

DATE: October 18, 2007

In re:)	
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-----)	ISCR Case No. 07-01050
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
MATTHEW E. MALONE**

APPEARANCES

FOR GOVERNMENT

D. Michael Lyles, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate the security concerns raised by his close ties to family members who are citizens of and reside in Iran, and by his acquisition and possession of an Iranian passport after he became a U.S. citizen. Clearance is denied.

STATEMENT OF THE CASE

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to give him a security clearance. On

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

May 14, 2007, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns about possible foreign influence (Guideline B) and possible foreign preference (Guideline C).²

Applicant timely responded to the SOR, admitted all of the allegations therein, and requested a hearing. The case was assigned to me on July 30, 2007, and I convened a hearing on September 12, 2007, at which the parties appeared as scheduled. I admitted three exhibits proffered by the government (Gx. 1- 3). A pre-hearing submission by the government, which consists of a six-page legal memorandum and eight documents attached thereto, is included in the record for purposes of administrative notice as Judicial Exhibit (Jx.) I.³ Applicant testified in his own behalf, but offered no exhibits. DOHA received the transcript (Tr.) on September 27, 2007.

FINDINGS OF FACT

Applicant's admissions in response to the SOR are incorporated herein as facts. After a thorough review of the pleadings, transcript, and exhibits, I make the following additional findings of fact.

Applicant is 56 years old and employed as a senior manufacturing associate by a defense contractor. He was initially hired by his employer in November 1998, and applied for a security clearance at that time. However, because he was laid off due to lack of work from December 2001 through January 2004, his background investigation was cancelled. A new background investigation was initiated when he submitted a security clearance application (SF 86)⁴ on or about June 23, 2004.

Applicant was born and raised in Iran. He came to the U.S. in 1977 to study electrical engineering at Oklahoma State University, where he received his BSEE in 1981. In July 1986, he married a native-born U.S. citizen. They had three children, now ages 22, 20, and 7, before the marriage ended in divorce in 2006. Applicant became a naturalized U.S. citizen on September 18, 1986. On April 1, 1998, he received a U.S. passport.⁵

His mother, three brothers, and one sister are all citizens of and live in Iran. Applicant calls his mother several times each week to check on her well-being. Because he knows Iranian authorities may be listening, he is careful to keep his conversation with her benign; that is, he avoids talking about politics or his work or anything other than routine family matters. He only speaks with his siblings if they happen to be with their mother. He has not seen his mother or siblings since 1978, when he last visited Iran because his mother was ill. Applicant wanted to visit Iran in 1994 to see

² Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, the Revised Adjudicative Guidelines supercede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

³ Tr., 13 - 15.

⁴ Gx. 1.

⁵ *Id.*, Tr., 19.

his again ailing mother, but decided not to because he was concerned he would not be allowed to leave Iran.⁶

Applicant had a passport from the pre-revolutionary government of Iran when he became a U.S. citizen. He allowed it to lapse for about 15 years before he requested and was given a new passport by the Islamic Republic of Iran on January 14, 2005. As with his U.S. passport, he has not yet used it. However, he acquired the passport to facilitate travel to Iran to see his mother should she become sick again. He knows it is difficult to obtain a travel visa to Iran using his U.S. passport. He is unwilling to relinquish his Iranian passport.

Applicant served in the Iranian military from 1972 until 1974 to satisfy a mandatory service requirement. Neither he nor his mother and siblings has any current ties to the Iranian government. His mother is in her 70s and probably did not work outside the home. His sister and her husband are retired school teachers. One brother owns his own truck for transporting oil. Another works for an oil refinery, and the third is a retired oil refinery worker.

Applicant has no financial interests in Iran. He owns a home in the U.S., and there is no information showing he maintains any bank accounts outside the U.S., but he has occasionally sent money to his mother to pay for unplanned events, such as home repairs. The most he has sent at one time is \$1,000.⁷

In 1979, the 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 (IRI) 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, disappearance, torture, and other unacceptable practices designed to preserve the government's hold over its citizens. The U.S. State Department has also advised U.S. citizens not to travel to Iran, and has noted instances whereby dual U.S.-Iranian citizens have been singled out for special monitoring and detention.⁸

Iran's global interests are directly antithetical to those of the U.S.. To further their regional and global goals, Iran has become an active collector of economic information 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 U.S. and its allies. Finally, the development and proliferation of nuclear weapons and other weapons of mass destruction by Iran is seen by the U.S. as a major threat to regional and possibly global stability.⁹

⁶ Tr., 43 - 47.

