

DATE: November 26, 2002

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-01340

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Katherine A. Trowbridge, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, who is a naturalized citizen of the US and was a citizen of Iran solely by virtue of his birth and his parents' birth in the country and who renewed his Iranian passport after becoming a naturalized US citizen (which he used only to visit his mother and sisters in 2000, and for the last time in May 2001) fails to absolve himself of preference concerns despite his surrendering of his Iranian passport in compliance with the Money memo. Because Applicant's immediate family members and brother-in-law who reside in Iran are shown to be still potentially vulnerable to pressure or coercion, foreign influence concerns pose unmitigated security risks as well. Clearance is denied.

STATEMENT OF THE CASE

On May 23, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on June 25, 2002, and requested a hearing. The case was assigned to this Administrative Judge on August 1, 2002, and was initially scheduled for hearing on August 22, 2002, before being rescheduled for September 12, 2002. A hearing was convened on September 12, 2002, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At hearing, the Government's case consisted of six exhibits; Applicant relied on four witnesses (including himself) and six exhibits. The transcript (R.T.) of the proceedings was received on September 20, 2002.

PROCEDURAL ISSUES

Prior to the close of the hearing, Department Counsel requested official notice be taken of President Bush's State of the

Union Address of January 29, 2002, in which he characterized Iran as part of an axis of evil: a country that "aggressively pursues these weapons and exports terror, while and unelected few repress the Iranian people's hope for freedom." For good cause shown, official notice was taken of the President's address pursuant to Rule 201 of the Fed.R.Ev.

Department Counsel also requested that official notice be taken of the State Department's travel advisory on the risks that exist in Americans traveling to Iran. Because neither the trier nor the Applicant was familiar with the advisory, official notice was withheld pending Applicant's being afforded a reasonable opportunity to examine the advisory and express any views or objections to official notice being taken. Assured that Applicant was furnished a copy of the State Department advisory, and with no Applicant objections forthcoming, good cause is shown for taking official notice of the State Department's Iran travel advisory. Official notice is, accordingly, taken of the travel advisory pursuant to Rule 201 of F.R.Ev.

STATEMENT OF FACTS

Applicant is a 44-year old research associate of a soft-ware defense contractor who seeks retention of his security clearance.

Summary of Allegations and Responses

Applicant is alleged to have (1) exercised dual citizenship with Iran and the US, (2) possession of an Iranian passport as of October 2001, issued in July 1999 and not scheduled to expire until July 2004, (3) applied for an Iranian passport in July 1999 after becoming a naturalized US citizen (in July 1996) and possessing a US passport (issued in August 1998), (4) used his Iranian passport to enter and exit Iran in May 2000 through July 2000, and in at least May 2001, (5) expressed an intention to renew his Iranian passport after it expires in July 2004, (6) been asked by an Iranian Government cabinet advisor to President Khatami during Applicant's visit to Iran in 2000 on how to purchase four commercial helicopters for VIPs, and (7) visited UN Iranian delegation offices in April 2001 during a fund raising trip.

Additionally, Applicant is alleged to (a) have a mother residing in Iran to whom sends financial support (since about 1982) and tries to use third parties to make the financial exchange in lieu of using the Iran's banking system, (b) have a brother, half-brother, and three sisters who are Iranian citizens residing in Iran, and (c) have a mother-in-law and father-in-law who are Mexican citizens residing in Mexico.

For his answer to the SOR, Applicant provides mixed answers. He admitted to possessing an Iranian passport that will not expire until July 2004, to being asked by an Iranian Government cabinet advisor to President Khatami about how to purchase four commercial helicopters for VIPs, to visiting UN Iranian Delegation Offices during a fund raising trip in April 1991, and to sending

his mother (an Iranian citizen residing in Iran) financial support since 1982 through third parties (rather than using the Iranian banking system) as a means of taking advantage of the most economic advantaged Iranian currency rate. As to the remainder of the allegations, Applicant denies each and every allegation, with explanations.

