



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



In the matter of:)
)
) ISCR Case No. 07-00455
)
)
Applicant for Security Clearance)

Appearances

For Government: Candace Le'i, Department Counsel
For Applicant: Sheldon I. Cohen, Esquire

September 26, 2008

Decision

HEINY, Claude R., Administrative Judge:

Applicant is an Iranian born, naturalized U.S. citizen, who has lived in the United States since 1981. Applicant's two aunts and in-laws are citizens and residents of Iran. His wife is a permanent resident alien from Iran living in the U.S. Applicant used his Iranian passport to enter Iran after becoming a U.S. citizen. He has substantially more connections to the United States than to Iran. Applicant has rebutted or mitigated the government's security concerns. Clearance is granted.

Statement of Case

Applicant contests the Defense Department's intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued to

¹ 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

Applicant a Statement of Reasons (SOR) on April 4, 2008, detailing security concerns under Foreign Preference and Foreign Influence.

On May 2, 2008, Applicant answered the SOR, and requested a hearing. On June 10, 2008, I was assigned the case. On July 28, 2008, DOHA issued a notice of hearing scheduling the hearing held on August 27, 2008. The government offered Exhibits (Ex.) 1 and 2, which were admitted into evidence. Applicant testified on his own behalf and submitted Exhibits A through T, which were admitted into evidence. Four additional witnesses testified on his behalf. On September 8, 2008, the transcript (Tr.) was received.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that administrative notice be taken of certain facts relating to Iran. The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibits (HEX) I–XII. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer to the SOR, Applicant denied the factual allegations in ¶ 1.g and ¶ 2.a of the SOR and admitted the remaining factual allegations.

Applicant is a 42-year-old electrical engineer who has worked for a defense contractor since September 2005, has a secret clearance, and is seeking to obtain a top secret security clearance. (Tr. 202) In October 2002, he received a letter of appreciation for his professionalism, skills, and dedication to quality work. (Tab M) In January 2007, Applicant received a certificate of appreciation (Tab N) for his “tremendous efforts” in managing and coordinating the building of a laboratory and electronics fabrication facility. In February 2008, his work earned him a \$4,500 bonus for outstanding accomplishments and contributions to the company. (Tr. 135, Tab L) His duty performance with this current employer have been outstanding and/or consistently been above acceptable levels. (Tabs G, H, I, J, K, and Q)

Applicant, his parents, and sister lived in Southern Iran. His father was an electrical engineer and his mother a house wife. Applicant was attending international school studying his courses in English and Persian. (Tr. 114, Gov Ex 2, p. 48) In 1979, the Islamic Revolution in Iran closed most international schools. Applicant – then age 12 – went to Tehran to live with his grandparents and to continue attending an international school. Before the revolutionary government closed the school he was attending in Tehran, all the library books were piled up and burned, which Applicant found shocking. (Tr. 118, Gov Ex 2, p. 48)

guidelines (AG) approved by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

In September 1980, Iraq invaded Iran following a long history of border disputes. At the start of the Iran-Iraq war, Applicant was attending school in Tehran and his family was in Tehran seeking medical treatment for Applicant's father. His father was going blind, suffering from macular degeneration. His family had anticipated being in Tehran for two weeks before returning home, but the war prevented them from returning home. Applicant's home town lay between the front lines of the two battling armies. It was heavily bombed during the war. Applicant learned his home had been looted, bombed, burned, and then bulldozed to the ground. (Tr. 123) All personal belongings were lost. (Gov Ex 2, p. 45)

Treatment for his father's eye sight problem was not available in Iran. His father asked to leave the country for treatment. The Iranian government showed no sympathy and was unwilling to grant him an exit visa. (Tr. 116, 202) When a visa was finally granted, Applicant – then age 14 – was allowed to accompany his father due to his father's inability to care for himself because of his blindness. Applicant's mother and sister were not allowed to accompany them and could not leave Iran for another year. (Tr. 113) The insensitive, brutal Iranian government made it very difficult for them to leave, following insults and a great deal of abuse, they were finally allowed to leave. (Tr. 121-122, 177) Two of Applicant's aunts remained in Iran.

Applicant and his father spent a month in England obtaining a visa to the U.S.. (Tr. 119) Applicant and his father went to England because Applicant's father had studied for seven years in England. They came to the U.S. because his mother's three brothers and his father's sister were living in the U.S.

