

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant is a 52-year-old naturalized U.S. citizen who has lived and worked in the U.S. for 28 years. He was born in Iran, but became a naturalized U.S. citizen in 1990. He traveled to Iran twice in the past fifteen years using his Iranian passport. His father and parents-in-law are Iranian citizens. Applicant has not mitigated the security concern under foreign preference and foreign influence. Clearance is denied.

CASENO: 05-14280.h1

DATE: 05/30/2007

DATE: May 30, 2007

In re:	)	
	)	
-----	)	
SSN: -----	)	ISCR Case No. 05-14280
	)	
Applicant for Security Clearance	)	

**DECISION OF ADMINISTRATIVE JUDGE  
NOREEN A. LYNCH**

**APPEARANCES**

**FOR GOVERNMENT**

John Bayard Glendon, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 52-year-old naturalized U.S. citizen who has lived and worked in the U.S. for 28 years. He was born in Iran, but became a naturalized U.S. citizen in 1990. He traveled to Iran twice in the past fifteen years using his Iranian passport. His father and parents-in-law are Iranian citizens. Applicant has not mitigated the security concern under foreign preference and foreign influence. Clearance is denied.

### **STATEMENT OF THE CASE**

On February 28, 2006, the Defense Office of Hearings and Appeals (DOHA), 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 Review Program* dated January 2, 1992, as amended and modified (Directive), issued a Statement of Reasons (SOR) to Applicant. The SOR alleges security concerns under Guideline C (Foreign Preference), and Guideline B (Foreign Influence). The SOR detailed reasons 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 March 11, 2006, Applicant responded to the SOR and elected to have his case decided on the written record, in lieu of a hearing. Department Counsel submitted the government's File of Relevant Materials (FORM) dated February 28, 2007.<sup>1</sup> Applicant received the FORM on March 6, 2007, and was given an opportunity to file objections and submit materials in refutation, extenuation, or mitigation. Applicant did not submit a written response. The case was assigned to me on May 2, 2007.

### **FINDINGS OF FACT**

Applicant admitted all factual allegations of the SOR pertaining to foreign preference under Guideline C (subparagraphs 1.a., 1.b., 1.c. and 1. d) but denied the underlying concern. He admitted allegations to foreign influence under Guideline B (subparagraphs 2.b. through 2.f) except allegation 2.a.<sup>2</sup> Those admissions are incorporated as findings of fact. After a complete and thorough review of the evidence in the record, I make the following findings of fact:

---

<sup>1</sup>The Government submitted six items in support of its contentions, and eight official government publications concerning Iran for administrative notice

<sup>2</sup>Item 3 (Applicant's Answer, dated March 11, 2006) at 1.

Applicant is 52 years old and has worked as a software engineer since 1992. He was born and raised in Iran<sup>3</sup>, earning a Bachelor of Science in 1977.<sup>4</sup> He attended a U.S. University from 1978 until December 1980, and received a master's degree in 1981. In 1989, he married an Iranian woman. He is now seeking a clearance for a position as a software engineer in the United States (U.S.) with a defense contractor.<sup>5</sup>

Applicant emigrated to the U.S. more than 28 years ago. In 1990, he became a naturalized U. S. citizen and received a U.S. passport in 2001. After being granted a U.S. passport, he was issued an Iranian passport on March 15, 2001. He used his Iranian passport when he traveled to Iran in June 2001.<sup>6</sup> As of April 7, 2005, he still possessed an Iranian passport that was issued in March 2001. This passport expired in March 2006, but is still in his possession. In his 2004 security clearance application he did not consider himself a dual citizen.<sup>7</sup>

Over the years, Applicant traveled to Iran in 1992 and June 2001. His father and parents-in-law still reside in and are Iranian citizens. His father<sup>8</sup> is a retired employee of the government of Iran. Applicant's mother is deceased. He has no other family left in Iran.<sup>9</sup> He provides financial support to his father "when possible." Applicant's father resides with him in the U.S. approximately six months a year. Applicant's in-laws reside with him in the U.S. approximately three months ever year. Other than identifying information as noted on his security clearance application (SF-86), Applicant has provided no information regarding his family. Other than acknowledging his possession of an Iranian passport that expired in March 2006, Applicant failed to provide any pertinent facts in response to the SOR.

The government submitted information regarding the Islamic Republic of Iran. It notes that the U.S. has not had diplomatic relations with Iran since April 7, 1980, following the November 1979 Iranian student occupation of the American Embassy in Tehran and the hostage taking of 52 Americans, which was supported by Ayatollah Ruhollah Khomeini, Iran's "Supreme Leader" at the

---

<sup>3</sup>Applicant's SF 86 lists Herndon, Va. as his birth place. However, in his Answer to the SOR and other information, he states Iran. The SF 86 would appear to be incorrect as to the birthplace in Va.

<sup>4</sup>Item 4 (Security Clearance Application (SF 86), dated August 11, 2004) at 1-10.