Relevant and Material Factual Findings

Born and raised in Iran to Iranian parents, Applicant emigrated to the US as a pre-high school adolescent (in 1974) to further his education. While resident in the US he married his current spouse who bore him a son. His wife is of Mexican descent. In 1979, he returned to Iran with his spouse and three children (two of them adopted), primarily to help his mother. During his brief stay in Iran, he worked for awhile for a major American television network. Following the overthrow of the Shah in 1979, Applicant re-entered the US (in 1980) to once again pursue his education. Once returned to the US, he entered college and received an undergraduate degree from a recognized American university in electrical engineering. He went on to receive a masters in his chosen engineering field, and is currently pursuing a PhD.

Before becoming a naturalized US citizen, Applicant participated in a demonstration against US military actions to show his support for the civilian passengers, whose plane was shot down by the US Navy (*see* R.T., at 74). Applicant attended several Ramadan gatherings as well while a university student in the US prior to 1990: His participation in

these gatherings was motivated by his desire to show his solidarity with his Iranian religious roots, and not to demonstrate any anti-US sentiments (*see* R.T., at 75-76).

Applicant was naturalized as a US citizen in July 1996 and received a US passport in August 1998. Because Iran does not recognize dual citizenship for its nationals and spouses, Applicant applied for a Visa from the Interest Section of the Republic of Iran in July 1999 to enable he and his family to travel to Iran to see his mother and siblings. He was informed, however, by the Iranian Interest Section that Iran does not grant visas to anyone who at any time had been either an Iranian citizen, born in Iran, or to their spouses and children by birth, regardless of their citizenship and citizenship preferences (*see ex. A*; R.T., at 54-56). Since he had an Iranian passport previously, he applied for a new one and was issued the same in July 1999. Only with his Iranian passport would he and his spouse be permitted to travel to Iran.

Notwithstanding his possession of a valid US passport at the time, he elected to use his Iranian passport to enter and exit Iran on several occasions spanning ay 2000 and July 2000, and last traveled to Iran on his Iranian passport in May 2001, once again to see his mother and siblings. He presented his Iranian passport for both entry and exit only after first presenting his US passport to Iranian immigration authorities and being refused. His insistence on his using his US passport at entry/exit check points could easily have resulted in detention and harassment by Iranian border authorities. It is accepted practice by entry and exit authorities in Iran to ask to see both the traveler's Iranian and US passports for Iranian nationals residing in the US, and then stamping only the Iranian passport. Applicant assures, however, that Iran will not issue a visa to an Iranian national from the US who seeks to travel to and from Iran (*see* R.T., at 82-85). His accounts are corroborated, not only by the State Department's travel advisory, but by a friend and fellow Iranian emigre and naturalized US citizen (W1), who, too, assures he could not enter or exit Iran without using an Iranian passport (*see* R.T., at 96-97). Applicant's accounts are accepted.

While Applicant would have liked to have kept his Iranian passport to ensure his unencumbered admission to Iran to see his parents and siblings, he relented, once he was shown that his continued possession of an Iranian passport could jeopardize his US security clearance. Applicant documents his return of his Iranian passport to the Iranian Interest Section in September 2002, and acknowledged receipt of the same (*see exs. E and F*; R.T., at 57). He has not taken steps to renounce his Iranian citizenship, however, or even to express a willingness to do so, insisting that no one can revoke the Iranian citizenship of an Iranian national. Applicant acknowledges that he has no way of returning to Iran to see his family under current visa restrictions for Iranian nationals holding US citizenship, but nonetheless assures he will not be reapplying for an Iranian passport in the future now that he has turned his Iranian passport into Iranian authorities (*see* R.T., at 84-85). While Applicant's sincerity is not doubted, his ability to withstand family pressures for his return most certainly is, given the understandably deep affections he has exhibited for his mother and siblings over the years.

During his visit to Iran in May 2000, Applicant was asked by an Iranian Government Cabinet Advisor to President Khatami he encountered about ways to purchase four commercial helicopters for VIPs. The inquiries were very general and did not address specifics of purchase methodology and logistics. Nonetheless, Applicant promptly reported the encounter to his employer upon his return to the US.

