

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant is a 52-year-old director of estimating and purchasing employed by a federal government contractor. He has siblings residing in and citizens of Iran. He speaks with them frequently. He has traveled to Iran about every one and one-half to two years over the past ten years, using his Iranian passport. He renounced his Iranian citizenship and destroyed his passport at the hearing. He successfully mitigated the security concerns about foreign preference, but failed to mitigate those concerns about foreign influence. Clearance is denied.

CASENO: 06-23479.h1

DATE: 07/23/2007

DATE: July 23, 2007

In re:)	
)	
)	
-----)	ISCR Case No. 06-23479
SSN: -----)	
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
CHRISTOPHER GRAHAM**

APPEARANCES

FOR GOVERNMENT

Gina Marine, Esq., Department Counsel
Richard Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 52-year-old director of estimating and purchasing employed by a federal government contractor. He has siblings residing in and citizens of Iran. He speaks with them frequently. He has traveled to Iran about every one and one-half to two years over the past ten years, using his Iranian passport. He renounced his Iranian citizenship and destroyed his passport at the hearing. He successfully mitigated the security concerns about foreign preference, but failed to mitigate those concerns about foreign influence. Clearance is denied.

STATEMENT OF THE CASE

On October 25, 2005, Applicant submitted a Security Clearance Application (SF 86).¹ The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, DOHA issued a Statement of Reasons (SOR) on December 22, 2006, detailing the basis for its decision – security concerns raised under Guideline B (Foreign Influence) and Guideline C (Foreign Preference) of the Directive. The President issued revised adjudicative guidelines (Guidelines) on December 30, 2005. DoD implemented them on September 1, 2006. Pending official amendment/reissue of DoD Directive 5220.6, the Guidelines are to be used in all cases when the SOR is dated on or after September 1, 2006. Because the SOR was issued after September 1, 2006, DoD policy requires that this case proceed under the revised guidelines.

Applicant answered the SOR in writing on January 16, 2007, and elected to have a hearing before an administrative judge. DOHA assigned the case to me on April 11, 2007, and issued a Notice of Hearing on April 24, 2007. I convened a hearing on May 15 2007, to consider whether it is clearly consistent with the national interest to grant or continue Applicant's security clearance. The government offered eleven exhibits, marked as Exhibits 1-11. Applicant offered no exhibits. All exhibits were admitted without objection. DOHA received the transcript (Tr.) on May 31, 2007.

FINDINGS OF FACT

Applicant admitted the allegations contained in the SOR. The admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 52-year-old director of estimating and purchasing employed by a federal government contractor.² He was divorced in 2005 and has no children.³ He has an associate's degree.⁴ This is his first application for a security clearance.⁵

Applicant's two brothers and a sister are citizens and residents of Iran. He owns an interest in Iranian real estate, a condominium worth about \$200,000. He had a valid Iranian passport, and at the time he answered the SOR, was unwilling to surrender it. He last traveled to Iran in 2005,

¹Government Exhibit 1 (Security Clearance Application (SF 86), dated October 25, 2005).

²Tr. at 11-12.

³*Id.* at 12.

⁴*Id.*

⁵*Id.*

using his Iranian passport.⁶ Applicant came to United States in 1973, when he was 19 years old.. He attended college earning the an Associates degree. Applicant owns a house, a rental condominium, and another condominium in a southern state.⁷ He has a 401(k) account, checking and savings accounts, and he has coached a children’s soccer team for about five years.⁸ During the hearing, Applicant tore his Iranian passport into four pieces, and stated his intent to revoke his Iranian citizenship.⁹ He has traveled to Iran about every year and a half to two years, his last trip being in 2005.¹⁰

His oldest brother lives in Iran, and conducts an import/export business. He does business with local Gulf countries and Turkey. He now only makes about one deal a year. He is not married and he has no children. His other brother is afflicted with Down’s Syndrome and is geared for by the older brother.¹¹ His sister is a homemaker, married to a rug merchant, who owns his own business. They have two children, one living in Iran, and the other in the United States. He talks to his sister about once per month.. He speaks to his brother twice a month. He has some distant cousins, but does not talk to them.¹² He has one aunt who recently stayed with him for a week, and spent about three months with her son living in the U.S. His uncle formerly owned an automobile and farm equipment dealership in Iran. Applicant stays with this uncle and his wife when he visits Iran.

