



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-02715
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer I. Goldstein, Esquire, Department Counsel
For Applicant: James Mckee, Esquire

February 11, 2008

Decision

LOKEY-ANDERSON, Darlene, Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (eQip), on October 17, 2005. On July 11, 2007, the Defense Office of Hearings and Appeals (DOHA) 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

The Applicant responded to the SOR on September 7, 2007, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on December 3, 2007. A notice of hearing was issued on January 4, 2008, scheduling the hearing for January 29, 2008. At the hearing the Government presented five exhibits. The Applicant called one witness, presented one exhibit and testified on

his own behalf. The official transcript (Tr.) was received on February 7, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts concerning the current political condition in Iran. Applicant's Counsel had no objection. (Tr. p. 16). 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

The following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 52 years of age and has a Bachelor's Degree. He is employed as a Repair Manager for a defense contractor since August 2005. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

In his Answer to the SOR, dated September 7, 2007, Applicant admitted the factual allegations in allegations 1(a), and 2(b) of the SOR, with explanations. He denied the factual allegations in allegations 2(a), and 2(c) of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

The Applicant was born in Iran in 1954 to Iranian parents. He grew up in Iran and came to the United States in 1978, on a student visa to attend college. A year later, in 1979, he married a United States citizen, received a green card, and started the naturalization process. In August 1988, he became a naturalized United States citizen. Before they divorced in 1989, the Applicant and his wife had two children who were born in the United States.

Since moving to the United States in 1979, the Applicant has traveled to Iran on three separate occasions. In 1982, prior to becoming a United States citizen, he traveled to Iran with his wife and daughter to introduce them to his family there. On that occasion, he used his original Iranian passport that he came to the United States with to enter and exit Iran. The Applicant applied for and was issued an Iranian passport in August 2002, after becoming a naturalized United States citizen in August 1988. The Applicant later applied for and obtained a United States passport in 2003. (See Government Exhibit 5). Instead of using his United States passport, the Applicant used

his Iranian passport to enter and exit Iran when he traveled to Iran from December 15, 2002 through January 2003, when his mother died, and from December 17, 2005 through January 2006, when his father had heart surgery. (See Government Exhibit 4). When asked why he did not use his United States passport, or get a visa to travel to Iran instead, the Applicant stated that he had some fear of traveling to Iran on the United States passport. He has less fear traveling on an Iranian passport. (Tr. p. 60).

Although his Iranian passport expired in August 2007, the Applicant currently maintains it in his file cabinet. (Tr. p. 61). If his father passes away, he would like to travel to Iran to pay respect. He states, however, that he would not renew his Iranian passport, but instead he would look into how to get to Iran by using his United States passport. (Tr. p. 65). He also stated that he would renounce his Iranian citizenship if it is required. However, he has not investigated the process of renouncing his Iranian citizenship. (Tr. p. 63).

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant's father and six sisters are citizens and residents of Iran. His sisters have children who are citizens and reside in Iran. The Applicant contacts his family in Iran on a regular basis to stay abreast of information concerning his father's health and how the whole family is doing in general. He contacts his sister who lives with his father about once every three or four weeks. (Tr. pp. 49 and 54). He speaks to his father about once every six months. (Tr. p. 66). In regard to his other sisters, he contacts one or two of them about once a year by telephone and one of them by e-mail on various occasions. (Tr. pp. 54, and 66-67). Their attempts to contact him varies. One of his sisters contacts him by e-mail about once a month, sometimes once every six months, as it varies, to discuss family matters and to ask about the children. (Tr. P. 72-73). He recently sent photos by e-mail of his daughter's graduation to one of his sisters. (Tr. p. 67).

Except for a sister who is a public school principal in Iran, none of the Applicant's family in Iran are employed for or agents of the Iranian government. His father is 79 years old and sells fishing equipment. One of his sisters is unemployed and is financially supported by their father. Another one of his sisters owns a rope making factory, and three are housewives supported by their husbands. None of the sister's husbands work for the Iranian government.

The Applicant's brother resides in the United States and is here on a student visa. He is working as an engineer and is aware that the Applicant is applying for a security clearance. The Applicant's brother finished his two years compulsory military service in Iran before coming to the United States.

