



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 12-08412
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

08/04/2015

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s brother-in-law and sister-in-law (siblings-in-law) are citizens and residents of Iran. Applicant failed to present sufficient evidence to mitigate his and his spouse’s relationships with Applicant’s Iranian siblings-in-law. Foreign influence security concerns are not mitigated. All other security concerns are mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On March 1, 2012, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a security clearance application (SF 86). (Item 2) On November 7, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant, pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR alleged security concerns under Guidelines B (foreign influence) and C (foreign preference). (Item 1) The SOR detailed reasons why DOD could not make the 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 Applicant's clearance should be granted, continued, denied, or revoked. (Item 1)

On December 10, 2014, Applicant responded to the SOR allegations and waived his right to a hearing. (Item 1) A complete copy of the file of relevant material (FORM), dated June 1, 2015, was provided to him on July 1, 2015.¹ On July 9, 2015, Applicant responded to the FORM. Department Counsel did not object to Applicant's submission. The case was assigned to me on July 30, 2015.

Procedural Rulings

Department Counsel requested administrative notice of materials concerning the Islamic Republic of Iran (Iran). (Item 6) Department Counsel listed 16 U.S. Government publications as reliable sources to show context and support for the discussion of Iran and its relationship to the United States. (Item 6 with Appendices I-XVI) There were no objections, and I have included Department Counsel's statement about Iran in the section labeled "Iran" of this decision based on my discretion to take administrative notice of generally accepted facts from reputable U.S. Government sources. The Iran section of this decision is taken from Department Counsel's administrative notice request with some punctuation, spelling corrections, and internal footnotes omitted. In addition to the information Department Counsel provided, I take administrative notice that the United States and Iran have recently discussed agreements to lift economic sanctions against Iran and for Iran to permit inspections to ensure Iran is not developing nuclear weapons. Iran and the United States oppose the activities of Isis in Iraq. See Paul D. Shinkman, U.S. News and World Report, "Is Iran Helping the U.S. Dislodge ISIS from Iraq?" (Mar. 3, 2015), <http://www.usnews.com/news/articles/2015/03/03/is-iran-helping-the-us-dislodge-isis-from-iraq>.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Findings of Fact²

Applicant's SOR response admitted the allegations in SOR ¶¶ 1.a and 1.b, 2.a(1) through 2.a(3), and he provided mitigating information. (Item 1) His admissions are

¹The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated June 19, 2015, and Applicant's receipt is dated July 1, 2015. The DOHA transmittal letter informed Applicant that he had 30 days after his receipt to submit information.

²To protect Applicant and his family's privacy, the facts in this decision do not specifically describe employment, names of witnesses, and names of other groups or locations. The cited sources contain more specific information.

incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 72-year-old manufacturing engineer who is seeking employment in post-design systems. (FORM response) He has worked for the same large DOD contractor for more than 10 years. (Item 2) Applicant was born in Iran, served in the Iranian Army for 18 months (1964-1965), earned a bachelor's degree in Lebanon in 1972, and immigrated to the United States in 1973. (Items 1, 2; FORM response) He earned a master's degree in business administration from a U.S. university. (FORM response) He began working for a DOD contractor in 1980. He became a U.S. citizen in 1984, and a U.S. passport was issued to him in 2004. (SOR response) He has a lifetime teaching credential from a college. (FORM response) His U.S. net worth is about \$1,605,000. (Item 3) Applicant and his spouse's parents are deceased. (Item 2)

In 1972, Applicant married his spouse in Iran. (Item 2) Applicant's spouse is a dual citizen of the United States and Iran. (SOR ¶ 1.a response) She resides with Applicant in the United States. Applicant's brother-in-law and sister-in-law are in their early 70s, and they are citizens and residents of Iran. (SOR ¶ 1.b response; Item 3) Applicant's brother-in-law is a retired Iran Government employee. (SOR ¶ 1.b response) Applicant said he communicates with his siblings-in-law about four times a year. (April 26, 2012 Office of Personnel Management (OPM) personal subject interview (PSI), Item 3)

Applicant obtained an Iranian passport in 2004. (SOR ¶ 2.a(1) response) He used it to travel to Iran in 2004. (SOR ¶ 2.a(2) response) In 2004, Applicant and his spouse went to Iran to visit his mother, who was very ill. (FORM response) Applicant explained he used his Iranian passport because:

[The Iranian authorities] would have captured me right upon arrival at the airport check out as an American spy & we would not have been able to have this conversation together. Plus in that case, my family would have lost their bread winner, their house, their belongings & God knows what would have happened to them. (FORM response)

