

On May 11, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) explaining why it was not clearly consistent with the national interest to grant or continue a security clearance. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended. He answered the SOR on May 22, 2007, admitting Paragraphs 1 and 2, denying Paragraphs 3 and 4, and requesting a hearing.

The case was assigned to me on July 23, 2007. On August 14, 2007, DOHA issued a notice of hearing scheduling it for September 12, 2007. During the hearing, I received five government exhibits, two Applicant exhibits, and the testimony of two Applicant witnesses. At the close of the hearing, I left the record open through September 26, 2007 to allow Applicant to submit additional exhibits. That day, he submitted two additional exhibits that I incorporated into the record. DOHA received the transcript on September 20, 2007.

RULINGS ON EVIDENCE

At the hearing, department counsel moved to withdraw the allegations under Paragraph 3 of the SOR, and I granted the motion.¹ Also, at department counsel's request, I took administrative notice of several relevant adjudicative facts about Iran. They are as follows:

1. Iran is hostile to the interests of the United States, and the State Department has designated it as a state sponsor of terrorism;
2. Iran is attempting to acquire weapons of mass destruction;
3. Iran has an abysmal human rights record. The abuses include summary executions, lack of fair public trials, arbitrary arrest and detention, and severe restrictions on civil liberties including speech, press assembly, association, movement, and privacy; and,
4. Iranian security forces have at times monitored the social activities of its citizens, entered homes and offices, monitored phone conversations, and opened mail without court authorization.²

FINDINGS OF FACT

 The SOR admissions are incorporated into the findings of fact. In addition, I make the following findings of fact.

Applicant is a 41-year-old divorced man with no children. He was born in Iran and emigrated to the U.S. in 1993 after living in Germany for six years. He has been a naturalized U.S. citizen since 1998. He is a personal protection officer.³ He is undergoing a security clearance investigation as part

¹Tr. 50.

²See generally, Hearing Exhibits I-VIII.

³Tr. 69.

of his application for a job as a translator.⁴ He earned an associate's degree in economics from an Iranian university in 1986.⁵

Applicant's father was a high-ranking officer in the Iranian army under the Shah's regime.⁶ He retired in the early 1970s.⁷ After the 1979 revolution, his family was harassed by extremists who spray painted death threats on the walls of their home. The harassment grew so severe that they had to separate for their safety and seek "secure and secret place[s] to survive."⁸ Approximately a year later, the revolutionary fervor subsided, allowing them to reunite.⁹

From 1984 to 1986, Applicant served as an infantryman in the Iranian army.¹⁰ At the time, the country was at war with Iraq, and military service was mandatory.¹¹ While in the Army, Applicant was involved in front-line combat.¹²

Applicant returned home in 1986 after he completed his military service. Shortly thereafter, he was charged with leaving the military without returning his weapon, and was jailed. The charges were false. The government manufactured them because of his family background, and because Applicant "was not agreeing with their politics."¹³

According to Applicant, gun violations in Iran are capital crimes.¹⁴ His uncle, an Iranian equivalent of a local district attorney, managed to get him released from jail while the charges were pending.¹⁵ Applicant then fled the country, crossing the border into Turkey overnight on a donkey.¹⁶

Once Applicant reached Turkey, he caught a plane bound for Germany, where a distant relative lived. Shortly after arriving, Germany granted him political asylum.¹⁷ The entire episode,

⁴Tr. 85.

⁵Tr. 71.

⁶Tr. 109.

⁷Tr. 108.

⁸Tr. 109.

⁹Tr. 33.

¹⁰Tr. 101.

¹¹Tr. 31.

¹²Tr. 101.

¹³Tr. 33.

¹⁴Tr. 34.

¹⁵Tr. 104. The charges were ultimately dismissed.

¹⁶Tr. 105-106.

¹⁷Tr. 106.

beginning with his flight from Iran to the granting of political asylum, took two to three months. Applicant feared that his life would have been in jeopardy if he had to return to Iran.

Throughout the process, he was assisted by a smuggler whom he paid \$3,000.¹⁸ His family helped him accumulate the money by selling much of their personal valuables.¹⁹

While living in Germany, Applicant earned a black belt in kickboxing.²⁰ He then started working various jobs in security at several night clubs, and eventually became a professional bodyguard.²¹

Applicant emigrated to the United States in 1993. In 1994, after four months of specialized training, he obtained a professional bodyguard's license.²² Since that time, he has worked several stints as a professional bodyguard, in addition to other related occupations such as private investigations and hotel security.²³ Over the years, he has taken extensive continuing education courses in order to retain his bodyguard's license.²⁴ In addition to his professional bodyguard's license, he is licensed to carry firearms in 35 states.²⁵

Applicant has worked for the same company since 2003. He was recently promoted to director of personal protection.²⁶ Also, he works as a firearm instructor for a subsidiary company.²⁷

Applicant is highly respected on the job and in his community. A character witness who is a police officer testified at the hearing. Having observed Applicant in his professional capacity when they worked together on a part-time security enforcement job, and in his personal capacity as a longtime friend, he described him as a "man of honor . . . whose greatest mission is to serve the U.S."²⁸ Among the former employers who praised his professionalism include a retired special agent

¹⁸Tr. 105.

