

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant is a native-born U.S. citizen with an Iranian father and a native-born U.S. citizen mother. Upon the death of his grandfather, the family moved to Iran. Applicant was educated in Iran, except for annual summer school programs in the U.S. Although his father was not permitted to leave Iran, Applicant returned to the U.S. permanently in 2001. His sister has resided in the U.S. for nine years. His mother visits her family in the U.S. annually. No member of his family has any connection or association with the Iranian government, nor are they agents of a foreign government or in positions to be exploited by a foreign government. They do not constitute an unacceptable security risk. Under the facts herein, the government's security concerns are mitigated. Clearance is granted.

CASE NO: 05-04126.h1

DATE: 06/21/2006

DATE: June 21, 2006

In re:

SSN:-----

Applicant for Security Clearance

ISCR Case No. 05-04126

DECISION OF CHIEF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a native-born U.S. citizen with an Iranian father and a native-born U.S. citizen mother. Upon the death of his grandfather, the family moved to Iran. Applicant was educated in Iran, except for annual summer school programs in the U.S. Although his father was not permitted to leave Iran, Applicant returned to the U.S. permanently in 2001. His sister has resided in the U.S. for nine years. His mother visits her family in the U.S. annually. No member of his family has any connection or association with the Iranian government, nor are they agents of a foreign government or in positions to be exploited by a foreign government. They do not constitute an unacceptable security risk. Under the facts herein, the government's security concerns are mitigated. Clearance is granted.

STATEMENT OF THE CASE

On July 9, 2004, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86).⁽¹⁾ On October 4, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, 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. The SOR detailed reasons under Guideline C (foreign preference) and Guideline B (foreign influence) 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 statement, dated November 5, 2005, Applicant responded to the SOR allegations and requested a hearing. Department Counsel indicated the government was ready to proceed on January 20, 2006, and the case was assigned to me on January 27, 2006. A notice of hearing was issued on February 1, 2006, scheduling the hearing for February 22, 2006. The hearing was held as scheduled. During the hearing, two Government exhibits, four Applicant exhibits,⁽²⁾ and Applicant's testimony were received. The transcript (Tr.) was received on March 3, 2006.

RULINGS ON PROCEDURE

Department Counsel requested Official Notice be taken of the contents of the following documents: U.S. Department of State, Bureau of Near Eastern Affairs, *Background Note: Iran*, dated August 2005; U. S. Department of State, Bureau of Consular Affairs, *Consular Information Sheet: Iran*, dated August 25, 2005; U.S. Department of State, Bureau of Consular Affairs, *Travel Warning: Iran*, dated December 29, 2005; U. S. Department of State, *Country Reports on Human Rights Practices: Iran - 2004*, dated February 28, 2005; U.S. Department of State, Office of the Coordinator for Counterterrorism, *Country Reports on Terrorism 2004*, dated April 2005; and Office of the Director of National Intelligence, *Annual Threat Assessment for the Senate Select Committee on Intelligence*, dated February 2, 2006. Pursuant to Rule 201, *Federal Rules of Evidence* (F.R.E.), I took Official Notice as requested, without any objection by Applicant. [\(3\)](#)

Department Counsel moved to amend the SOR to conform to the evidence to be presented. More specifically, he sought the following two changes: (1) withdraw subparagraph 2.c. of the SOR, and (2) to subparagraph 2.d. of the SOR; delete the word "grandfather," and substitute the word "father." There being no objection to the motion by Applicant, the motion was granted and the SOR amended as stated. [\(4\)](#)

FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to foreign preference under Guideline C (subparagraphs 1.a. through 1.c.) and some of the factual allegations pertaining to foreign influence under Guideline B (subparagraphs 2.g. and 2.h., and portions of subparagraphs 2.b., 2.e., and 2.f.). Those admissions are incorporated herein as findings of fact. He denied the remaining allegations. 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 31-year-old employee of a defense contractor. He is seeking to obtain a security clearance, the level of which has not been identified. He has been employed by the same government contractor since July 2004, and currently serves as a senior information security engineer. His immediate supervisor and the department head have both known Applicant since he started working for the company and they support his application and characterize him in very positive terms. Likewise, the director of research and development of his former employer would welcome his return.