Applicant's mother passed away in 2010, and his sister used Applicant's Iranian passport to claim the \$3,000 in benefits of an insurance policy in 2011. (SOR ¶ 2.a(3) response; FORM response) In 2012, Applicant surrendered his Iranian passport to his security officer. (SOR response) His Iranian passport expired in 2014. (SOR ¶ 2.a(1) response)

Applicant's three daughters were born in 1973, 1978, 1982, in the United States. (Item 2) His three daughters live in the United States. (FORM response) One daughter has a biology degree, is married to a physician, and has three sons. The other two daughters are medical professions with degrees from a well-known university. (FORM response) Applicant's grandchildren are U.S. citizens.

Applicant said, "I love Iran & I always will love Iran because it is my birth place – for no other reason." (FORM response) He also loves the United States and appreciates everything the United States has done for him and his family. (FORM response) He denies that he has a preference for Iran over the United States. (FORM response) Applicant does not have any financial interests in Iran. (Item 3) Applicant offered to renounce his Iranian citizenship. (April 26, 2012 OPM PSI, Item 3)

Iran

- In January 2012, the Director of National Intelligence assessed that the most menacing foreign intelligence threats in the next two to three years will involve espionage by China, Russia, and Iran, and that the foreign intelligence services of these three countries will remain the top threats to the United States in the coming years. He also assessed that Iran's intelligence operations against the United States, including cyber capabilities, have dramatically increased in recent years in depth and complexity.
- In February 2014, the Director of National Intelligence assessed that Iran and North Korea are unpredictable actors in the international arena. Their development of cyber espionage or attack capabilities might be used in an attempt to either provoke or destabilize the United States or its partners.
- The U.S. Government does not have diplomatic relations with Iran. The United States has long-standing concerns over Iran's nuclear program, sponsorship of terrorism, and human rights record. The United States and the international community have imposed comprehensive sanctions against Iran to compel Iran to engage seriously in discussions with the international community and address concerns over its nuclear program and human rights abuses. The current Iranian government still has not recognized Israel's right to exist, has hindered the Middle East peace process by arming militants, including Hamas, Hezbollah, and Palestinian Islamic Jihad, and continues to play a disruptive role in sustaining violence in the region, particularly Syria.
- The U.S. Government prohibits nearly all trade and investment with Iran by U.S. persons. Sanctions have been imposed on Iran because of its sponsorship of terrorism, its refusal to comply with international obligations on its nuclear program, and its human rights violations.
- Iran has made technical progress in a number of areas-including uranium enrichment, nuclear reactors, and ballistic missiles-from which it could draw if it decided to build missile-deliverable nuclear weapons. These technical advancements strengthen the assessment that Iran has the scientific, technical, and industrial capacity to eventually produce nuclear weapons.
- Iran will continue to act assertively abroad in ways that run counter to U.S. interests and worsen regional conflicts. Iranian officials almost certainly believe that their support has been instrumental in sustaining Assad's regime in Syria

and will probably continue support during 2014 to bolster the regime. In the broader Middle East, Iran will continue to provide arms and other aid to Palestinian groups, Houthi rebels in Yemen, and Shia militants in Bahrain to expand Iranian influence and to counter perceived foreign threats.

- Iran sees rising sectarianism as a dangerous regional development, but its perceived responsibility to protect and empower Shia communities will increasingly trump its desire to avoid sectarian violence. Hence, Iran's actions will likely do more to fuel rather than dampen increasing sectarianism.
- In 2013, the U.S. Department of State reaffirmed its 1984 designation of Iran as a State Sponsor of Terrorism, denoting the U.S. Government's determination that Iran has repeatedly provided support for acts of international terrorism.
- In 2013, Iran continued its terrorist-related activity, including support for Palestinian terrorist groups in Gaza, and for Hizballah. It has also increased its presence in Africa and attempted to smuggle arms to Houthi separatists in Yemen and Shia oppositionists in Bahrain. Iran used the Islamic Revolutionary Guard Corps-Quds Force (IRGC-QF) and its regional proxy groups to implement foreign policy goals, provide cover for intelligence operations, and create instability in the Middle East. The IRGC-QF is the regime's primary mechanism for cultivating and supporting terrorists abroad.
- In 2013, Iran continued to provide arms, financing, training, and the facilitation of Iraqi Shia fighters to the Assad regime's brutal crackdown, a crackdown that has resulted in the death of more than 100,000 civilians in Syria.
- In 2013, despite its pledge to support Iraq's stabilization, Iran trained, funded, and provided guidance to Iraqi Shia militant groups. Iran remained unwilling to bring to justice senior al-Qa'ida (AQ) members it continued to detain, and refused to publicly identify those senior members in its custody.
- In 2013, Iran allowed AQ facilitators Muhsin al-Fadhli and Adel Radi Saqr al-Wahabi al-Harbi to operate a core facilitation pipeline through Iran, enabling AQ to move funds and fighters to South Asia and also to Syria.
- In 2013, the most egregious human rights problems in Iran were the government's manipulation of the electoral process, which severely limited citizens' right to change their government peacefully through free and fair elections; restrictions on civil liberties, including the freedoms of assembly, speech, and press; and disregard for the physical integrity of persons whom it arbitrarily and unlawfully detained, tortured, or killed. The government took few steps to prosecute, punish, or otherwise hold accountable officials who committed abuses. Members of the security forces detained in connection with abuses were frequently released soon after their arrest, and judicial officials did not prosecute offenders. Impunity remained pervasive throughout all levels of the government and security forces.