Iran is an authoritarian, constitutional, theocratic republic, dominated by the Shi’a Muslim clergy.¹³ Islamic law is the basis of the state’s authority. Human rights violations continue, particularly against journalists who speak out against Iran’s current government, minority religions, and political activists, who oppose the current ruling regime.¹⁴ Serious mistreatment of prisoners occurs. Human rights problems such as summary execution, torture, arbitrary arrest, prolonged solitary confinement, and official corruption have been reported. Although human rights violations are prohibited by law, the Iranian government does not enforce the law.

Iran has been one of the most active state sponsors of terrorism. It is increasingly involved in supplying lethal assistance to Iraqi militant groups in support of terrorist activity against the U.S.

⁶*Id.* at 13-14.

⁷*Id.* at 49-50.

⁸*Id.* at 57-58.

⁹*Id.* at 51-53.

¹⁰*Id.* at 38-45.

¹¹*Id.* at 24-30.

¹²*Id.* at 30-38.

¹³Government Exhibit 4 (U.S. Department of State, Consular Information Sheet, Iran, April 3, 2006) at 1; Government Exhibit 3 (Iran Bureau of Near Eastern Affairs Report, dated October 2006) at 1; and Government Exhibit 7 (Country Reports on Human Rights Practices – 2006: Iran Bureau of Democracy, Human Rights, and Labor Report, dated March 6, 2007) at 1 are the sources for this sentence and the next sentence.

¹⁴Government Exhibit 7, *supra*, note 13, at 1-28, is the source for this sentence and the next four sentences.

forces in Iraq. Iran supported the June 25, 1996, truck bombing of the Khobar Towers in Saudi Arabia, a terrorist act that killed 19 U.S. military personnel and wounded 500.¹⁵ The current Iranian government supports and actively sponsors terrorism by providing resources, guidance and a safe haven to terrorists.¹⁶ Iran continues to be unwilling to bring to justice senior al-Qaida members, and has resisted numerous requests to transfer custody of its al-Qaida detainees to their countries of origin or to third countries for interrogation and/or trial. Iran presents a particular concern, given its active sponsorship of terrorism and its continued development of a nuclear program. Iran is also capable of producing biological and chemical agents or weapons. Iran could support terrorist organizations seeking to acquire weapons of mass destruction (WMD).¹⁷

POLICIES

In an evaluation of an applicant's security suitability, an administrative judge must consider the "Adjudicative Guidelines for Determining Eligibility For Access to Classified Information" (Guidelines). In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into Disqualifying Conditions (DC) and Mitigating Conditions (MC), which are used to determine an applicant's eligibility for access to classified information.

These guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. Guideline ¶ 2. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge considers all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. Guideline ¶ 2(c).

Specifically, an administrative judge should consider the nine adjudicative process factors listed at Guideline ¶ 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) 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."

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." Guideline ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable,

¹⁵Government Exhibit 6 ("Iran: U.S. Concerns and Policy Responses," Congressional Research Service Report, dated January 5, 2007) at 20-21.

¹⁶Government Exhibit 3, *supra*, note 13, at 8; Exhibit 8 (Country Reports on Terrorism, Chapter 6 – State Sponsors of Terror, Overview, Office of the Coordinator for Counterterrorism, dated April 28, 2006) at 1.

¹⁷Government Exhibit 8, *supra*, note 16, at 173.

logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, facts must be established by “substantial evidence.”¹⁸ The Government initially has the burden of producing evidence to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to present “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).¹⁹

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 under this Directive include, by necessity, consideration of the possible risk an 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.

The scope of an administrative judge’s decision is limited. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. Executive Order 10865, § 7.

CONCLUSIONS

Guideline B—Foreign Influence

¹⁸“Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “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).

¹⁹“The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

Guidelines ¶ 6. The Concern. 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.

Guidelines ¶ 7. Conditions that could raise a security concern and may be disqualifying include:

(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;

(e) 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.