Applicant was born in 1974 in the U.S. to an Iranian father and a native-born U.S. citizen mother. (5) At that time, his father--a green card holder--worked for a U.S. company and had resided in the U.S. for about 10 years. (6) Applicant's grandfather, a general in the Imperial Iranian Army, (7) came to the U.S. to visit the family when Applicant was young, and on the return trip to Iran, he passed away while in Italy. (8) Because the grandfather owned about 2,000 acres of land at the time he died, the family relocated to Iran. (9) Applicant, a practicing Catholic, (10) grew up in Iran and attended school there. (11) The first few years, he attended a school which was operated by Americans, (12) but after the 1979 Islamic revolution which overthrew the Shah, he attended public schools. (13) However, every summer, he returned to the U.S. where he attended summer school. (14) He attended college in Iran, earning a degree in electrical engineering. (15) After graduation, Applicant worked for his father's consumer electronics manufacturing company in Iran. (16) He was exempted from Iranian military service because of weak eyes. (17) In 1998, he married a college classmate in Iran, a Muslim woman who later worked with him at his father's company. (18) In June 2001, seeking more personal freedom, and because he felt uncomfortable in Iran, Applicant and his wife relocated to the U.S. (19)

He earned a master's degree in an unspecified discipline from a U.S. university several years ago, and is currently enrolled in another master's program, in systems engineering, at another U.S. university. (20) Applicant's wife earned an MBA in business and is employed by a large U.S. company where she is a hardware manager for consumer electronics. (21) According to Applicant, since she became a "career person," she left little room for family, (22) and in September 2004, they separated. (23) They currently reside in different states. (24) In about November 2005, she became a naturalized U.S. citizen. (25) In February 2006, they agreed to a divorce, and on March 6, 2006, they filed for divorce jointly citing grounds of irretrievable breakdown. (26) They have no children, although Applicant would like to have some. (27)

Applicant's father, born in Iran in 1943, returned to Iran upon his father's demise and established his own moderately-sized private consumer electronics manufacturing company. (28) While the company currently employs about 20 people, it had previously been larger. (29) When the revolution occurred, all of the family's land was confiscated. (30) Although he had a green card while residing and working in the U.S., it expired because he was never able to return to the U.S. because of his late father's position with the Shah. (31) Applicant's father has not returned to the U.S. in over 32 years. (32) Due to his age, the Iranian government no longer considers him a risk to the revolution, and will be free to immigrate to the U.S. upon receipt of another green card. (33) Once he decides to retire, he will do so and move to the U.S. (34) Since his father's death, he has not had any connection or association with the monarchy or Islamic fundamentalist regimes of the Iranian government, the Shi'a Muslims, or any Iranian government, or its military, political, or intelligence entities. (35)

His mother, a U.S. citizen born in the U.S. in 1943, (36) and still a practicing Catholic, (37) moved to Iran with her husband upon the death of her father-in-law. She has been primarily a homemaker, (38) but about 12 years ago, she worked briefly as a TOFEL (test of English as a foreign language) instructor at the Canadian Embassy. (39) She also serves as a teacher in a private school. (40) She generally calls Applicant every Sunday after church, (41) and visits her two children, including Applicant and his sister, in the U.S. annually, and periodically visits her cousins here as well. (42) Her mother and sister also reside in the U.S. (43) Since her father-in-law's death, she has not had any connection or

association with the monarchy or Islamic fundamentalist regimes of the Iranian government, the Shi'a Muslims, or any Iranian government, or its military, political, or intelligence entities. [\(44\)](#)

His sister, a dual U.S.-Iranian citizen born in Iran 1983, [\(45\)](#) has resided in the U.S. for about nine years, and is studying anesthesiology. [\(46\)](#) She has never had any connection or association with the Islamic fundamentalist regime of the Iranian government, the Shi'a Muslims, or any Iranian government, or its military, political, or intelligence entities. [\(47\)](#)

