

DATE: June 10, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-16516

## DECISION OF ADMINISTRATIVE JUDGE

**ROBERT ROBINSON GALES**

### APPEARANCES

#### FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

#### FOR APPLICANT

*Pro Se*

### SYNOPSIS

Security concerns were raised regarding a 45-year-old Iranian-born naturalized U.S. citizen who was sent out of Iran by his father during the 1979 revolution when he was 19 years old. He completed degree requirements at a U.S. university, and, in 1991, became a naturalized U.S. citizen. He is married to a naturalized U.S. citizen and has a child born in the U.S. He has a permanent resident, non-U.S. citizen, mother (a citizen of Iran), two siblings who continue to be citizens and residents of Iran, and one sibling who has been granted political asylum in France. His Iranian passport has been allowed to expire and will not be renewed. He voted in one Iranian election to try to elect a moderate president in Iran. The security concerns have been mitigated by the evidence developed herein. Clearance is granted.

### STATEMENT OF THE CASE

On December 4, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR 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 a clearance should be granted, continued, denied, or revoked.

In a sworn written answer, dated January 12, 2004, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was initially assigned to another administrative judge, but due to caseload considerations, was reassigned to, and received by, me on March 30, 2004. A notice of hearing was issued that same day, and the hearing was held on April 22, 2004. During the course of the hearing, one joint exhibit, four government exhibits, three Applicant exhibits, and the testimony of one Applicant witness (the Applicant), were received. The transcript (Tr.) was received on May 4, 2004.

## RULINGS ON PROCEDURE

During the proceeding, under Rule 201(b)(2), *Federal Rules of Evidence*, Department Counsel requested that Official Notice be taken of certain adjudicative facts as set forth in two documents furnished for consideration. There being no objection by Applicant, Official Notice was taken of: (1) U.S. Department of State, Bureau of Near Eastern Affairs, *Background Note: Iran*, dated June 2003, consisting of eight pages; and (2) U.S. Department of State, Bureau of Consular Affairs, *Consular Information Sheet - Iran*, dated September 8, 2003, consisting of six pages.

## FINDINGS OF FACT

Applicant has admitted the factual allegations pertaining to foreign preference under Guideline C (subparagraphs 1.a. through 1.d.) and foreign influence under Guideline B (subparagraphs 2.a. through 2.e.). Those admissions are incorporated herein as findings of fact.

After a complete and thorough review of the evidence, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 45-year-old employee of a defense contractor seeking to obtain a security clearance, the level of which has not been revealed.

Applicant was born in 1959 in Iran and received his elementary and secondary education there.<sup>(1)</sup> In 1978-79 domestic turmoil swept Iran, and in January 1979 the Shah fled Iran during the revolution and establishment of a new theocratic republic, now known as the Islamic Republic of Iran, guided by fundamental Islamic principles under Ayatollah Ruhollah Khomeini. Applicant's father--a maintenance worker for the former Imperial Iranian Air Force at a military base in Iran<sup>(2)</sup>--wanted him out of the country before he had to serve in the military.<sup>(3)</sup> Applicant departed Iran in April 1979, when he was 19-years-old,<sup>(4)</sup> and headed for France.<sup>(5)</sup> For the next 18 months he attended French universities, but did not complete his studies there.<sup>(6)</sup> Instead, having met a young lady--a U.S. citizen--and becoming engaged, he came to the U.S. to complete his studies in April 1981.<sup>(7)</sup> He and his fiancée were married in May 1981.<sup>(8)</sup> They divorced in 1986.<sup>(9)</sup> He married his second wife in 1987.<sup>(10)</sup> Applicant completed his degree requirements and received a bachelor of science degree in electrical engineering from a U.S. university in June 1988.<sup>(11)</sup> He divorced his second wife in 1994, and married his third, and current, Iranian-born wife in 1997.<sup>(12)</sup> They have one daughter.<sup>(13)</sup>

In order to support himself while attending college, Applicant held a variety of jobs, including teaching part-time and working for the city department of transportation.<sup>(14)</sup> He financed his own education and paid off all his student loans 1998.<sup>(15)</sup> Applicant and his wife now own and reside in a house with an appraised value of \$730,000.00.<sup>(16)</sup> Their combined gross annual income is about \$145,000.00.<sup>(17)</sup> Their estimated net worth is approximately \$1,000,000.00.<sup>(18)</sup> They have no bank accounts, investments, property, retirement rights, pensions, inheritance rights, or financial interests in Iran.<sup>(19)</sup> They do not send money to family, organizations, or institutions outside the U.S.<sup>(20)</sup>

