



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
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Applicant for Security Clearance )

ISCR Case No. 12-04757

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: Stewart Baker, Esq.

02/05/2013

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**Decision**

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LYNCH, Noreen A., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application on April 23, 2010. On September 6, 2012, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline B. DOD acted 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 adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant received the SOR and requested a hearing on the record. Department Counsel requested a hearing before an administrative judge. The case was assigned to me on November 26, 2012. A notice of hearing was issued on December 7, 2012, scheduling the hearing for January 10, 2013. Government Exhibits (GX) 1 and 2 were

admitted in evidence without objection. Applicant testified and presented Applicant's Exhibits (AX) A through J. I received the transcript (Tr.) on January 17, 2013.

### **Procedural Issue**

The Government, through Department Counsel, requested that I take administrative notice of certain facts with respect to Iran. Applicant did not object to the documents. A packet was labeled Hearing Exhibit I and entered into the record.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the factual allegations in the SOR under Guideline B (Foreign Influence) with explanations. He provided additional information to support his case. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a native-born U.S. citizen. He was educated in the United States and received his doctoral degree in public service from a U.S. university in 1996. His professional career has been in public service with various federal agencies for 15 years. He has held a security clearance for 17 years without incident. (AX A)

Applicant is married and has one son. (Tr. 18) His wife is a naturalized U.S. citizen (1994). She was born in Iran, but her immediate family resides in the United States. She has some cousins in Iran. Applicant's wife came to the United States seeking political asylum. She has never returned to Iran, and she has no desire to return. Applicant met his wife when they were graduate students in the United States. She works for a pharmaceutical company.

Applicant's father-in-law, who is 87, is a citizen of Iran who lives in the United States. His wife, three daughters, and one brother live in the United States and are naturalized U.S. citizens. (Tr. 24)

Applicant's father-in-law is a permanent resident in the United States but he has not been able to pass the test for citizenship in English. (AX D) He has reapplied and is awaiting an interview. (AX E) Due to the length of time that he has been in the United States and his age, he will be allowed to take the citizenship test in his native language. (Tr. 34)

Applicant's father-in-law has travelled to Iran in the past to collect an Iranian pension and to visit friends. (Tr. 38) His pension is valued at \$8,000 a year. (Tr. 39) Applicant purchases the airline ticket for his father-in-law. In 2012, Applicant's father-in-law did not go to Iran due to his failing health. It is a hard trip for him to make due to his deteriorating health. He also does not like the political situation in Iran. His daughter (Applicant's wife) does not want him to travel to Iran. It is doubtful if he will be able to make any more trips to Iran.

Applicant and his wife own a home in the United States. His net worth is substantial. (AX I) He and his wife have several mutual funds, as well as 401(k) and savings accounts. He has no bank accounts or investments in Iran. Applicant has no financial interests in Iran.

Applicant's wife acknowledges her hatred for the Iranian government. Her immediate family is in the United States. She has some extended family (cousins, aunts and uncles) who live in Iran. Her ties with them are quite limited. She considers them distant relatives. She has had phone conversations with some of them once or twice a year. Her conversations are short and casual. She does not call them; they call her. None of her family knows about Applicant's work. Applicant does not know her Iranian relatives living in Iran.

Applicant submitted a recommendation from his supervisor who commends him for his distinguished work in research. His long and outstanding service has been recognized with an important award in 2004. His supervisor has known Applicant for many years. Applicant is described as an honest, loyal leader who is committed to his work on issues critical to the nation's computer infrastructure. (AX B)

Applicant presented letters from high-ranking U.S. military officials who have worked with him on various projects as recent as 2010. Applicant's leadership in his field is cited as greatly influencing military missions. (AX C)

Applicant was credible when describing his loyalty to his work in national security. If the need arose, he would immediately contact his FSO to report anything suspicious. He is honored to have an opportunity to provide research advice to the U.S. government. He is active in the community.

### **Administrative Notice**

Iran is a constitutional, theocratic, Islamic republic, founded in 1979 after a revolution that removed the Shah as head of State. Islamic law is the basis for the authority of the Iranian state. Shi'a Muslim clergy dominate the country's political structure, and ultimate political power rests in a Shi'a religious scholar, who is called the Supreme Leader.

The United States has not had diplomatic or consular relations with Iran since 1979. The United States, by executive orders issued by the President as well as by congressional legislation, prohibits nearly all trade and investment with Iran. Sanctions have been imposed on Iran because of its sponsorship of terrorism, its refusal to comply with the International Atomic Energy Agency (IAEA) regulations regarding its nuclear program and its human rights violations.

In January 2012, the Director of National Intelligence expressed concern that the 2011 plot to assassinate the Saudi Ambassador to the United States shows that some Iranian officials – probably including Supreme Leader Ali Khamenei – have changed

their calculus and are now more willing to conduct an attack in the United States in response to real or perceived U.S. actions that threaten the regime. He also expressed concern about Iranian plotting against U.S. or allied interests overseas. He assessed that Iran is keeping open the option to develop nuclear weapons, in part by developing various nuclear capabilities that better position it to produce such weapons, should it choose to do so.

Iran has been designated as a State Sponsor of Terrorism since 1984, and remains one of the most active state sponsors of terrorism. According to the U.S. Department of State, it provides planning and financial support for terrorists attacks throughout the Middle East, Europe, and Central Asia. Iran trains, equips, and funds select Iraqi Shi'a militant groups. It has refused to bring to justice senior al-Qa'ida members it has detained.

The U.S. State Department warns U.S.-Iranian dual citizens to consider carefully the risks of travel to Iran. Iranian authorities do not recognize dual citizenship, and consider Iranian-born, naturalized U.S. citizens and their children to be solely Iranian citizens. The State Department also warns that U.S. citizens of Iranian origin may be subject to harassment or arrest while in Iran, and should carefully consider the risk of being targeted by Iranian authorities. Such dual citizens have had their U.S. passports confiscated, and have been denied permission to exit Iran. Visitors from abroad may be placed under surveillance, have their personal possessions in hotel rooms searched, and their telephone monitored.

## **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the

possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Guideline B, Foreign Influence**

The security concern under this guideline is set out in AG ¶ 6:

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.

Two disqualifying conditions under this guideline are relevant. A disqualifying condition may be raised by “contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion.” AG ¶ 7(a). In addition, AG ¶ 7(b) “sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure or coercion” is applicable.

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002). Finally, friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation’s government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

Applicant is a native-born U.S. citizen. He has lived and worked in the United States for his professional career. He met his wife in graduate school in the United States. Applicant’s wife sought and received political asylum in the United States. She is a naturalized U.S. citizen. Applicant and his wife have one son who is a U.S. citizen. Applicant shares living quarters with his wife who maintains some contact with distant relatives who live in Iran.

Applicant’s father-in-law has travelled to Iran in the past to collect an \$8,000 pension. He is 87-years-old and in failing health. He is a permanent resident of the United States, but has not yet passed his citizenship test. “[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family

members of the person's spouse." ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at \* 8 (App. Bd. Feb. 20, 2002). Applicant maintains a relationship with his father-in-law.

After considering the totality of Applicant's wife's family ties to Iran as well as each individual tie, I conclude that Applicant's family ties are sufficient to raise an issue of a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion. Based on all these circumstances, I conclude that AG ¶ 7(a) and 7(b) are established.

Security concerns under this guideline can be mitigated by showing that "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." AG ¶ 8(a).

Security concerns under this guideline can also be mitigated by showing "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." AG ¶ 8(b).

Applicant is a native-born U.S. citizen. He was educated in the United States. Ultimately, he received his Ph.D in 1996. His professional life is in the United States. He has held a clearance for 17 years without incident. He met his wife in graduate school in the United States. His wife was born in Iran but sought and received political asylum in the United States. His wife is a naturalized U.S. citizen. Applicant and his wife have a son who is a U.S. citizen. His wife has never returned to Iran. Her immediate family resides in the United States. They are U.S. citizens, with the exception of her father.

Applicant's father-in-law is a permanent resident of the United States. He has not yet passed the citizenship test due to a language barrier. He reapplied and is scheduled to take the test in his native language. Applicant's father-in-law travelled to Iran in the past to collect a small pension. However, he is not dependent on it. Also, due to his health and advancing age, it is not likely that he will return. His father-in-law will become a U.S. citizen when he passes the citizenship test. Applicant has significant professional, personal, and financial ties to the United States. In light of Applicant's wife's close ties to her family in the United States, it is unlikely that Applicant or his wife would choose any distant relatives in Iran over their life in the United States. The extended family members of Applicant's wife are unknown to him. His wife has quite limited contact. His wealth and assets are in the United States. I find mitigating conditions AG ¶ 8(b) applies. Even if security concerns are not mitigated under 8(b), they are mitigated under the whole-person concept, *infra*.

## Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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 extent to which 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has held a security clearance for 17 years without incident. He is highly recommended for his research work with U.S. national security. His wife is a naturalized U.S. citizen. He and his wife have a son who is a U.S. citizen. He was articulate, candid, sincere, and credible at the hearing. Applicant's home is in the United States. Applicant has been successful in his work. His current employer recommends him for his security clearance. He has strong recommendations from his supervisor and several senior U.S. military officers. He received an important award in 2004.

Applicant's father-in-law is a permanent resident of the United States. He is 87 and in poor health. His father-in-law made trips to Iran in the past to collect an \$8,000 pension. However, it is unlikely that due to his deteriorating health and the condition of or the conditions in Iran that he will return. Moreover, he is scheduled to take his citizenship test in his native language very soon. He would then become a U.S. citizen. Applicant's wife's immediate family is in the United States and are U.S. citizens. His wife has never returned to Iran. They are firmly established in the United States. She has quite limited ties with distant relative in Iran. Although Applicant through his wife has some familial ties to Iran, I am convinced that he will resolve any issues in favor of the United States.

There is no evidence any of the individuals at issue are involved with, or under scrutiny, by interests antithetical to the United States. His wife's family members do not know the specifics of his work.



Regarding Applicant's life in the United States, he is an American citizen, with a stable family, social, and professional life. His life is focused here. He has loyalty to the United States. His professional career has blossomed in the United States. There is no evidence indicating that he may be manipulated or induced to help a foreign power or interest.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign influence. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

**Formal Findings**

I make the following formal findings on the allegation in the SOR:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant

**Conclusion**

In view of all the circumstances presented in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Noreen A. Lynch  
Administrative Judge