



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 13-00135

Appearances

For Government: Christopher Morin, Esquire, Department Counsel
For Applicant: *Pro se*

01/31/2014

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding foreign influence. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On June 9, 2011, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).¹ The Department of Defense (DOD) issued a Statement of Reasons (SOR) to him on May 6, 2013, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline B (Foreign Influence) and detailed reasons

¹ GE1 ((SF 86), dated June 9, 2011).

why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The DOD adjudicators recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on June 13, 2013. In a sworn statement, dated June 24, 2013, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed August 20, 2013. The case was assigned to me on August 26, 2013. A Notice of Hearing was issued on December 12, 2013, and I convened the hearing as scheduled on December 18, 2013.²

During the hearing, 4 Government exhibits (GE 1 through GE 4) and 14 Applicant exhibits (AE A through AE N) were admitted into evidence without objection. The transcript (Tr.) was received on January 3, 2014. The record was closed on January 3, 2014.

Rulings on Procedure

Department Counsel requested that I take administrative notice of certain enumerated facts pertaining to the Islamic Republic of Iran (Iran), appearing in 20 written submissions. Facts are proper for administrative notice when they are verifiable by an authorized source and relevant and material to the case. In this instance, the Government relied on source information regarding Iran in publications of the U.S. Department of State,³ U.S. Department of Justice,⁴ U.S. Department of the Treasury,⁵

² The delay from August until December was occasioned by Applicant being stationed in Kuwait, and the hearing, at his request, could not be scheduled until his return to the United States. On December 12, 2013, Applicant notified Department Counsel that he was in the United States and he requested that the hearing be scheduled at an early date. The Directive established that notification as to the time and place of a hearing be furnished to an applicant at least 15 days in advance of the time of the hearing. See, Directive, Encl. 3, § E3.1.8. In this instance, Department Counsel and Applicant were in discussions regarding the potential time and location long before the actual Notice of Hearing was issued, as well as during Applicant's unexpected return to the United States. Applicant also advised Department Counsel of his willingness to waive the 15-day notice period. Nevertheless, because the period between the issuance of the Notice and the hearing was less than 15 days, I inquired of Applicant if the period of notice was sufficient, and Applicant specifically waived the 15-day notice requirement. See, Tr. at 32-33.

³ U.S. Department of State, *Country Specific Information: Iran*, dated October 30, 2009; U.S. Department of State, Office of the Coordinator for Counterterrorism, *State Sponsors of Terrorism 2012*, dated May 30, 2013; U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices for 2012 – Iran*, undated; U.S. Department of State, Press Release: *Secretary Clinton and Foreign Minister Cannon Express Concern over Continued Detention of U.S. and Canadian Nationals in Iran*, dated September 25, 2009; U.S. Department of State, Press Release: *Robert Levinson's 1,000th Day Missing*, dated December 3, 2009; U.S. Department of State, Press Release: *Wave of Arrests, Harassment, and Death Sentences in Iran*, dated January 26, 2012.

⁴ U.S. Department of Justice, Press Release: *Iranian Pleads Guilty to Attempted Exportation of Arms and Money Laundering*, dated April 13, 2005; U.S. Department of Justice, Press Release: *Singapore Businessman Convicted of Secretly Diverting U.S. Military and Civilian Aircraft Parts to the Islamic Republic of Iran*, dated May 18, 2006; U.S. Department of Justice, Press Release: *Arms Dealer Pleads Guilty to Conspiracy to Supply U.S. Fighter Jet Engines to Iran*, dated November 23, 2009; U.S. Department of Justice, Press Release: *U.K. Firm Fined \$2 Million After Pleading Guilty to Illegally Exporting Boeing 747 Aircraft to Iran*, dated May 11, 2010; U.S. Department of Justice, Press Release: *Iranian National Pleads Guilty to Attempting to Export Munitions from the United States*, dated June 17, 2010; U.S. Department of Justice, Press Release: *Iranian National Charged With Illegally Exporting*

the Office of the Director of National Intelligence,⁶ and the Office of the National Counterintelligence Executive.⁷

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts,⁸ as set forth below under the Iran subsection. However, while I do not reject the facts set forth in the various press releases, any inference that Applicant or his family participated in criminal activity was not argued by the Government and is specifically rejected.