While on a fund raising trip to the UN in April 1991, Applicant visited the UN's Iranian Delegation offices. As an executive committee member of an American Muslim organization, Applicant was delegated (along with two other members) to seek funding from the Iranian Delegation's UN office to open a mosque back in his home state. On this trip, he and his associates visited several Muslim organizations and candidate Muslim businesses, along with the Iranian Delegation. Ultimately, he and his associates were able to raise about \$15,000.00 (*see* R.T., at 67). Applicant has not been involved in any similar fund raising activities since his 1991 visit.

Applicant last used his Iranian passport in May 2001. Except for his renewal and use of his Iranian passport, Applicant has not exercised or accepted any other rights, privileges, or benefits from Iran, or any other state, since becoming a US citizen. He holds no financial, property, employment, or inheritance rights in Iran, or any other foreign state for any purpose (to include fulfillment of any citizenship obligations requisite to maintaining dual citizenship with Iran). He has never had any property or possessions confiscated by Iran or any foreign government, and never provided any financial support to any foreign educational institution. And he has never worked for any foreign government or military contractor, or sponsored any foreign national of entry into the US (*see ex. 2*).

Besides his Mexican-born spouse, whose US citizenship is also by naturalization, Applicant has three children, two of whom are adopted, who have become naturalized US citizens. He has a mother, three sisters, a brother, and one brother-in-law who are Iranian citizens by birth and continue to reside in Iran. His father passed away in 1979 (*see ex. 2*).

Applicant continues to provide financial support to his mother. Between 1982 and 1995, he estimates to have sent her approximately \$500.00 a year. He increased his annual support to his mother after 1995, providing her approximately \$4,000.00 to \$5,000.00 a year, and currently sends his mother (who has moved in with one of his sisters) between \$5,000.00 and \$8,000.00 a year (*see R.T.*, at 69-70). The support is intended to provide for his mother's medical care and other subsistence. To ensure his mother receives the full currency exchange amount from the US dollars he sends her, he bypasses Iranian banks (who customarily exchange only about 30 cents on the dollar) and uses third parties (including his brother-in-law) for his exchanges into Iranian currency. Applicant maintains regular telephone contact with his mother and sisters, and has visited both his mother and sisters, along with his brother and brother-in-law, during his past trips to Iran. He remains very close to his mother and sisters, but has no regular contact with his brother (*see R.T.*, at 69-70).

Applicant has no current reason to believe his mother or sisters are at any risk to pressure or coercion to Iranian authorities. While he has only seen his mother seven to eight times since he left Iran in 1980, he feels a duty to protect her and provide for her. With such feelings towards his mother, he honestly doesn't know what he would do if either she, or his sisters, were subjected to pressure by Iranian authorities. He can foresee considerable difficulty risking the security of the US to aid his mother and sisters (*see R.T.*, at 90).

Applicant is highly regarded by his direct supervisor (W2), who describes Applicant as both reliable and trustworthy. W2 not only confirmed Applicant's returning his Iranian passport to the Iranian Interest Section, but participated directly in a teleconference with the Iranian Interest Section official who acknowledged receipt of Applicant's Iranian passport (*see R.T.*, at 113). W2 also confirmed Applicant's prompt reporting of a helicopter purchase inquiry by an Iranian official during Applicant's 2000 visit to Iran. Applicant's report of the helicopter inquiry resulted in a later follow-up face-to-face meeting with a CIA representative, who appeared to Applicant to be fully satisfied with the information Applicant provided about his Iranian contact (*see R.T.*, at 122-23). He heard nothing more from her after their concluded meeting.