<sup>5</sup>*Id.*

<sup>6</sup>*Id.* at 5.

<sup>7</sup>*Id.*

<sup>8</sup>Applicant did not admit his father's Iranian citizenship. However, there is no evidence in the record as to whether his father has renounced his Iranian citizenship, so it is reasonable to infer that he presently has dual citizenship with the U.S. and Iran. Applicant presented no evidence concerning his father's status.

<sup>9</sup>*Id.* at 2.

time.<sup>10</sup> Today, Iran is a “theocratic Islamic republic in which Shi’a Muslim clergy dominate the key power structures” and “ultimate political authority is vested in a learned religious scholar.”<sup>11</sup>

The U.S. has designated Iran as a state sponsor of terrorism, one of a half dozen countries, and characterizes it as “the most active state sponsor.”<sup>12</sup> As a state sponsor of terrorism, Iran provides critical support to non-state terrorist groups. Iran regularly provides “unique safe haven, substantial resources and guidance to terrorists organizations. As a state sponsor of terrorism with nuclear ambitions, Iran poses “a grave WMD terrorism threat.”<sup>13</sup>

The State Department continues to warn U.S. citizens, particularly those born in Iran, to consider carefully the risks of travel to Iran. Iranian born, naturalized U.S. citizens, and the children of such persons, are considered Iran citizens by the Iranian authorities, since Iran does not recognize dual citizenship. As a result, U.S.-Iranian dual citizens have been detained and harassed by the Iranian government.<sup>14</sup>

Iran’s dismal and worsening human rights record presents a further threat to the U.S., especially since large numbers of Iranians emigrated to the U.S. after Khomeini’s 1979 Islamic revolution, and these immigrants often left behind family members in Iran. The government of Iran, particularly its regular and paramilitary security forces, have committed “numerous, serious human rights abuses” against the Iranian people. The abuses include political killings and incarceration, religious kidnaping and persecution, torture, cruel, inhumane and degrading treatment of detainees, arbitrary arrests and detentions, the execution of minors, and the denial of due process. Iran’s security forces often target family members of political prisoners for harassment purposes.<sup>15</sup>

## POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines For Determining Eligibility For Access To Classified Information*, sets forth the criteria which must be applied when determining security clearance eligibility. The adjudicative guidelines specifically distinguish between those factors that are considered in denying or revoking an employee’s request for access to classified information (Disqualifying Conditions), and those factors that are considered in granting an employee’s request for access to classified information (Mitigating Conditions). By acknowledging that individual

---

<sup>10</sup>U.S. Department of State, Bureau of Near Eastern Affairs, *Background Note: Iran*, dated October 2006 (Background Note) at 7.

<sup>11</sup>U.S. Department of State, Bureau of Consular Affairs, *Consular Information Sheet: Iran*, dated April 3, 2006, (Consular Information Sheet) at 1.

<sup>12</sup>Reports on Terrorism at 171 and 173.

<sup>13</sup>*Id.*

<sup>14</sup>U.S. Department of State, Bureau of Consular Affairs, *Travel Warning: Iran*, date October 10, 2006, (Travel Warning) at 1.

<sup>15</sup>Reports on Human Rights Practices at 1-11.

circumstances of each case are always different, the guidelines provide substantive standards to assist an administrative judge in reaching fair and impartial common sense decisions.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at meritorious decisions. Section E2.2 of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the “whole person concept.” In evaluating the conduct of the applicant and the circumstances in any case, the factors an administrative judge should consider pursuant to the concept 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 the 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.

Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interest of national security. Granting an applicant’s clearance for access to classified information is predicated on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not just the *actual* risk of disclosure of such information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information in any aspect of his or her life. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information.<sup>16</sup> The decision to deny a security clearance request to an individual is not necessarily a determination of the loyalty of the applicant.<sup>17</sup> It is merely an indication the applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

In accordance with the Directive, the government bears the initial burden of proof in the adjudicative process to establish conditions which indicate it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information.<sup>18</sup> When the government meets this burden, a heavy burden of persuasion then falls on the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the position of the government, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant’s clearance.<sup>19</sup>

Based upon consideration of all the evidence submitted in this matter, the following adjudicative guidelines are appropriate for evaluation with regard to the facts of this case:

---

<sup>16</sup>*Department of Navy v. Egan*, 484 U.S. 518, 517 (1988).

<sup>17</sup>Executive Order 10865, § 7.

<sup>18</sup>ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).

<sup>19</sup>ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

**Guideline C - Foreign Preference: 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.**

**Guideline B - Foreign Influence: A security risk may exist when an individual's immediate family, including co-habitants, 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.**

The Guideline C and B disqualifying and mitigating conditions, applicable to this case, are set forth and discussed in the Conclusions section below. For clarity, I will discuss each separately.

## CONCLUSIONS

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

### **Foreign Preference**

Based on all the evidence Foreign Preference (FP DC) E2.A3.1.2.2 (*possession and/or use of a foreign passport*) apply. Applicant obtained an Iranian passport after becoming a naturalized U.S. citizen. On two occasions he traveled on his Iranian passport, rather than his U.S. passport, to Iran, so he would benefit from the protection of the Iranian government toward its citizens and not have to comply with the procedures required for non-citizens. Applicant has exercised dual citizenship by reaping the benefits afforded Iranian citizens when entering and exiting the country. Applicant's passport expired in 2006 and he continues to retain it in his possession. Applicant has not surrendered or attempted to surrender the passport to the appropriate authority. I find Applicant exercised dual citizenship with Iran beyond his parents' citizenship or birth there. In accordance with a memorandum issued by Assistant Secretary of Defense for Command, Control, Communication, and Intelligence, Arthur L. Money, dated August 16, 2000, (Money Memorandum), a security clearance must be denied or revoked for an Applicant with a foreign passport "unless the applicant surrenders the foreign passport...." Surrender of the passport contemplates returning it to the issuing authority. There is no evidence that Applicant has accomplished this.

I have considered all the mitigating conditions, and especially Foreign Preference Mitigating Conditions (FP MC) E2.A3.1.3.1. (*Dual citizenship is based solely on parents' citizenship or birth in a foreign country*), and FP MC E2.A3.1.3.4 (*individual has expressed a willingness to renounce dual citizenship*) and conclude none apply.

### **Foreign Influence**

The government has established its case under Guideline B. Applicant's father, and his parents-in-law are residents and citizens of Iran. However, the mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under the Guideline. Such ties raise a *prima facie* security concern sufficient to require an applicant to present evidence of rebuttal, extenuation, or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. Whether an applicant's family ties in a foreign country pose a susceptibility to foreign influence depends on a common sense evaluation of the overall facts and circumstances of those family ties.<sup>20</sup> Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1 (*an immediate family member or person to whom the individual has close ties of affection or obligation, is a citizen, or, a resident or present in, a foreign country*), applies in this case.

When the Government's initial burden has been met and a disqualifying condition raised, the burden shifts to the applicant to go forward with evidence in rebuttal, explanation, or mitigation, which is sufficient to overcome or outweigh the Government's case. Here Applicant lives and resides in the U. S., and his father and his parents-in-law stay with him in his home for period of time each year. FI DC E2.A2.1.2.2. (*Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists*) applies.

Applicant acknowledged his father is retired from the Iranian government. FI DC. E2.A2.1.2.3 (*relatives, co-habitants, or associates who are connected with any foreign government*) applies. Iran is a country that is clearly hostile to the U.S. It is considered the most active state sponsor of terrorism, and the government has committed numerous, serious human rights abuses against its people, Applicant's immediate family in Iran creates a heightened risk of foreign coercion pressure, or exploitation.

Applicant's last visit to Iran was recent (2001). Applicant's personal and family ties to his homeland are not in dispute. His wife's family and his father are citizen residents and could be subject to coercion or pressure by the government.

As discussed earlier, Applicant maintains close contact with his family and visits them in Iran or has them living in his home in the U.S. for a part of every year. Applicant bears the burden of demonstrating that his family members are not in a position where they could be exploited by a foreign power in a way that could force him to choose loyalty to those relatives and the U.S. Applicant has not met his burden to establish his relatives are not vulnerable to pressure or duress by a foreign power. The record is devoid of any information concerning their identity or whether they are in anyway connected to the government, military, or intelligence services. Foreign 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 associates(s) in questions 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*) does not apply.

The record evidence supports the legal presumption that family ties are not casual in nature. Applicant admitted providing financial support to his father "when possible," and Applicant traveled

---

<sup>20</sup>ISCR Case No. 98-0419 at 5 (App. Bd. Apr 30, 1995).

to see his family in 1992 and 2001. Moreover, one or more of his Iranian relatives live with him and his wife 6-9 months of the year. This is evidence of non-casual and frequent ties with his Iranian relatives. FI MC E2.A2.1.3.3. (*contact and correspondence with foreign citizens are casual and infrequent*) does not apply.

### **Whole Person Analysis**

Finally, I considered the “whole person” concept in evaluating Applicant’s risk and vulnerability in protecting our national interests. I am not persuaded by the evidence in this case that Applicant would not be vulnerable to pressure or duress from a foreign power. Although Applicant has developed a stable life in the U.S., he has not met the heavy burden of persuasion to mitigate the security concerns. Ordinarily, an applicant’s foreign citizenship possesses little security significance if based solely on his birth in a foreign country. I am persuaded by the totality of the evidence in this case that although Applicant is proud of his U.S. citizenship, he is vulnerable due to his family in Iran. A detrimental impact on the interests of the United States is not required before the Government may deny access under Guideline B or C. Applicant has not mitigated the security concerns under Foreign Influence, and Foreign Preference in this case.

### **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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Paragraph 2. Guideline B:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e:	Against Applicant
Subparagraph 2. f:	Against Applicant

### **DECISION**

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



Noreen A. Lynch  
Administrative Judge