



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 15-00425
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)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esquire, Department Counsel
For Applicant: *Pro se*

02/16/2016

Decision

HOWE, Philip S., Administrative Judge:

On July 27, 2012, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On July 29, 2015, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines C (Foreign Preference) and B (Foreign Influence). 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 on September 1, 2006.

Applicant acknowledged receipt of the SOR on August 13, 2015. He answered the SOR in writing on August 17, 2015, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on September 30, 2015, and I received the case assignment on October 20, 2015. DOHA issued a Notice of Hearing on October 21, 2015, and I convened the hearing as scheduled on

November 4, 2015. The Government offered Exhibits 1 through 5, which were received without objection. Applicant testified and submitted Exhibits A through E, without objection. DOHA received the transcript of the hearing (Tr.) on November 16, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Notice

At the hearing, Department Counsel disclosed he spoke with Applicant on October 20, 2015, about a hearing date. The Notice of Hearing was sent on October 21, 2015. I advised Applicant of his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived his right to 15 days notice. (Tr. 7)

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Iran. (Tr. 8, 13, 14) The request and the attached documents were admitted into evidence as Exhibit 5 and were included in the record. Applicant had no objection to these documents. 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 ¶ 1 and ¶ 2, of the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 49 years old. He is married since 1994 and has two sons. His wife and sons were born in the United States. Applicant was also born in the United States. He has a master's degree in mechanical engineering. He is self-employed as a consultant for defense contractors. (Tr. 18, 19, 20, 22, 23, 41)

Applicant's father is an 81-year-old Iranian pathologist who lives and works in Iran. His mother is a French citizen who lives in France and is 76 years old. She works as a translator. She may sell her house in France and move to the United States where she is a naturalized U.S. citizen. He expected to bring her to the United States in December 2015. His mother also owns two rental properties she may sell. His parents are divorced since 1969. (Tr. 18, 19, 20, 22, 25, 35, 39, 41, 46, 52)

Applicant lived with his mother and brother in France from 1969 to 1972. They moved back to Iran in 1972, and departed again in 1976 and returned to France. In 1982 Applicant and his mother moved to New York. In 1985 Applicant went to college in the U.S. (Tr. 41, 42)

Applicant testified his father in Iran is retired and does not work for the Iranian government. He works a few days each week at a private medical testing lab as a pathologist. Neither man travels to visit each other because of the difficulty of an 81-year-old man traveling and Applicant's reluctance to travel to Iran. Applicant speaks with his father monthly on the telephone, though there are periods when they do not speak for several months. In years past Applicant met his father overseas. He met him in France in 2002, 2009, and 2011. They met in Turkey in 2008 and 2012. Applicant saw his father twice between 1979 and 1985, twice more between 1985 and 1994. Finally, he saw his father one more time before 2002. Applicant testified he will not receive an inheritance from his father, particularly of any property in Iran. (Tr. 19, 32, 33, 35, 36)

Applicant has two half-brothers living in the United States. They are the sons of his father's second marriage after Applicant's mother divorced his father. One is an architect and has a resident alien "green card." He is about 40 years old. The other half-brother is a U.S. citizen and is about 42 years old. Applicant speaks with him about once a year. These siblings have not traveled to Iran in at least 15 years. Applicant also has a brother in the United States who is a U.S. citizen and was born when his parents were married. (Tr. 18, 19, 20, 22, 25, 31, 32, 39, 41; Exhibit 2)

Applicant is a dual U.S. and French citizen, based on his mother's French citizenship and he being born in the United States. Applicant has a United States passport issued in 1984, another one issued in 1996, and a third U.S. passport issued in 2006. Applicant had a French passport issued in 1988 and in 1998. He does not have one now. He has worked for U.S. companies in his career in the United States. Applicant retained his French citizenship because of French law regarding inheritance by non-French citizens being complicated. He stated he maintains French citizenship as a family obligation. However, he has no intention of retaining his French citizenship because he does not use it. When his mother moves to the United States with her assets converted to cash he will not have the French inheritance issue, and can inherit according to U.S. state law. (Tr. 16, 20, 21, 25-27, 45, 48; Exhibit 2, 4; Exhibits A to E)

Applicant voted in the second round of the French presidential elections in 2002 when he visited Toronto, Canada. He did so at his mother's request because she feared the right-wing presidential candidate in France might win the election. His mother asked him to vote to defeat that candidate. The other presidential candidate did win in that election. That was the only time Applicant voted in a French election. Applicant stated he voted in every U.S. election for which he is eligible. (Tr. 20, 21, 27; Exhibit 3)

Applicant had a security clearance in 1989 until 1997. He had an interim security clearance for a year in 2005 when working for a defense contractor. (Tr. 24)

I take administrative notice of the following facts relating to Iran:

Iran is a constitutional Islamic republic with a theocratic system of government in which Shi'a Muslim clergy dominate the key power structures, and ultimate political

authority is vested in a learned religious scholar. The U.S. has not had diplomatic relations with Iran since 1980.

The U.S. Government has defined the areas of objectionable Iranian behavior as: (1) Iran's efforts to acquire nuclear weapons and other weapons of mass destruction; (2) Its support for and involvement in international terrorism; (3) Its support for violent opposition to the Middle East peace process; (4) Its dismal human rights record; (5) Iran's intervention in the internal affairs of Iraq and Syria; and (6) cyber espionage. The U.S. has designated and characterized Iran as the most active state sponsor of terrorism. Iran provides critical support to non-state terrorist groups.