- In 2013, other reported human rights problems included, for example: disappearances; cruel, inhuman, or degrading treatment or punishment, including judicially sanctioned amputation and flogging; politically motivated violence and repression, such as beatings and rape; harsh and life-threatening conditions in detention and prison facilities, with instances of deaths in custody; arbitrary arrest and lengthy pretrial detention, sometimes incommunicado; continued impunity of security forces; denial of fair public trials, sometimes resulting in executions without due process; the lack of an independent judiciary; political prisoners and detainees; ineffective implementation of civil judicial procedures and remedies; arbitrary interference with privacy, family, home, and correspondence; severe restrictions on freedoms of speech (including via the internet) and press; and harassment of journalists.
- In 2013, Iranian security forces monitored the social activities of citizens, entered homes and offices, monitored telephone conversations and Internet communications, and opened mail without court authorization. The Iranian Government often charged persons with crimes against national security and insulting the regime based on letters, e-mails, and other public and private communications.
- The Iranian government does not recognize dual nationality and will treat U.S.-Iranian dual nationals solely as Iranian citizens subject to Iranian laws. Thus, U.S. citizens who were born in Iran, who became naturalized citizens of Iran (e.g., through marriage to an Iranian citizen), and children of such persons—even those without Iranian passports who do not consider themselves Iranian—are considered Iranian nationals by Iranian authorities. Therefore, despite the fact that these individuals hold U.S. citizenship, under Iranian law, they must enter and exit Iran on an Iranian passport unless the Iranian government has recognized a formal renunciation or loss of Iranian citizenship. Dual nationals sometimes have their U.S. passports confiscated and may be denied permission to leave Iran, or encounter other problems with Iranian authorities.
- Iranian authorities have prevented a number of U.S. citizen academics, scientists, journalists, and others who traveled to Iran for personal/cultural/business reasons from leaving the country and in some cases have detained, interrogated, and imprisoned them on unknown or various charges, including espionage and being a threat to the regime. U.S. citizens of Iranian origin should consider the risk of being targeted by authorities before planning travel to Iran.
- Iranian security personnel may at times place foreign visitors under surveillance. Hotel rooms, telephones, and fax machines may be monitored, and personal possessions in hotel rooms may be searched.
- In February 2011, the Iranian Government put former presidential candidates and opposition leaders Mehdi Karroubi, Mir Hossein Mousavi, and his wife, women's rights advocate Zahra Rahnava, under house arrest without formally charging

them with any crimes. In February 2014, the U.S. Department of State condemned their continued imprisonment and the harassment of their family members, and called for their immediate release, continued to urge the Iranian government to respect its international obligations to guarantee its citizens minimum fair trial guarantees and provide that no one shall be subject to arbitrary arrest or detention, and renewed its call for Iran to release all prisoners of conscience in its custody.

- In March 2014, the U.S. Department of State renewed its commitment to the safe return of Robert Levinson, who disappeared seven years ago while on a business trip to Iran, and is one of the longest held American citizens in history.
- In May 2013, Mansour Arbabsiar was sentenced to 25 years in prison for conspiring with Iranian-based co-conspirators, including senior officials in Iran's Quds Force, to assassinate the Saudi Arabian ambassador to the United States.
- In October 2011, the Office of National Counterintelligence Executive reported that losses of sensitive economic information and technologies to foreign entities represent significant costs to U.S. national security. It also reported that the illicit transfer of technology with military applications to a hostile state such as Iran or North Korea could endanger the lives of U.S. and allied military personnel. Finally, it reported that Russia and Iran have aggressive programs for developing and collecting U.S. civilian and dual use technologies, specifically in one area of advanced materials and development: nanotechnology. The United States continues to charge and convict individuals involved with the illegal export, or attempted illegal export, of restricted and dual-use technology to Iran.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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 “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, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[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

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] 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.