Applicant stayed with his uncle and his father went to live with his sister in Texas. When allowed to leave, his mother and sister joined his father and they now live together in California. (Tr. 120, 124, 202) Applicant worked as a busboy at this uncle's restaurant for two or three years. His pay as a bus boy paid for his college. He had no scholarships or financial aid because of his foreign status. (Tr. 127) In school, he became a teacher's assistant. At age 16 he had become independent and moved in with two roommates for a year or two.

In the fall of 1983, he started attending university. (Tr. 125) In December 1987 and May 1988, he obtained three bachelor's degrees in physics, mathematics, and electrical engineering. (Tab A, D, E) In May 1992, he obtained a master's degree in electrical engineering. (Tab A, Tab F) Applicant's uncle died of a heart attack at the age of 38. While Applicant was working on his PhD, Applicant's grandfather died of a heart attack. Soon after his grandfather's death, Applicant learned he was suffering from retinal detachment in both eyes and without treatment would go blind. (Tr. 128, Gov Ex 2, p. 49) Applicant's surgery and recovery interrupted his further PhD studies.

In October 1995, Applicant became a U.S. citizen. In December 2000, his sister became a naturalized U.S. citizen; in July 2001, his father; and in November 2001, his mother became a naturalized U.S. citizen.

During December 1997 and January 1998, Applicant returned to Iran for the first time since leaving in 1981. He wanted to visit his home for the purpose of closure. (Tr. 140) Applicant left his home in Iran abruptly taking no pictures or other material. When Applicant and his family left Iran all they could take was one suitcase each. On his visit, Applicant visited his neighborhood that was now an open field with all houses having been reduced to rubble. Streets were yet discernable. He was able to locate the cleared foundations of his family home by identifying some fragments of his mother's broken china on the ground in the open field. From the location of his former home, only flat land without structures existed for miles around. (Gov. Ex. 2, p. 45)

Applicant waited until he was a U.S. citizen before returning to Iran. He was apprehensive about the trip. He had said he would never return to Iran. On the trip he could not relate to anybody in Iran, the culture, or even the surroundings. (Gov Ex. 2, p. 45)

Applicant's two aunts remained in Iran. His first real conversation with his aunts came when he was age 31. (Tr. 179) He has no bonds of affection for them. Both are retired accountants. One is married to a retired doctor the other to a retired accountant. (Gov Ex 2, p. 23, Tab B) He talks to one aunt once a year and has not talked with his other aunt for "quite some time." (Gov Ex 2, p. 29) During the 1997 trip, Applicant stayed with an aunt who was interested in getting him married. (Gov Ex. 2, p. 10) Prior to his trip, he had no contact with his relatives in Iran. (Tr. 143) His grandmother living in the U.S. did have contact. On this trip by mere chance he visited his future father-in-law, who was a friend of Applicant's grandfather. (Tr. 143) Applicant was invited to dinner at his future in-laws home, but does not remember seeing his future wife. He was 31 years old and his future wife was 14 or 15. (Tr. 145)

In 2000, Applicant visited Iran for 12 days. He was seeking a wife and his aunt knew a young woman who was a doctor who might have been a suitable bride. They met, but nothing came of the meeting. (Tr. 147) Following this trip, Applicant never again visited Iran.

On his two trips to Iran, Applicant carried both his U.S. (Gov Ex 2, p. 53-92) and Iranian (Gov Ex 2, p. 93 -114) passports. He entered Iran as a U.S. citizen. Having been born in Iran, his Iranian passport was required for his entry into the country. (Tr. 147) In 2007, Applicant gave his Iranian passport to his company's security officer to be destroyed. (Tr. 152, Gov Ex 2, p. 13, 14) The passport expired on April 11, 2007. (Gov Ex 2, p. 39)

Applicant's grandmother informed Applicant about his future wife. (Tr. 155) His future wife was then 22 years old. At his grandmother's insistence, Applicant called his future wife. For six months, Applicant and his future wife talked on the telephone for many hours. (Tr. 159) They corresponded for close to a year. (Tr. 16) In April 2004, they agreed to meet in Turkey. While there, he proposed and she accepted. (Tr. 161) She returned to Iran and he to the U.S. In October 2004, Applicant traveled to Turkey for five

days for the wedding. (Tr. 163) On both trips, Applicant's wife was accompanied by her brother, who Applicant met each time. None of her other relatives were able to attend the wedding. Applicant had asked his company's security officer if he could go to Iran for the wedding. He was told it was not a good idea to do so. (Tr. 164) His wife wanted a wedding in Iran, but Applicant told her this was something he could not grant her.