The government of Iran has committed numerous, serious human rights abuses against the Iranian people. Abuses include political killings and incarceration; summary executions, including of minors; disappearances; religious persecution; torture; arbitrary arrest and detention, including prolonged solitary confinement; denial of due process; severe restrictions on civil liberties - speech, press, assembly, association, movement and privacy; severe restrictions on freedom of religion; official corruption; violence and legal and societal discrimination against women, ethnic and religious minorities, and homosexuals; trafficking in persons; and child labor.

The State Department continues to warn U.S. citizens to consider carefully the risks of travel to Iran. U.S. citizens, who were born in Iran and are the children of Iranian citizens, even those without Iranian passports who do not consider themselves Iranian, are considered Iranian citizens by Iranian authorities, since Iran does not recognize dual citizenship. Therefore, despite the fact that these individuals hold U.S. citizenship, under Iranian law, they must enter and exit Iran on an Iranian passport, unless the Iranian government has recognized a formal renunciation or loss of Iranian citizenship. U.S.-Iranian dual nationals have been denied permission to enter and depart Iran using their U.S. passports; they even have had their U.S. passports confiscated upon arrival or departure. 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 be searched. (Exhibit 5)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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 (AG ¶ 2(a)). 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 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, 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 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

Under AG ¶ 9 the security concern involving foreign preference arises, “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.”

AG ¶ 10 describes four conditions that could raise a security concern and may be disqualifying. Two conditions may apply:

(a) 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:

(5) using foreign citizenship to protect financial. or business interests in another country; and

(7) voting in a foreign election.

Applicant has dual U.S. and French citizenship based on his mother's French citizenship, and his being born in the United States. He retained French citizenship in case he needed to use it to obtain his mother's assets from France in case of her death or to assist her in moving her money from France to the United States when she sold her real estate in France and moved to the United States. AG ¶ 10 (a) (5) applies.

Applicant voted in the second round of the French presidential election in 2002 at his mother's request. She was concerned a candidate she did not favor might win and wanted her son's support to elect that man's opponent. AG ¶ 10 (a) (7) applies.

AG ¶ 11 provides six conditions that could mitigate security concerns. Three conditions apply:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship; and

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant's dual citizenship is based on his mother's French citizenship. Applicant was born in the United States and that event is the source of his U.S. citizenship. AG ¶ 11 (a) is established.

Applicant testified at the hearing he would renounce his French citizenship because he has no use for it. He has not had a French passport since the last one was issued in 1998. That passport is now invalid because of the passage of time. AG ¶ 11 (b) and (e) are established.

Voting in the French 2002 presidential election is mitigated by the passage of time and it being a one-time occurrence. There is no other basis on which to assess this disqualifying condition. It was not frequent or recent.

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

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.

AG ¶ 7 describes nine conditions that could raise a security concern and may be disqualifying. Two conditions may apply:

(a) contact 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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Applicant's father is an Iranian citizen and resident. His mother is a French and U.S. citizen who lives in France. Applicant has more frequent contact with his mother. He last saw his father in 2012 in Turkey. Applicant has not been to Iran since he was last there in 1976 when he was 10 years old. His elderly father does not travel much anymore. Contact with anyone in Iran could create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of the nature of the Iranian government and theocracy, about which the U.S. government has many security, human rights, and political concerns. AG ¶ 7 (a) is established.

For the same reasons Applicant's connections to his father, however infrequent, create a potential conflict of interest between Applicant's obligation to protect sensitive information or technology and his desire to help his father by providing that information if his father is pressured by the Iranian government to obtain such information as part of their industrial espionage program against the United States. Applicant also has a half-brother with Iranian citizenship who lives in the U.S. and has a resident alien card. AG ¶ 7 (b) is established based on the historical concerns of the United States about Iran and its government.

AG ¶ 8 provides six conditions that could mitigate security concerns. Three conditions may apply:

(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 U.S.;

(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 U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

AG ¶ 8 (a) applies to his father and his half-brother and their connections to Applicant. Applicant's father is 81-years-old and semi-retired as a pathologist in Iran. He has no connections with the Iranian government. He works in a private medical testing lab. Applicant last saw him in 2012 in Turkey. He speaks with him by telephone several times a year but has no further contact with him.

There is no conflict of interest because Applicant lives and works in the United States and has since 1976. He was educated here, married here, and his two sons were born in the United States. Applicant has deep and longstanding relationships and loyalties to the United States, and it is quite clear he would resolve any conflict of interest in favor of the United States. AG ¶ 8 (b) is established.

Finally, there are no property or inheritance issues relating to Applicant's father in Iran, according to his testimony. Any inheritance from his French-born mother will be received in the United States when she relocates here from France, which Applicant expected to be in late 2015. That property would be split with his brother from that marriage between his mother and father that was ended in 1969. The assets would most likely be invested in the United States and not have any involvement with French law. AG ¶ 8 (f) is established.

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 an applicant's

conduct and all the circumstances. The administrative judge should 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. Applicant is 49-years-old and lives in the United States. His immediate family lives here. They were born in the United States. His parents are 81 and 76 years old. His father lives in Iran and is in the private medical profession. His mother is a translator who is about to sell her property assets in France and move to the United States where she can be closer to her two sons. Applicant's situation arises from family history and circumstances. Only his French passports in the past, and his one vote in a French presidential election 14 years ago in 2002, raise any immediate concerns. They are mitigated. Applicant is willing to renounce his French citizenship because it is of no use to him. He only votes in U.S. elections. All the security concerns are resolved.

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 Foreign Preference and Foreign Influence security concerns.

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 C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

Paragraph 2, Guideline B: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Conclusion

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

PHILIP S. HOWE
Administrative Judge