



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



In the matter of: )  
)  
) ISCR Case No. 23-01211  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Cassie L. Ford, Esq., Department Counsel  
For Applicant: *Pro Se*

03/14/2024

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**Decision**

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BORGSTROM, Eric H., Administrative Judge

Applicant did not overcome the foreign influence security concerns arising from his contacts with his Iranian mother and aunt or demonstrate good-faith efforts to address his delinquent state taxes. He did not mitigate the foreign influence and financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On August 23, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence) and Guideline F (financial considerations). The CAS acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines implemented by the DOD on June 8, 2017.

In an undated response to the SOR, Applicant admitted, with explanations, all of the allegations. He attached an Internal Revenue Service (IRS) repayment agreement. He requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. (Answer)

On November 28, 2023, the Government was ready to proceed to hearing. I was assigned this case on December 20, 2023. On January 5, 2024, DOHA issued a notice scheduling a hearing by video teleconference for January 25, 2024. The hearing proceeded as scheduled. The Government proffered three exhibits, which I admitted as Government Exhibits (GE) 1 through 3 without objection. The Government also proffered a 10-page request for administrative notice and excerpts of materials cited therein regarding the security concerns about the Islamic Republic of Iran (Iran). I admitted the request and the attached materials for administrative notice as Administrative Notice (AN) I without objection. Applicant testified and proffered three exhibits, which I admitted as Applicant Exhibits (AE) A through C without objection. At Applicant's request, I left the record open until February 27, 2024, to permit him an opportunity to supplement the evidentiary record. DOHA received the hearing transcript (Tr.) on February 2, 2024. On February 27, 2024, Applicant emailed 12 exhibits, and I admitted the email and 12 exhibits as AE D through P without objection. The record closed on February 27, 2024.

### **Findings of Fact**

Applicant is 49 years old. He was born in Iran, and he completed high school and two years of college there. In April 1996, he entered the United States to attend a U.S. university, from which he earned a bachelor's degree in 2000. He became a naturalized U.S. citizen in September 2013. He married his first wife in October 2004, and they divorced in October 2008. He married his second wife in April 2017, and they divorced in September 2021. He does not have any children. Applicant is employed as a software engineer through his own company, which has been a subcontractor for a DOD contractor since about October 2020. (GE 1; AE G, M; Tr. 28-30, 49)

### **Foreign Influence**

Applicant's father died in 2016, and his mother is a citizen of Iran (SOR ¶ 1.a.). She has been a U.S. legal permanent resident (LPR) since about 2017 or 2018. Applicant's mother typically splits her time residing with Applicant in the United States about eight or nine months a year and residing in her apartment in Iran the remainder of the year. During the COVID-19 pandemic, she was in Iran for a year. Applicant has weekly telephonic contact with his mother during her visits to Iran. While she is in Iran, Applicant's mother cares for her older sister, who is neuroatypical and has caregivers. Most recently, Applicant mother left for Iran in late December 2023 and was expected to return to the United States in late February 2024. Applicant's mother financially supports herself on her trips to Iran, owns an apartment in Iran, and pays for her sister's caregivers; however, Applicant financially supports his mother while she lives with him in the United States. While Applicant's mother is visiting Iran, she utilizes Iranian healthcare providers for dental and medical appointments. (Answer; GE 1; AE L; Tr. 29, 34-47, 55-56)

Applicant's maternal aunt is a citizen and resident of Iran (SOR ¶ 1.b.). She lives in the apartment owned by Applicant's mother, and she is financially supported by Applicant's mother. Applicant himself has contact with his aunt once or twice a week, and Applicant has engaged an immigration attorney to work towards getting his aunt to immigrate to the United States. (Answer; Tr. 39-43)

Applicant's brother and sister-in-law are dual citizens of Iran and the United States, and they reside in the United States. Applicant is estranged from his brother and sister-in-law, and they have not spoken to Applicant in five or six years; however, Applicant's mother maintains contact with Applicant's brother once or twice a week. (GE 1; Tr. 34-36)

In March 2016, Applicant traveled to Iran to visit family members and attend his father's funeral. He also visited Iran from December 2016 to January 2017. (GE 1, 3; Tr. 53)

During the hearing, Applicant acknowledged and agreed with the security concerns raised by the administrative notice materials regarding Iran's support for terrorist activities and its suppressive actions towards its own people. He does not have any foreign bank accounts, assets, or property. (Tr. 38, 59)