⁷ Tr., 48 - 49.

⁸ Jx. I, Attachments 1- 3, 5.

⁹ Jx. I, Attachments 4, 6, 7.

POLICIES AND BURDEN OF PROOF

Security clearance decisions must reflect consideration of both disqualifying and mitigating conditions under each adjudicative guideline applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive.¹⁰ 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. In this case, the pleadings and the information presented by the parties at hearing require that Revised Adjudicative Guidelines B (foreign influence) and C (foreign preference) be applied.

_____ A security clearance decision is intended to resolve whether it is clearly consistent with the national interest¹¹ for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, the burden then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.¹² A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national 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 in favor of the government.¹³

CONCLUSIONS

Foreign Preference. The government denied Applicant's request for clearance, in part because, after becoming a U.S. citizen in 1986 and obtaining a U.S. passport in 1998, he exercised his Iranian citizenship by obtaining and possessing, as of April 2007, a valid Iranian passport. (SOR ¶¶ 1.a, 1.b, and 1.c). The information presented through the Government's exhibits, Applicant's admissions, and his testimony is sufficient to support these allegations. The established facts, in turn, raise a security concern addressed by Guideline C of the Revised Adjudicative Guidelines.

¹⁰ Commonly referred to as the "whole person" concept, these factor are as follows: 1. Nature and seriousness of the conduct and surrounding circumstances; 2. Frequency and recency of the conduct; 3. Age of the applicant; 4. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences involved; 5. Absence or presence of rehabilitation; and 6. Probability that the circumstances or conduct will continue or recur in the future.

¹¹ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

¹² See *Egan*, 484 U.S. at 528, 531.

¹³ See *Egan*; Directive E2.2.2.

Specifically, the government is concerned that, “[w]hen 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.”¹⁴ In 2005, he raised a security concern by acquiring an Iranian passport nearly 20 years after becoming a U.S. citizen. He still holds the passport, which is still valid, and he does not intend to relinquish it because it will facilitate entry to Iran should he want to see his mother, to whom he is very close.

The foregoing requires consideration of Guideline C disqualifying condition 10(a).¹⁵ Applicant’s passport allows him to travel as an Iranian citizen despite his U.S. citizenship. It also reflects Applicant’s divided preference between the U.S. and Iran. This facet of the Government’s concern is heightened by the fact he has been in the U.S. for 30 years and has been a U.S. citizen since 1986. By contrast, Applicant’s foreign citizenship, if based solely on his parents’ citizenship,¹⁶ and if he never exercised post-naturalization his rights as an Iranian citizen, would not be disqualifying. But an act in furtherance of a right or privilege of foreign citizenship after naturalization, such as Applicant’s acquisition of his Iranian passport in 2005, makes such mitigation unavailable.

Mitigation of the foreign preference concerns raised by his active exercise of foreign citizenship might also be available if Applicant expressed a willingness to renounce his Iranian citizenship.¹⁷ (Subsequent acquisition of a new Iranian passport renders this moot and to add it here is confusing) The concerns about his possession of the Iranian passport he obtained in 2005 may have been mitigated if Applicant had relinquished, destroyed, or otherwise rendered it invalid.¹⁸ However, Applicant affirmatively stated his desire to maintain his Iranian citizenship so he may, in turn, retain the passport for ease of travel to Iran to see his mother. Accordingly, none of the Guideline C mitigating conditions apply, and I resolve this guideline against Applicant.