Applicant became a naturalized U.S. citizen, and renounced his Iranian citizenship, in January 1991.<sup>(21)</sup> He does not consider himself a dual citizen of the U.S. and Iran,<sup>(22)</sup> but is cognizant of Iranian law which refuses to recognize adopted citizenship of another country.<sup>(23)</sup> Nevertheless, in 2004, Applicant declared to the Iranian authorities that he was formally renouncing his Iranian citizenship and requested the process be commenced and expedited.<sup>(24)</sup>

Applicant first obtained an Iranian passport in January 1979,<sup>(25)</sup> prior to departing Iran. He subsequently had it renewed, with his most recent renewal occurring in 1999, after he was naturalized as a U.S. citizen.<sup>(26)</sup> His current passport expired earlier this year.<sup>(27)</sup> He has no intention of renewing it.<sup>(28)</sup> Applicant's explanation for maintaining his Iranian passport was that it was the sole source of official identification he had and it was necessary to obtain various records of his past such as his birth certificate, high school diploma, or to sponsor travel to the U.S. by his family members.<sup>(29)</sup>

Following the establishment of the Islamic Republic of Iran under Ayatollah Khomeini, internal political struggles and unrest continued with severe human rights violations and the seizure of the U.S. embassy. When Khomeini died in 1989, an election was held to select a successor. Successive elections were also held in 1993, 1997, and 2001. Prior to the 2001 election, (30) there was an effort made within the Iranian-American community in the U.S. to try to elect a moderate president of Iran with the eventual hope of normalizing relations between the two countries. (31) Mohammad Khatami-Ardakani, the president, was perceived as the moderate candidate in the U.S., (32) and Applicant, for the first and only time in his life, decided to vote in the Iranian presidential election, (33) because he did not want to see another extremist running Iran. He did so by casting his ballot at a local hotel in the town where he resides. (34)

Applicant's father passed away in 1988. (35) Applicant's mother (born in 1942) (36) was a housewife until her husband died. (37) She immigrated to the U.S. in about 1993, (38) and currently resides with Applicant and his family. (39) She applied for U.S. citizenship in July 2003. (40) Applicant's wife and her entire family, including parents and siblings, immigrated to the U.S. from Iran over 30 years ago, long before the revolution, and they are all, with the exception of her father who died, now naturalized U.S. citizens, (41) residing in the U.S. (42) His wife was naturalized as a U.S. citizen in 1996. (43) His daughter was born in the U.S. (44) and is a U.S. citizen. (45)

Applicant is the oldest of four siblings, and has a sister and two brothers, all of whom are citizens of Iran. (46) His older brother (born in 1963), (47) completed his mandatory 18 months to two years' military service in Iran, (48) and in about 1990 left Iran for France where he enrolled in a local university. (49) He was subsequently granted political asylum and hopes to become a French citizen. (50) Although he served in the Iranian military, he is not an agent or employee of either the Iranian or French governments or their respective intelligence services. (51) Applicant and his brother regularly communicate with each other by telephone, generally about one to three times per month, (52) but since his brother does not have access to the Internet, they do not use e-mail. (53) They last saw each other in 1999 in France when Applicant was returning from a business trip. (54) Applicant does not support his brother but, on occasion, has sent him gifts of clothing. (55)

His younger brother (born in 1973), (56) remained in Iran where he is a self-employed expediter in the import/export business and owns a small beauty shop. (57) He resides in the family home with his wife and child, as well as his sister and her family. (58) It is unclear if he too served in the Iranian military. He is not an agent or employee of the Iranian government or its intelligence service. (59) Applicant and his brother regularly communicate with each other by telephone, generally about one to two times per month. (60) They last saw each other in 1999 in Iran when Applicant's brother was getting married. (61) At about the same time their mother immigrated to the U.S., immigration papers were also submitted for this brother to come to the U.S. (62) That process is continuing.