Guidelines ¶ 8. Conditions that could mitigate security concerns include:

(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; and

(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.

The mere possession of close family ties with a person 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 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). Applicant has frequent contacts and a close relationship with his siblings, who are residents and citizens of Iran. This close relationship with his siblings creates a heightened risk of foreign

pressure or attempted exploitation because Iranian agents actively seek intelligence, classified and economic information from United States' businesses. His connections to his siblings also create a potential conflict of interest because his relationship is sufficiently close to raise a security concern about his desire to help his siblings or Iran by providing sensitive or classified information.

The Government produced substantial evidence of these two disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. As previously indicated, the burden of disproving a mitigating condition never shifts to the Government. Iran is hostile to the U.S. and is ruled by a radical Islamic fundamentalist government with a poor record of human rights. With this history it is not difficult to envision a scenario in which Applicant's relatives could be subjected to some or all of these arbitrary denials of basic human rights in an effort to put pressure on Applicant to divulge classified information. Iran is actively pursuing nuclear capability, has chemical and biological capabilities, and is a sponsor of terrorism. Given these circumstances - which are clearly beyond Applicant's control - the presence of Applicant's family in Iran places them at risk of being brought under control or used as a hostage by an Iranian intelligence or security service. The mere fact that they live in Iran means they are in a position where there is a potential for them to be exploited in a way that could force Applicant to choose between loyalty to his family members and the interests of the U.S. Accordingly, Applicant is unable to successfully mitigate the security concern using the Guidelines ¶ 8 (a) standard.

Under the mitigating condition of Guidelines ¶ 8 (b) there is a conflict of interest because Applicant has such deep and longstanding relationships and loyalties to his family. He was educated in the U.S. He owns property here, and in Iran. He has a 401(k) plan, stock investments, rental real estate in addition to his home. His immediate family members in Iran are for the most part getting elderly. He has substantial contact with his immediate family members in Iran. This raises a concern of compromising his ability to keep classified information confidential.

Appellant, however, did not establish the mitigating conditions of Guideline ¶¶ 8(a) or 8(c) in regard to his siblings. He did not establish "it is unlikely [he] will be placed in a position of having to choose between the interests of [his siblings] and the interests of the U.S." His frequent contacts and close relationship with his siblings could potentially force him to choose between the United States and Iran. He did not meet his burden of showing there is "little likelihood that [his relationship with his siblings] could create a risk for foreign influence or exploitation."

Guideline ¶ 8(b) partially applies because Appellant has developed a sufficient relationship and loyalty to the U.S., and he can be expected to resolve any conflict of interest in favor of the U.S. interest. He has lived in the United States since 1973. He became a U.S. citizen. He has three sisters who are U.S. citizens. He received his college education in U.S. colleges and universities. He renounced his Iranian citizenship, and declared his exclusive loyalty to the United States, by tearing his passport apart. Although this mitigating condition is partially applicable, these facts are insufficient to overcome the security concerns as discussed in the "whole person" analysis, *infra*.

Guideline C—Foreign Preference

Guidelines ¶ 9. The 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.

Guidelines ¶ 10. Conditions that could raise a security concern and may be disqualifying include:

(a) 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;

Guidelines ¶ 11. Conditions that could mitigate security concerns include:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship;

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

The government established its case under Guidelines ¶ 10 (a) (2), because Applicant held a valid Iranian passport, had exercised dual citizenship by using the passport to travel to Iran on numerous occasions, and at the time the SOR was issued was refusing to surrender it. At the hearing, after learning that keeping his Iranian passport would make a security clearance problematic, he then expressed a willingness to and did renounce his Iranian citizenship and tore his Iranian passport into four pieces.

The mitigating conditions under Guidelines ¶ 11 (a) (b) and (e) are applicable to successfully mitigate the security concerns. Applicant's dual citizenship is based on his parents citizenship and his birth in Iran. I conclude Guideline C for Applicant.