¹⁹Tr. 72.

²⁰He had previously studied martial arts while living in Iran.

²¹Tr. 73.

²²Tr. 119.

²³Exhibit 1, Security Clearance Application, dated October 14, 2004, at 2-3; Exhibit A, Reference Letter of Former Supervisor, dated September 1, 2007.

²⁴Tr. 119.

²⁵Tr. 118.

²⁶Exhibit D, Supervisor's Reference Letter, dated April 29, 2007.

²⁷Exhibit D.

²⁸Tr. 63.

with the U.S. Department of Justice Office of Internal Affairs,²⁹ and a former personnel security specialist.³⁰

Applicant's parents and two of his sisters live in Iran. He has not seen them since he fled Iran in 1987.³¹ Applicant's relationship with his father is strained.³² They do not correspond, and have only talked with one another once in the past five years.³³ Applicant is close to his mother. He considers her a friend, and talks with her once a week.³⁴ His parents have been separated for approximately 10 to 15 years.

Applicant's sisters living in Iran are both homemakers. He talks to them every two to four months.³⁵ He has another sister. She is a citizen and resident of the Netherlands. He visited her in the Netherlands approximately two years ago.³⁶ Currently, he talks to her a few times per week.³⁷ There is no record evidence of when she emigrated from Iran.

Applicant has one brother. He is a citizen and resident of the Netherlands. He emigrated there from Iran in 2001. In the ten years before he left Iran, he worked in law enforcement.³⁸ He exclusively focused on drug interdiction. He was an honest agent working in a corrupt system.³⁹ Fearing retribution against him by drug lords or other corrupt officials, he sought asylum in the Netherlands.⁴⁰ Applicant traveled to the Netherlands to visit his brother in approximately 2001. Although he has not seen him since then, he talks to him "a couple of times a week."⁴¹

²⁹Exhibit A.

³⁰Exhibit B. The former supervisor did not elaborate upon which agency he worked as a personnel security specialist.

³¹*Id.*

³²Tr. 93.

³³Tr. 96.

³⁴Tr. 97.

³⁵Tr. 116.

³⁶Exhibit 1 at 5.

³⁷Tr. 113.

³⁸Tr. 110.

³⁹Tr. 112.

⁴⁰Tr. 112.

⁴¹Tr. 113.

Applicant has no financial interests in Iran.⁴² He does not receive a pension from Iran for his service in the Iranian military.⁴³

Applicant did not disclose that he had a brother and sister living in the Netherlands, as required on his security clearance application. He did not have their addresses at the time he submitted the application.⁴⁴ When he obtained the information, he provided the information to a security clearance investigator.⁴⁵ He listed all his other relatives, disclosed his service in the Iranian military, and disclosed his father's prior service as a high-ranking officer in the Iranian army.

Approximately two years after emigrating to the United States, Applicant legally changed his name. He adopted an Americanized name to "honor the custom and culture of the country."⁴⁶

POLICIES

The adjudicative guidelines, as revised December 29, 2005, and implemented September 1, 2006, apply to the analysis of this case. In addition to brief introductory explanations for each guideline, they 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).

The mere presence or absence of a disqualifying or mitigating condition is not dispositive of a case.⁴⁷ Instead, their analysis is part of a broader adjudicative process which involves the consideration of all available, reliable information about the person, past and present, favorable and unfavorable.

As part of this process, a number of variables known as the "whole person concept" must be evaluated. Specifically these are: (1) the nature 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 age of the applicant; (5) the extent to which the 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 national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly

⁴²Exhibit 2 at 8.

⁴³*Id.*

⁴⁴Answer.

⁴⁵Tr. 42.

⁴⁶Tr. 78.

⁴⁷ISCR Case No. 03-12882 (App. Bd. July 20, 2005).

consistent with the national interest.”⁴⁸ In reaching this decision, I have drawn only those conclusions that are based on the evidence contained in the record.

The government is responsible for presenting evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

CONCLUSIONS

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.”⁴⁹ Here, Applicant’s service in the Iranian Army in the mid - 1980s triggers the application of Foreign Preference Disqualifying Condition 10(a)(2): *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 [including] military service or a willingness to bear arms for a foreign country.*

Applicant’s Iranian military service was compulsory, and occurred before he emigrated to the United States. Foreign Preference Mitigating Condition 11(c): *exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor, applies.*

Foreign Influence

“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.”⁵⁰ Here, Applicant’s contacts with his parents and two sisters residing in Iran and his two siblings residing in the Netherlands raise the issue of whether Foreign Influence Disqualifying Condition (FI DC) 7 a): *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or a resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, applies.* Although friendly countries can engage in activities involving coercion, persuasion or duress of an individual to gather classified information as readily as hostile countries,

⁴⁸See generally, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

⁴⁹Adjudicative Guideline (AG) Paragraph 9.

