



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 04-11375  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jennifer I. Goldstein, Department Counsel  
For Applicant: Greg D. McCormack, Attorney At Law

December 8, 2008

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**Decision**  
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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Security Clearance Application (SF-86) dated July 13, 2006. On July 24, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and C for Applicant. The action was taken under 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 guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

The Applicant responded to the SOR on August 12, 2008, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on September 16, 2008. A notice of hearing was issued on September 23, 2008, scheduling the hearing for November 5, 2008. On September 29, 2008, the hearing dated was amended from November 5, 2008, to November 12, 2008. At the hearing the Government presented nine exhibits, referred to as Government Exhibits 1

through 9. The Applicant presented four exhibits, referred to as Applicant's Exhibits A through D, and testified on his own behalf. The record remained open until November 19, 2008, to allow the Applicant to submit additional documentation. The Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A. The official transcript (Tr.) was received on November 24, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts concerning the current political condition in Iran. Applicant had no objection. (Tr. p. 11). The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

### **FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 61 years of age and has a Doctorate Degree in Electrical Engineering. He is employed as a Senior Principal Multi-Disciplinary Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant is a dual citizen of Iran and the United States. He was born in Tehran, Iran in 1946, to Iranian parents. He came to the United States in 1965, at the age of nineteen, on a student visa to pursue his studies with the intentions of returning to Iran. While attending college, he met his wife, a native American citizen. In 1975, after finishing his Bachelor's and Master's degrees, he returned with his wife to Iran to live.

While living in Iran, the Applicant was employed for an Iranian company where he held a Top Secret Iranian Clearance. (Tr. p 76). He entered the Iranian Army where he served for four years and obtained the rank of First Lieutenant. On land that the Applicant inherited from his father, he built a condominium to live in. He and his wife lived in Iran until 1979, when the revolution occurred, and then moved back to the United States.

The Applicant became a naturalized United States citizen in 1984, and obtained his doctorate degree. On February 11, 2004, in a sworn statement to the DoD, he stated that he was not willing to relinquish his Iranian passport because he did not know

if he would need to travel to Iran because of his mother or his property. Furthermore, it would require that he petition the Iranian government and he does not want to bring attention to himself in that way. (Government Exhibit 5 and Tr. pp. 72-73 ). Presently, he still does not wish to renounce his Iranian citizenship. (Tr. p. 72).

At the hearing, Applicant still possessed an Iranian passport that was issued to him on November 12, 1998, and expired in 2003. (Applicant's Exhibit A and Tr. p. 42). He now indicates that he is willing to surrender it if necessary. Applicant submitted a copy of a Foreign Passport Disposition Certificate indicating that on November 13, 2008, he surrendered his foreign passport to his company security department. (Applicant's Post-Hearing Exhibit A). The Applicant has two children who are native born American citizens. However, his wife and children are dual citizens of Iran and they all possess Iranian passports.

Since becoming a United States citizen, the Applicant has traveled to Iran on three occasions using his Iranian passport. The first time was in 1996, in honor of his father's death. The second time was in 1999, or so to take his wife and children back to Iran visit his mother and see the countryside. In 2001, his daughter graduated from college and he took her back to visit his mother and spend time in Iran. On each trip the Applicant stayed with his mother. (Tr. p. 68).

The Applicant hopes to someday be able to go back to Iran, to visit, but not under the present regime. (Tr. p. 47). In the event of his mother's death, he will not go back. (Tr. p. 49). He states that he has no intentions of returning to Iran while he maintains a security clearance. The Applicant has worked for his current employer since 2002, and holds a Top Secret security clearance.

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant has a close and continuing relationship with his family in Iran. His 95 year old mother, a retired medical doctor, and his sister, a retired University professor, are citizens and residents of Iran. His brother, who is two years older than the Applicant and also married to an American citizen, is a resident of Iran. They moved back to Iran take care of the Applicant's mother. The Applicant's contact with his mother has decreased over the years, however he presently telephones her, once every two months or so to check on her. He e-mails his brother about once a week or once every two weeks. (Tr. p. 41). His father, who was a retired government civil engineer passed away in 1991.

His mother receives a pension from the Iranian government for her husband's service to the country. His sister also receives a pension from the Iranian government. Her husband is a retired Colonel in the Iranian Air Force. When his mother dies, he stands to inherit some assets in Iran.