Applicant's candor notwithstanding, risks of pressure and influence that could be brought to bear on Applicant's immediate family and relatives living in Iran cannot be fairly evaluated on the strength of any requested assumption of a moderating Iran, absent firm evidence to the contrary. The Government of the revolutionary Islamic Republic of Iran that continues to be home to Applicant's mother, sisters and relatives, has a history of hostility with the US. Its current regime has shown little inclination to shed its revolutionary fervor towards the West and the US in particular and is characterized by President Bush as part of an axis of evil. Historically, Iran has devoted its considerable public resources to the discrediting and undermining of America's political, social, religious and economic institutions and values. This raises continuing risks of recurrent persecution and intimidation against Applicant's mother and sisters (in particular), and even his brother and brother-in-law, waged either directly or through Applicant and his family residing in the US. Inferences warrant of continuing risks to pressure and influence on members of his Iran-based immediate family and relatives in the foreseeable future, notwithstanding Applicant's exhibited stern love and support for the US since his becoming a naturalized citizen of the latter.

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) lists "binding" policy considerations to be made by Judges in the decision making process covering DOHA cases. The term "binding," as interpreted by the DOHA Appeal Board, requires the Judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the Judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E2.2 of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Foreign Preference

The Concern: 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.

Disqualifying Conditions:

DC 1: The exercise of dual citizenship

DC 2: Possession and/or use of a foreign passport.

Mitigating Conditions:

MC 1: Dual citizenship is based solely on parents' citizenship or birth in a foreign country.

Foreign Influence

The Concern: A security risk may exist when an individual's immediate family, including co-habitants, and other persons to whom he or she may be bound by affection, influence, or are obligation *are not* citizens of the United States *or may* be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Disqualifying Conditions:

DC 1: An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country.

DC 6: Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government.

DC 7: Indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, coercion, or pressure.

Mitigating Conditions:

MC 1: A determination that the immediate family members are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the persons involved and the United States.

MC 4: The individual has promptly reported to proper authorities all contacts, requests, or threats from persons or organizations from a foreign country, as required.

MC 5: Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

Burden of Proof

By dint of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense decision. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a nexus to the applicant's eligibility to obtain or maintain a security clearance. The required showing of nexus however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of accessible risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant presents as a conscientious research associate for a defense contractor who after being born and raised in Iran, emigrated to the US in 1974 (returning for a short period in 1977) to further his education and seek better economic opportunities. Claiming his principal affections still lie with the US, he recently surrendered his Iranian passport.

Dual citizenship concerns necessarily entail allegiance assessments and invite critical considerations over acts indicating a preference or not for the interests of the foreign country over the interests of the US. In a different vein, the continued residence of his mother, sisters, brother and brother-in-law in Iran raises potential concerns about their being vulnerable to future pressure or duress that could result in the compromise of classified information. The issues, as such, raise concerns over Applicant's preference for a foreign country over the US and the potential for members of Applicant's immediate and extended family being placed at risk to pressure or duress to induce Applicant to divulge classified information he might be privy to.

Foreign Preference

By virtue of his birth in Iran to parents of Iranian descent and citizenship, Applicant was endowed with Iranian citizenship through his parents. This citizenship could not be lost except by

express renunciation, approved by the Iranian Government, which Applicant claims is virtually impossible for an Iranian national to obtain. Since becoming a naturalized US citizen in 1996, Applicant has taken few actions that can be fairly characterized as active indicia of dual citizenship. He has never served in the Iranian military (either before or after his gaining US citizenship) or voted in the latter's elections. He retains no property or financial interests (to include inheritance rights) in Iran, and claims no health, retirement or other health or employment benefits or privileges from Iran. And he has never worked for any foreign government or military contractor, or sponsored any foreign national of entry into the US (*see ex. 2*).

But Applicant did renew and obtain an Iranian passport in July 1999, after becoming a naturalized US citizen in 1996. And he, in turn, used his renewed Iranian passport on several occasions to enter and exit Iran to visit his mother and sisters (last in May 2001). That he renewed his Iranian passport to comply with Iranian border entry/exit requirements for Iranian nationals (dual citizenship notwithstanding), and not for his personal convenience, does not insulate Applicant from security concerns associated with an applicant's using a foreign passport. Risks of his being taken hostage behind Iranian lines and denied the customary diplomatic intercession made available to US citizens traveling on US passports cannot be easily discounted, given the country threat risks assigned Iran by both President Bush and the State Department's travel advisory. Our Appeal Board, moreover, has tended to blur convenience/force of law distinctions when appraising legal necessity passport usage in multiple return to country situations (as here). *See* ISCR Case No. 99-0424 (February 8, 2001); ISCR Case No. 99-0254 (February 16, 2000). Exercise of choice to repeatedly use an Iranian passport out of motivation to visit family members is itself a voluntary election, not a submission to legal compulsion, when made in juxtaposition to known security risks extant in traveling to a hostile country as a dual Iranian citizen using that country's passport. By renewing and using his Iranian passport in the knowledge that he could travel to and from Iran only on an Iranian passport, Applicant displayed a conscious preference for Iran, even if it was for perfectly logical and understandable reasons: wanting to see his mother and sisters.

So, even Applicant's limited exercise of dual citizenship is sufficient under the facts of this case to invoke DC 1 of the Adjudication Guidelines (exercise of dual citizenship). Use and/or possession of a foreign passport is considered a *per se* basis for denying or suspending a security clearance under the clarifying provisions of the memorandum of August 16, 2000 authored by the Asst SecDef forC3I ("the Money Memo"), unless the foreign passport is surrendered, or the Applicant obtains official approval for its use from the appropriate agency of the US Government.

To his credit, Applicant shows a clear understanding of the risks that inhere in his using an Iranian passport as a dual Iranian citizen. His grasp of American security concerns on issues that involve Iran manifest in several ways. For instance, when he was contacted by an Iranian official about presidential interest in the purchase of American-made helicopters during a visit to Iran in 2000, he wisely and promptly reported the contact to his employer, and later submitted to a satisfactory debriefing by a CIA representative. And he has avoided any fund raising activities with Iranian groups since his fund raising trip to the UN in 1991. Whatever application of DC 6 (conduct which may make the individual vulnerable) or DC 7 (indications that representatives of a foreign country are acting to increase the vulnerability of the individual) may have to the foreign preference issues raised in the proceeding are mitigated by Applicant's prompt reporting of the incident, enough to entitle him to invoke the mitigating force of MC 4 (prompt reporting) and MC 5 (minimal foreign financial interests).

Applicant's demonstrated limited history of exercising any privileges associated with his Iranian citizenship (*i.e.*, multiple use of a foreign passport over a number of months), surrender of his Iranian passport, assurances of strong support of his adopted country (the US) and its institutions since becoming a naturalized US citizen, and the trust and high esteem he is held in by his employer all bode well for his making the case of his preference for the US.

Concerns over continued Applicant Iranian preference remain significant, nonetheless, in the backdrop of his post-naturalization renewal of his Iranian passport. Applicant continues to hedge on his expressing any willingness to renounce his Iranian citizenship. There is advantage certainly to hedging on such an important citizenship decision: It leaves him an opening to reapply for an Iranian passport should his family circumstances require it. Nothing in the evidence he presented precludes him from reapplying for an Iranian passport as a dual Iranian citizen. With unsettled questions still very much in evidence about Applicant's reluctance to take any bold steps towards renunciation of his Iranian citizenship (even if it might prove ultimately futile) and the opportunities still afforded him to reapply and obtain another Iranian passport absent renunciation, too many risks loom at the present time under the current geopolitical climate between Iran and the US to credit Applicant with satisfying the heavy mitigation burden imposed on by our Appeal Board.

Considering all of the circumstances surrounding Applicant's dual citizenship exercise and mitigation efforts, conclusions warrant that more seasoning is needed from Applicant to test his assurances he will be able to get along without any realistic chance of seeing his family in Iran. Such firm Applicant commitments are required to satisfy expressed Appeal Board burden requirements when it comes to successfully discounting residual security risks that exist with his continued holding dual Iranian citizenship and the opportunities that such citizenship affords him to reapply for an Iranian passport. Unfavorable conclusions warrant with respect to sub-paragraphs 1.a through 1.e of Guideline C. Crediting Applicant with promptly reporting his contact with President Khatami on his return to the US and avoiding any further fund raising activities in behalf of Iranian groups, Applicant is entitled to a favorable conclusions with respect to sub-paragraphs 1.f and 1.g of the same Guideline.