Applicant's father-in-law is retired from a furniture factory and his mother-in-law is a house wife. (Tr. 169) One of his wife's sisters is an accountant and the other a university student studying accounting. (Tr. 169, Gov Ex 2, p. 19, 29) One of his brothers-in-law worked as a salesman in a furniture store and the other sells food products. (Tr. 170, 198) Gov Ex 2, p. 19) Applicant met the one brother-in-law when he accompanied his sister to Turkey to meet Applicant. Applicant has never met his other brother-in-law. (Tr. 168)

Applicant refused to jeopardize his security clearance by traveling to Iran to meet with her parents before asking her to marry him or for the wedding. In 2004, Applicant and his wife married the day after he arrived in Turkey. (Tr. 112) He returned to the U.S. and applied for a visa for his wife. (Tr. 16) She returned to Iran. In 2005, Applicant's wife obtained her "green card," permanent resident alien card. (Tab R, Gov Ex 2, p. 18) When the visa was granted, Applicant returned to Turkey, met his wife and met her brother, and returned to the U.S. with his wife. In August 2008, his wife applied for U.S. citizenship, which was her first opportunity to do so. (Tr. 171, Tab S) His wife is currently a student. (Tr. 208)

Applicant's wife talked with her family weekly. Applicant refuses to talk with them for fear of jeopardizing his clearance. He has talked with one brother-in-law, and has not talked with his other brother-in-law or sisters-in-law. (Gov Ex 2, p. 29) Because of his clearance, Applicant has purposely not had a relationship with his wife's family. (Tr. 166) Once a year, he will talk with his parents-in-laws for 30 seconds to a minute, wishing them a Happy New Year and asking how they are. (Tr. 167, 199) It is tradition to call relatives on New Year's Day. (Tr. 208) He also talked briefly with them in 2007 when they congratulated him on the birth of his daughter. (Tr. 194) Currently, he has no communication with his sisters-in-law or brothers-in-law. (Tr. 167)

Applicant's landlord first met Applicant when Applicant was 22 years old and a student and has maintained close contact with him since that time. Applicant lived in his landlord's home for five years. (Tr. 28) She states Applicant is serious, by the book individual who always strives to achieve the highest level. Applicant is very honest, hardworking, diligent, and patriotic. (Tr. 33, 34) Applicant feels deeply and is very passionate in his beliefs. His former land lady refers to Applicant's daughter as "her" granddaughter.

A co-worker describes Applicant's technical and professional performance as exceptional. (Tab T) Applicant is honest, trustworthy, a person of high integrity, who is devoted to his job and the people for whom he works. Applicant is passionate about being an American and being able to serve his country. (Tab T)

Applicant's division manager at work, and one time Applicant's direct supervisor, states Applicant is very conscientious, honest to a fault, passionate, trustworthy, a hard worker, and so reliable Applicant was entrusted with building a new laboratory. (Tr. 50 – 61) Applicant has strong feelings against the government of Iran. A co-worker who first met Applicant in college in 1985 and has known him since 1992, states Applicant is bright, hard working, and maintains the highest integrity. He recognizes that Applicant appreciates the opportunities he has received in the U.S. (Tr. 77)

Another co-worker Applicant met in 1983 and started working with Applicant in 1992, states Applicant is highly principled to the point he referred to Applicant as "noble." (Tr. 97) Applicant is productive, rational, and possessing a very disciplined mind. (Tr. 99) Applicant has expressed to him Applicant's strong negative feelings about the Iranian government. This co-worker has such trust in Applicant that he would entrust his children to Applicant's care. (Tr. 101)