Foreign Preference. The Government also stated as reasons for denying Applicant’s request for a clearance the fact his mother (SOR ¶ 2.a) and his siblings (SOR ¶ 2.b) are all citizens of and reside in Iran. Information presented through the Government’s exhibits, Applicant’s admissions, and his testimony is sufficient to support these allegations. The established facts, in turn, raise a security concern addressed by Guideline B of the Revised Adjudicative Guidelines. Specifically, the Government is concerned that “[f]oreign 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

¹⁴ Revised Adjudicative Guidelines, ¶ 9.

¹⁵ “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;”

¹⁶ Revised Adjudicative Guidelines, ¶ 11(a).

¹⁷ Revised Adjudicative Guidelines, ¶ 11(b).

¹⁸ Revised Adjudicative Guidelines, ¶ 11(e).

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.”¹⁹ Applicant’s contact with his mother and, to a lesser extent, his siblings, who are citizens of and reside in Iran, may be disqualifying “if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.”²⁰ In assessing whether these facts present a heightened risk, I have considered the fact that Applicant is very close to and concerned about his elderly mother. He calls her several times each week to check on her well-being, and he has obtained an Iranian passport to make it easier to travel to Iran to see her before she dies or if she becomes ill. His relationship with his siblings appears to be more distant, and he speaks with them only if they happen to be present when he calls.

I have also considered the repressive nature of the Iranian government towards its own people, particularly where dual U.S.-Iranian citizens are concerned. I have also considered Iran’s sponsorship of international terrorism, aggressive economic espionage and foreign intelligence activities, all of which are conducted in furtherance of its strategic, political, and economic interests hostile and opposed to those of the U.S. and its allies. Also probative of whether Applicant’s contact with his family in Iran creates a heightened risk of foreign exploitation is his own concern about what the Iranian government would do if he, a U.S.-Iranian citizen, were to travel to Iran to see his mother, and his acknowledgment that he must be careful about what he discusses on the phone with his mother when he calls her.

The security concerns raised by the foregoing may be mitigated if it can be shown 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.”²¹ In light of all of the information about Applicant’s close relationship with his mother and the nature of Iran’s government and its adverse relationship with the U.S., such mitigation is unavailable to the Applicant. However, because it appears his contact or communication with his siblings is casual and infrequent, I conclude there is little likelihood his relationship with them could create a risk for foreign influence or exploitation.²² On balance, however, available information is insufficient to overcome the security concerns about Applicant’s ties to his family in Iran, and I resolve this guideline against Applicant.

Whole Person. I have evaluated the facts presented in this record and have applied the appropriate adjudicative factors, pro and con, under Guidelines B and C. I have also reviewed the record before me in the context of the whole person factors listed in section 2(a) of the Revised

¹⁹ Revised Adjudicative Guidelines, ¶ 6.

²⁰ Revised Adjudicative Guidelines, ¶ 7(a).

²¹ Revised Adjudicative Guidelines, ¶ 8(a).

²² See, Revised Adjudicative Guideline ¶ 8(c).

Adjudicative Guidelines.²³ Applicant is a mature adult, who has lived most of his adult life in this country. He has worked hard to support his wife and family, and, when faced with financial adversity because of layoffs, he did what he could to make ends meet. While he has significant ties to the U.S., the facts herein, particularly those pertaining to Iran, present a significant potential for continued pressure, coercion, exploitation, or duress, and Applicant did not present information to show the potential for duress is likely to abate at any time. Accordingly, a fair and commonsense assessment²⁴ of all available information before me shows that the Applicant has not yet overcome the government's reasonable doubts about his suitability for access to classified information. Because protection of the national interest is of paramount importance, such doubts must be resolved in favor of the national security.²⁵

²³ “ (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; (9) The likelihood of continuation or recurrence.”

²⁴ Directive, 6.3.

²⁵ Revised Adjudicative Guidelines, ¶ 2(b).

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline C (Foreign Preference):	AGAINST THE APPLICANT
Subparagraph 1.a:	Against the Applicant
Subparagraph 1.b:	Against the Applicant
Subparagraph 1.c:	Against the Applicant
Paragraph 2, Guideline B (Foreign Influence):	AGAINST THE APPLICANT
Subparagraph 2.a:	Against the Applicant
Subparagraph 2.b:	For the Applicant

DECISION

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

Matthew E. Malone
Administrative Judge