

KEYWORD: Foreign Influence

DIGEST: Forty-nine year old Applicant, who immigrated to the U.S. from Iran in 1975, and became a naturalized U.S. citizen, resides in the U.S. with his Iranian-born U.S. citizen wife and two native-born children. He has spent the last 32 years in the U.S. and is a loyal and dedicated U.S. citizen. Given the mitigating evidence submitted, and under the "whole person" concept, Applicant has mitigated security concerns pertaining to foreign influence because of his strong connections to the U.S. Under the specific facts in evidence, the government's security concerns have been mitigated. Clearance is granted.

CASENO: 04-12732.h1

DATE: 04/24/2007

DATE: April 24, 2007

In re:)	
)	
)	
-----)	ISCR Case No. 04-12732
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**REMAND DECISION OF ADMINISTRATIVE JUDGE
ROBERT J TUIDER**

APPEARANCES

FOR GOVERNMENT

Melvin H. Howry, Esquire, Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esquire

SYNOPSIS

Forty-nine year old Applicant, who immigrated to the U.S. from Iran in 1975, and became a naturalized U.S. citizen, resides in the U.S. with his Iranian-born U.S. citizen wife and two native-born children. He has spent the last 32 years in the U.S. and is a loyal and dedicated U.S. citizen. Given the mitigating evidence submitted, and under the “whole person” concept, Applicant has mitigated security concerns pertaining to foreign influence because of his strong connections to the U.S. Under the specific facts in evidence, the government's security concerns have been mitigated. Clearance is granted.

STATEMENT OF THE CASE

On January 24, 2002, Applicant applied for a security clearance by submitting a Security Clearance Application (SF 86).¹ On April 22, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons under Guideline B (foreign influence) why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn, written statement, dated May 10, 2005, Applicant responded to the SOR allegations and requested a hearing. Department Counsel indicated the government was ready to proceed on June 2, 2005. The case was assigned to me on June 8, 2005. A notice of hearing was issued on June 14, 2005 and the hearing was held before me on June 22, 2005. Applicant appeared at his hearing *pro se*. During the hearing, six Government exhibits, eight Applicant exhibits, and Applicant's testimony were received. The transcript (Tr.) was received on July 6, 2005. On February 21, 2006, I concluded that under the specific facts in evidence, the government's security concerns had not been mitigated, and I issued a decision in which I found that it was not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Applicant retained counsel, who filed a notice of appeal and submitted an appeal brief. It is not known if a reply brief was filed by the government. My findings of fact were not challenged on appeal. The Appeal Board considered “Whether Applicant was denied due process under Executive Order and the Directive.”

On November 2, 2006, the Appeal Board ruled that they “cannot conclude with confidence that Applicant received the due process provided for in Executive (Order) 10865 and the Directive.” In particular, the Appeal Board found merit in Applicant's argument that his *pro se* representation was ineffective because Applicant was uninformed about the hearing process, the meaning of the rules of evidence, the role of the Administrative Judge, and what evidence could be produced at the hearing. As a result, Applicant contends that Applicant missed opportunities to produce evidence

¹Government Exhibit 1 (Security Clearance Application, dated January 24, 2002).

at the hearing. Accordingly, the Appeal Board remanded the case to me with instructions that the case be reopened and that Applicant be given an opportunity to have a new hearing.²

The case was subsequently reassigned to me on November 8, 2006. I conducted a new hearing on December 19, 2006.

The government submitted seven documents that were marked as Government Exhibits (GE) 1 through 7 without objections. Applicant submitted 30 documents that were previously marked as Applicant Exhibits (AE) 1 through 30 without objections. DOHA received the transcript on December 28, 2006.

FINDINGS OF FACT

Because my Findings of Fact were not challenged on appeal, those set forth in my initial decision, dated February 21, 2006, are hereby incorporated herein as though they were expressly rewritten below.

At his second hearing, Applicant developed additional facts which supplement, complement, or clarify facts presented at his first hearing.³ Those facts are as follows:

Applicant's wife holds a bachelor of science degree in medical technology, and is employed as a senior scientist in a hospital laboratory.

Applicant has two U.S. born children, a daughter and a son. His daughter is a college senior majoring in psychology, and his son is a college freshman majoring in computer science.

Applicant described his relationship with his parents as "[b]asically, nonexistent," adding, "[t]hey decided not to get involved with my life and we just left it alone. They don't call; we don't call." Tr. 117. Applicant last contacted his parents by telephone in March 2004 or 2005. Tr. 116-117. Applicant's father is 78-years-old and his mother is 74-years-old. Applicant further stated that he has had no contact whatsoever with any of his Iranian relatives in the past six to twelve months. He has no trips planned to Iran nor are any of his relatives planning to visit the U.S.

Applicant has no assets in Iran. Conversely, he estimates his assets to be as follows: a home valued at \$850,000, four automobiles valued at \$90,000, and a 401(K) plan valued at \$120,000. Applicant's gross salary is \$84,000 and his wife's gross salary is \$65,000. Applicant estimates his total assets to include real estate, automobiles, life insurance, bank accounts, and IRAs to be worth \$1.5 million dollars.

Applicant regularly votes in elections and exercises all rights of a U.S. citizen. Applicant reaffirmed his loyalty to the U.S.

²See Appeal Board Decision, ISCR Case No. 04-12732, dated November 2, 2006.

³As previously noted, Applicant appeared at his first hearing *pro se*. At his second hearing, he appeared with counsel and as a result his representation was significantly enhanced.

Applicant stated if he were approached by an individual from Iran or other country seeking sensitive or classified information, he would immediately report such contact to the appropriate authorities.

Applicant called eight character witnesses on his behalf. These witnesses included senior company officials, co-workers, and friends. Included among those witnesses were individuals with lengthy government experience, who hold clearances, and understand the process and importance of carefully vetting those granted clearances. Some of Applicant's witnesses have known him since college. In any event, all his witnesses expressed a very high opinion of Applicant. Applicant also submitted 30 exhibits which included personal recommendations, copies of his diplomas, performance evaluations, and various certificates, and a profile of Applicant. The collective sense of these witnesses and personal recommendations overwhelmingly portray Applicant as an individual possessing exceptional integrity, honesty, family values, strong work ethic, and loyalty to the U.S. Those who know Applicant through work stated he is an employee who has contributed substantially to the U.S. defense effort and who possesses unlimited potential for future potential.

At the remand hearing, the government offered three documents prepared by the U.S. Government on Iran. Those documents are U.S. Department of State, Bureau of Consular Affairs, Washington, DC, "Consular Information Sheet, dated June 2, 2005, CRS Report for Congress, "Iran: U.S. Concerns and Policy Responses," dated April 15, 2005, and U.S. State Department, Bureau of Consular Affairs, Washington, DC, "Travel Warning," dated October 10, 2006. GE 5 through 7, respectively. GE 6 and 7 were previously offered at Applicant's initial hearing. I considered these documents in their entirety.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E.2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider are: (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 voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

[GUIDELINE B - FOREIGN INFLUENCE]: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Conditions that could raise security a concern and may be disqualifying, as well as those which could mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the Conclusions section below.

Since the protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is “clearly consistent with the interests of national security” or “clearly consistent with the national interest.”⁴ For the purposes herein, despite the different language in each, I have concluded all of the standards are the same. In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences that are grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government 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. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk that 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.

⁴The Directive, as amended by Change 4, dated April 20, 1999, uses “clearly consistent with the national interest” (Sec. 2.3.; Sec. 2.5.3.; Sec. 3..2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.25.); Sec. E3.1.26.; and Sec. E3.1.27.), “clearly consistent with the interests of national security” (Enclosure 2, Sec. E2.2.3.); and “clearly consistent with national security” (Enclosure 2, Sec. E2.2.2.).

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance 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.” Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of credibility, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

Applicant is a potential security risk because members of his immediate family or persons to whom he is bound by affection, influence, or obligation—in this instance, Applicant's elderly parents and two of his siblings—are either not citizens or residents of the United States or may be subject to duress. This situation raises the potential for vulnerability to coercion, exploitation, or pressure, and the exercise of foreign influence that could result in the compromise of classified information. In support of its contentions, the government has shown that his relatives are Iranian citizens residing in Iran. Based on a review of the evidence previously presented at his first hearing and, more importantly, evidence presented at his remand hearing, I conclude that Applicant has mitigated these security concerns.

Applicant's parents and sisters are citizens of and reside in Iran.⁵ Those simple facts, standing alone, are sufficient to raise security concerns over the possibility of Applicant's vulnerability to coercion, exploitation, or pressure. However, the mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B.⁶

The government's evidence points to the presence of terrorist activity in Iran. The apparent thrust of raising this point was the need for heightened awareness regarding applicant vulnerability to terrorist threats in Iran and the presence of Applicant's family in that country. While there may be some merit to the overall argument, it must be remembered that terrorist cells also actively operate in even more western nations, such as England, Germany, Spain, and Italy. And, as shown by the events of 9/11, they also operate here in the U.S.

For the past 32 years, Applicant has lived in the U.S. He has raised his family here, owns all his real and personal property here, and has all his financial holdings here. He is fully vested in the U.S. and integrated in the American way of life. As mentioned in my previous Decision, Applicant had not spoken to his parents for 15 years following a family rift. His contact

⁵The SOR alleged Applicant's brother-in-law was a citizen and resident of Iran (SOR ¶ 1.b.). I concluded at Applicant's first hearing that he had mitigated this allegation. As such, my discussion is focused on unmitigated concerns to relatives whose connections to Applicant were not mitigated (SOR ¶¶ 1. a. and 1.b.).

⁶For an expansive discussion of Appeal Board decisions under Guideline B, *see* the decision of Administrative Judge Michael J. Breslin, in ISCR Case No. 03-21434 at 7-17 (May 24, 2006).

with his parents and sisters is virtually non-existent, especially for the past year. Applicant has no financial interests in Iran.

The residence and citizenship of some of Applicant's family members constitute a security concern under Foreign Influence Disqualifying Condition (FIDC) E2.A2.1.2.1. (*an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country*), but the significance of that conclusion is mitigated by Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1. (*a determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States*); FI MC E2.A2.1.3.3. (*contact and correspondence with foreign citizens are casual and infrequent*); and FI MC E2.A2.1.3.5 (*foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*).

Whether an applicant's family ties in a foreign country pose a security risk depends on a common sense evaluation of the overall facts and circumstances of those family ties. None of Applicant's family members in Iran meet the definition of "agent of a foreign power" under 50 U.S.C. § 438(6) and 50 U.S.C. § 1801(b). Similarly, none of them would be considered as an "agent of a foreign power" under the more expansive definition adopted by the Appeal Board. Except for his elderly father, who retired from the Iranian Army in 1985, and resides in retirement in Iran, all of the remaining family members are either retired or employed in non-governmental capacities in the private sector.

As noted above, the "whole person concept" is the heart of the analysis of whether an applicant is eligible for a security clearance.⁷ In assessing whether an applicant is a security risk because of his or her relatives or associates in a foreign country, it is necessary to consider all relevant factors. In fact, the Appeal Board has repeatedly held:

Although the position of an applicant's foreign family members is significant and may preclude the favorable application of Foreign Influence Mitigating Condition 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.⁸

One factor which must be considered is "the potential for pressure, coercion, exploitation, or duress." In that regard, it is important consider the character of the foreign power in question, including the government and entities controlled by the government, within the relevant foreign country. Nothing in Guideline B suggests it is limited to countries that are hostile to the United

⁷ISCR Case No. 03-11448 at 3-4 (App. Bd. Aug. 10, 2004); ISCR Case No. 02-09389 at 4 (App. Bd. Dec. 29, 2004).

⁸ISCR 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).

States.⁹ In fact, the Appeal Board has cautioned against “reliance on overly simplistic distinctions between ‘friendly’ nations and ‘hostile’ nations when adjudicating cases under Guideline B.”¹⁰ Nevertheless, the relationship between a foreign government and the U.S. may be 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 U.S. through the applicant. It is reasonable to presume that a friendly relationship, or the existence of a democratic government, is not determinative, but it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that foreign country.

There are many countervailing positive attributes to Applicant’s life as a U.S. citizen that weigh towards granting his clearance. His Iranian passport has long since expired. He has the following strong links or connections to the U.S.: (1) Applicant became a U.S. citizen, (2) His Iranian born wife became a U.S. citizen, (3) His two college age children are U.S. born citizens, (4) His only brother who was born in Iran immigrated to the U.S. and became a U.S. citizen, (5) Applicant and his wife are hard working, productive citizens, who are making a daily contribution to society, (6) All of Applicant’s real and personal property are in the U.S., (7) Conversely, Applicant has no financial interests in Iran, (8) Applicant’s contact with his elderly parents and two sisters in Iran is virtually non-existent, (9) Applicant’s work supervisors, colleagues, and friends hold a very high view of Applicant, and (10) Applicant credibly stated that he would never do anything to harm the U.S. and promptly report to appropriate authority any improper contact by a foreign agent.

Equally as important is the necessity of considering Applicant’s vulnerability to exploitation through his relatives. Applicant—a naturalized U.S. citizen since 2000—is a mature individual with very close ties to the U.S. His wife and his brother are naturalized U.S. citizens, and his two children are U.S. born U.S. citizens. Because of Applicant’s deep and long-standing relationships and loyalties in and to the U.S., he can be expected to resolve any conflict of interest in favor of the U.S. Consequently, I find the potential for pressure, coercion, exploitation, or duress does not constitute a security risk. Thus, I conclude on remand Applicant has, through new evidence of extenuation and explanation, successfully mitigated and overcome the government's case with respect to Guideline B. Accordingly, allegations 1.a. through 1.c. of the SOR are concluded in favor of Applicant.

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:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	For Applicant

⁹See ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002); ISCR Case No. 00-0489 at 12 (App. Bd. Jan. 10, 2002).

¹⁰ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002).

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Robert J. Tuidor
Administrative Judge