Applicant's maternal grandmother was a nurse; his aunt was a commissioned Air Force officer who later worked for a major U.S. city police department, but is now a nurse with the U.S. Navy; and his cousin is a police officer for a major U.S. city police department. [\(48\)](#) They are all U.S. citizens who reside here as well. [\(49\)](#)

In addition to his estranged wife's parents (her father is retired but about to embark on the raising of ostriches and her mother is a former teacher working as a private school administrator), [\(50\)](#) she has two sisters and a brother, all of whom are Iranian citizens and residents. [\(51\)](#) One sister was granted her green card and has already moved in with her. [\(52\)](#) Green cards have also been approved for her parents, but have not yet been issued. [\(53\)](#) Another sister resides in Cyprus where she is a student, and a brother remains in Iran where he is an aspiring actor. [\(54\)](#) Applicant does not consider himself to have any affiliation, affection, or obligation to any member of his estranged wife's family. [\(55\)](#)

Before Applicant and his wife came to the U.S. in June 2001, they sold nearly everything they owned, including furniture and various items. [\(56\)](#) They arrived in the U.S. with about \$8,000.00. [\(57\)](#) He has no financial interests in Iran. [\(58\)](#) In contrast, he owns a residence in the U.S. worth about \$380,000, [\(59\)](#) investments worth \$20,000.00, two automobiles, and personal holdings worth about \$15,000.00. [\(60\)](#)

When Applicant left Iran in June 2001, he possessed both a U.S. passport and an Iranian passport. [\(61\)](#) In order to depart, he was required by Iranian authorities to use his Iranian passport, [\(62\)](#) because if the authorities had known about his U.S. passport they would have confiscated it from him. [\(63\)](#) He has never used his Iranian passport to travel to countries other than Iran. [\(64\)](#) For all other travel he uses his U.S. passport. [\(65\)](#) When Applicant was apprised of the significance of possessing a foreign passport and its potential impact on his obtaining a security clearance, in November 2005, he surrendered his Iranian passport by submitting it to the Iranian Interest Section of the Algerian Embassy, the local entity handling Iranian interests. [\(66\)](#) The passport was returned to him because the Algerian Embassy was unable to process the renunciation of Iranian citizenship. [\(67\)](#) However, Applicant persisted and surrendered it a second time in January 2006. [\(68\)](#) It was apparently accepted, because it had not been returned to him. [\(69\)](#)

Applicant initially intended to return to Iran every two years or so to visit his parents,⁽⁷⁰⁾ and has returned to Iran for two weeks in March 2003 and again in July 2004.⁽⁷¹⁾

Applicant's allegiance resides solely with the U.S.⁽⁷²⁾

Iran is a member of what President George W. Bush characterized as the "axis of evil."⁽⁷³⁾ 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.⁽⁷⁴⁾ In fact, it remained the most active state sponsor of terrorism and has continued to exhort a variety of groups to use terrorism in pursuit of their goals.⁽⁷⁵⁾ Iran is modernizing its military, acquiring weapons of mass destruction, and continues to seek nuclear capabilities.⁽⁷⁶⁾ The U.S. does not currently have diplomatic or consular relations with Iran and cannot provide protection to U.S. citizens in that country.⁽⁷⁷⁾ Iran is known to conduct intelligence operations and economic espionage against the U.S., and 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 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.

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

On August 16, 2000, the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD/C³I) issued a passport policy "clarification" pertaining to Adjudicative Guideline C--foreign preference. ⁽⁷⁸⁾ It is unclear if a photocopy of the memorandum was ever furnished to Applicant. The memorandum states, in pertinent part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. ***Therefore, consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government.*** Modification of the Guideline is not required. (Emphasis supplied)