The Applicant owns a condominium in Iran that he and his wife had built on land that he inherited from his father. The condominium is worth approximately \$300,000.00. His mother currently resides either in the condominium or adjacent to it. For some time, the Applicant has rented out the condominium. The rents received went directly to his brother for management fees and maintenance costs. Upon the advice of his attorney, he recently transferred ownership of his property to his two brothers. He states that he is not expecting financial reimbursement for it. (Tr. pp. 53-54). He currently has no financial assets in his name in Iran.

The Applicant has significant financial holdings in the United States. He owns a house worth approximately \$750,000.00 and has equity of approximately \$400,000.00. His credit reports show that he pays his bills on time and has good credit. (Applicant's Exhibit B).

Letters of character reference from professional colleagues, coworkers, neighbors, friends and his pastor attest to the Applicant's honesty, integrity, intelligence and strong work ethic. He is known as a devoted family man, who is a loving and compassionate father and deeply devoted to the United States. (Applicant's Exhibit C).

Applicant received two achievement awards for outstanding job performance. (Applicant's Exhibit D).

I have taken administrative notice of the current political conditions in Iran. The fact that Iran has no diplomatic relations with the United States, Iran's efforts to acquire nuclear weapons and other weapon of mass destruction, its support for and involvement in international terrorism, its support for violent opposition to the Middle East peace process, and its dismal human rights records. I have considered the fact that Iranian Government officials at all levels commit serious abuses of their power and authority. Its Totalitarian Government, the fact that Iran supports terrorists activities, and it is rampant with crime and instability. The overall deteriorating security situation in Iran, the human rights abuses, and the government corruption elevates the cause for concern in the case. The United States may face no greater challenge from a single country than from Iran.

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and

circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

#### Foreign Preference

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.

#### Conditions that could raise a security concern:

10. (a) exercise of any right, privilege or obligation of foreign citizenship after becoming a United States citizen or through the foreign citizenship of a family member.

#### Conditions that could mitigate security concerns:

None.

#### Foreign Influence

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.

#### Condition that could raise a security concern:

7. (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risks of foreign exploitation, inducement, manipulation, pressure, or coercion.

#### Condition that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guidelines C (foreign preference) and B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign connection may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another country. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

### **CONCLUSIONS**

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

Under Foreign Preference, Disqualifying Conditions *10 (a) exercise of any right, privilege or obligation of foreign citizenship after becoming a United States citizen or through the foreign citizenship of a family member.* None of the mitigating conditions are applicable.

Under Foreign Influence, Disqualifying Condition *7(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risks of foreign exploitation, inducement, manipulation, pressure, or coercion* applies in this case. None of the mitigating conditions are applicable.

The Applicant is a dual citizen of Iran and the United States and specifically acknowledges that. Although his wife and children are native born Americans, they are all dual citizens and have Iranian passports to enter and exit Iran as they wish. The Applicant remains close to his mother, sister and brother who are citizens and residents of Iran. He did not want to sell his property in Iran because he knew it would emotionally hurt his mother, so he transferred ownership of it to his brothers. He loves and respects his mother and siblings in Iran. He telephones and e-mails his family in Iran regularly. He has a strong bond of affection with his family and deep and abiding ties in Iran. He stands to inherit assets in Iran upon the death of his mother. Furthermore, after becoming a United States citizen, he exercised his privilege of foreign citizenship, by traveling to Iran using his Iranian passport on three separate occasions. He does not want to relinquish his Iranian citizenship. He has not cut all ties from Iran.

It is noted that the current political situation in Iran elevates the cause for concern in this case. Although there is no direct evidence that his family members in Iran are associated in any way with the Iranian government, there is evidence of a close bond and strong evidence of affection with his family in Iran. This bond and affection with his family could potentially cause the Applicant to become subject to foreign exploitation, inducement, manipulation, pressure, or coercion. Therefore, the possibility of foreign influence exists that could create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is vulnerable to foreign influence. Accordingly, I find against the Applicant under Guidelines C (Foreign Preference) and B (Foreign Influence).

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guidelines C and B.

### **FORMAL FINDINGS**

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

- Subparas. 1.a.: Against the Applicant
- Subparas. 1.b.: Against the Applicant
- Subparas. 1.c.: Against the Applicant

Paragraph 2: Against the Applicant.

- Subparas. 2.a.: Against the Applicant
- Subparas. 2.b.: Against the Applicant
- Subparas. 2.c.: Against the Applicant
- Subparas. 2.d.: Against the Applicant
- Subparas. 2.e.: Against the Applicant



## **DECISION**

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson  
Administrative Judge