Applicant's sister (born in 1961), (63) also remained in Iran and resides with her husband, an accountant, (64) and their two children, in the same family residence where her brother resides. (65) She is now a housewife, but had previously worked as a secretary and bookkeeper. (66) She has no relationship with any government agency or intelligence service. (67) Applicant and his sister regularly communicate with each other by telephone, generally about one time per month. (68) They last saw each other in 1999 in Iran when their brother was getting married. (69) She would like to immigrate to the U.S., (70) and once Applicant's mother attains her naturalization, she intends to sponsor her daughter's immigration. (71)

Since emigrating from Iran in 1979, Applicant has returned there on three occasions. His first trip occurred during the summer of 1995 and lasted about one month. (72) He stayed with his brother and sister in the family residence. (73) The second trip occurred in about December 1995 and lasted three weeks. (74) He again stayed with his brother and sister. (75) He returned for the third and final time during the summer of 1999 when his brother was getting married. (76) He

again stayed with his siblings.<sup>(77)</sup> He has no plans on returning to Iran in the future.<sup>(78)</sup> Applicant's wife and daughter traveled to Iran in 2003.<sup>(79)</sup>

If anyone in Iran ever threatened any of Applicant's family members unless he cooperated by furnishing sensitive or classified information to Iran he would not succumb to the threats, but would report them to the authorities.<sup>(80)</sup> While he loves his siblings, he would never jeopardize his wife and daughter by cooperating.<sup>(81)</sup>

Applicant has been employed by the same government contractor since July 1997 where he is now a senior systems engineer. In 1999, he was selected into a program for certain employees who are highly productive and have the essential skills to become leaders within the company.<sup>(82)</sup> In March 2004, he was identified as a select employee with key technical system knowledge or process expertise whose loss would have an adverse impact on the company.<sup>(83)</sup>

Iran is a member of what President George W. Bush characterized as the "axis of evil."<sup>(84)</sup> 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, and supported terror.<sup>(85)</sup> Iran is known to conduct intelligence operations and economic espionage against the U.S.<sup>(86)</sup> Iran is a nation whose interests are inimical to the United States.

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E.2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider are: (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 voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

**GUIDELINE B - FOREIGN INFLUENCE: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) 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.**

**GUIDELINE C - FOREIGN PREFERENCE: When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.**

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, pertaining to both adjudicative guidelines are set forth and discussed in the Conclusions section below.

Since the protection of the national security is the paramount determinant, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security,"<sup>(87)</sup> or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded that both standards are one and the same. 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 that are grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate that it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that 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 under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or 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.

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

## CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of the witness testimony, demeanor, and credibility, and after application of all appropriate legal precepts and factors, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

The government has established its case under Guideline B. Applicant has been portrayed as a person who is a potential security risk because members of his immediate family or persons to whom he is bound by affection, influence, or obligation--in this instance, his two brothers and sister--are not citizens or residents of the United States or may be subject to duress. The concern also carried over to Applicant's mother because of her citizenship status as a non-citizen permanent resident of the U.S. These situations raise the potential for vulnerability to coercion, exploitation, or pressure, and the exercise of foreign influence that could result in the compromise of classified information. In support of its contentions, the government has cited the fact Applicant's mother is a citizen of Iran residing in the U.S., one brother and sister are citizens of Iran residing there, and one brother is a citizen of Iran residing in France. Those simple facts are not controverted, and, standing alone, might be sufficient to raise security concerns over the possibility of Applicant's vulnerability to coercion, exploitation, or pressure. However, the mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B:<sup>(88)</sup>

The language of [Guideline] B (Foreign Influence) in the Adjudicative Guidelines makes clear that the possession of such family ties *may* pose a security risk. Whether an applicant's family ties in a foreign country pose a security risk depends on a common sense evaluation of the overall facts and circumstances of those family ties. *See* ISCR Case No.

98-0419 (April 30, 1999) at p. 5.

The citizenship and resident status of Applicant's brothers and sister, as well as the citizenship status of his mother, when considered in light of the nature of the government in Iran--a totalitarian theocratic government whose interests are inimical to the United States and which is known to conduct intelligence operations and economic espionage against the U.S.--activates Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1. (*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*) and DC E2.A2.1.2.2. (*sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse influence or duress exists*).

However, also applicable, in this instance, is Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1. (*a determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question 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 person(s) involved and the United States*). Applicant's two siblings who remain in Iran--a shopkeeper/business man and a housewife--are the only persons seemingly coming within the ambit of security concern. Those relationships, while continuing primarily via telephone communications a few times each month, remain emotionally, but not physically, close. They have seen each other only three times in the past 25 years. Applicant does not send them any living expenses and does not discuss his business. As far as the potential for influence is concerned, it should be noted that Applicant has declared he would not cooperate with Iranian agents if his siblings were threatened in any way because his family in the U.S. is more important to him than his brother and sister in Iran.

Equally meaningful is the historical perspective. Since his arrival in the U.S. 25 years ago, and especially since he has been employed by a defense contractor since 1997, there have been no instances of Iranian government efforts to capitalize on his two siblings' Iranian residence and citizenship or Applicant's employment or security clearance status. When asked what he would do if Iran threatened his brother or sister unless he furnished sensitive, or even something innocuous, Applicant declared he would not risk his own family or his country, referring to his family in the U.S. or the U.S. government, in favor of his sister, and would immediately report the situation to the authorities.

The best predictor of whether an applicant's relatives are in a position to be exploited in the future by a government which has no interest in complying with human rights and liberties, or even with the accepted rules and norms of international law, is the government's past conduct. In this case there have been no incidents and no pressure applied directly or indirectly. Considering all of the above, including the Iran's past conduct, as well as the citizenship and residency status of Applicant's one brother and sister, I do not consider them to constitute unacceptable security risks. Considering the citizenship and residency status of Applicant's mother and his other brother who has been granted political asylum in France, I do not consider them to constitute unacceptable security risks either.

There is, however, one issue which is of potential concern. Applicant's primary focus is on the protection and security of his wife and child--surely a laudable concern. If his wife and child should happen to return to Iran for another visit, possible actions by the Iranian government or its agents against them while they are in Iran raises the potential for a nasty confrontation. While he would have little difficulty in withstanding pressures from Iran directed against his siblings, he may be more vulnerable to pressures involving his wife and daughter. Now that he is aware of the government's security concerns, I am confident that when the possibilities of such vulnerability have been explained to him, Applicant will apply the same restraint to their travel to Iran as he has now done to his own, and the vulnerabilities will be diminished.

Also applicable, in this instance, is FI MC E2.A2.1.3.5. (*foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*). As noted above, neither Applicant nor his wife has any financial interests in Iran whereas their entire, and substantial, holdings are in the U.S.

Considering all of the above, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the government's case under Guideline B. Accordingly, allegations 2.a. through 2.e. of the SOR are concluded in favor of Applicant.

The government has also established its case under Guideline C. It is quite true Applicant exercised one of the rights and



privileges of a citizen of Iran by renewing and using an Iranian passport after he became a naturalized U.S. citizen. Applicant's allegiance to the United States has been questioned because of his exercise of Iranian citizenship, and an allegation was made that he thus prefers Iran over the U.S.

A review of the evidence reveals his allegiance and loyalty to the U.S. are resolute, and supported by significant indicia of same. Applicant has: indicated a willingness to renounce his Iranian citizenship; allowed his Iranian passport to expire with no intention to renew it; received his college degree here; maintained a residence in the U.S.; created a family here with his wife and child; been employed in the U.S.; and declared allegiance to the U.S. It is clear that possession of a foreign passport cannot be considered merely in isolation, but should be analyzed in light of all the facts and circumstances, "with the adjudicator needing to consider whether the facts and circumstances of possession reasonably indicate the applicant is demonstrating a foreign preference within the meaning of [Guideline] C." [\(89\)](#) The ASD/C<sup>3</sup> I memo appears to be conclusive in this regard, negating any consideration of the facts and circumstances. Thus, the issue is: whether Applicant's actions in keeping, renewing, and using his Iranian passport, from January 1991, when he was naturalized as a U.S. citizen, until it expired in 2004, constituted the exercise of dual citizenship and were indicative of a preference for Iran over the U.S. Applicant's actions in retaining, renewing, and using the Iranian passport were exercises by him of his Iranian citizenship and fall within Foreign Preference Disqualifying Condition (FP DC) E2.A3.1.2.1. (*the exercise of dual citizenship*) and FP DC E2.A3.1.2.2. (*possession and/or use of a foreign passport*).

However, Applicant's dual citizenship is based solely on his birth in Iran. Thus, Applicant benefits from Foreign Preference Mitigating Condition (FP MC) E2.A3.1.3.1. (*dual citizenship is based solely on parents' citizenship or birth in a foreign country*). His willingness and efforts to renounce his Iranian citizenship comes within FP MC E2.A3.1.3.4. (*individual has expressed a willingness to renounce dual citizenship*). The ASD/C<sup>3</sup> I memo states there are no mitigating factors "related to an applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country," a phrase which I construe to relate to the use of a foreign passport. In this instance, Applicant has used that passport on three occasions since obtaining his U.S. citizenship. Furthermore, the memo states "consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport. . . ."

When Applicant was interviewed by a special agent of the Defense Security Service (DSS) in April 2003, he volunteered to "relinquish" the passport if required to do so, knowing he would no longer be able to visit Iran. It is unclear if Applicant was apprised of the existence of the ASD/C<sup>3</sup> I memo at that time, and he took no further actions in that regard. At some otherwise unidentified point in the processing of this case, a copy of the memo was furnished to Applicant. It is known that a copy of the memo was furnished to Applicant on March 16, 2004. The Iranian passport was simply permitted to expire. While he may have believed that he had complied with the surrender provisions of the ASD/C<sup>3</sup> I memo, it has been determined by the Appeal Board that expiration of a foreign passport is not equivalent to a surrender of it because "surrender contemplates returning it to the issuing authority, and merely keeping a foreign passport until it expires does not satisfy this requirement in the ASD/C<sup>3</sup> I memo." [\(90\)](#)

I believe that interpretation is far too inflexible and is contraindicated by Enclosure 2 of the Directive which requires "an overall common sense determination." Moreover, it implies a requirement that does not have any basis in fact--that the foreign passport be surrendered "to the issuing authority." When Applicant's Iranian passport expired, it effectively and legally became a useless piece of paper which could no longer be used for the purposes for which it was initially created. It ceased to exist. A document no longer in existence need not be returned, or surrendered, as seemingly required by the Appeal Board, for it has already been abandoned or surrendered to uselessness.

One of Applicant's actions--that of voting in the 2001 Iranian presidential election--falls within FP DC E2.A3.1.2.8. (*voting in foreign elections*). In this instance, however, Applicant's actions were motivated solely for honorable reasons, and not for personal gain or to show a preference for Iran over the U.S. He was part of an effort made within the Iranian-American community in the U.S. to try to elect a moderate president of Iran with the eventual hope of normalizing relations between the two countries because he did not want to see another extremist running Iran. His goal would seem to be identical to that of the U.S. government.

Considering all of the above, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the government's case under Guideline C. Accordingly, allegations 1.a. through 1.d. of the SOR are concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is suitable for access to classified information.

### **FORMAL FINDINGS**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline C: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Paragraph 2. Guideline B: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: For the Applicant

Subparagraph 2.d.: For the Applicant

Subparagraph 2.e.: For the Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

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**Robert Robinson Gales**

**Chief Administrative Judge**

1. Government Exhibit 4 (Statement, dated April 2, 2003), at 4.

2. *Id.*, at 6.

3. *Id.*, at 4.

4. Tr., at 22.

5. Government Exhibit 4, *supra* note 1, at 4.

6. *Id.*

7. *Id.*



8. Government Exhibit 1 (Security Clearance Application, dated March 24, 2000), at 4.

9. *Id.*

10. *Id.*

11. *Id.*, at 2.

12. *Id.*, at 4.

13. Tr., at 52.

14. Applicant Exhibit C (Statement, dated April 21, 2004), at 1.

15. *Id.*

16. Tr., at 53.

17. Tr., at 54.

18. Tr., at 54.

19. Government Exhibit 4, *supra* note 1, at 6.

20. *Id.*

21. Tr., at 25; Government Exhibit 1, *supra* note 8, at 1.

22. Tr., at 26. There is, however, some inconsistency regarding Applicant's impressions on dual citizenship. In his SF 86, completed in March 2000, he responded "yes" to the question: "Are you now or were you a dual citizen of the U.S. and another country." *Id.*, Government Exhibit 1. In April 2003, he stated: "I hold Iranian citizenship along with U.S. citizenship. . . . If it were possible to renounce Iranian citizenship I would do so." Government Exhibit 4, *supra* note 1, at 4; In January 2004, he stated: "My citizenship with Iran is based solely on my birth in Iran. In my mind I renounced my Iranian citizenship the day I became a United States citizen. I am willing to renounce my Iranian citizenship. . . ." Response to SOR, dated January 11, 2004, at 1. During the hearing he stated: ". . . in my mind I'm not a dual citizen of Iran." Tr., at 26.

23. Tr., at 26; Under Iranian law, U.S. citizens who were born in Iran, and the children of such persons, are considered Iranian nationals. Department of State, Bureau of Consular Affairs, *Consular Information Sheet - Iran*, dated September 8, 2003, at 2.

24. Applicant Exhibit B (Letter to Iranian Authorities, dated -/-/2004). Note, the actual date has been deleted to protect the identity and security of Applicant.