Since the protection of the national security is the paramount consideration, 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" or "clearly consistent with the national interest."⁽⁷⁹⁾ For the purposes herein, despite the different language in each, I have concluded all of the standards are 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 raises a security concern under 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 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 credibility, and after application of all appropriate legal precepts, factors, and conditions, 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 C. It is quite true Applicant exercised one of the rights and privileges of a dual citizen of Iran by using an Iranian passport although he is also a native-born U.S. citizen. Applicant's allegiance to the United States has been questioned because of his exercise of Iranian citizenship as well, 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, and attempted to do so; surrendered his Iranian passport; received his advanced college degree(s) here; maintained a residence in the U.S.; made investments in the U.S.; been employed in the U.S.; and declared allegiance to the U.S. In addition, he no longer has any assets in Iran; and as a Catholic, feels uncomfortable there. 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." ⁽⁸⁰⁾ The ASD/C³ 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 and using his Iranian passport on two occasions from June 2001 until July 2004, and then keeping it until he tried to surrender it in November 2005, or finally did so in January 2006, constituted the exercise of dual citizenship and were indicative of a preference for Iran over the U.S. Applicant's actions in retaining 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 the U.S. to an Iranian father. 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 come within FP MC E2.A3.1.3.4. (*individual has expressed a willingness to renounce dual citizenship*). The ASD/C³ 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 at least two occasions to enter and exit Iran in 2003 and 2004. Furthermore, the memo states "consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport. . . ."

It is unclear if or when Applicant was apprised of the existence of the ASD/C³ I memo. Nevertheless, upon being advised of the significance of possessing a foreign passport, Applicant first attempted to surrender it to the Iranian Interest Section of the Algerian Embassy, but his initial effort was rejected. He persisted, and on the second attempt, was successful. Applicant's actions have complied with the surrender provisions of the ASD/C³ I memo. Thus, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the government's case with respect to Guideline B. Accordingly, allegations 1.a. through 1.d. (allegation 1.b. was withdrawn) of the SOR are concluded in favor of Applicant. Thus, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the government's case with respect to Guideline C. Accordingly, allegations 1.a. through 1.c. of the SOR are concluded in favor of Applicant.

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, Applicant's grandfather, parents, his wife, and his in-laws--are either not citizens or residents of the United States or may be subject to duress. This situation raises 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 that Applicant's grandfather, parents, and in-laws are Iranian citizens residing in Iran, and that his spouse is an Iranian citizen residing in the U.S. Those simple facts, standing alone, are 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 should not, as a matter of law, be disqualifying under Guideline B. ⁽⁸¹⁾ Based on the evidence, I conclude the security concerns manifested by the government, in this instance, are largely unfounded.

Iran is a theocratic government that represses its people, pursues weapons of mass destruction, ignores customary principles of international law, endorses fundamentalist Muslim political movements abroad, and supports international terrorism. Iran is acquiring weapons of mass destruction, continues to seek nuclear capabilities, and is known to conduct intelligence operations and economic espionage against the U.S. Iran is a nation whose interests are inimical to the United States. There obviously is some merit to the government's concerns regarding the need for heightened awareness regarding Applicant's potential vulnerability to threats in Iran and the presence of his family in that country. However, some of the government's concerns have been overcome by events.

Applicant's grandfather died 33 years ago. Because of Applicant's impending divorce, his tenuous relationship with his estranged spouse and her family is such that there are no close ties of affection or obligation between them. This situation pertaining to those relationships raises the applicability of Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.3.3. (*contact and correspondence with foreign citizens are casual and infrequent*).

The sole concern pertaining to foreign influence surrounds his parents and his sister. His father is an Iranian citizen and his mother is a native-born U.S. citizen, both of whom reside in Iran. His sister is a dual U.S.-Iranian citizen who has resided in the U.S. for nine years. The residence and/or citizenship of Applicant's parents and sister are clearly of security concern under 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*), but the significance of that conclusion is mitigated by FI DC 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*).

