



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 14-04800
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Bryan Olmos, Esquire, Department Counsel
For Applicant: Eric A. Eisen, Esquire

02/29/2016

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted an application for a security clearance (e-QIP) on December 5, 2013. On January 22, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline B, Foreign Influence, and Guideline C, Foreign Preference. 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) implemented within the Department of Defense on September 1, 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 15, 2015. Another administrative judge was assigned the case on December 1, 2015. On December 18, 2015, a Notice of Hearing was issued, scheduling the hearing for January 13, 2016. The case was transferred to me on January 12, 2016. The hearing was held as scheduled. During the hearing, the Government offered two exhibits which were admitted without objection as Government (Gov) Exhibits 1 and 2. Applicant offered four exhibits which were admitted as Applicant Exhibits (AE) A – D, without objection. The Government also requested administrative notice be taken of certain facts regarding the country of Iran. The administrative notice documents were marked

as HE I. Applicant did not object to the administrative notice documents. The record was held open until January 27, 2016, to allow Applicant to submit additional documents. Applicant timely submitted an additional document which was admitted as AE E. The transcript was received on January 19, 2016. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

Administrative Notice – Iran

The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute.

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. Currently, the United States does not have diplomatic relations with Iran. The U.S. Government has designated Iran as a state sponsor of terrorism, and it has special concerns about four particular areas of the Iranian government: (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 human rights record. (HE I)

Iran does not recognize dual nationality and will treat U.S.-Iranian dual nationals solely as Iranian citizens subject to Iranian laws. The spouse and children of Iranian citizens who become naturalized U.S. citizens are considered Iranian citizens by Iranian authorities even if the spouse and children do not have Iranian passports and do not consider themselves to be Iranian citizens. Iran requires them to enter and exit Iran using an Iranian passport. When in Iran, they may be subject to surveillance, search, harassment, arrest, detention, or imprisonment. (HE I)

Findings of Fact

In his answer to the SOR, Applicant admits to all of the allegations in the SOR. (Item 3)

Applicant is a 56-year-old president of a technology firm that does business with U.S. government agencies. The firm hopes to gain a facility clearance to be able to work on classified projects. This is his first time applying for a security clearance. He is married and has three adult daughters. (Note: The facts in this decision do not specifically describe employment, names of witnesses, or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.)

Applicant was born and grew up in Iran. He first came to the United States as a high school exchange student when he was 16. He lived with a family in the Midwest and attended a local high school. Upon graduating from the U.S. high school, Applicant returned to Iran in 1976, but immediately applied for a U.S. student visa. He returned to the United States in the fall and attended a U.S. college from September 1976 to May 1978. He transferred to another U.S. university in September 1978. He was awarded a

Bachelor's degree in May 1981. In 1984, he earned a Master's degree at another U.S. university. (Tr. 19-20; Gov 1; Gov 2 at 2)

Applicant met his wife while attending college. She was born and raised in the United States. They married in 1983. Applicant became a naturalized U.S. citizen in 1988. Applicant has lived in the U.S. since 1975. His children were born and raised in the United States. All three daughters attended U.S. schools and live and work in the United States. His oldest daughter is married. She and her husband have a son and are expecting a second child. (Tr. 20-24; Gov 1; Gov 2 at 2-3)

Applicant's first job was with a technology firm in the Midwest. His job did not require him to have a security clearance. He worked for the firm for 18 years with the exception of a one year leave of absence in 1987, in order to help his brother start a business. In 2001, his brother passed away. Applicant resigned from the technology firm and moved to the area of the country where his brother's business was located. Applicant and his two sisters took over the company that his brother started. They still run the company today. (Tr. 21-23)

All of Applicant's immediate family members are citizens and residents of the United States. His deceased brother was the first to immigrate to the United States, a few years before Applicant. His father immigrated to the United States in 1980. Applicant's mother and two sisters immigrated to the United States in 1983. They became U.S. citizens in the 1990s. (Tr. 46, Gov 1; Gov 2-3) Applicant is also close to his wife's family, all of whom are U.S. citizens who were born and raised in the United States. (see AE C)

Applicant has several extended family members who are citizens of and reside in Iran. He has a 90 year-old aunt, who he speaks to on the telephone about twice a year. She lives with his cousin. He has an 80 year-old uncle, who is a retired water irrigation engineer, whom he speaks with about twice a year. His cousin is a high school teacher, but he has little contact with her. He provides no support for any of his extended relatives who reside in Iran. (Tr. 30-31, 39-42; Gov 2 at 3-4)

All of Applicant's assets are located in the United States. He and his wife own their home, three rental properties, and some farm land located in various areas of the United States. He intends to live and retire in the United States. In 2003, he purchased a burial plot next to where his brother is buried. His brother is buried in a location close to Applicant's home. (Tr. 28; AE A; AE B)

Applicant possessed a valid Iranian passport, which was issued in June 2012, and has an expiration date of June 2017. Previously, Applicant renewed his Iranian passport in 1999 in order to be able travel to Iran. Because Iran does not recognize dual citizenship, Iran will not allow Iranian citizens to travel to Iran using another country's passport. (Tr. 27, HE I)

Having lived in the United States since 1975, Applicant has traveled to Iran on four occasions over a period of 40 years. He traveled in 1976 after he graduated from a U.S. high school. He traveled in 1978 for a few weeks. These trips occurred before he

became a U.S. citizen and before the revolution in Iran. In 1998, he traveled with his mother to visit her older sister. They left after three days because his father had a heart attack in the United States and they rushed home to be with him. In 2004/5, he traveled with his parents. His father wanted to visit with his sisters. His father was in a wheel chair at the time and he traveled in order to assist his father. In late 2007, he traveled with his wife and three daughters to sightsee and visit extended family members. It was the first and only time his wife and daughters have traveled to Iran. His wife and daughters did not have individual Iranian passports. Their photos and names were attached to Applicant's Iranian passport as dependent family members. He last traveled to Iran in 2013 with his mother. His mother wanted to visit her two brothers, both of whom were terminally ill. They stayed for 10 days. (Tr. 25 – 27; Gov 2 at 5, 8, attch 2)

Applicant has not used his Iranian passport for any other foreign travel. He surrendered his Iranian passport to his facility security officer in late December 2013 or early January 2014. He offered to destroy the passport, but was advised not to destroy it. He does not intend to travel to Iran in the future. He is willing to renounce his Iranian citizenship. (Tr. 28, 34-37; Gov 2 at 8)

The record was held open for two weeks to allow Applicant the opportunity to provide proof that his passport was surrendered to his facility security officer or that he destroyed his passport. Applicant destroyed his passport in front of his attorney. His attorney verified that the passport was destroyed and provided a photograph of Applicant's defaced Iranian passport. (Tr. 47-48; AE E)

Applicant voted in Iranian national elections in 1997, 2001, 2005, 2009 and 2013. He voted at a location in the United States. Polling stations were set up in local hotels and once at the Pakistani Embassy. He used his Iranian passport for identification. He was a U.S. citizen when he voted in the national elections. Applicant voted for the pro-democracy candidates. He believed that his vote would benefit the U.S. Now that he understands that this is a security issue, he will not vote in future Iranian elections. He is also not able to vote in future Iranian elections because his Iranian passport is destroyed. (Tr. 32-34) Applicant routinely votes in U.S. local and national elections. (Tr. 37)

Reference Letters

Applicant's wife wrote a letter stating that she met her husband while a senior in high school while taking a college course. They were married two years later. They have been married 32 years and have raised three daughters and have one grandson. They spent many Thanksgiving and Christmas holidays with her family when her children were growing up. They now host 40-50 family members at their home for Thanksgiving. She says her husband believes in hard work and honesty. After becoming a U.S. citizen, Applicant makes an effort to vote in every election. He carefully researches each candidate before deciding who to vote for. He believes it is a privilege and a responsibility. She indicates her husband's family immigrated to the United States years ago and none has expressed an interest in returning to Iran. Her husband returned to Iran to visit aging aunts and uncles. The visits were short and her husband

was always glad to be back home when he returned. Their lives are built in the United States. They have no assets or connections in Iran. (AE C at 1-2)

A niece, cousin and brother-in-law all wrote letters attesting to Applicant's excellent character and integrity. (AE C at 3-6) Several of Applicant's former co-workers wrote letters on Applicant's behalf. They describe Applicant as a devoted family man, a man with high personal and professional standards. Each of them have known Applicant for over 25 years and praise his work ethic, teamwork, and commitment to friends and family. (AE D at 1-7)

The IT Director and Government Contracts Manager of Applicant's company also wrote a letter. He also serves as the company's FSO. He has worked for the company since October 1990. He met Applicant in 2001 when he took over management of the company after the death of his brother. He states Applicant has a strong work ethic. He is among the first to arrive in the office in the morning and the last to leave at night. He has overseen the growth of the company. Applicant conducts all of his business deals with honesty, fairness and truthfulness. (AE D at 8)

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. 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.

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 that 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).

Guideline C, Foreign Preference

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

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.

The guideline notes several disqualifying conditions that could raise security concern under paragraph 10.

AG ¶ 10(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through foreign citizenship of a family member. This includes but is not limited to:

- (1) Possession of a current foreign passport;
- (2) Military service or a willingness to bear arms for a foreign country;
- (3) Accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) Residence in a foreign country to meet citizenship requirements;
- (5) Using foreign citizenship to protect financial or business interests in another country;
- (6) Seeking or holding political office in a foreign country; and
- (7) voting in a foreign election;

AG ¶ 10(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

AG ¶ 10(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group,

organization, or government in conflict with the national security interest;
and

AG ¶ 10(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

AG ¶¶ 10(a) applies in Applicant's case. AG ¶ 10(a) applies because Applicant possessed a valid foreign passport which does not expire until 2017. Applicant also voted in Iranian national elections in 1997, 2001, 2005, 2009 and 2013. AG ¶ 10(b) applies because the renewal of Applicant's Iranian passport and his voting in the Iranian national elections occurred after Applicant became a U.S. citizen. Applying for a foreign passport and voting in a foreign election are considered an exercise of foreign citizenship.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline C, Foreign Preference. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

Guideline C also includes examples of conditions that could mitigate security concerns arising from foreign preference. The following mitigating conditions potentially apply to the Applicant's case:

AG ¶ 11(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

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

AG ¶ 11(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

AG ¶ 11(d) use of a passport is approved by the cognizant security authority;

AG ¶ 11(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and

AG ¶ 11(f) the vote in a foreign election was encouraged by the United States Government.

AG ¶ 11(a) applies because Applicant was born in Iran. AG ¶ 11(b) applies because Applicant expressed a willingness to renounce his Iranian citizenship. AG ¶

11(e) applies because Applicant surrendered his passport to his FSO. He surrendered the passport in December 2013 or January 2014, before his background investigation interview. Applicant destroyed his passport after the hearing. He would have destroyed the passport earlier but was advised by someone from the Government not to destroy it. While there is no evidence that Applicant's voting in the Iranian national elections was encouraged by the U.S. Government, Applicant believed that he was assisting the United States by voting for pro-democracy candidates. While I cannot apply AG ¶ 11(f), I considered Applicant's motivation for voting in the Iranian national elections under general whole-person factors.

I also considered that Applicant's actions occurred before he submitted his security clearance application. Now that he is aware that possessing a valid foreign passport and voting in a foreign election raises security concerns, he intends to stop doing either action. He does not intend to travel to Iran. For these reasons, I find Applicant mitigated the security concerns under foreign preference.

Guideline B, Foreign Influence

AG ¶ 6 explains the security concern about "foreign contacts and interests" stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] 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.

The guideline indicates two conditions that could raise a security concern and may be disqualifying under AG ¶ 7 according to the facts of this case:

AG ¶ 7(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

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

The nature of the Iranian government creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. AG ¶ 7(a) raises a security concern regarding Applicant's relatives who are citizens of and reside in Iran. A

valid concern is raised with regard to Applicant's aunts, uncle and cousins who reside in Iran. I find SOR ¶¶ 2.a and 2.b for Applicant. Although, the government of Iran considers Applicant's wife, children, mother and sisters to be citizens of Iran, they all live and reside in the United States. His wife and children were born and raised in the United States. His sisters and mother have lived in the United States for over 32 years and are U.S. citizens. The concern under foreign influence is not a significant factor with regard to Applicant's immediate family members.

AG ¶ 7(b) is applicable because Applicant's connections with his extended family members in Iran create a potential conflict of interest between Applicant's obligation to protect sensitive information or technology and his desire to help his extended family members by providing that information.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns. Of these conditions, three potentially apply to Applicant's case:

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 U.S.;

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

AG ¶ 8(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.

I find AG ¶ 8(b) applies. While Applicant has some familial obligation to his extended family members who are citizens of and reside in Iran, I find such obligations to be minimal in comparison to his sense of loyalty and devotion to his immediate family members, all of whom reside in the United States. Applicant has resided in the United States for over 40 years. He attended college and graduate school here. He met his wife and raised a family here. All of his professional life has been in the United States. All of his assets are here. Applicant's closest family members and relationships are in the United States. He can be expected to resolve any conflict in favor of U.S. interest.

Security concerns raised under Foreign Influence are mitigated.

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 relevant 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.

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. I considered Applicant has lived and worked in the United States for over 40 years. In particular, I found the letters of several of Applicant's co-workers and his wife's relatives persuasive in demonstrating Applicant's established ties in the United States, both personally and professionally, over the past 40 years as well as his outstanding character traits.

His wife, three daughters, son-in-law, grandson, mother and two sisters are citizens of and reside in the United States. Applicant's travel to Iran, possession of a valid Iranian passport, and voting in Iranian elections all occurred before he applied for a security clearance. He believed he was assisting the United States when he voted for the pro-democracy candidates in the Iranian elections. Once he understood the security concerns, he surrendered his Iranian passport to his FSO. He subsequently destroyed the Iranian passport in front of his attorney. In the future, he does not intend to travel to Iran or to vote in Iranian elections.

While Applicant has extended family members residing in Iran, his immediate family members and all of his investments are located in the United States. Applicant's longstanding ties in the United States indicate that Applicant can be expected to resolve any conflict in favor of U.S. interests.

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
Paragraph 2, Guideline B:	FOR APPLICANT

Subparagraphs 2.a – 2.c:

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.

ERIN C. HOGAN
Administrative Judge