Findings of Fact⁹

In his Answer to the SOR, Applicant admitted, with substantial explanations and modifications, all of the factual allegations pertaining to foreign influence (¶¶ 1.a. through 1.e.). Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 71-year-old employee of a defense contractor who, since June 2011, has served as a linguist.¹⁰ He previously worked as a university researcher, and for a period of 22 years, as a university professor. Applicant has never served in the

Specialized Metals From the United States to Iran, dated February 1, 2011; U.S. Department of Justice, Press Release: *Iranian National Sentenced to 51 Months in Prison for Plot to Illegally Export Missile Components and Radio Tests Sets to Iran*, dated August 15, 2011; ; U.S. Department of Justice, Press Release: *Five Individuals Indicted in a Fraud Conspiracy Involving Exports to Iran of U.S. Components Later Found in Bombs in Iraq*, dated October 25, 2011; U.S. Department of Justice, Press Release: *Man Pleads Guilty in New York to Conspiring with Iranian Military Officials to Assassinate Saudi Arabian Ambassador to the United States*, dated October 17, 2012.

⁵ U.S. Department of the Treasury, Press Release: *Treasury Designates Multi-Million Dollar Procurement Network for Directly Supporting Iran's Missile Program*, dated February 1, 2011.

⁶ Office of the Director of National Intelligence, *Worldwide Threat Assessment of the US Intelligence Community for the Senate Select Committee on Intelligence*, dated January 31, 2012; Office of the Director of National Intelligence, *Worldwide Threat Assessment of the US Intelligence Community for the Senate Select Committee on Intelligence*, dated March 12, 2013.

⁷ Office of the National Counterintelligence Executive, Report to Congress on Foreign Economic Collection and Industrial Espionage, 2009-2011, *Foreign Spies Stealing US Economic Secrets in Cyberspace*, dated October 2011.

⁸ Administrative or official notice is the appropriate type of notice used for administrative proceedings. See *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986); 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)). The most common basis for administrative notice at ISCR proceedings, is to notice 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). Requests for administrative notice may utilize authoritative information or sources from the internet. See, e.g. *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) (citing internet sources for numerous documents).

⁹ Some details pertaining to Applicant's personal and family background have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

¹⁰ GE 1, *supra* note 1, at 10. In addition to his other duties, to assist in the training of U.S. military personnel, Applicant has performed role-playing activities as a would-be terrorist. See AE E (Photographs, undated).

U.S. military.¹¹ Applicant initially received an interim secret clearance in June 2011, and “Interim CAT II” in August 2011, which was downgraded to “CAT I” in December 2012. A “no determination made” was issued as to the security clearance in December 2012.¹² The “CAT” category refers to the job position level, not the actual security clearance, although the position level is increased according to the level of the security clearance the individual holds. Applicant currently serves as a civilian linguist for the U.S. Army at or near military facilities in Kuwait in support of U.S. military operations in Afghanistan.

A well-educated individual, Applicant obtained a bachelor’s degree in 1968, a master’s degree in 1970, and a Ph.D. in sociology in 1982.¹³ Applicant was married in 1970, and divorced in 2000. He and his ex-wife have two daughters, born in 1976 and 1982. Applicant’s ex-wife is a senior scientist with a U.S. Government entity, his older daughter is an assistant U.S. attorney, and his younger daughter is an officer with the state National Guard, currently deployed to Afghanistan.¹⁴

Foreign Influence

Applicant was born in 1942 in Iran.¹⁵ He received his primary, secondary, training, and university education in Iran, under the regime of the Shah.¹⁶ He entered the United States in 1978 on a scholarship to attend graduate school, but following the downfall of the Shah’s regime, in 1979 the scholarship was suspended.¹⁷ In part, due to the financial impact of losing his scholarship, Applicant transferred to another university in the United States, where he continued his studies. In November 1981, Applicant applied for political asylum in the United States, claiming that many of his relatives and tribesman had already taken refuge in other adjacent countries in anticipation of hostilities between Iran and Iraq, and he feared persecution or other jeopardy because of his ethnicity and “affiliation” with the Shah’s regime.¹⁸ Political asylum was granted in November 1983.¹⁹ Applicant became a naturalized U.S. citizen in July 1989.²⁰ Since his

¹¹ GE 1, *supra* note 1, at 13.