Whole Person Analysis

In assessing whether an applicant is a security risk because of his or his relatives or associates in a foreign country, it is necessary to consider all relevant factors. As noted above, ¶¶ E2.2.1, E2.2.2, and E2.2.3 of the Directive specifically require each administrative judge to consider all the facts and circumstances, including the "whole person" concept, when evaluating each individual case. To ignore such evidence would establish a virtual per se rule against granting clearances to any person with ties to persons in a foreign country, which is contrary to the clear terms of the Directive. "Although the position of an applicant's foreign family members is significant and may preclude the favorable application of Foreign Influence Mitigating Conditions E2.A2.1.3.1., the totality of an applicant's conduct and circumstances (including the realistic potential for exploitation) may still warrant a favorable application of the relevant general factors."²⁰

²⁰ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006) (footnotes omitted); *accord* ISCR Case No. 03-23259 at 3 (App. Bd. May 10, 2006).

One of the “whole person” factors which must be considered is “the potential for pressure, coercion, exploitation, or duress.”²¹ In that regard, an important factor for consideration is the character of any foreign power in question, including the government and entities controlled by the government, within the relevant foreign country. The relationship between a foreign government and the U.S. is relevant in determining whether a foreign government or an entity it controls is likely to attempt to exploit a resident or citizen to against the United States through the applicant. The nature of the foreign government might also relate to the question of whether the foreign government or an entity it controls would risk jeopardizing its relationship with the United States by exploiting or threatening its private citizens in order to force a U.S. citizen to betray this country. A hostile relationship may make it more likely that Iran would attempt to exploit a U.S. citizen through his relatives or associates.²²

Iran is one of the least democratic countries in the Middle East. Iran and the United States have had poor relations for at least 27 years. I believe it is probable that Iran would attempt to exploit Applicant’s relatives to obtain classified information, and if it did, I believe Applicant would properly notify the authorities. The potential for pressure, coercion, exploitation, or duress, is still a prime concern. However, other matters, such as evidence of an applicant’s personal loyalties, the nature and extent of an applicant’s family ties to the U.S. relative to his ties to a foreign country; his or her social ties within the U.S., and many others raised by the facts of a given case can properly be factored in to a judge’s evaluation of an applicant’s worthiness of a security clearance.²³

Applicant communicates with his siblings from once to twice per month. He has a history of frequent trips to Iran to see his family. The Appeal Board suggests that the whole person analysis address “evidence of an applicant’s personal loyalties; the nature and extent of an applicant’s family’s ties to the U.S. relative to his ties to a foreign country; his or his ties social ties within the U.S.; and many others raised by the facts of a given case.”²⁴ In the present case, there is a fair amount of information about positive attributes to Applicant’s life as a U.S. citizen that could weigh in favor of granting him a security clearance, in response to the disqualification under Guideline B. I considered his age (52), his education which includes an associate college degree, his employment record, his reasons for travel to Iran, and his financial stability make him a better candidate for a security clearance than he would be without these positive attributes. However, his close contacts with his family members who live in Iran and are subject to the potential terrorist activity and government pressure outweigh his positive attributes.

To conclude, Applicant has failed to meet his ultimate burden of persuasion to obtain a favorable clearance decision. But this decision should not be construed as an indictment of Applicant’s loyalty and patriotism to the U.S., as those matters are not at issue. Instead, the clearly-consistent standard requires me to resolve any doubt against Applicant. His close ties to family in Iran create doubt about his security suitability. In reaching my decision, I have considered the record

²¹Directive, ¶ E2.2.1.8.

²²ISCR Case No. 03-21423 at 7-10.

²³See ISCR Case No. 04-11414 at 4 (App. Bd. March 5, 2007).

²⁴ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

evidence as a whole, the whole-person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive. In view of the Appeal Board's standards, I conclude that he has not mitigated the Guideline B concerns, and it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. I conclude Guideline B against Applicant.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline B: AGAINST APPLICANT

 Subparagraph 1.a: Against Applicant

 Subparagraph 1.b: Against Applicant

Paragraph 2. Guideline C: FOR APPLICANT

 Subparagraph 2.a: For Applicant

 Subparagraph 2.b: For Applicant

 Subparagraph 2.c: For Applicant

DECISION

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

Christopher Graham
Administrative Judge