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. Neither of Applicant's parents nor his sister meet the definition of "agent of a foreign power" under 50 U.S.C. § 438(6) and 50 U.S.C. § 1801(b). Similarly, none of them would be considered as an "agent of a foreign power" under the more expansive definition adopted by the Appeal Board. As noted above, his father was the son of an Iranian general under the deposed monarchy who died over 33 years ago. Because of that relationship, Applicant's father was, over the years, not permitted to depart Iran to return to the U.S. where he

resided and worked for 10 years, but now due to his age, is no longer considered a risk to the revolution, and will be free to immigrate to the U.S. upon receipt of another green card. As a private business man, he has remained basically anonymous with no further relationship to the government or any of its entities. His mother, a practicing Catholic and native-born U.S. citizen, has been free to visit the U.S. on an annual basis to visit her children, mother, sister, and a variety of other family members, all of whom are U.S. citizens residing in the U.S. His sister is a dual citizen who has resided in the U.S. for nine years.

As noted above, the "whole person concept" is the heart of the analysis of whether an applicant is eligible for a security clearance.⁽⁸²⁾ In assessing whether an applicant is a security risk because of his or her relatives or associates in a foreign country, it is necessary to consider all relevant factors. In fact, the Appeal Board has repeatedly held:

Although the position of an applicant's foreign family members is significant and may preclude the favorable application of Foreign Influence Mitigating Condition 1, the totality of an applicant's conduct and circumstances (including the realistic potential for exploitation) may still warrant a favorable application of the relevant general factors.⁽⁸³⁾

One factor which must be considered 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.⁽⁸⁴⁾ 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."⁽⁸⁵⁾ Nevertheless, the relationship between a foreign government and the U.S. 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 against the U.S. through the applicant. It is reasonable to presume that a friendly relationship, or the existence of a democratic government, is not determinative, but 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. In this instance, Iran is a fundamentalist Muslim nation that is a state sponsor of terrorism whose interests are inimical to the U.S.

Equally as important is the necessity of considering Applicant's vulnerability to exploitation through his relatives. Applicant--a resident of the U.S. since June 2001 and a native-born U.S. citizen who lived for many years in Iran--is a mature individual with very close family, business, and economic ties to the U.S. Applicant's interests in the U.S. are substantial. He owns no property overseas but does own a residence in the U.S. worth about \$380,000, investments worth \$20,000., two automobiles, and personal holdings worth about \$15,000. These facts fall within FI MC E2.A2.1.3.5. (*foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*).

Because of Applicant's deep and long-standing relationships and loyalties in and to the U.S., he can be expected to resolve any conflict of interest in favor of the U.S. Consequently, I find the potential for pressure, coercion, exploitation, or duress does not constitute a security risk. Thus, I conclude Applicant has, through evidence of extenuation and

explanation, successfully mitigated and overcome the government's case with respect to Guideline B. Accordingly, allegations 1.a. through 1.i. (allegation 1.c. was withdrawn) 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 Section E3.1.25. of Enclosure 3 of the Directive, are:

Paragraph 1., Guideline C: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Paragraph 2., Guideline B: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: Withdrawn/For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: For Applicant

Subparagraph 2.f.: For Applicant

Subparagraph 2.g.: For Applicant

Subparagraph 2.h.: For Applicant

Subparagraph 2.i.: For 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.

Robert Robinson Gales

Chief Administrative Judge

1. Government Exhibit 1 (Security Clearance Application, dated July 8, 2004).
2. A fifth exhibit was submitted following the hearing without objection from Department Counsel.
3. Tr. at 22.
4. *Id.* at 10-12.
5. Government Exhibit 1, *supra* note 1, at 1, 4.
6. Tr. at 31-32.
7. *Id.* at 35.
8. *Id.* at 32.
9. *Id.*
10. *Id.* at 36, 67.
11. *Id.* at 32-33.
12. *Id.* at 36.
13. *Id.*

14. *Id.* at 33.
15. *Id.* at 30.
16. *Id.* at 33, 38-39.
17. *Id.* at 51.
18. *Id.* at 40; Government Exhibit 1, *supra* note 1, at 4.
19. Tr. at 39.
20. *Id.* at 44; Response to SOR, dated November 5, 2006, at 1.
21. Tr. at 41-42.
22. *Id.* at 41.
23. *Id.* at 40.
24. *Id.* at 25.
25. *Id.* at 41; Applicant Exhibit B (U.S. passport issued to Applicant's estranged wife, dated May 3, 2005).
26. Applicant Exhibit E (Joint Petition for Divorce, dated March 6, 2006) at 1, 5.
27. Tr. at 41.
28. *Id.* at 33-34.
29. *Id.* at 39.
30. *Id.* at 35.
31. *Id.* at 37.
32. *Id.* at 38.
33. *Id.*
34. *Id.* at 37-38.
35. *Id.* at 57.
36. Government Exhibit 1, *supra* note 1, at 4.
37. Tr. at 36.
38. *Id.* at 35.
39. *Id.* at 34.
40. *Id.* at 57.
41. *Id.*
42. *Id.* at 38.

43. *Id.*
44. *Id.* at 57.
45. Government Exhibit 1, *supra* note 1, at 5.
46. Tr. at 38, 59.
47. *Id.* at 57.
48. *Id.* at 38.
49. *Id.*
50. *Id.* at 56-57, 60.
51. *Id.* at 54-55.
52. *Id.* at 54.
53. *Id.*
54. *Id.* at 55.
55. Response to SOR, dated November 5, 2005, at 2.
56. Tr. at 50, 66.
57. *Id.* at 50.
58. *Id.* at 43.
59. *Id.*
60. *Id.* at 44, 64.
61. *Id.* at 50-51. The Iranian passport was issued on January 25, 1998, and was due to expire on January 25, 2008. Response to SOR, *supra* note 55, at 1.
62. Tr. at 51.
63. *Id.* at 46. 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. *See* U. S. Department of State, Bureau of Consular Affairs, *Consular Information Sheet: Iran*, dated August 25, 2005, at 3-4.
64. Tr. at 46.
65. *Id.* at 46-47.
66. *Id.* at 47.
67. *Id.* at 47, 49.
68. *Id.* at 50; Applicant Exhibit A (FedEx Express Customer Support Trace, dated January 27, 2006).

69. Tr. at 50.
70. *Id.* at 45.
71. Government Exhibit 2 (Affidavit, dated November 15, 2004) at 2.
72. Response to SOR, *supra* note 20, at 1.
73. 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.
74. U.S. Department of State, Bureau of Near Eastern Affairs, *Background Note: Iran*, dated August 2005, at 4-7.
75. U.S. Department of State, Office of the Coordinator for Counterterrorism, *Country Reports on Terrorism 2004*, dated April 2005, at 88.
76. U.S. Department of State, Bureau of Near Eastern Affairs, *Background Note: Iran*, *supra* note 74, at 6.
77. U.S. Department of State, Bureau of Consular Affairs, *Travel Warning: Iran*, dated December 29, 2005, at 1.
78. Item 7 (ASD/C³I Memorandum from Arthur L. Money, Subject: *Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline*, dated August 16, 2000).
79. The Directive, as amended by Change 4, dated April 20, 1999, uses "clearly consistent with the national interest" (Sec. 2.3.; Sec. 2.5.3; Sec. 3.2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1; Sec. E3.1.2.; and Sec. E1.25.), Sec. E3.1.26.; and Sec. E3.1.27.), "clearly consistent with the interests of national security" (Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (Enclosure 2, Sec. E2.2.2).
80. ISCR Case No. 97-0356 at 5-6 (App. Bd. Dec. 12, 1997).
81. For an expansive discussion of Appeal Board decisions under Guideline B, *see* the decision of my esteemed colleague Administrative Judge Michael J. Breslin, in ISCR Case No. 03-21434 at 7-17 (May 24, 2006).
82. ISCR Case No. 03-11448 at 3-4 (App. Bd. Aug. 10, 2004); ISCR Case No. 02-09389 at 4 (App. Bd. Dec. 29, 2004).
83. ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006) (footnotes omitted); *accord* ISCR Case No. 03-23259 at 3 (App. Bd. May 10, 2006).
84. *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).
85. ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002).