¹² Applicant’s Response to the SOR, at 15-16; Tr. at 12-13. Despite there being some issues with his security clearance, Applicant has routinely translated, edited, reviewed, analyzed, and commented on a variety of classified documents for senior military officials throughout the region. He also produced a number of classified documents for senior military personnel. In addition, Applicant attended daily classified briefings in person or through telecommunication systems, and gave a variety of briefings. See Applicant’s Response to the SOR, at 16-24.

¹³ GE 1, *supra* note 1, at 9; Tr. at 7-8.

¹⁴ Applicant’s Response to the SOR, at 3; Tr. at 10, 71.

¹⁵ GE 1, *supra* note 1, at 5.

¹⁶ AE M (Request for Asylum in the United States, dated November 18, 1981), at 2.

¹⁷ GE 2 (Personal Subject Interview, dated June 24, 2011), at 1.

¹⁸ AE M, *supra* note 16, at 5; GE 2, *supra* note 17, at 1; Tr. at 69. Applicant noted that, over the years since he departed Iran, at least one family member and one friend had been killed by the regime, and others had been interrogated by Iranian authorities.

¹⁹ AE M, *supra* note 16, at 1.

entry into the United States in 1978, Applicant has never returned to Iran, and he has no intention of ever returning there for any reason.²¹ He surrendered his most recent Iranian passport (one that expired in the 1990s) in 2011, and formally renounced his Iranian citizenship.²²

His Iranian-born parents are both deceased.²³ His brother is an Iranian citizen-resident, in poor health, who was a teacher and a judge who retired after the Islamic revolution that toppled the Shah in early 1979.²⁴ He currently receives a pension.²⁵ His brother's wife, who was also an Iranian citizen-resident, was illiterate, and recently passed away.²⁶ Applicant's sister, an illiterate widow in poor health, is an Iranian citizen-resident.²⁷ She currently receives her late husband's pension.²⁸

Applicant also has several nephews.²⁹ One is a citizen-resident of Sweden.³⁰ One is a citizen-resident of Australia.³¹ One is a citizen-resident of Germany.³² One, a retired teacher, is an Iranian citizen-resident who receives a pension.³³ One, an Iranian citizen-resident, is a clerk in the private sector.³⁴ With the exception of his brother (the retired judge) and his nephew (the retired teacher), no member of Applicant's extended family has ever had any affiliation with the Iranian government or intelligence service.

²⁰ AE A (Naturalization Ceremony, dated July 28, 1989); GE 1, *supra* note 1, at 6-7; GE 2, *supra* note 17, at 1; Tr. at 70.

²¹ Applicant's Response to the SOR, at 4, 11.

²² AE B (Letter, dated June 9, 2011).

²³ GE 4 (Relatives and Associates, dated June 13, 2011), at 1.

²⁴ Applicant's Response to the SOR, at 4-5; Tr. at 81.

²⁵ Tr. at 81.

²⁶ Applicant's Response to the SOR, at 6; Tr. at 77-80.

²⁷ GE 4, *supra* note 23, at 1; Applicant's Response to the SOR, at 6; Tr. at 92-93.

²⁸ Tr. at 93.

²⁹ There is inconsistent evidence regarding the number of Applicant's nephews, for in his SF 86, he identified two such individuals by name; in his Personal Subject Interview, he identified five nephews by name; in his list of relatives and associates, he listed two nephews by name; in his Response to the SOR, he referred to four nephews by name; and during the hearing, he discussed five nephews by name. See GE 1, *supra* note 1, at 22-23, 25; GE 2, *supra* note 17, at 2-4; GE 4, *supra* note 23, at 2, 4; Response to the SOR, at 6-7; Tr. at 97-106.

³⁰ Applicant's Response to the SOR, at 6; GE 4, *supra* note 23, at 2.

³¹ Applicant's Response to the SOR, at 6; Tr. at 97-99.

³² GE 4, *supra* note 23, at 2.

³³ Tr. at 100, 104, 107.

³⁴ Tr. at 110.