25. Government Exhibit 1, *supra* note 8, at 6.

26. Tr., at 28-29; Government Exhibit 2 (Passport, issued -/-/1999), at 4. Note, the actual date has been deleted to protect the identity and security of Applicant.

27. *Id.*, Government Exhibit 2.

28. Tr., at 30; Response to SOR, *supra* note 22, at 1.

29. *Id.*, Response to SOR; Tr., at 27-30.

30. Tr., at 33, 61.
31. Tr., at 32.
32. Tr.,at 32.
33. Tr., at 32-33.
34. Tr., at 33; Government Exhibit 4, *supra* note 1, at 4.
35. Tr., at 29, 35.
36. Government Exhibit 1, *supra* note 8, at 4.
37. Response to SOR, *supra* note 22, at 1.
38. Tr., at 34.
39. Government Exhibit 1, *supra* note 8, at 1, 4.
40. Tr., at 34; Response to SOR, *supra* note 22, at 1.
41. Tr., at 51-52.
42. Government Exhibit 1, *supra* note 8, at 5; Tr., at 52.
43. *Id.*, at 6.
44. Tr., at 52.
45. Government Exhibit 4, *supra* note 1, at 3.
46. Response to SOR, *supra* note 22, at 1-2.
47. Government Exhibit 1, *supra* note 8, at 5.
48. Tr., at 38.
49. Tr., at 39.
50. Tr., at 36.
51. Tr., at 38-39.
52. Tr., at 37; Government Exhibit 4, *supra* note 1, at 3.
53. Tr., at 38.
54. Government Exhibit 4, *supra* note 1, at 3.
55. Tr., at 38.
56. Government Exhibit 1, *supra* note 8, at 5.
57. Tr., at 40; Government Exhibit 4, *supra* note 1, at 2..
58. *Id.*, Government Exhibit 4.

59. Tr., at 41.

60. Tr., at 41.

61. Government Exhibit 4, *supra* note 1, at 2.

62. Tr., at 41-42.

63. Government Exhibit 1, *supra* note 8, at 5.

64. Tr., at 43.

65. Government Exhibit 4, *supra* note 1, at 2.

66. *Id.*

67. Tr., at 43.

68. Tr., at 43.

69. Government Exhibit 4, *supra* note 1, at 2.

70. *Id.*

71. Tr., at 43.

72. Tr., at 47.

73. Tr., at 48.

74. Tr., at 48.

75. Tr., at 48.

76. Tr., at 49.

77. Tr., at 49.

78. Tr., at 32, 46.

79. Tr., at 59.

80. Tr., at 55-57.

81. Tr., at 56.

82. Applicant Exhibit C, *supra* note 14, at 2.

83. Applicant Exhibit A (Employee Retention Plan, dated March 4, 2004).

84. 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](http://www.gov.com/union_1_2002.html), at 5.

85. President George W. Bush's comments regarding Iran in The President's State of Union Address, dated January 28, 2003, at [www.gov.com/union\\_1\\_2003.html](http://www.gov.com/union_1_2003.html), at 9; U.S. Department of State, Office of the Coordinator for Counterterrorism, *Patterns of Global Terrorism: 2002*, dated April 2003, at 2-3; Library of Congress, *Congressional*

*Research Service Issue Brief for Congress - Iran: Current Developments and U.S. Policy*, dated July 25, 2003, at CRS 4-7.

86. *Id.*, Library of Congress, *Congressional Research Service Issue Brief for Congress - Iran: Current Developments and U.S. Policy*, at Summary; Office of the National Counterintelligence Executive, *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage 2001*, dated October 2001, at 6.

87. Exec. Or. 12968, *Access to Classified Information*; as implemented by Department of Defense Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended by Change 3, dated November 8, 1995. However, the Directive uses both "clearly consistent with the national interest" (Sec. B.3; Sec. C.2.; and Sec. D.2.; Enclosure 3, Sec. 1.; and Sec. 25), and "clearly consistent with the interests of national security" (Enclosure 2 (Change 3), Adjudicative Guidelines, at 2-2).

88. ISCR Case No. 98-0507 (Appeal Board Decision and Reversal Order, May 17, 1999), at 10.

89. ISCR Case No. 97-0356 (Appeal Board Decision, December 12, 1997), at 5-6.

90. ISCR Case No. 01-24306 (Appeal Board Decision, September 30, 2003), at 5; ISCR Case No 00-0009 (Appeal Board Decision, September 26, 2001) at p. 4.