Applicant has no love for the government of Iran who he refers to as "brutal, animalistic, scum of the earth," and an infection on this planet, and if not contained or eliminated will more cause problems. (Tr. 176) He sees the Islamic revolution in Iran as ravaging the country, causing chaos, anarchy, fundamentalist extremism, and characterized it as being surrounded by a plague of infectious disease. (Gov Ex 2, p. 4) Applicant described the government of Iran as a "pyramid scheme of evil. " (Tr. 201) He believes the Iranian government should be wiped out. Applicant describes the Iranian government as terrorists and explains one can not trust, deal with, or appease terrorists. (Tr. 182) There is nothing one can do except seek help from the authorities. (Tr. 181) Applicant believes nothing said by the Iranian government is worthy of belief. (Gov Ex 2, p. 47)

Applicant's attitude toward the Iranian government is summed up as follows:

It's because before I die, I want to know that there's a sense of justice in this world, that scum like this that come to the earth and put so much horror on to so many people's lives will some day get what's coming to them and if I can be a part of this, I'll be very proud and it means a lot to me to be part of that. . . it would make me very happy to wipe out this government in any way possible and I hope I can help in any way I can.

It's not that I just dislike them. I highly encourage whatever needs to be done to eliminate this government. It's not a government. It's an occupying infection that everybody is suffering. (Tr. 178 -179)

If the Iranian government pressured his relatives in Iran, Applicant knows there is nothing he can do because you can not negotiate with a terrorist. He would never cooperate with evil in any attempt to ensure his relatives safety or release should they be detained. (Gov Ex 2, p. 46) Applicant twice attempted to join the U.S. military but

was told by the recruiter he could not join because he only had a “green card.”² (Tr. 185) Since becoming a citizen, he is too old to join the U.S. military. He would take no action endangering his family in the U.S. or endangering America. (Gov. Ex 2, p. 46)

Applicant sums up his attitude toward security of classified information as follows:

Classified information, giving up classified information is worse than being a serial murderer or being a rapist of children because in a sense you’re giving out the security of the whole nation, of all the children, of all the woman, of all the men.

So this question is like are you willing to do the highest crime of the land, highest crime, you know, that would, you know, tarnish my name, my family name, my children in the future, not to mention wipe out everything I ever worked for in my life. (Tr. 180 -181)

Applicant no longer takes simple things such as “seeing” for granted. He realizes becoming a U.S. citizen was a gift and blessing. (Tr. 212) He believes in the principles of the U.S. (Gov Ex 2, p. 3) He is proud to be a U.S. citizen and is proud of what the U.S. represents. He sees his current job as a way contributing to the U.S. and protecting U.S. military members and the country. The U.S. is the only country for which he is willing to die. Applicant states his “American citizenship is the most valuable possession that I have in my life.” (Tr. 211)

Applicant has spent the last 27 years living in the U.S. In 2007, Applicant’s daughter was born in the U.S. (Tr. 112) He has 76 relatives living in the U.S. including his parents, sister, grandmother, four uncles, aunts, and numerous cousins. (Tab B) His uncles and aunts began immigrating to the U.S. in the 1960’s. (Tr. 205) His grandmother, two uncles, and aunts all live in Applicant’s geographical vicinity and he sees them often. (Tr. 210)

Iran

Iran is a constitutional Islamic republic with a theocratic system of government in which Shi’a Muslim clergy dominate the key power structures, and ultimate political authority is vested in a learned religious scholar. The U.S. has not had diplomatic relations with Iran since 1980. The President’s National Security Strategy has stated that the United States “may face no greater challenge from a single country than from Iran.”

The U.S. Government has defined the areas of objectionable Iranian behavior as:

- Iran’s efforts to acquire nuclear weapons and other weapons of mass destruction;

² This restriction against joining the military as a resident alien was later changed.

- Its support for and involvement in international terrorism;
- Its support for violent opposition to the Middle East peace process;
- Its dismal human rights record; and
- Iran's intervention in the internal affairs of Iraq.³

The U.S. has designated and characterized Iran as the most active state sponsor of terrorism. Iran provides critical support to non-state terrorist groups. The government of Iran has committed numerous, serious human rights abuses against the Iranian people. Abuses include political killings and incarceration; summary executions, including of minors; disappearances; religious persecution; torture; arbitrary arrest and detention, including prolonged solitary confinement; denial of due process; severe restrictions on civil liberties - speech, press, assembly, association, movement and privacy; severe restrictions on freedom of religion; official corruption; violence and legal and societal discrimination against women, ethnic and religious minorities, and homosexuals; trafficking in persons; and child labor.