Foreign Influence

Besides foreign preference concerns, Government finds security risks associated with Applicants mother, siblings, and brother-in-law residing in Iran

The Adjudicative Guidelines governing collateral clearances do not dictate *per se* results or mandate particular outcomes for any chosen set of guidelines covering risks of foreign influence. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing. Personnel security investigations continue to be governed by the same Change 2 requirements of DoD Regulation 5200.2-R for appraising the security risks associated with the individual's having family abroad, which include both common sense assessments of country risks and

information available from public sources.

So, under these investigatory guidelines, while an applicant with immediate family domiciled in a hypothetical hostile country might pose a risk of a hostage situation, he might conversely be able to neutralize material risks of exploitation of immediate and/or extended family members residing in a friendly country. Iran (characterized by President Bush as a part of the axis of evil and the subject of state Department travel warnings to would-be American tourists) is considered a hostile country among those that have been the subject of studies of friendly and unfriendly countries practicing industrial espionage in recent years. *Cf. G. Gilder, Geniuses from Abroad* (Wall Street J. December 18, 1995); S. Wood & C. Chandler, *Selected Economic Espionage Incidents Against the United States, 1980-1994: An Open-Source Research Project* (Defense PSRC), cited with approval in DoD's Adjudicative Desk reference (ADR). Iran, as such, can be classed as an unfriendly country known to pose unmanageable hostage risks.

While the foreign influence provisions of the Adjudicative Guidelines are ostensibly neutral as to the character of the subject country, they should not be construed to ignore the geopolitical aims and policies of the particular foreign regime involved. Iran is a constitutional republic, governed by executive and legislative branches whose leadership and influence is directed and circumscribed by the Muslim clergy, who have yet to declare an end to the reign of terror that was ushered in following the fall of the Shah in 1979. Iran is also a country with a considerable history of hostility towards America and its longstanding institutional respect for human rights and the rule of law.

Because of the presence of Applicant's immediate family members and brother-in-law in Iran (a country whose interests have recently been and continue to be inimical to those of the US), the risk of a pressure or influence situation remains a significant security concern. This active security concern is insufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand risks of exploitation and pressure attributable to his familial relationships and contacts with his mother, siblings, and brother-in-law domiciled in Iran.

So, given the continued presence of Applicant's immediate and extended family members in Iran, their presence there presents potential risks of pressure and coercion. Their Iranian citizenship and residence constitutes an unacceptable risk, for which the mitigation benefits of MC 1 (presence of immediate family in host country does not pose an unacceptable security risk) of the Adjudicative Guidelines may not be availed of by Applicant.

Unfavorable conclusions warrant with respect to sub-paragraphs 2.a through 2.c of Guideline B. However, neither his mother-in-law nor father-in-law (both citizens and residents of neighboring Mexico) appear to be in any foreseeable danger of pressure or coercion sufficient to make their situation and unmanageable risk. Favorable conclusions warrant, accordingly, with respect to sub-paragraph 2.d of Guideline B.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS and the FACTORS and CONDITIONS listed above, this Administrative Judge makes the following separate FORMAL FINDINGS with respect to Appellant's eligibility for a security clearance.

GUIDELINE C (FOREIGN PREFERENCE): AGAINST APPLICANT

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

Sub-para. 1.d: AGAINST APPLICANT

Sub-para. 1.e: AGAINST APPLICANT

Sub-para. 1.f: FOR APPLICANT

Sub-para. 1.g: FOR APPLICANT

GUIDELINE B: (FOREIGN INFLUENCE): AGAINST APPLICANT

Sub-para. 2.a: AGAINST APPLICANT

Sub-para. 2.b: AGAINST APPLICANT

Sub-para. 2.c: AGAINST APPLICANT

Sub-para. 2.d: FOR APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance.

Roger C. Wesley

Administrative Judge