AG ¶ 7 indicates three conditions that could raise a security concern and may be disqualifying in this case:

(a) 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;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and

(d) 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.

Applicant was born in Iran, and he served in the Iran military for 18 months. His siblings-in-law are citizens and residents of Iran. In 2012, he told an OPM investigator that he had contacts with his siblings-in-law living in Iran about four times a year. He did not provide updated information on his contacts with his siblings-in-law or describe his spouse's contacts with her brother and sister in Iran.

Applicant lives with his spouse in the United States. His spouse is presumptively close enough to her siblings to raise a security concern because her siblings are residents and citizens of Iran. Applicant did not indicate how often his spouse communicates with her parents. There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). “[A]s a matter of common sense and human experience, there 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. 07-17673 at 3 (App. Bd. Apr. 2, 2009) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). This concept is the basis of AG ¶ 7(d). See *also* ISCR Case No. 09-05812 at 2 (App. Bd. Dec. 1, 2011) (finding “presence in India of close family members, viewed in light of that country's troubles with terrorism and its human rights abuses, and his sharing living quarters with a person (his wife) having foreign family contacts, establish the ‘heightened risk’” in AG ¶¶ 7(a) and 7(d)). Thus, an indirect, but important tie remains between Applicant and his in-laws living in Iran. Indirect influence from Applicant's in-laws living in Iran, through Applicant's spouse to Applicant, could result in a security concern.

Applicant's relationships with his siblings-in-law living in Iran create a concern about Applicant's “obligation to protect sensitive information or technology” and his desire to help his spouse's siblings, who are in Iran. For example, if terrorists or

government officials in Iran wanted to expose Applicant to coercion, they could exert pressure on his siblings-in-law in Iran. Applicant would then be subject to coercion through his spouse's relatives and classified information could potentially be compromised.

Possession of close family ties with family living in Iran is not, as a matter of law, disqualifying under Guideline B. However, if an applicant or his or her spouse has a close relationship with even one relative, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion or inducement. 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 collection operations against the United States. The relationship of Iran with the United States places some, but not an insurmountable burden of persuasion on Applicant to demonstrate that his and his spouse's relationships with family members living in Iran do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist his spouse's relatives in Iran.

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, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives or terrorists from Iran seek or have sought classified or economic information from or through Applicant, his spouse, or her relatives living in Iran, nevertheless, it is not possible to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Iran has a problem with terrorism. Applicant's and his spouse's relationships with family members living in Iran create a potential conflict of interest because these relationships are sufficiently close to raise a security concern about his desire to assist relatives in Iran by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant's and his spouse's contacts with family living in Iran. Department Counsel has raised the issue of potential foreign pressure or attempted exploitation, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(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.;

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant has frequent contacts with his siblings-in-law and his spouse's contacts with her siblings, who are citizens and residents of Iran is unknown. His loyalty and connections to family living in Iran is a positive character trait. However, for security clearance purposes, those same connections negate the possibility of mitigation under AG ¶ 8(a), and Applicant failed to fully meet his burden of showing there is "little likelihood that [his relationships with his siblings-in-law who are Iran citizens living in Iran] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) partially applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has significant connections to the United States. He immigrated to the United States in 1973. He earned a master's degree in business administration from a U.S. university. He began working for a DOD contractor in 1980. He became a U.S. citizen in 1984. His spouse, three daughters, and grandchildren are all U.S. citizens and live in the United States. When he took an oath and swore allegiance to the United States in 1984, as part of his naturalization as a U.S. citizen, and when he volunteered to assist the U.S. Government as a contractor, he manifested his patriotism, loyalty, and fidelity to the United States over all other countries. His U.S. net worth is about \$1,605,000.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his and his spouse's relationships with family living in Iran. There is no evidence, however, that terrorists, criminals, the Iranian Government, or those conducting espionage have approached or threatened Applicant, his spouse, or their family to coerce Applicant for classified or sensitive information.³ As such, there is a reduced possibility that Applicant or his family living in Iran would be specifically selected as targets for improper coercion or exploitation. Of course, the primary risk to his family living in Iran is from the lawless Iranian Government.

