



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



In the matter of:)
)
-----) ISCR Case No. 17-01872
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: Ryan C. Nerney, Esq.

03/22/2019

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke his eligibility for access to classified information. An Iranian citizen by birth and a U.S. citizen since 2008, Applicant met his burden to present sufficient evidence to rebut, explain, extenuate, or mitigate the security concern for foreign influence due to his minimal ties to Iran. Accordingly, this case is decided for Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 format) on November 3, 2015.¹ This document is commonly known as a security clearance application. After a background investigation, he was granted a security clearance at the secret level, which his employer (via the Government customer) subsequently requested be upgraded to top secret.² Thereafter, on March 6,

¹ Exhibit 1.

² Tr. 5.

2018, the Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information. The SOR is similar to a complaint. It detailed the factual reasons for the action under the security guideline known as Guideline B for foreign influence due to his ties to Iran, the country of his birth.

With assistance of counsel, Applicant answered the SOR on May 2, 2018. His answers to the SOR allegations were mixed with explanations, and he provided supporting documentation (marked as Exhibits A-N). He also requested a hearing before an administrative judge.

The case was assigned to me on September 24, 2018. The hearing took place as scheduled on December 4, 2018. Both Department Counsel and Applicant offered documentary exhibits, which were admitted as Government Exhibits 1-5 and Applicant's Exhibits A-W.³ I took administrative or official notice, which is similar to judicial notice, of certain facts concerning the country of Iran per Department Counsel's written request.⁴ The essential facts about Iran are discussed below. The hearing transcript was received on December 12, 2018.

Findings of Fact

Applicant, a native of Iran, is a 36-year-old employee who is seeking to upgrade an existing security clearance to the top-secret level for his job as a senior systems engineer for a company in the defense industry. He has never married and has no children. He immigrated with his family to the United States in 2003. He, along with his father, mother, and sister, became naturalized U.S. citizens in 2008,⁵ and they all reside in the United States.

Shortly after his arrival here, Applicant attended a local community college and then a large state university during 2004-2006, and earned a bachelor's degree in electrical engineering. He was a graduate student at a private research university for one semester in 2008 before he was admitted to a prestigious private research university. He earned a master's degree in aeronautics and astronautics in June 2012. He remained a student at the same university while on leave of absence from September 2012 to August 2013.

Applicant has worked for his current employer since late 2014. Before that, he had a series of part-time jobs. He was self-employed as a research associate during 2012-2014. He was self-employed as information technology specialist during 2013-2014. He was employed as a research assistant for the university during 2010-2012

³ Tr. 12-18.

⁴ Exhibit 5.

⁵ Exhibits I, J, K and L.

while studying for his master's degree. Before that, he worked as an associate software engineer for a well-known research and development center during 2007-2008. This was his first job after earning his bachelor's degree.

With exception of an unnamed friend, the SOR concerns Applicant's family ties to Iran via his father, mother, sister, aunt, and uncle, whom all have dual citizenship with the United States and Iran. The relevant details are set forth below.

Applicant's mother, age 63, a child psychologist with a master's degree from a U.S. university, was a kindergarten teacher or principal for a few years in Iran until the birth of her second child. She has permanently resided in the United States since moving here in 2003. She traveled to Iran periodically (e.g., once per year) to provide care for her mother until her death after a long period of illness in 2011 or 2012. Since the passing of her mother, Applicant's mother made three short trips to Iran to assist with the shipping of household property to the United States.⁶ Applicant's mother is not employed outside the home, and she has focused her time and energy throughout her marriage on running the household and raising the children.

Applicant's father, age 69, has spent a career in academia, with teaching positions at the university level in both Iran and the United States. He earned his degrees, including a Ph.D., from universities in the United States.⁷ He then worked for various companies in the United States. When they married, his wife was then a student at a U.S. university. After the revolution in Iran, Applicant's father and mother decided to return to Iran so she could be near her mother. They resided there from the early 1980s (Applicant was born in Iran in 1983) until they returned to the United States in 2003. In Iran, Applicant's father worked as a professor of civil engineering at a technology university and as a senior executive for the university. He never worked for the Iranian government.⁸ He officially retired from the Iranian university in 2013 or 2014.⁹ Applicant understands his father is not entitled to receive a pension or other type of retirement benefit. Applicant's father has worked for the last several years as a research professor for the same state university where Applicant obtained his bachelor's degree. Before that, he worked as an adjunct professor for the same university. Since retiring from the Iranian university, Applicant's father has made two short trips to Iran in his capacity representing the state university.¹⁰ Neither Applicant's father nor mother intends to return to Iran.¹¹

⁶ Exhibit N.

⁷ Tr. 89.

⁸ Exhibit N.

⁹ Exhibit N.

¹⁰ Exhibit N.

¹¹ Exhibit N.

Applicant's sister, age 32, recently earned a Ph.D. and she is now a research assistant in a post-doctoral program with the federal government.¹² She traveled to Iran on a single occasion in 2009 to visit her grandmother.

Applicant's aunt (his mother's sister) and uncle are dual citizens who reside in the United States. They have a son born in Iran and a daughter born in the United States. Both of Applicant's cousins are U.S. citizens. Applicant has limited contact with his aunt and uncle due to geographic separation. He knows that his aunt has always been a stay-at-home mother, and his uncle has a Ph.D. in civil engineering. As far as Applicant knows, neither his aunt nor his uncle have any connections to the Iranian government.

Applicant believes the unnamed friend, alleged in the SOR to be a citizen of Iran, is a person with whom he had irregular social interactions with but none since 2015.¹³ Applicant was introduced to the person by a professor they had in common. The social interactions consisted of hanging out, watching football, and having a beer or two.¹⁴

Applicant's financial interests are solely in the United States.¹⁵ His annual salary is about \$100,000, and he has a net worth of about \$250,000, which is sizeable given his age and work history. He volunteers in various constructive community activities.¹⁶

Based on documentary evidence and the testimony of two character witnesses, Applicant has a good employment record and is held in high regard. For example, the technical director of the program in which Applicant works described Applicant as hard working, exceptional, and a high performer in the company.¹⁷ He further described Applicant as dedicated, trustworthy, and straightforward in following the rules and dealing with security matters.¹⁸ Even more impressive was the highly favorable endorsement from Applicant's program director, a retired Air Force colonel with 25 years of active duty, including multiple combat tours. He described Applicant as one of the company's top engineers.¹⁹ He described Applicant's work ethic as the very highest.²⁰ He described Applicant's character as one of unquestioned integrity and

¹² Tr. 70-72.

¹³ Tr. 72-74.

¹⁴ To his credit, Department Counsel acknowledged that he could not identify a specific named person and further acknowledged that the allegation was "fairly settled." Tr. 77.

¹⁵ Tr. 85-88; Exhibits C and D.

¹⁶ Exhibit B.

¹⁷ Tr. 22.

¹⁸ Tr. 23.

¹⁹ Tr. 37.

²⁰ Tr. 37-38.

trustworthiness with a tremendous sense of honesty.²¹ He has zero reservations in vouching for Applicant's suitability for access to classified information. He further described Applicant as "the best young engineer" employed by the company.²² Going even further in his praise, he described Applicant as a national resource, among the brightest of his generation, and whose contributions to the defense and security of the United States are essential."²³

Concerning the country of Iran, the February 1979 fall of the Shah of Iran, then a key U.S. ally, opened a long rift in diplomatic relations between Iran and the United States that continues to today. On November 4, 1979, radical Iranian students seized the U.S. Embassy in Tehran, and then held hostages until shortly after President Reagan's inauguration on January 20, 1981. The United States severed relations with Iran on April 7, 1980. As a result, in the United States the Iranian Interests Section is located in the Embassy of Pakistan, and the U.S. protecting power in Iran is Switzerland. The U.S. Government has a number of special concerns regarding Iranian behavior as outlined in Department Counsel's written request.²⁴ The concerns include Iran's efforts to acquire weapons of mass destruction; its support for violent opposition to the Middle East peace process; its ongoing support of the Assad regime in war-torn Syria; and its dismal human-rights record. The United States has designated Iran as a state sponsor of terrorism for many years.

Law and Policies

This case is adjudicated under Executive Order (E.O.) 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.²⁵

It is well-established law that no one has a right to a security clearance.²⁶ As noted by the Supreme Court in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."²⁷ Under *Egan*, Executive Order 10865, and the Directive, any doubt

²¹ Tr. 38.

²² Tr. 43.

²³ Tr. 46-48; Exhibit A at 3.

²⁴ Exhibit 5.

²⁵ The 2017 AG are available at <http://ogc.osd.mil/doha>.

²⁶ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

²⁷ 484 U.S. at 531.

about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.²⁸ The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²⁹

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.³⁰ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.³¹

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.³² The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.³³ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.³⁴ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.³⁵

Discussion

The gravamen of the SOR under Guideline B for foreign influence is whether Applicant's ties to Iran should disqualify him from access to classified information. Under Guideline B for foreign influence,³⁶ the suitability of an applicant may be questioned or put into doubt due to foreign contacts and interests. The overall concern under the guideline is:

Foreign contacts and interests, including but not limited to business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a

²⁸ 484 U.S. at 531.

²⁹ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

³⁰ Directive, ¶ 3.2.

³¹ Directive, ¶ 3.2.

³² ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

³³ Directive, Enclosure 3, ¶ E3.1.14.

³⁴ Directive, Enclosure 3, ¶ E3.1.15.

³⁵ Directive, Enclosure 3, ¶ E3.1.15.

³⁶ AG ¶¶ 6, 7, and 8 (setting forth the concern and the disqualifying and mitigating conditions).

way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.³⁷

The guideline notes several conditions that could raise a security concern under AG ¶ 7. The following are potentially applicable in this case:

AG ¶ 7(a) contact, regardless of method, 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 classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

The starting point for the analysis is the country of Iran. Suffice it to say, the U.S. Government views the behavior of the Iranian government as presenting a serious national security concern. Given Applicant's ties to Iran, a country that is hostile to the United States, the Government has established its case under Guideline B. In practice, the Iranian government considers dual citizens as Iranian citizens only, and the fact that Applicant and his family members obtained U.S. citizenship does not amount to a formal or legal renunciation of Iranian citizenship, which is at the discretion of Iranian government. Nonetheless, I have given no weight to the evidence concerning the unnamed friend in the SOR. At best, the interaction was a casual, social relationship that ended several years ago. The above disqualifying conditions are raised by the evidence.

The guideline provides that certain facts and circumstances may mitigate foreign influence concerns. Given the evidence here, I considered the following mitigating conditions:

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 United States; and

³⁷ AG ¶ 6.

AG ¶ 8(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

Iran's hostility to the United States and the heightened risk it presents place a heavy burden on Applicant to mitigate the security concern. With that said, Applicant has multiple indicators of a mature, stable, responsible, and trustworthy person. He was articulate, serious, candid, and credible at the hearing. He cooperated fully and provided truthful information about his ties to Iran during the security clearance process. He made a highly favorable impression upon me during the hearing.

I have considered the totality of Applicant's ties to Iran, which can now be described as minimal. Applicant, then age 20, and his family came to the United States in 2003, and he has since established and made his life here. His parents have a long-standing connection to the United States, both having spent years here obtaining their academic degrees before returning to Iran in the early 1980s. Now, Applicant's father, mother, sister, uncle, aunt, and cousins are citizens of and residents in the United States. Applicant has spent the last 16 years living, furthering his education, and working in the United States. His financial interests are solely in the United States. He is held in high regard by many who know him. Indeed, the character evidence, both documentary and testimonial, was quite powerful.

It is unclear what has changed since Applicant was favorably adjudicated for a security clearance at the secret level within the last few years.³⁸ Nonetheless, Applicant has had more time to establish his ties and connections to the United States and to demonstrate that he adheres to security rules and requirements for his employment with a defense contractor. Given the totality of facts and circumstances, I conclude that it is unlikely Applicant will be placed in a position of having to choose between the interests of the United States and the interests of the Iranian government, a terrorist organization, or his family members who have Iranian citizenship. I further conclude there is no conflict of interest, because Applicant has developed such deep and long-standing relationships and loyalties in the United States that he can be expected to resolve any potential conflict of interest in the favor of the United States. AG ¶ 8(a) is partially applicable. AG ¶ 8(b) is applicable.

Following *Egan* and the clearly consistent standard, I have no doubts or concerns about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified or sensitive information. In reaching this conclusion, I weighted the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept. Accordingly, I conclude that he met his ultimate burden of persuasion to show that it is

³⁸ To his credit, Department Counsel acknowledged in closing argument that he could not honestly say what had changed since the favorable adjudication. Tr. 99-100.

clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline B: For Applicant

Subparagraphs 1.a – 1.f: For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant access to classified information.

Michael H. Leonard
Administrative Judge