### **Financial Considerations**

In early 2017, Applicant invested approximately \$100,000 in multiple cryptocurrencies. These investments skyrocketed in value and earned gains over a million dollars, which Applicant liquidated and then reinvested many times over. He testified that he did not understand that he potentially would incur Federal and state income tax liability for each transaction and gain; however, he had understood he would bear some tax liability from his investment gains. He did not set aside any funds to pay his income taxes. His cryptocurrency investments lost all value by February 2018, and he had no funds to pay the significant Federal and state income taxes owed. (Answer; Tr. 63-65, 77-81)

Applicant originally owed approximately \$296,954 in Federal income taxes for tax year 2017 (SOR ¶ 2.a.). In June 2021, he established a repayment agreement with the IRS, by which he pays \$500 a month. As of January 31, 2024, Applicant owed \$428,172 in delinquent taxes, interest, and penalties. He provided documentary evidence of regular monthly payments from August 2021 to November 2022, a single payment of \$1,600 in February 2023, and monthly payments between July 2023 and February 2024. (Answer; GE 2; AE A, B, K; Tr. 66, 70-72)

As of January 2024, Applicant owed approximately \$147,778 to the state tax authority for tax year 2017 (SOR ¶ 2.b.). He also owed \$212 for tax year 2021 and \$1,430 for tax year 2020. In January 2019, Applicant offered \$25,000 to settle his tax debt for tax year 2017, and the state tax authority rejected this offer. In November 2022, he offered \$76,150, and this offer was also rejected. Applicant's tax attorney indicated that he will present a third settlement offer in spring 2024, equivalent to the taxes owed for 2017 - excluding the interest and penalties - or approximately \$97,000. After the hearing, Applicant made a \$1,440 payment to the state tax authority, presumably for tax year 2020. He has not made or attempted to make any payments outside of a payment agreement on the delinquent taxes for tax years 2017. (Answer; GE 1-2; AE B, E, N, O; Tr. 68-70, 84-87)

Applicant testified that he has a few thousand dollars in his checking account, and he does not own any property or investments in the United States. His monthly income is

approximately \$10,000, and his monthly expenses are approximately \$8,000. Applicant's security clearance application lists self-employment since 2015; however, he testified that he was unemployed for about a year from 2017 to 2018. (GE 1; AE P; Tr. 32, 45, 61, 63, 74)

### **Whole Person**

The CEO of the DOD contractor and a co-worker with the DOD contractor both praised Applicant's subject-matter expertise, professionalism, honesty, and integrity. (AE G, J)

Applicant's friend, a 27-year military veteran, attested to Applicant's character and recommended him for clearance eligibility. A longtime friend and professional associate lauded Applicant's "profound integrity," reliability, trustworthiness, and ethical principles. Applicant's landlord described Applicant's "exceptional integrity, responsible behavior, and unwavering trustworthiness." (AE C, H, I)

### **Facts for Administrative Notice**

I have taken administrative notice of the following facts concerning Iran excerpted from the materials proffered by Department Counsel:

Iran is an authoritarian theocratic republic with a Shia Islamic political system. Shia clergy and political leaders vetted by the clergy dominate key power structures in the country. Iran's Supreme Leader is the head of state and holds constitutional authority over the judiciary, government-run media, and other important institutions.

The U.S. Department of State advises U.S. citizens not to travel to Iran due to the risk of kidnapping and the arbitrary arrest and detention of U.S. citizens. Since 1984, Iran has been designated by the United States as a state sponsor of terrorism. Its support of terrorist organizations throughout the Middle East creates instability in the region. Iran threatens U.S. persons directly and through proxy attacks, particularly in the Middle East.

Iran's growing expertise and willingness to conduct aggressive cyber operations make it a major threat to U.S. and allied networks and data. As of 2018, all previously suspended sanctions imposed on Iran were reinstated with the goals of permanently preventing Iran from acquiring a nuclear weapon, ceasing Iran's development of ballistic missiles, and ending Iran's broad range of malign activities.

The U.S. Department of State has identified significant human rights issues in Iran. The issues include unlawful and arbitrary killings by the Iranian Government or its agents; forced disappearances attributed to the government; torture and inhumane treatment by the government and its agents; the imprisonment of political opponents; severe restrictions on free expression and the media; serious restrictions on political participation; and government corruption. (AN I)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 national security eligibility will be resolved in favor of the national security."

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Section 7 of EO 10865 provides that adverse 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**

### **Guideline B: Foreign Influence**

The security concern under this guideline is set out in AG ¶ 6 as follows:

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 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.

Two disqualifying conditions under this guideline are relevant to 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 United States has a compelling interest in protecting and safeguarding [sensitive] information from my 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). "An applicant with family members living in a country hostile to the U.S. has a very heavy burden to show that they are not a means through which the applicant can be subjected to coercion or exploitation." ISCR Case No. 11-12659 at 3 (App. Bd. May 30, 2013). To establish AG ¶ 7(a), the Government must demonstrate a "heightened risk" of exploitation due to Applicant's contacts with his Iranian family members. Given the presence and activities of several terrorist organizations hostile to the interests of the United States in Iran, as well as human rights issues within Iran, the Government has established the requisite "heightened risk" and potential conflict of interest regarding Applicant's contacts with his mother and aunt. Given the active, capable, and hostile entities within Iran, Applicant must overcome the "very heavy burden" to show that his foreign family members are not a means through which he may be influenced or coerced. AG ¶¶ 7(a) and 7(b) apply.

The following mitigating conditions under this guideline are potentially relevant:

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;

AG ¶ 8(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; and

AG ¶ 8(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.

The administrative notice materials detail the security concerns regarding Iran. The U.S. Department of State has advised U.S. citizens not to travel to Iran due to the risk of kidnapping and the arbitrary arrest and detention of U.S. citizens. Iran's problematic human rights record and its designation as a state sponsor of terrorism extend these concerns to Iran's own citizens and residents, such as Applicant's mother or aunt. AG ¶ 8(a) does not apply.

Applicant earned his bachelor's degree in the United States, started a business here, and has developed some personal and professional contacts in the United States. While he holds no loyalty to the Iranian Government, his relationships with his mother and aunt are not "so minimal" that he can be expected to resolve any conflict in favor of the U.S. interest. Rather, Applicant has very close relationships with his mother and aunt. While such close relationships are natural and appropriate, they present a conflict of interest. AG ¶ 8(b) does not apply.

Applicant maintains regular contact with his mother while she visits Iran, and she lives with him while she is in the United States. Applicant has weekly contact with his aunt, and his mother financially supports her sister in Iran. Applicant has close and continuing relationships with his mother and aunt. AG ¶ 8(c) does not apply. Applicant did not mitigate the foreign influence security concerns.

## **Guideline F: Financial Considerations**

The security concern for financial considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds ....

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

(a) inability to satisfy debts; and

(f) failure to file or fraudulently filing annual Federal, state; or local income tax returns or failure to pay annual Federal, state, or local income tax as required:

Applicant's Federal and state income tax liability for tax year 2017, currently totaling approximately \$575,950, was due in 2018 and remains unpaid. AG ¶¶ 19(a) and 19(f) apply.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable in this case:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce, or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual has initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's Federal and state income taxes for tax year 2017 were due in 2018. Although Applicant was unaware of the tax liability he incurred as he was repeatedly liquidated and repurchased cryptocurrency, this unawareness is not a circumstance beyond his control under AG ¶ 20(b). Applicant's period of unemployment between 2017 and 2018 was a circumstance beyond his control that contributed to his delay in addressing and resolving his tax delinquency; however, there is no evidence of any resolution efforts by Applicant on his Federal income tax debt prior to June 2021. In June 2021, Applicant established a repayment plan with the IRS. Since August 2021, he has made several \$500 monthly payments, with some lapses in late 2022 and early 2023. Notwithstanding the lapses in payments, Applicant demonstrated good-faith efforts to resolve his Federal income tax debt. AG ¶¶ 20(d) and 20(g) apply only as to SOR ¶ 1.a.

In January 2019, Applicant offered \$25,000 to settle his state income tax debt, which was \$97,000 plus interest and penalties. When this offer was declined, he offered \$76,150 in November 2022, to settle this tax debt. This second offer was declined, and no third offer has been made by Applicant. Most importantly, there is no evidence that Applicant has made or attempted to make any payments since 2018 towards his increasing state tax dept, which was \$147,778 as of January 2024. He has not demonstrated good-faith efforts to resolve his state income tax debt. Applicant did not mitigate the financial considerations security concerns arising from his delinquent state taxes.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (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. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B, Guideline F, and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant is very well regarded by his personal and professional associates. Nonetheless, he has not overcome the foreign influence security concerns arising from his contacts with his mother and aunt in Iran or established good-faith efforts to address his delinquent state taxes. The absence of a payment agreement or even any partial payments to address his state income taxes does not reflect the judgment, reliability, and adherence to financial obligations of one entrusted to safeguard sensitive information. He did not mitigate the foreign influence and financial considerations 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, Guideline B:

**AGAINST APPLICANT**

Subparagraphs 1.a.-1.b.:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a.	For Applicant
Subparagraph 2.b.	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Eric H. Borgstrom  
Administrative Judge