I have taken administrative notice of the current political conditions in Iran. The fact that Iran has no diplomatic relations with the United States, Iran's efforts to acquire nuclear weapons and other weapon of mass destruction, its support for and involvement in international terrorism, its support for violent opposition to the Middle East peace process, and its dismal human rights records. I have considered the fact that Iranian Government officials at all levels commit serious abuses of their power and authority. Its Totalitarian Government and the level of insurgent troops there, the fact that Iran has terrorists activities, and is rampant with crime and instability. The overall deteriorating security situation in Iran, the human rights abuses, and the government corruption elevates the cause for concern in the case. The United States may face no greater challenge from a single country than from Iran.

The Applicant's section head and supervisor who hired the Applicant, has regular contact with him at work, and who evaluates his work performance, testified that the Applicant's work performance is of high quality, as evidenced by his early promotion, which is unprecedented. With regard to his character, the Applicant is considered to be extremely dependable, honest, maintains a high level of integrity and is a loyal citizen of the United States. The Applicant has never been seen to fail to carry out necessary precautions or procedures related to security. The Applicant's Section head knows nothing about the Applicant's family in Iran and has only socialized with him at work functions.

A letter of recommendation from a co-worker who has worked with the Applicant for two years attests to his great character and high integrity. He considers the Applicant to be loyal, honest, dedicated to his job and family and one of the most genuine people he has ever known. (See Applicant's Exhibit A).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Preference

9. *The Concern.* 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.

Condition that could raise a security concern:

10. (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.

Conditions that could mitigate security concerns:

11. (a) dual citizenship is based solely on parent's citizenship or birth in a foreign country;

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

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

Foreign Influence

6. *The Concern.* 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.

Condition that could raise a security concern:

7. (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . 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."

The Government must make out a case under Guideline C (foreign preference), and Guideline B (foreign influence) that establishes doubt about a person's judgment,

reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

Under Foreign Preference, Disqualifying Condition 10(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* applies. However, Mitigation Conditions 11(a) *dual citizenship is based solely on parent's citizenship or birth in a foreign country*, 11(b) *the individual has expressed a willingness to renounce dual citizenship*, and 11(e) *the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated* also apply.

The Applicant is a dual citizen of Iran and the United States. It is noted that the Applicant came to the United States as a teenager, and that he has worked for more than 30 years in the United States. He has two children who are native born American citizens and are educated and successful. However, after becoming a United States citizen in August 1988, and after having applied for and obtained a United States passport in August 2003, the Applicant used his Iranian passport to enter and exit Iran from December 15, 2002, through January 2003 and from December 17, 2005, through January 2006. As he indicated, he felt less fear to use his Iranian passport than if he used his United States passport to enter and exit Iran. Although his Iranian passport has now expired, he has not thrown it away, surrendered it, or destroyed it. Instead, he maintains it in his file cabinet. He indicates that he will not renew it, but when he wants

to travel to Iran in the future, he will inquire as to how he can use his United States passport.

The Applicant has also indicated that he is willing to renounce his Iranian citizenship if required to do so by DoD, yet he has not done so. He has not even taken the time to investigate the matter and figure out how to do it. However, this, under the circumstances of this case, I find for the Applicant under Guideline C (Foreign Preference).

Under Foreign Influence, Disqualifying Condition 7(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risks of foreign exploitation, inducement, manipulation, pressure, or coercion* applies. None of the mitigation conditions apply.

It is also acknowledged that the Applicant has a brother who resides in the United States. On the other hand, the Applicant has many family members, including his father and six sisters, who are citizens of and reside in Iran with whom he maintains a close and continuing relationship. He also has extended family members, including nieces and nephews, who reside in Iran. He is very close to his father and six sisters in Iran and has regular ongoing contact with them by telephone and e-mail. Except for his sister who is a public school principal, there is no evidence that any of his family members in Iran are associated in any way with the Iranian government. There is, however, evidence of a close bond and strong evidence of affection with his immediate family. This bond and affection with his family could potentially cause the Applicant to become subject to foreign exploitation, inducement, manipulation, pressure, or coercion. Moreover, the current political situation in Iran elevates the cause for concern in this case. The possibility of foreign influence exists that could create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is vulnerable to foreign influence. Accordingly, I find against the Applicant under Guideline B (Foreign Influence).

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guideline B. Guideline C is found for the Applicant.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.
Subparas. 1.a.: For the Applicant

Paragraph 2: Against the Applicant.
Subparas. 2.a.: Against the Applicant
Subparas. 2.b.: Against the Applicant
Subparas. 2.c.: Against the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge