



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 14-07045
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

03/25/2016

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns raised by his ties to family members who are citizens of and reside in Iran. He also did not mitigate the security concerns about his exercise of dual citizenship through his possession of a valid Iranian passport, which he obtained after becoming a naturalized citizen of the United States. Applicant's request for a security clearance is denied.

Statement of the Case

On June 18, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain a security clearance required for his job with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Department of Defense (DOD) could not determine

that it is clearly consistent with the national interest for Applicant to have access to classified information.¹

On July 28, 2015, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed at Guideline B (Foreign Influence) and Guideline C (Foreign Preference).² Applicant timely responded to the SOR and requested a decision without a hearing. On September 22, 2015, Department Counsel issued a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on October 8, 2015, and was notified that he had 30 days to file a response to the FORM. He did not submit any additional information within the time allotted and the record closed on November 8, 2015. The case was assigned to me on December 1, 2015.

Findings of Fact

The Government alleged that Applicant's wife is a citizen of both Iran and the United States (SOR 1.a). It was also alleged that his mother, brother, mother-in-law, and father-in-law are all citizens of and reside in Iran (SOR 1.b). The Government further alleged that Applicant obtained and still possesses an Iranian passport that is valid until July 2016 (SOR 2.a); and that Applicant obtained his foreign passport after becoming a naturalized citizen of the United States (SOR 2.b).

Applicant admitted all of the SOR allegations. In addition to the facts established by his admissions, I make the following findings of fact.

Applicant is 56 years old. He was born and raised in Iran, where he earned his bachelor's and master's degrees. He immigrated to the United States in August 1991, matriculating at an American university for his doctorate, which he earned in December 1995. He became a U.S. citizen in June 2008. According to his EQIP, this is his first application for a security clearance. (FORM, Item 2)

Applicant's wife also was born and raised in Iran, where they were married in June 1994. She is a naturalized U.S. citizen, and she works for the same company as Applicant. They have one 10-year-old child, who was born in the United States. The child is a natural-born citizen of the United States despite the fact that Applicant had not yet been naturalized. Applicant does not have any property or other interests outside the U.S., and he has not voted in Iranian elections since leaving there in 1991. Neither he nor anyone in his or his wife's families has any official connection with the Iranian government or its military. Applicant has sponsored his mother and his father-in-law in their applications for permanent resident alien status in the U.S. (FORM, Items 2 and 3)

¹ Required by Executive Order 10865, as amended. See *also* Directive, Section E3.1.1.

² See Directive, Enclosure 2. See *also* 32 C.F.R. § 154, Appendix H (2006).

³ See Directive, Enclosure 3, Section E3.1.7. The FORM included four documents (Items 1 - 4) proffered in support of the Government's case. Item 4 is a request that I take administrative notice of facts regarding Iran and its relationship with the United States.

Applicant has not tried to renounce his Iranian citizenship, because he has not been asked to. But he also stated he has retained his Iranian citizenship and obtained an Iranian passport to facilitate travel to and from Iran. (FORM, Items 1 and 3)

Based on Department Counsel's memorandum and the references cited therein, I have taken administrative notice of certain facts about the government of Iran. In 1979, the U.S.-backed Shah of Iran was overthrown in favor of a theocratic government based on Islamic law. Despite occasional gains by more moderate Muslim clerics in the government, the Islamic Republic of Iran remains under the control of fundamentalists dedicated to a repressive form of government in furtherance of strict adherence to the Koran. Iran's regime has amassed a dismal human rights record. Government entities have been involved in an increased number of abductions, summary executions, disappearances, torture, and other unacceptable practices designed to preserve the government's hold over its citizens. The State Department has advised U.S. citizens not to travel to Iran, and has noted instances where dual U.S.-Iranian citizens have been singled out for special monitoring and detention.

Iran's global interests are directly antithetical to those of the United States. To further their regional and global goals, Iran has become an active collector of economic information, has engaged in cyberwarfare, and has an active espionage service which targets U.S. interests and information. Iran is also an active sponsor of terrorism, which targets the interests of the United States and its allies. Finally, notwithstanding recent multinational agreements, the potential remains for Iran to develop, proliferate, and ballistically deliver nuclear weapons and other weapons of mass destruction. This is still regarded by the U.S. as a major threat to regional and possibly global stability. (FORM, Item 4)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁴ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

- (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.

⁴ Directive, 6.3.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOHA based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.⁶ If the Department Counsel meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁷

Because no one is entitled to a security clearance, an applicant bears a heavy burden of persuasion to establish that it is clearly consistent with the national interest for the applicant to have access to protected information.⁸ A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.⁹

Analysis

Foreign Influence

Applicant has close family ties to citizens of Iran, all but one of whom (his wife) still reside there. This record also establishes that Iran poses a heightened risk of coercion and exploitation of those family ties by the Iranian government or its agents. Accordingly, Applicant's family relationships reasonably raise security concerns about foreign influence. That concern is articulated at AG ¶ 6, as follows:

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

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ Directive, E3.1.14.

⁷ Directive, E3.1.15.

⁸ See *Egan*, 484 U.S. at 528, 531.

⁹ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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.

More specifically, the record requires application of the following disqualifying conditions under 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

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

I have also considered the following pertinent AG ¶ 8 mitigating conditions:

(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.; and

(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.

Although none of Applicant's family, all close and immediate relatives, are associated with the government of Iran, the heightened risk of coercion presented by that country's government, particularly its poor human rights record and its aggressive stance toward U.S. interests, precludes application of AG ¶ 8(a). As to AG ¶ 8(b), Applicant has clearly established a life in the United States that suggests a deeper obligation to his adopted country than to Iran. Nonetheless, the close and continuing relationships with Iranian citizens residing in a country that presents such a heightened risk of coercion and exploitation requires a more substantial case in mitigation. Applicant's effort in this regard is undermined by his sponsorship of two relatives for permanent resident alien status in the U.S. Of course, his sponsorship is perfectly legal and understandable; however, within the context of this adjudication, it preserves the security concerns about his affinity for his foreign family ties. On balance, none of the available mitigating conditions apply here.

Foreign Preference

Applicant exercised his Iranian citizenship in preference to his U.S. citizenship. He did so by obtaining an Iranian passport after he became a U.S. citizen. That passport is still valid, but he has not yet used it for travel to Iran. Nonetheless, it is clear from both his interview with a Government investigator and his response to the SOR, that he will exercise his foreign citizenship when traveling to Iran because doing so will be more convenient than using his U.S. passport. This information reasonably raises a security concern that is expressed at AG ¶ 9 as follows:

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.

More specifically, the following AG ¶ 10 disqualifying condition applies:

(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: (1) possession of a current foreign passport.

I have also considered the following AG ¶ 11 mitigating conditions:

(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;

(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;

(d) use of a foreign passport is approved by the cognizant security authority; and

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

None of these factors apply. Applicant still possesses a foreign passport that he obtained after he was naturalized as a U.S. citizen. Although he is not required to actually renounce his foreign citizenship, he has not expressed a willingness to do so. To the contrary, Applicant stated that he will retain his Iranian citizenship (and his passport) as a matter of convenience should he travel to Iran in the future. There is no indication in this record that his use of a foreign passport would be approved by a "cognizant security authority" or that he has relinquished the passport since he responded to the SOR. As previously noted, Applicant did not respond to the FORM. He has not mitigated the security concerns established under this guideline.

In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guidelines B and C, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Doubts raised by the Government's information remain about Applicant's suitability for access to classified information. Because protection of the national interest is the principal focus of these adjudications, those doubts must be resolved in favor of the Government.

Formal Findings

Formal findings 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 B:	AGAINST APPLICANT
Subparagraphs 1.a - 1.b:	Against Applicant
Paragraph 2, Guideline C:	AGAINST APPLICANT
Subparagraphs 2.a - 2.b:	Against Applicant

Conclusion

In light of all available information, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge