

_____ Applicant is a native of Iran who became a naturalized U.S. citizen in 1989. In 1996, he obtained and used an Iranian passport to visit his parents and participate in seminars in Iran. He renewed his Iranian passport in May 2005. He is unwilling to surrender his Iranian passport because he needs it to settle his father's estate in Iran. His oldest brother is a citizen and resident of Iran. Security concerns based on foreign influence and foreign preference are not mitigated. Clearance is denied.

STATEMENT OF THE CASE

On May 21, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive); and the revised adjudicative guidelines (AG) approved by the President on December 29, 2005, and implemented effective September 1, 2006. The SOR alleges security concerns under Guidelines B (Foreign Influence) and C (Foreign Preference).

Applicant answered the SOR in writing on June 1, 2007, admitted one allegation, denied four, and requested a hearing. The case was assigned to me on July 25, 2007, and heard as scheduled on August 21, 2007. DOHA received the transcript (Tr.) on August 29, 2007.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant is a 57-year-old systems engineer employed by a defense contractor, for whom he has worked since May 2003. He holds a doctorate in mechanical engineering. He has never held a security clearance (Tr. 7).

Applicant was born in Iran. He came to the U.S. in 1975 to attend graduate school. He completed his education in 1981, receiving a masters and a doctorate in mechanical engineering (Tr. 39). After the revolution in Iran, he decided to stay in the U.S., and he became a U.S. citizen in July 1989. His wife also was born in Iran. They were married in the U.S. in December 1988, and she became a U.S. citizen in September 1994. They have two children, both native-born U.S. citizens (Tr. 41).

Applicant has two brothers and two sisters who were born in Iran. His oldest brother worked for the Iranian Ministry of Transportation as a low-level manager, responsible for scheduling intercity commercial transportation (Government Exhibit (GX 2) at 3). He retired in 1999, received his retirement in a lump sum (Tr. 52), and has no connection with the Iranian government. This brother lives in Iran but would like to come to the U.S. to be closer to his son (Tr. 61). Applicant and his brother had regular conversations about the welfare of their parents until their parents died, when regular conversations stopped. They now converse five or six times a year about settling the estate (Tr. 59).

Applicant's other brother and one sister are citizens and residents of the U.S. His other sister has a U.S. "green card" but lives in Greece (Tr. 44).

Applicant obtained an Iranian passport in 1996, after becoming a U.S. citizen, and he used it to visit his parents in Iran and participate in two seminars. He does not consider himself a dual citizen of Iran and the U.S., but he used his Iranian passport to enter and leave Iran because it was

more convenient (AX A at 1-2); AX B). The passport expired in 2001. He obtained a new Iranian passport in May 2005.

Applicant's mother died in March 2005, and his father died in September 2006. He used his Iranian passport when he gave his oldest brother a power of attorney to settle his father's estate (GX 3 at 1). He testified the Iranian courts would not accept any documents unless he submitted his Iranian passport along with the documents (Tr. 71). In response to DOHA interrogatories, he stated he intended to surrender his Iranian passport after his father's estate is settled (GX 2 at 12).

Applicant has no interest in sharing in his father's estate, and he does not know what the estate is worth (Tr. 47). He executed an affidavit declaring his desire to give his interest in the estate to his brother (Attachment to Answer to SOR), but he is unwilling to surrender his Iranian passport until the estate is closed and all property distributed. He fears that the government will find some way to invalidate his power of attorney and require it to be revised. If they do, he would not be able to submit a revised power of attorney to the courts without a passport, and the courts would not release the inheritance to his siblings as long as he is alive (AB B at 2).

At Department Counsel's request, and without objection from Applicant, I took administrative notice of relevant adjudicative facts about Iran (Hearing Exhibit (HX) I; Tr. 14). Iran is a theocratic Islamic republic dominated by Shia Muslim clergy, with ultimate political authority vested in a learned religious scholar. Current U.S. concerns about Iran are based on its efforts to acquire nuclear weapons and weapons of mass destruction; support for and involvement in international terrorism; support for violent opposition to the Middle East peace process; and its human rights abuses, including summary executions, torture, arbitrary arrest and detention, and restrictions on civil liberties. Iran has provided guidance, training, and weapons to Shia political and militant groups in Iraq. It also provides encouragement, training, funding, and weapons to anti-Israeli terrorist groups in its efforts to undermine the Arab-Israeli peace process (HX I at 1-5).

The U.S. has designated Iran as a state sponsor of terrorism. The U.S. broke diplomatic relations with Iran in April 1980, prohibits most trade with Iran, and uses multilateral sanctions and diplomatic pressure to contain the threats posed by Iran (HX I at 3).

Iran does not recognize dual citizenship. Iranian-born, naturalized U.S. citizens are considered solely Iranian citizens by the Iranian authorities, and they are subject to surveillance, search, harassment, arrest, and imprisonment while traveling or residing in Iran (HX I at 5).

POLICIES

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the Guidelines. Each clearance

decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, the disqualifying conditions and mitigating conditions under each specific guideline, and the factors listed in AG ¶¶ 2(a)(1)-(9).

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in persons with access to classified information. However, the decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The Guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

CONCLUSIONS

Guideline B (Foreign Influence)

The SOR alleges Applicant’s brother is a citizen and resident of Iran and a former government employee (SOR ¶ 1.a), and that Applicant will inherit property from his deceased father when the will is probated (SOR ¶ 1.b). The concern under this guideline is 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 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 ¶ 6.

A disqualifying condition may be raised by “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.” AG ¶ 7(a). A disqualifying condition also may be raised by “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.” AG ¶ 7(b). Applicant’s contacts with his brother in Iran raise these two disqualifying conditions.

A disqualifying condition also may be raised by “a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.” AG ¶ 7(e). Although Applicant has declared his intention to give his share of their father’s estate to his brother, he wants to ensure that the estate will be distributed to his siblings. His interest in his father’s estate and his desire to control its disposition raise this disqualifying condition. The record does not reflect the value of the estate, but its proper distribution is a matter of concern to Applicant. I conclude this disqualifying condition is established.

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation’s government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S.

Family ties with persons in a foreign country are not, as a matter of law, automatically disqualifying under Guideline B. However, such ties raise a *prima facie* security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant’s burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant. *See* Directive ¶ E3.1.15; ISCR Case No. 99-0424, 2001 WL 675725 at *12 (App. Bd. Feb. 8, 2001). 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. Sep. 22, 2005). Iran’s hostility to the U.S., repressive government, and abysmal human rights record place a “very heavy burden of persuasion” on Applicant to demonstrate that his family member and financial interests in Iran do not pose a security risk. *See* ISCR Case No. 04-11463 at 4 (App. Bd. Aug 4, 2006).

Security concerns under this guideline can be mitigated by showing that “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(a). Applicant’s brother wants to live in the U.S., but as long as he lives under the repressive and hostile government of Iran, Applicant may be placed in a position of having to choose between the interests of his brother and the interests of the U.S. This mitigating condition is not established.

Security concerns under this guideline also can be mitigated by showing “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.” AG ¶ 8(b). Applicant has deep and longstanding relationships and loyalties in the U.S., but he also has loyalty to his brother and is deeply concerned that his siblings receive their inheritance. His reluctance to surrender his passport, even though he knows it raises a security concern, demonstrates his dilemma. I conclude this mitigating condition is not established.

Security concerns can be mitigated by showing “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.” AG ¶ 8(c). There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). Applicant has not rebutted the presumption. Applicant talks with his brother less frequently than he did when their parents were alive, but they still converse regularly about their father’s estate, a matter of serious concern. This mitigating condition is not established.

Security concerns based on foreign property interests also can be mitigated by showing “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(f). The value of Applicant’s father’s estate is not established, but the record clearly reflects that its disposition is a matter of importance to Applicant. I conclude Applicant has not met his burden of establishing this mitigating condition.

Guideline C (Foreign Preference)

The SOR alleges Applicant is a dual citizen of the U.S. and Iran (SOR ¶ 2.a), he obtained an Iranian passport in 1996 after becoming a U.S. citizen and used it to visit his parents in Iran (SOR ¶ 2.b), and he renewed his Iranian passport in order to resolve matters related to his father’s estate (SOR ¶ 2.c). The concern under this guideline is 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.” AG ¶ 9. A disqualifying condition may arise from “exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen,” including but not limited to “possession of a current foreign passport.” AG ¶ 10(a)(1). Applicant’s possession and use of an Iranian passport raise this disqualifying condition.

Dual citizenship is not a disqualifying condition, unless it is exercised. Thus, the allegations in SOR ¶ 2.a have little security significance standing alone. The allegations in SOR ¶¶ 2.b and 2.c are premised on Applicant’s dual citizenship, thus incorporating and duplicating SOR ¶ 2.a. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicate allegations should be resolved in Applicant’s favor. *See* ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, I resolve SOR ¶ 2.a. in Applicant’s favor.

Since the government produced substantial evidence to raise the disqualifying condition in AG ¶ 10(a)(1), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. Security concerns under this guideline can be mitigated by

evidence that “dual citizenship is based solely on parents’ citizenship or birth in a foreign country.” AG ¶ 11(a). This mitigating condition is established. Security concerns based on possession or use of a foreign passport can be mitigated if “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.” AG ¶ 11(e). This condition is not established.

Whole Person Analysis

In addition to considering the specific disqualifying and mitigating conditions under each guideline, I have also considered: (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 applicant’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(a)(1)-(9). Some of these factors have been discussed above, but some merit additional comment.

Applicant is a mature adult who has spent all his professional life in the U.S. He was sincere, candid, and credible at the hearing. His loyalty to the U.S. is not an issue. Nevertheless, his brother’s Iranian citizenship and residence and his concern about the distribution of his father’s estate make him vulnerable.

I have weighed the enumerated disqualifying and mitigating conditions under Guidelines C and B; considered the nature of the Iranian government, its human rights record, its involvement in international terrorism, and its efforts to foster instability in neighboring countries; considered the totality of Applicant’s family ties as well as each family tie; and evaluated all the evidence in the context of the whole person. I conclude Applicant has not mitigated the security concerns based on foreign influence and foreign preference. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him a security clearance.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Paragraph 2. Guideline B:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

LeRoy F. Foreman
Administrative Judge