The State Department continues to warn U.S. citizens to consider carefully the risks of travel to Iran. U.S. citizens who were born in Iran and the children of Iranian citizens—even those without Iranian passports who do not consider themselves Iranian—are considered Iranian citizens by Iranian authorities, since Iran does not recognize dual citizenship. Therefore, despite the fact that these individuals hold U.S. citizenship, under Iranian law, they must enter and exit Iran on an Iranian passport, unless the Iranian government has recognized a formal renunciation or loss of Iranian citizenship. U.S.-Iranian dual nationals have been denied permission to enter/depart Iran using their U.S. passport; they even had their U.S. passports confiscated upon arrival or departure. U.S.-Iranian dual citizens have been detained and harassed by the Iranian government. Iranian security personnel may place foreign visitors under surveillance. Hotel rooms, telephones and fax machines may be monitored, and personnel possessions in hotel rooms may be searched.

Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised 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 over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶

³*Country Reports on Terrorism 2007, Chapter 3 – State Sponsors of Terrorism Overview*, U.S. Department of State, Office of the Coordinator for Counterterrorism, dated April 30, 2008 (country Report on Terrorism).

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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 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).

Analysis

Foreign Influence

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

if 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.

AG ¶ 7 indicates three conditions that could raise a security concern and may be disqualifying in this case:

(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;

(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;

(d) sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists;

Applicant traveled to Iran in 1997 and 2000. These are the only two trips to Iran he has taken to Iran in the last 27 years since leaving Iran at age 14. He has two aunts who are residents and citizens of Iran, with which he has minimal contact. Applicant's wife is an Iranian citizen living in the U.S. with a permanent resident alien card. Her parents, two brothers, and two sisters are citizens and residents of Iran. Applicant refuses to talk with his in-laws when they call for fear of jeopardizing his clearance. He has purposely not had a relationship with his wife's family.

The mere possession of family and in-laws in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an Applicant has frequent, non-casual contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001). However, Applicant's direct contact with his relatives living in Iran is somewhat infrequent and casual.

The nature of a nation's government, its relationship with the United States, 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 United States. The country of Iran places a heavy, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationship with his aunts and in-laws in Iran does not pose a

security risk and he is not in a position to be forced to choose between loyalty to the United States and his family members.⁴ With its mixed human rights record, and other political, economic and military rivalry with the United States, it is conceivable that Iran would target any citizen in an attempt to gather valuable information from the United States.

Because of all of these factors,. AG ¶¶ 7(b) and 7 (d) apply.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(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.;

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; [and]

⁴ An applicant with relatives in Iran, for example, has a heavier burden to overcome than an applicant with relatives living in Russia. See ISCR Case No. 02-13595 at 3 (App. Bd. May 10, 2005) (stating an applicant has "a very heavy burden of persuasion to overcome the security concerns" when parents and siblings live in Iran). See *also* ISCR Case No. 04-11463 at 4 (App. Bd. Aug. 4, 2006) (articulating "very heavy burden" standard when an applicant has family members living in Iran); ISCR Case No. 07-12471 at 9 (A.J. May 30, 2008) (stating "Between January 9, 2007 and January 18, 2008, the Appeal Board decided 36 appeals involving Iran under the old guidelines, and it reversed 20 decisions granting clearances and affirmed 15 decisions denying clearances." And listing at 9 n.1 the pertinent cases).

(f) 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(a), 8(c) and 8(f) partially apply and 8(b) fully applies with to Applicant's aunts and in-laws because of his limited contacts with them. Both aunts are retired accountants. One is married to a retired doctor the other to a retired accountant Applicant did not know his aunts growing up. He has no bonds of affection for them. His first real conversation with them occurred at age 31. Before he went to Iran in 1997, he had no contact with any of his relatives living there. He talks to one aunt once a year and has not talked with his other aunt for "quite some time."

His parent-in-law, brothers-in-law, and his sisters-in-law, who are residents and citizens of Iran are not security concerns. He has talked to one brother-in-law when that brother accompanied Applicant wife to Turkey before they were married and has not talked to his sisters-in-law or other brother-in-law. Because of concern over his clearance, Applicant's telephone contact is limited to short New Year's Day greetings. "It is unlikely [he] will be placed in a position of having to choose between the interests of [these relatives] and the interests of the U.S." See AG ¶ 8(a). His infrequent contacts and not particularly close relationship with these in-laws have a low potential of forcing him to choose between the United States and the Iran. He met his burden of showing there is "little likelihood that [his relationships with these relatives] could create a risk for foreign influence or exploitation." See AG ¶ 8(c). His contacts and communications with these relatives are so casual and infrequent as to result in a very low risk of foreign influence or exploitation.

There is no evidence that these relatives have been political activists, challenging the policies of the Iranian Government. There is no evidence these relatives currently work for or have ever worked for the Iranian Government or military or any news media, other than mandatory, conscripted military service required of all men in Iran, which applied to his brother-in-law. There is no evidence that terrorists or the Iranian Government have approached or threatened Applicant or these relatives for any reason. There is no evidence that these family members living in Iran currently engage in activities which would bring attention to them or that they or other Iranian elements are even aware of Applicant's work. As such, there is a reduced possibility that these relatives would be targets for coercion or exploitation.⁵

⁵ In ISCR Case No. 06-17838 at 4 (App. Bd. Jan. 28, 2008), the Appeal Board discussed the precedential value of the decisions predating the revision of the Adjudicative Guidelines indicated in n. 3, *supra*, and determined where the language of the Directive is unchanged or not substantively altered, the precedent remains valid. AG ¶ 8(c) apparently adopted the Appeal Board's interpretation of Foreign Influence Mitigating Condition 1 (FIMC 1) under the previous guidelines. The Appeal Board had determined that contacts with relatives living in a foreign country must be both casual and infrequent to apply FIMC 1. See ISCR Case No. 04-12500 at 4 (App. Bd. Oct. 26, 2006). Moreover, contacts with such family members are presumed to be "not casual." *Id.* In the analysis of countervailing evidence, it is legal error to give significant weight to any of the following facts or factors: applicant's ties to the United States (ISCR Case No. 02-13595 at 5 (App. Bd. May 10, 2005)); lack of prominence of relatives living in a foreign country (*Id.*); "family members' low-key and noncontroversial lifestyle, and the fact that the Iranian

Applicant clearly stated his strong, negative beliefs about the Iranian government, which he refers to as “brutal, animalistic, scum of the earth,” an infection on this planet, and if not contained or eliminated will more cause problems. He believes the Islamic revolution has brought evil to Iran. He believes it is ravaging the country, causing chaos, anarchy, fundamentalist extremism, and is like being surrounded by a plague of infectious disease. He believes the Iranian government should be wiped out. Applicant sees the Iranian government as terrorists and one can not trust, deal with, or appease terrorists. Should the Iranian government bring pressure to bear on this aunts or in-laws there is nothing he could do except seek help from the authorities for anything said by the Iranian government is not worthy of belief.

Applicant has lived the last 27 of his 42 year life in the U.S. He has been a citizen since 1995. His daughter was born in the U.S. Applicant has 76 relatives living in the U.S. including his wife, daughter, parents, sister, grandmother, uncles, aunts, and cousins. He realizes becoming a U.S. citizen was a gift and blessing. He believes in the principles of the U.S., is proud to be a U.S. citizen, and is proud of what the U.S. represents. He sees his current job as a way contributing to the U.S. and protecting U.S. military members and the country. He describes his American citizenship as the most valuable possession that he has.

Applicant’s deep relationship with the United States weighs against a security concern for the relationships with his aunts and in-laws. Applicant has “such deep and longstanding relationships and loyalties in the U.S., [he] can be expected to resolve any conflict of interest in favor of the U.S. interest.” His spouse and daughter reside in the United States. His wife lived in the United States since 2005 and is fully inculcated with U.S. values. He attended U.S. schools, obtaining three bachelor’s degrees and a master’s degree. He has worked for his current government contractor with great distinction. AG ¶ 8(b) fully applies to mitigate security concerns.

AG ¶ 8(f) partially applies for he has no financial interest or property outside the U.S. AG ¶¶ 8(a) and 8(b) partially apply and 8(c) fully applies because Applicant’s does not have a close relationship with his aunts and intentionally maintains a distant

government has not contacted them about Applicant” (ISCR Case No. 04-12500 at 4 (App. Bd. Oct. 26, 2006)); one relative living in a foreign country may be sufficient to negate FIMC 1 (ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006)); a foreign relative’s fragile health (ISCR Case No. 02-29403 at 4 (App. Bd. Dec. 14, 2004)), advanced age (ISCR Case No. 02-00305 at 7 (App. Bd. Feb. 12, 2003), financial independence (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005), or lack of financial dependency upon applicant (ISCR Case No. 03-15205 at 4 (App. Bd. Jan 21, 2005)); foreign relatives spend part of each year in the U.S. (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)); the lack of any connection between the foreign relative and the foreign government in question (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)); the absence of any attempt at exploitation in the past (ISCR Case No. 03-15205 at 4 (App. Bd. Jan. 21, 2005)); a foreign country’s friendly relationship with the U.S., its stable, democratic government, or its extensive foreign military agreements with the United States (ISCR Case No. 02-22461 at 5-6 (App. Bd. Oct. 27, 2005)) and an applicant’s “refusal to travel to Iran” and “meticulous work habits and practice of strictly following the rules relating to his work” (ISCR Case No. 03-15205 at 3 (App. Bd. Jan. 21, 2005)). Notwithstanding the Appeal Board’s position, I conclude that many of these attributes are pertinent to the analysis in this case under the whole person concept.

relationship from his in-laws. The security concerns as to his aunts and in-laws are mitigated.

Guideline C–Foreign Preference

Under AG ¶ 9, foreign preference is a security 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. Additionally, the possession or use of a foreign passport is a condition that could raise a security concern and may be disqualifying.

On his two trips to Iran in 1997 and 2000, Applicant carried both his U.S. and Iranian passports. Applicant chose not to return to Iran until he was a U.S. citizen and then entered Iran as a U.S. citizen. Having been born in Iran, he was required to show his Iranian passport for his entry into the country. The passport expired on April 11, 2007. In 2007, Applicant gave his Iranian passport to his company's security officer who destroyed it.

AG ¶ 10(a) (1) states a security concern could be raised by "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 and/or use of a foreign passport." Applicant showed his Iranian passport as required as identification when entering Iran. I find AG 10(a) applies.

AG ¶ 11 lists conditions that could mitigate security concerns. AG ¶ 11(b) states the "individual has expressed a willingness to renounce dual citizenship," and AG ¶ 11(e), which states "the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated," apply.

It is hard to imagine how Applicant's dislike for the Iranian government could be stronger. Become a U.S. citizen is his most prized possession. He is not an Iranian citizen. He has willingly renounced his Iranian citizenship. The Iranian passport is no longer a "valid" passport for it expired in April 2007. Additionally, the passport was surrendered to the company's security officer and destroyed. Applicant has demonstrated that he no longer holds a foreign passport and that he has renounced his Iranian citizenship. He has mitigated foreign preference in this case. The finding must be for Applicant.

Whole Person Concept

Protection of our national security is of paramount concern. Applicant understands this and stated to give up classified information would be the highest crime of the land for it surrenders the security of the nation.

Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the adjudicative process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. In reaching this decision, I have considered the whole person concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I considered the totality of Applicant's family ties to Iran and the heavy burden an Applicant carries when he has family members in a foreign country.

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 the 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.

In the more than 27 years since he left Iran, Applicant returned twice. Applicant received his three bachelor's degrees and his master's degree in the U.S. Applicant has no love for the Iranian government, understands the seriousness of being granted access to classified information, and is thankful to be a U.S. citizen. He intentionally limits his contact with his in-law. His concern for his clearance was such that he was unable to grant his wife's wish to be married in Iran and they married in Turkey.

Applicant has two aunts and in-laws in Iran, but has 76 relatives living in the U.S. including his wife, daughter, parents, sister, grandmother, uncles, aunts, and cousins. I have carefully weighed the evidence in favor of Applicant against the government's concerns about Applicant's ability to protect classified information. I adopt my analysis under Guideline B and C for the whole person concept. I find that there is little potential for Applicant to be pressured, coerced, or exploited because his aunts or in-laws live in Iran. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the foreign influence and foreign preference security concerns.

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, Foreign Influence:	FOR APPLICANT
Subparagraph 1.a – 1.f:	For Applicant
Paragraph 2, Foreign Preference:	FOR APPLICANT
Subparagraph 2.a:	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.

CLAUDE R. HEINY II
Administrative Judge