*passport has been . . . surrendered to the cognizant security authority,*” his FSO. Furthermore, he would renounce his Iranian citizenship if Iran permitted it, and has no intention of visiting Iran in the future.

Guideline B - Foreign Influence

Paragraph 6 of the adjudicative guidelines sets out the security concern relating to Foreign Influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign 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 a foreign interest.

Here, Paragraph 7(a) is arguably applicable: “*contacts with a foreign family member . . . 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.*” The Applicant’s spouse and children are dual nationals with Iran. Also, his two half-sisters, mother-in-law, and three siblings in-law are citizens and residents of Iran. This is clearly countered, however, by the first mitigating condition, as “*the nature of the relationships with foreign persons, the country in which these persons are located . . . 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 . . . and the interests of the U.S.*” The Applicant has little contact with his relatives who live in Iran. Also, his dual national spouse and children would gladly give up their Iranian citizenship if permitted to do so. Furthermore, though not properly alleged in the SOR; if it were, his and his wife’s foreign property interest in Iran pales in comparison to their net worth in the United States.

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 the circumstances. 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.

The Administrative Judge should also 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.

The record shows that the Applicant has little contact with Iran; and as such, can not be coerced vis-a-vis any of his Iranian based relatives. Furthermore, he has the unqualified support of those who know and have worked with the Applicant. (AppX A the last three pages.)

I have considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Overall, the record evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his alleged Foreign Preference and Foreign Influence.

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 C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	For Applicant
Subparagraph 2.f:	For Applicant
Subparagraph 2.g:	For Applicant

Conclusion

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

Richard A. Cefola
Administrative Judge