⁵⁰AG Paragraph 6.

the risk of such activity is heightened with hostile countries because such countries are “not likely to have scruples about pressuring one of its citizens” to obtain classified information.⁵¹

Iran is both intensely authoritarian and hostile to the United States. Consequently, FI DC 7(a) applies to Applicant’s relationship with his family members who are citizens and residents of Iran.

Conversely, no record evidence exists of either any enmity between the Netherlands and the U.S. or any deprivation of human rights of the Dutch people by its government. FI DC 7(a) does not apply to Applicant’s relationship with his sister living in the Netherlands. Although Applicant’s brother was previously a special agent in Iran before emigrating to the Netherlands, his work was limited to drug interdiction. Moreover, he quit the job more than six years ago, and sought asylum in the Netherlands out of disgust for his home country. Under these circumstances, FI DC 7(a) does not apply to Applicant’s relationship with his brother, either.

Applicant’s father’s position in the Shah’s regime placed himself and his family at risk after the 1979 revolution. Later, it served as an underlying factor leading to the false weapons charge against Applicant in the mid-1980s. Consequently, although they are estranged, Applicant’s father’s status with the former regime and the history of persecution continue to create a risk of coercion. Foreign Influence Mitigating Condition (FC MC) 8(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.*, does not apply to Applicant’s relationship with his father.

Applicant’s family experienced persecution after the 1979 revolution, and the government remains extraordinarily repressive. Consequently, FC MC 8(a) is also inapplicable to Applicant’s relationship with his mother and sisters living in Iran. The infrequent, casual nature of Applicant’s communication with his sisters could conceivably trigger the application of FC MC 8(c): *contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation*. However, their contact is not casual and infrequent enough to overcome the risk of coercion posed by the Iranian government in light of its uniquely hostile and repressive nature.

Applicant has lived in the U.S. for more than 12 years. To acknowledge his profound appreciation for American culture and ideals, he legally changed his name, adopting an Americanized one. His closest friend, the police officer who testified at the hearing, is a U.S. citizen. FC MC 8(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*, applies.

Personal Conduct

“Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness

⁵¹ISCR Case No. 02-04786 (App. Bd. June 27, 2003, at 5).

and ability to protect classified information.”⁵² Here, Applicant’s omission of his siblings living in the Netherlands from his 2004 security clearance application raises the issue of whether Personal Conduct Disqualifying Condition 16 (a): *deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire*, applies. Given that Applicant listed his service in the Iranian army, his father’s status in the Shah’s government, and his relatives living in Iran, I conclude that his explanation for not listing his two siblings in the Netherlands was credible. PC DC 16(a) does not apply.

Whole Person Concept

Applicant is potentially vulnerable to coercion by the Iranian government through his relatives living in Iran. His emphatic statement that he would not succumb to such coercion does not trigger the applicability of FC MC 8 (a). Because an analysis of the potentially applicable mitigating conditions is merely one component of the security suitability analysis, however, his statement must be evaluated further in the broader context of the whole person concept.

According to the Appeal Board, “an applicant’s stated intention about what he or she might do in the future under some hypothetical set of circumstances is merely a statement of intention that is not entitled to much weight, unless there is record evidence that the applicant has acted in a similar manner in the past.”⁵³ Here, Applicant has acted in a similar manner in the past. When he considered fleeing Iran in 1987, he was keenly aware, as one who had previously experienced persecution by the Iranian government, of the potentially fatal consequences to himself and his family if he failed. This neither deterred him from fleeing nor his family from helping him. In this context, Applicant’s statement that he would not succumb to any future pressure from the Iranian government is entitled to significant weight.

In weighing Applicant’s statement in this manner, I am in no way implying that the government must wait until the Iranian government threatens him or his family, then see how he responds to such threats.⁵⁴ Rather, I have evaluated it in conjunction with a number of other positive factors including his courage, character, credibility, professional competence, and longstanding ties to the U.S. When viewed together, these positive factors outweigh the security concerns generated by the presence of his immediate family members in Iran. I conclude he has carried the burden. Clearance is granted.

FORMAL FINDINGS

_____ Paragraph 1 - Guideline C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2 – Guideline B:	FOR APPLICANT

⁵²AG Paragraph 15.

⁵³ISCR Case No. 03-09053 (App. Bd. March 29, 2006 at 5).

⁵⁴See ISCR Case No. 01-26893 (App. Bd. October 16, 2002).

Subparagraphs 1.a-1.f:	For Applicant
Paragraph 3 - Guideline F:	WITHDRAWN
Paragraph 4 - Guideline E:	FOR APPLICANT
Subparagraph 4.a:	For Applicant

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.

Marc E. Curry
Administrative Judge