Communications between Applicant and his family are inconsistent, depending on the family member. Applicant used to speak with his brother by telephone on more than one occasion each month, but that frequency has diminished significantly. He last spoke with his brother two months before the hearing.³⁵ They do not communicate by e-mail or letter, with the last written communication between them occurring in the early 1980's.³⁶ He was in the process of sponsoring his brother for permanent entry into the United States, but because of his brother's health, the application was withdrawn.³⁷ Applicant used to speak with his sister by telephone on more than one occasion each month, but that frequency has also diminished significantly. He last spoke with his sister two months before the hearing.³⁸ They do not communicate by e-mail or letter because she is illiterate.³⁹ He last saw his sister, for the first time since he left Iran, in another country, in 2003.⁴⁰ Applicant rarely speaks with his two nephews who remain in Iran, and has not done so for at least three years.⁴¹ He last saw his nephews in 1999 in Germany.⁴²

In addition to family members still remaining in Iran, Applicant has two friends who are Iranian citizen-residents. One is a former teacher who was fired as a result of the Islamic revolution.⁴³ He has traveled to the U.S. several times before and after the revolution, and has visited Applicant in the U.S. on two occasions within the past seven years.⁴⁴ This friend's daughter won the "Green Card Lottery" and is in the process of becoming a permanent U.S. resident, and eventually sponsoring her parents for entry into the U.S.⁴⁵ Applicant generally receives e-mails from his friend.⁴⁶ Applicant has never met his friend's wife.⁴⁷ Applicant has another friend, a free-lance author and translator, who is an Iranian citizen-resident.⁴⁸ Over the years, Applicant has occasionally spoken to him by telephone, but now they periodically exchange e-mails.

³⁵ Tr. at 90-91.

³⁶ Tr. at 94.

³⁷ Tr. at 88-89.

³⁸ Tr. at 94.

³⁹ Tr. at 94.

⁴⁰ Applicant's Response to the SOR, at 6.

⁴¹ Tr. at 108.

⁴² Tr. at 108, 110.

⁴³ Tr. at 112.

⁴⁴ Applicant's Response to the SOR, at 7; Tr. at 112.

⁴⁵ Applicant's Response to the SOR, at 7-8; Tr. at 112-113.

⁴⁶ Tr. at 113.

⁴⁷ Tr. at 111.

⁴⁸ Applicant's Response to the SOR, at 9; Tr. at 115-116.

Their most recent contact was about four months before the hearing.⁴⁹ Neither of Applicant's friends has ever had any affiliation with the Iranian government or intelligence service.

Applicant does not have any financial, medical, educational, retirement, social welfare, or any other benefits or interests in Iran.⁵⁰

Work Performance and Character References

In May 2012, Applicant's former Point of Contact (POC), a Major, stated:⁵¹

Words cannot completely define the deep respect and thanks I have for you. It has truly been an honor to serve with you. You were truly my sounding board and I don't know what I would have done without you on my team. I feel that you are family and you will always hold a special place in my heart. I hope that we remain in touch. I have learned so much from you and I know that you will continue to mentor me wherever I go. . . .

Iran

Iran has been designated a State Sponsor of Terrorism since January 1984, and is a member of what President George W. Bush characterized as the "axis of evil."⁵² While there was previously a lengthy period of friendship and cooperation between Iran and the U.S., since the fundamentalist Islamic revolution that toppled the Shah in early 1979, the resulting theocratic government has repressed its people, pursued weapons of mass destruction, ignored customary principles of international law, endorsed fundamentalist Muslim political movements abroad, and supported international terrorism. In fact, Iran has remained the most active state sponsor of terrorism and has continued to exhort a variety of groups throughout the Middle East, Europe, and Central Asia to use terrorism in pursuit of their stated goals. For example, Iran has provided weapons, training and funding to Hamas and other Palestinian terrorist groups, Lebanese Hezbollah, Taliban in Afghanistan, and Iraq-based jihadists. Iran is modernizing its military, acquiring weapons of mass destruction, and continues to seek nuclear capabilities. Iran is in non-compliance with its international obligations, and flouts the United Nations Security Council restrictions on its nuclear program. Iran has the largest inventory of ballistic missiles in the Middle East. The U.S. does not currently have diplomatic or consular relations with Iran and cannot provide protection to U.S. citizens in that country.

⁴⁹ Tr. at 116-117.

⁵⁰ Tr. at 72-74, 96-97.

⁵¹ Applicant's Response to the SOR, at 23, quoting an e-mail, dated May 23, 2012; AE F (Birthday Card, undated).

⁵² President George W. Bush's comments regarding Iran in The President's State of Union Address, dated January 29, 2002, at www.gov.com/union_1_2002.html, at 5.

Iran has a poor human rights record, and has been implicated in politically motivated violence, including death, torture, beatings and rape; officially sanctioned punishments, including death by stoning, amputation, and flogging; arbitrary arrest and detention; lack of judicial independence and fair public trials; severe restrictions on civil liberties; and the monitoring of the social activities of its citizens, including telephone conversations and internet communications, and the opening of mail without court authorization. Since 2009, Iranian authorities have, for lengthy periods, prevented the departure of a number of Iranian-American citizens, including journalists, who traveled to Iran for personal or professional reasons. This is significant as it relates to Applicant, for all persons who were at one time Iranian citizens are considered Iranian nationals by Iranian authorities and, despite the fact that they may possess U.S. citizenship, they must enter and exit Iran with an Iranian passport with an exit visa. Recent mass demonstrations throughout Iran were violently suppressed by Iranian authorities, resulting in significant deaths. Iran is known to conduct aggressive intelligence operations and economic espionage against the United States, and is a nation whose interests are inimical to the United States.

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.”⁵³ 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”⁵⁴

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider

⁵³ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁵⁴ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”⁵⁵ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.⁵⁶

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”⁵⁷

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.”⁵⁸ 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 as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

⁵⁵ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “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).

⁵⁶ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁵⁷ *Egan*, 484 U.S. at 531

⁵⁸ See Exec. Or. 10865 § 7.

Analysis

Guideline B, Foreign Influence

The security concern under the Foreign Influence 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.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.⁵⁹

The guideline notes several conditions that could raise security concerns. Under AG ¶ 7(a), it is potentially disqualifying where there is:

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.

Similarly, under AG ¶ 7(b), security concerns may be raised when there are:

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.

Applicant's varied relationships with two siblings, two nephews, and two friends, all citizen-residents of Iran, are current security concerns for the Government. AG ¶¶ 7(a) and 7(b) apply in this case. However, the security significance of these identified conditions requires further examination of Applicant's respective relationships with those six individuals to determine the degree of "heightened risk" or potential conflict of interest.

⁵⁹ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 12 (App. Bd. Feb. 8, 2001).

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence. Under AG ¶ 8(a), the disqualifying condition may be mitigated where:

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.

Similarly, AG ¶ 8(b) may apply where the evidence shows:

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.

In addition, AG ¶ 8(c) may apply where:

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.

In assessing whether there is a heightened risk because of an applicant's relatives or associates in a foreign country, it is necessary to consider all relevant factors, including the totality of an applicant's conduct and circumstances in light of any realistic potential for exploitation. One such factor is the potential for pressure, coercion, exploitation, or duress. In that regard, it is important to consider the character of the foreign power in question, including the government and entities controlled by the government within the relevant foreign country. Nothing in Guideline B suggests it is limited to countries that are hostile to the United States.⁶⁰ In fact, the Appeal Board has cautioned against "reliance on overly simplistic distinctions between 'friendly' nations and 'hostile' nations when adjudicating cases under Guideline B."⁶¹

Nevertheless, the relationship between a foreign government and the United States may be relevant in determining whether a foreign government or an entity it controls is likely to attempt to exploit a resident or citizen to take action against the United States. It is reasonable to presume that although a friendly relationship, or the existence of a democratic government, is not determinative, it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that foreign country.

⁶⁰ See ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002); ISCR Case No. 00-0489 at 12 (App. Bd. Jan. 10, 2002).

⁶¹ ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002).

Despite the absence of Iranian government contacts or attempted contacts with Applicant, or the apparent absence, over many years, of coercive means to obtain sensitive information, it does not eliminate the *possibility* that Iran would employ some coercive or non-coercive measures in an attempt to exploit a relative. Applicant's two siblings, two nephews, and two friends, still reside in Iran and there is substantial risk – a “heightened risk” – of foreign exploitation, inducement, manipulation, pressure, or coercion to disqualify Applicant from holding a security clearance. In order to minimize the risk, Applicant has concealed his employment activities and location from his family and friends. He has not returned to Iran since he left in 1978, and has no intention of ever returning. He has substantially reduced his contacts with them.

There is some evidence that some family members or friends may be unhappy with the regime and considered to be political activists, informally challenging the policies of the Iranian government; and that Iranian authorities may have approached or interrogated them for various reasons, and released them because of their advanced age and ill health. Considering the Iranian government and its position with respect to human rights, its aggressive intelligence operations and economic espionage against the United States, and its relationship with the United States, it is possible that Applicant's siblings, nephews, and friends could be a means through which Applicant could come to the attention of the regime, but they would serve no useful purpose, for he is already known to the regime. They could also be the vehicle through which Iran might attempt to coerce Applicant, but there have been no such efforts over the past 36 years. As Iranian citizen-residents, Applicant's family and friends are not beyond the reach of the regime. The Appeal Board has consistently held that factors such as the failure of foreign authorities to contact relatives in the past does not provide a meaningful measure of whether an applicant's circumstances pose a security risk, when, for example, the relatives are subject to the authority of a regime that is hostile to the United States and has a dismal human rights record.⁶²

Applicant has significant connections to the United States, having lived in the United States for 36 years. His ex-wife, and two daughters are U.S. citizens residing in the United States. His ex-wife is a senior scientist with a U.S. Government entity, his older daughter is an assistant U.S. attorney, and his younger daughter is an officer with the state National Guard, currently deployed to Afghanistan. Applicant wants his security clearance so that he can continue to support the U.S. Armed Forces in their combat and intelligence-gathering mission in the Middle East. This is not a situation where an applicant seeks a security clearance so he or she can simply work with classified information and enjoy the comforts of home in the United States. Applicant has offered to continue to risk his life to support the United States' goals in the Middle East, and has shown his patriotism, loyalty, and fidelity to the United States.

Applicant's continuing relationship with his brother, and to a lesser extent, his sister, is close and his contacts with those siblings are relatively frequent, too close and frequent to generate more than a limited application of AG ¶¶ 8(a) and 8(c). His

⁶² See ISCR Case No. 07-18283, at 5 (App. Bd. Apr. 24, 2009); ISCR Case No. 07-13696 at 5 (App. Bd. Feb. 9, 2009).

relationship with his nephews has been slightly more distant and less frequent. His relationship with his friends is even more distant. As to the nephews, AG ¶¶ 8(a) and 8(c) partially apply, and as to the friends, AG ¶¶ 8(a) and 8(c) apply. Applicant has met his burden of showing there is little likelihood that his relationships with his family or friends could create a risk for foreign influence or exploitation. Furthermore, I am persuaded that Applicant's loyalty to the United States is steadfast and undivided, and that he has "such deep and longstanding relationships and loyalties in the U.S., that [he] can be expected to resolve any conflict of interest in favor of the U.S. interest." AG ¶ 8(b) applies.

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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.⁶³

There is some evidence against mitigating Applicant's situation, because his two siblings, two nephews, and two friends, remain Iranian citizen-residents, and are at risk from the regime.

The mitigating evidence under the whole-person concept is more substantial. Applicant has offered to continue to risk his life to support the United States' goals in the Middle East, and has shown his patriotism, loyalty, and fidelity to the United States by remaining embedded with U.S. Army units. He is fully aware of the risks to himself and his family and friends. These circumstances increase the probability that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit him.⁶⁴ Moreover, while the "heightened risk" of

⁶³ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

⁶⁴ See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008).

politically motivated violence occurring in Iran is of significance, it should also be remembered that terrorists and would-be terrorists are also active in the United States, creating a substantial risk here as well. With the vast majority of his family members residing either in the United States or elsewhere, there is a reduced risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Under the evidence presented, I have no questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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 F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant

Conclusion

In light of all of the circumstances presented by the record 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.

ROBERT ROBINSON GALES
Administrative Judge