While the U.S. Government does not have any burden to prove the presence of such evidence, if such record evidence were present, Applicant would have a heavier evidentiary burden to mitigate foreign influence security concerns. It is important to be mindful of the United States' recent efforts to reach an agreement with Iran to inspect for development for nuclear weapons and possible lifting of economic sanctions. In addition, the United States and Iran both seek to expel Isis from Iraq. Nevertheless, Applicant's potential access to classified information could theoretically add some risk to Applicant's siblings-in-law from the Iranian Government.

AG ¶¶ 8(d) and 8(e) do not apply. The U.S. Government has not encouraged Applicant's involvement with family members living in Iran. Applicant is not required to report his contacts with citizens or residents of Iran. AG ¶ 8(f) does not apply because Applicant does not have any property in Iran.

In sum, Applicant and his spouse's connections to family living in Iran are significant. According to Applicant's 2012 OPM PSI, Applicant frequently communicated

³There would be little reason for U.S. enemies to seek classified information from an applicant before that applicant has access to such information or before they learn of such access.

with his siblings-in-law in Iran. The frequency of his spouse's communications with her siblings in Iran is not described in the record. Applicant has the burden of establishing mitigation. He did not provide any information that his communications with his siblings-in-law are less frequent now than they were in 2012. Security concerns are not analyzed in a piecemeal assessment. Instead, the overall situation must be considered. Foreign influence security concerns under Guideline B are not mitigated at this time.

Foreign Preference

AG ¶ 9 describes the foreign preference security concern stating, "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."

AG ¶ 10 describes one condition with seven subparts that could raise a security concern and may be disqualifying in Applicant's case. AG ¶ 10(a) provides:

(a) 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. This includes but is not limited to: (1) possession of a current foreign passport; . . . [and] (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country.

The scope of AG ¶ 10 is not limited to the specifically enumerated disqualifying conditions and includes other conduct or statements that show preference for a foreign country. In 1984, Applicant became a U.S. citizen. In 2004, Applicant obtained an Iranian passport, and he and used it in 2004 to enter and leave Iran, and his sister used it in 2011, to obtain benefits from Iran. AG ¶ 10(a)(1) and 10(a)(3) apply.

AG ¶ 11 provides two conditions that could mitigate security concerns in this case: "(b) the individual has expressed a willingness to renounce dual citizenship; . . . [and] (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated."

AG ¶¶ 11(b) and 11(e) apply. Applicant turned in his Iranian passport, and it has expired. He offered to renounce his Iranian citizenship. Based on the entire record, foreign preference concerns are mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The 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 Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

The factors weighing towards approval of Applicant's security clearance are noteworthy; however, they are less substantial than the factors weighing against its approval. There is no evidence that Applicant has engaged in recent criminal activity, abused alcohol or recently abused illegal drugs, or committed any security violations. When he and his spouse were naturalized as U.S. citizens, they swore allegiance to the United States. His spouse, three children, and grandchildren are U.S. citizens and reside in the United States. He volunteered to serve as a contractor supporting the DOD. Applicant has substantial property in the United States, including his U.S. salary, and these financial components are important economic connections to the United States. There is no evidence that Applicant has any economic connections to Iran. There is no evidence that terrorists or other foreign elements have specifically targeted Applicant or his family.

A Guideline B decision concerning Iran must take into consideration the geopolitical situation and dangers there.⁴ Iran is a dangerous place. Iran supports terrorists, who threaten the interests of the United States, and those who cooperate and assist the United States. The Iranian Government does not comply with the rule of law or protect civil liberties. Iran aggressively seeks intelligence information from the United States. The United States and Iran have recently discussed agreements to lift economic sanctions against Iran and for Iran to permit inspections for nuclear-weapon development. Iran and the United States oppose the activities of Isis in Iraq. Iran and the United States continue to have profound policy disputes.

Unresolved significant foreign influence security concerns from Applicant's siblings-in-law living in Iran, and his, his spouse's connections to them warrant greater weight than his connections to the United States. Applicant and his spouse were born in Iran. Applicant acknowledged his love for Iran and the dangerous elements in Iran and the risks to his siblings-in-law. In 2012, Applicant frequently communicated with his siblings-in-law in Iran. The record is silent about his spouse's communications with her siblings. Applicant and his spouse's connections to family in Iran make Applicant, his spouse, and his siblings-in-law more vulnerable as a target of coercion of lawless

⁴ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

elements in Iran, including the Iranian Government. Applicant's family in Iran will be at a greater risk if his clearance is granted.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude foreign preference concerns are mitigated; however, Applicant has not carried his burden and foreign influence concerns are not mitigated at this time. Eligibility for access to classified information is denied.

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:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraphs 2.a(1) through 2.a(3):	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge