

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant, a 49-year-old software engineer, was born in Iran. He immigrated to the U.S. in 1978 and became a naturalized U.S. citizen in 1982. He married his wife, a naturalized U.S. citizen, in the U.S. His children are U.S. citizens by birth. He renounced his Iranian citizenship in 2005. All of his business and financial holdings are in this country. His wife, parents, and siblings are dual citizens of the U.S. and Iran. He has mitigated the security concerns arising from foreign preference and foreign influence. Clearance is granted.

CASENO: 05-02210.h1

DATE: 08/31/2007

DATE: August 31, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 05-02210
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
JACQUELINE T. WILLIAMS**

APPEARANCES

FOR GOVERNMENT

Francisco Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 49-year-old software engineer, was born in Iran. He immigrated to the U.S. in 1978 and became a naturalized U.S. citizen in 1982. He married his wife, a naturalized U.S. citizen, in the U.S. His children are U.S. citizens by birth. He renounced his Iranian citizenship in 2005. All of his business and financial holdings are in this country. His wife, parents, and siblings are dual citizens of the U.S. and Iran. He has mitigated the security concerns arising from foreign preference and foreign influence. Clearance is granted.

STATEMENT OF THE CASE

On April 16, 2003, Applicant applied for a security clearance and completed a Security Clearance Application (SF 86).¹ On September 6, 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 C (Foreign Preference) and 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 or revoked.

In a sworn statement, executed on September 30, 2005, Applicant responded to the SOR allegations and requested a hearing. Department Counsel was ready to proceed on April 12, 2007. The case was assigned to me on April 18, 2007. A Notice of Hearing was issued on April 24, 2007, scheduling the hearing for May 15, 2007. On May 16, 2007, an Amended Notice of Hearing was issued, rescheduling the hearing for May 23, 2007. The hearing was conducted as scheduled. At the hearing, the Government offered five exhibits, Exs. 1-5. Applicant offered three exhibits, Exs. A-C. All exhibits were admitted without objection. Prior to the hearing, the Government requested that administrative notice be taken of the content of nine documents (I-IX) about Iran. There being no objection, administrative notice was taken of those facts. The transcript (Tr.) was received on June 4, 2007.

MOTION TO AMEND THE STATEMENT OF REASONS

Prior to the hearing, on March 22, 2007, the Government submitted a Motion to Amend the SOR. Pursuant to subparagraph 1 of the SOR, the Government requested adding allegations 1.e and 1.f:

1.e You purchased your house from an individual who is under investigation by the United States Government for links to terrorist organizations.

1.f At least two of your neighbors are under investigation by the United States Government for links to terrorist organizations and their homes were searched as a result of this investigation.

At the hearing, Applicant did not object to the newly added subparagraphs 1.e and 1.f. Accordingly, the SOR is amended as stated above.

SUPPLEMENTAL MOTION TO AMEND THE STATEMENT OF REASONS

¹Ex. 1 (Security Clearance Application, executed April 16, 2003).

Prior to the hearing, on April 17, 2007, the Government submitted a Supplemental Motion to Amend the SOR. Pursuant to subparagraph 2 of the SOR, the Government requested adding allegations 2.c through 2.g:

2.c Your parent-in-law is a dual citizen of the United States and Iran, residing in the United States.

2.d Your wife is a dual citizen of the United States and Iran, residing in the United States.

2.e Your parents are dual citizens of the United States and Iran, residing in the United States.

2.f Your two siblings are dual citizens of the United States and Iran, residing in the United States.

2.g That information set forth above in subparagraphs 1.e and 1.f.

At the hearing, Applicant did not object to the newly added subparagraphs 2.c through 2.g. Accordingly, the SOR is amended as stated above.

FINDINGS OF FACT

Applicant admitted the factual allegations in subparagraphs 1.b, 1.d, 2.a through 2.f. Those admissions are incorporated herein as findings of fact. He denied the remaining factual allegations in subparagraphs 1.a, 1.d through 1.f, and 2.g. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is 49 years old and has been employed as a software engineer by a defense contractor since April 2003.² He was born in Iran and immigrated to the U.S. in 1978 at the age of 18. He received both his undergraduate and graduate degrees from U.S. universities. He became a naturalized U.S. citizen in 1982. He married his wife in 1986 in the U.S.³ His wife is a dual citizen of the U.S. and Iran. She became a naturalized U.S. citizen in 1992. His two children, aged 16 and 10, were born in the U.S. and are not dual citizens.

Applicant applied for and was reissued an Iranian passport on December 6, 1998. He used his Iranian passport to enter and exit Iran in at least 1997, 1998, and 2000.⁴ He visited in 1997,

²Tr. 56.

³*Id.* at 55.

⁴*Id.* at 29.

because his mother-in-law was sick. In 1998, he and his family brought his ill mother-in-law to the U.S.⁵ In 2000, he visited Iran because his grandmother passed away.⁶

Applicant's in-laws are deceased and thus are not dual citizens.⁷ His mother-in-law passed away in 2001 and his father-in-law in 2005.⁸

Applicant's parents are dual citizens of the U.S. and Iran. His father is a retired physician.⁹ His mother is a retired midwife.¹⁰ His parents visit Iran at about once every other year.¹¹ He does not know whether they have any assets in Iran.¹² He stated that his parents never worked for the Iranian government.¹³

Applicant is uncertain as to whether his two siblings are dual citizens.¹⁴ They both reside in the U.S. and were born in Iran. Since living in the U.S., he does not believe that either sibling has traveled to Iran.¹⁵ His brother works for a large private corporation.¹⁶ His sister works in real estate.¹⁷

Applicant's two aunts, cousins, and an uncle are citizens and residents of Iran. He has contact with his aunts by telephone once or twice a year.¹⁸ They have never visited his family here in the U.S.¹⁹ One aunt was a doctor and the other a physical therapist and they are both retired.²⁰ His

⁵*Id.* at 60.

⁶*Id.* at 30.

⁷*Id.* 23.

⁸*Id.* at 25.

⁹*Id.* at 35.

¹⁰*Id.* at 36.

¹¹*Id.* at 35.

¹²*Id.*

¹³*Id.* at 37.

¹⁴*Id.* at 38.

¹⁵*Id.* at 39.

¹⁶*Id.* at 37.

¹⁷*Id.*

¹⁸*Id.* at 31.

¹⁹*Id.* at 32.

²⁰*Id.*

cousins are female and they both reside in Iran. He does not know what they do for a living.²¹ He has telephone contact with each cousin about twice a year.²² One cousin's husband is an engineer.²³ On the SOR, he deleted reference to his uncle because he does not have one. He indicated that neither aunts nor cousins have ever worked for the Iranian government.²⁴

The SOR contends Applicant purchased his house from an individual who is under investigation by the U.S. Government for links to terrorist organizations. Applicant denied this allegation. He testified that prior to getting the SOR, he had no knowledge of this allegation at the time he purchased his home in July 2000.²⁵ He worked with a real estate agent to find a home and the agent showed him several homes, including the one he purchased.²⁶

The SOR states at least two of Applicant's neighbors are under investigation by the U.S. Government for links to terrorist organizations and their homes were searched as a result of this investigation. Applicant stated he had no knowledge of this allegation at the time he purchased his home. He became aware of this allegation when he received the SOR.²⁷

Applicant proffered a letter attesting to his character. This individual has known Applicant and his family for more than 17 years. He strongly endorses Applicant for a security clearance. He stated:

. . . he [Applicant] deeply cherishes his life in U.S. and is proud of the American democratic system and the freedom and the ideals that it has offered him and his family. I believe that [Applicant] is true to his value and principles about the principals of the U.S. democracy and form of government. He has served this country with dignity, humility and devotion.²⁸

On February 9, 2005, when Applicant was interviewed by an authorized investigator for the Department of Defense, he possessed an Iranian passport. In a letter dated February 17, 2005, the Embassy of Pakistan confirmed that Applicant submitted his passport in order to renounce his Iranian citizenship.²⁹ Applicant stated this concerning visits to Iran in the future: "I have no reason to go back [to Iran]. I have no interest and I have no relatives to go back to." He stated that "[s]ince

²¹*Id.* at 28.

²²*Id.*

²³*Id.* at 29.

²⁴*Id.* at 33.

²⁵*Id.* at 26, 42.

²⁶*Id.* at 42-43.

²⁷*Id.*

²⁸Ex. B (Character letter, dated May 14, 2007).

²⁹Ex. A (Letter from Embassy of Pakistan, dated February 17, 2005).

I denounced it [Iranian citizenship], no I'm not a citizen."³⁰ He does not own any real estate in Iran nor does he have any other assets there.³¹

Applicant has strong attachments to the U.S. He has lived in the U.S. since 1978. He owns real estate in the U.S., valued at \$1 to \$2 million. He has savings and retirement accounts in the U.S. His children are enrolled in the neighborhood public school system.³²

The government of Iran is controlled by radical Islamic clerics. The State Department reports it has a poor record of protecting human rights.³³ Iran has a history of poor relations with the U.S. because it attempts to acquire nuclear weapons and other weapons of mass destruction, supports international terrorism, and opposes the Middle East peace process.³⁴

On August 16, 2000, the Assistant Secretary of Defense, issued the "Money Memorandum," clarifying certain issues in cases involving possession and/or use of a foreign passport. Pursuant to this memorandum, an applicant possessing a valid foreign passport cannot be granted access to classified information unless he does one of two things: (1) surrenders the passport, or (2) offers credible evidence that he obtained official approval for its use from the appropriate United States Government agency.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

³⁰Tr. 22.

³¹*Id.* at 34.

³²Tr. 55.

³³Administrative Notice V (U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *Country Report on Human Rights Practices 2006: Iran*, dated March 6, 2006, at 1-7).

³⁴*Id.* at 7.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.³⁵ The Government has the burden of proving controverted facts.³⁶ The burden of proof is something less than a preponderance of evidence.³⁷ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.³⁸ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.³⁹

No one has a right to a security clearance⁴⁰ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁴¹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁴² The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁴³ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

I have carefully considered all facts in evidence and the legal standards, and I reach the following conclusions.

Foreign Preference

Under Guideline C, a security risk may exist “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.”

The Government has established a *prima facie* case under foreign preference. Applicant became a naturalized U.S. citizen in 1982. He visited Iran in 1997, 1998, and 2000 using his Iranian passport during those trips. Thus, he exercised the rights and privileges of a citizen of Iran by using

³⁵ISCR Case No. 96-0277 (July 11, 1997) at 2.

³⁶ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.

³⁷*Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³⁸ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.

³⁹ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.

⁴⁰*Egan*, 484 U.S. at 531.

⁴¹*Id.*

⁴²*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

⁴³Executive Order 10865 § 7.

an Iranian passport. Thus, Foreign Preference Disqualifying Condition (FP DC) 1 (*the exercise of dual citizenship*) and FP DC 2 (*possession and/or use of a foreign passport*) apply.

Various conditions can mitigate a security concern regarding foreign preference. Applicant was born in Iran and was a citizen of Iran by operation of Iranian law. Thus, Foreign Preference Mitigating Condition (FP MC) 1 (*dual citizenship is based solely on parents' citizenship or birth in a foreign country*) applies. However, on February 17, 2005, Applicant relinquished his Iranian passport to the Pakistani Embassy in order to renounce his citizenship. Consequently, FP MC 4 (*individual has expressed a willingness to renounce dual citizenship*) applies. Moreover, he is in compliance with the Money Memorandum because he surrendered his passport. Accordingly, allegations 1.a through 1.f of the SOR are concluded in favor of Applicant.

Foreign Influence

Under Guideline B, 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.”

Applicant’s wife, his parents, and two siblings are citizens of the U.S. They are also citizens of Iran because they were born in Iran, and Iran considers them citizens by birth. Thus, Foreign Influence Disqualifying Condition (FI DC) 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*) applies to those family members. An “immediate family member” is defined to include: spouse, father, mother, sons, daughters, brothers, and sisters.⁴⁴ Although Applicant’s aunts and cousins are Iranian citizens and residents, they are not defined as immediate family member. Thus, FI DC 1 does not apply to his aunts and cousins.

Various factors can mitigate the foreign influence security concern. Applicant has offered evidence to support a determination that his wife, parents, and his siblings do not constitute an unacceptable security risk. First and foremost, his wife, parents, and siblings are permanent U.S. citizens. The evidence demonstrates that none are agents of a foreign power or politically inclined. As far as he knows, his parents are the only ones who visit Iran. They visit Iran every other year. His father is a retired physician and his mother is a retired midwife. These family members have chosen the U.S. as their home and none of them have any affiliation with the Iranian government when they lived there, or since becoming U.S. citizens. Moreover, Applicant renounced his Iranian citizenship and has no plans to visit that country in the future. Applicant, as a U.S. citizen, is unlikely to be put in a position where he would have to choose between loyalty to the U.S. and his limited family, in Iran. Pursuant to Foreign Influence Mitigating Condition (FI MC) 1 it is potentially mitigating where there is (*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*). Moreover, his communication with his two cousins and aunts in Iran, is infrequent. Thus, FI MC 3 (*contact and correspondence with foreign citizens are casual and infrequent*) applies to those relatives who are citizens and residents of Iran.

⁴⁴E2.A2.1.3.1.

I considered carefully all the potentially disqualifying and mitigating conditions in this case in light of the “whole person” concept, keeping in mind that any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor of the national security. Applicant is a mature individual who has lived in the U.S. for almost 30 years. He has strong ties to this country, including his profession, his home, bank accounts, and community involvement. His use of his Iranian passport to travel to and from that country in 1997, 1998, and 2000, even though he was a naturalized U.S. citizen since 1982, is a moot issue since he renounced his Irani citizenship and relinquished his Iranian passport. Applicant has renounced his Iranian citizenship and has no plans to ever visit that country again. He does not have real or personal property in Iran. Applicant’s wife is an American citizen, permanently residing in the U.S. Their children were born in the U.S. and do not have dual citizenship in Iran. Applicant’s parents and siblings are U.S. citizens, residing in the U.S. I conclude Applicant has mitigated the potential security concerns arising from foreign influence. Accordingly, allegations 2.a through 2.f 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 C (Foreign Preference):	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Paragraph 2. Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	For Applicant
Subparagraph 2.f:	For Applicant
Subparagraph 2.g:	For Applicant

DECISION

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

Jacqueline T. Williams
Administrative Judge