

DATE: January 16, 2007

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 06-17164

DECISION OF ADMINISTRATIVE JUDGE

MARK W. HARVEY

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

David P. Price, Esq., Applicant's Counsel

SYNOPSIS

Fifty-four-year-old Applicant is an Iran-born, naturalized United States citizen. Although he has much more substantial connections to the United States than to Iran, his parents, two sisters, mother-in-law and sister-in-law are citizens of and live in or visit Iran, and he has frequent contact with them. He surrendered his Iranian passport and is willing to renounce his Iranian citizenship. Because of Iran's poor human rights record and hostility towards the United States government, he must overcome a heavy burden to mitigate security concerns. He failed to meet this heavy burden. Security concerns pertaining to foreign preference are mitigated, but security concerns pertaining to foreign influence are not mitigated. Clearance is denied.

STATEMENT OF THE CASE

On December 20, 2004, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86).⁽¹⁾ On August 16, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, 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.⁽²⁾ The SOR alleges security concerns under Guidelines B (Foreign Influence), and C (Foreign Preference). 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 him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In an answer notarized on September 18, 2006, Applicant responded to the SOR allegations, and elected to have his case decided at a hearing.⁽³⁾ On October 19, 2006, the case was assigned to an Administrative Judge. On October 23, 2006, the case was transferred to me. On October 30, 2006, the notice of hearing was issued. On November 15, 2006, the hearing was held. On November 29, 2006, DOHA received the transcript. I did not receive the transcript until December

4, 2006, because I was on temporary duty in South Carolina.

PROCEDURAL RULING

At the hearing, Department Counsel asked for administrative notice of the following U.S. Department of State documents: Iran Bureau of Consular Affairs Report, dated October 11, 2006 (Exhibit I); Iran Bureau of Near Eastern Affairs Report, dated October 2006 (Exhibit II); Country Reports on Human Rights Practices - 2005: Iran Bureau of Democracy, Human Rights, and Labor Report, dated October 12, 2006 (Exhibit III); Country Reports on Terrorism, Chapter 6, "State Sponsors of Terror, Overview," Office of the Coordinator for Counterterrorism, dated April 28, 2006 (Exhibit IV); "Recognizing Iran as a Strategic Threat: An Intelligence Challenge for the United States," Staff Report of the House Permanent Select Committee on Intelligence, Subcommittee on Intelligence Policy, dated August 23, 2006 (Exhibit V).

Administrative or official notice is the appropriate type of notice used for administrative proceedings. *See* ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings is to notice facts that are either well known or from government reports. *See* Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Applicant did not object to my consideration of Exhibits I - V, and I took administrative notice of them (R. 14-15).

FINDINGS OF FACT

As to the factual allegations, Applicant admitted the underlying facts alleged in the SOR ¶¶ 1.a to 1.c, and 2.a to 2.d. (4) For SOR ¶¶ 1.b and 1.c, he explained that he used his Iranian passport to enter and exit Iran in June 2000 "as directed by the Department of State," and he surrendered his Iranian passport on September 7, 2006. He denied that his conduct under Guidelines B or C raised security concerns. His admissions are incorporated herein as findings of fact, and his clarifying remarks about security concerns will be discussed in detail, *infra*.

Applicant is 54-years-old. (5) He is employed as a senior member of the engineering staff for a defense contractor. (6) From 1977 to 1982, he was number one academically at a U.S. university (R. 37), and was awarded a Bachelor of Science degree in mechanical engineering. (7) He did not serve in the U.S. military. (8) He married his current spouse in 1989, (9) and became a U.S. citizen that same year. (10) He has lived in the United States for almost 30 years, obeys United States laws, pays taxes to the United States and is a good U.S. citizen. (11) He is loyal to the United States and is proud to be an American.

Foreign Preference

Applicant has exercised dual citizenship with both Iran and the United States (SOR ¶ 1.a) by his Iranian military service, and possession and use of an Iranian passport. On February 15, 2006, he renewed his expired Iranian passport (SOR ¶ 1.b). (12) He used this Iranian passport to enter and exit Iran in June 2000 (SOR ¶ 1.c) and in June 2006. (13) A U.S. State Department Travel Warning, dated September 12, 2003, advises:

U.S.-Iranian dual nationals have been denied permission to depart Iran documented as U.S. citizens. To prevent the confiscation of U.S. passports, the Department of State suggests that dual nationals leave their U.S. passports at the nearest U.S. Embassy or Consulate overseas for safekeeping before entering Iran, and use their Iranian passports to enter the country. . . . Dual nationals must enter and leave the United States on U.S. passports. . . . U.S. citizens who were born in Iran . . . and the children of such persons, are considered Iranian nationals by Iranian authorities. Therefore, despite the fact that these individuals possess U.S. citizenship, they must enter and exit Iran bearing an Iranian passport. (14)

Applicant relied on the U.S. State Department's advice about using an Iranian passport for visiting Iran to avoid problems with Iranian authorities (R. 35). Absent the State Department advice about retaining the Iranian passport, he would have thrown it away twenty years ago (R. 64). He understands that he is prohibited by Iranian authorities from

traveling to Iran using his U.S. passport because he was born in Iran and Iran still considers him to be an Iranian citizen. (15) His wife is a U.S. citizen, but she has retained her Iranian passport (R. 65).

He was born in Iran, and attended school there through high school (R. 36). After high school, he served in the Iranian military for two years, performing medical and administrative duties (R. 36-38; 54). He completed his Iranian military service in 1975, and emigrated to the United Kingdom that same year (R. 37). In 1977, he came to the United States. *Id.*

In the last thirty years, Applicant has visited Iran about five times (R. 56), and in the last seven years he has visited Iran twice (R. 57-60). His most lengthy Iranian visit was in 1989 for 4 ½ weeks (R. 39). He met and married his current wife during his 1989 visit to Iran (R. 39). In June 2000, he visited Iran (R. 51, 56). His most recent use of his Iranian passport was in June 2006 (R. 60). For the 2006 visit, he stayed in Iran for 3 ½ weeks, but he does not plan to return to Iran (R. 50-51; 56). He took his wife and daughters with him on his 2006 visit to Iran, and they stayed with his parents in his sister's residence (R. 57).

Applicant does not own property or have a bank account in Iran, and has no business interests in Iran (R. 51, 63). He has a U.S. bank account, and owns his home which is located in the United States (R. 72-73). He has substantial investments in American stocks. (16) He has not voted in Iran, or held political office in Iran (R. 73). He has voted in the United States, but not held political office in the United States (R. 73).

In September 2006, Applicant surrendered his Iranian passport to the Embassy of Pakistan, Interests Section of the Islamic Republic of Iran. (17) He is willing to renounce his citizenship with Iran (R. 50). However, he does not believe Iran would accept renunciation of his citizenship because he was born in Iran (R. 50). He asked at the Embassy of Pakistan, Interests Section of the Islamic Republic of Iran, about renouncing Iranian citizenship and was informed that it was difficult, and they declined to provide the paperwork to do so (R. 64, 74). Approval of the Council of Ministers is required to renounce Iranian citizenship. (18)

Foreign Influence

Applicant's mother and father (SOR ¶ 1.a), (19) two sisters (SOR ¶ 1.b), mother-in-law (SOR ¶ 1.c) and sister-in-law (SOR ¶ 1.d) are all citizens of Iran and live in or visit Iran.

His father is 87 years old, and retired, and his mother is 76-years-old (R. 42-43). His father sold commodities such as meat and barley, and his mother was and is a homemaker (R. 42-43). His parents did not work for the Iranian government, and do not receive a pension from the Iranian government (R. 42-43). His parents are both permanent residents of the United States (R. 63). His mother wants to become a U.S. citizen (R. 43). She has a green card and has lived in America for 15 years (R. 43). She is waiting for her English to improve before completing the citizenship process (R. 44, 72). His father's English is not as good as his mother's, but he would apply for citizenship if he knew of a way to do so (R. 72). They live in Iran about half of the year, and live the other half of the year in the United States (R. 58). When they stay in Iran, they live with Applicant's sister (R. 58), and when they visit the United States, they stay with Applicant (R. 60). Applicant provides some financial support to his parents (R. 60). He telephones his parents in Iran once a month (R. 61). When his parents are in the United States, they receive telephone calls from his sister living in Iran about once a month (R. 61).

Applicant's older sister was staying with Applicant in the United States at the time of his hearing, and she wants to become a U.S. citizen (R. 44, 55). She is married (R. 45). Her three sons have been moving back and forth between Iran and the United States for three years (R. 44, 55). Her sons are 22 to 27 years of age (R. 55). One son completed his Iranian military service, and the second son avoided Iranian military service (R. 55). She has applied for a green card for her three sons, but hopes to become a citizen, which will improve her chances of obtaining an immigration preference for her sons (R. 44).

Applicant's younger sister is married and lives in Iran (R. 46, 55). Her husband is currently a university professor, and she is a homemaker (R. 46). He received a Ph.D from a U.S. university, and two of their three children were born in the United States (R. 47, 59). They plan to move to the United States as soon as one of their children completes school (R. 47).

Applicant's father-in-law, who was an accountant is deceased (R. 47-48; 69). His mother-in-law lives with his sister-in-law when she visits Iran (R. 69). His mother-in-law is a permanent U.S. resident (R. 47-48; 70). She is waiting for Applicant's sister-in-law's green card to be approved so they can return to the United States (R. 47-48; 70-71). His mother-in-law visited him in the United States about one year ago, and stayed for about two months (R. 71). Applicant's brother-in-law lives in the United States, and will be eligible to apply for U.S. citizenship in the next few months (R. 70). Applicant and his wife do not provide financial support to her mother or sister (R. 71).

None of Applicant's family members have been approached by anyone from the Iranian government about Applicant's work, and no one has attempted to put pressure on them (R. 49). If anyone put pressure on his family members, and he was informed of the situation, he would report it to U.S. authorities (R. 50). His family members living in Iran are not aware that he works for a U.S. government contractor (R. 49). His male relatives who lived in Iran probably served in the Iranian military (R. 54). Applicant has three daughters (R. 39-40). His oldest daughter is 14, and the twins are 11 years of age. *Id.* His daughters were born in the United States, and they are U.S. citizens (R. 40, 72). They prefer to speak English, but can understand some Farsi (R. 40).

Applicant previously held a security clearance from 1990 to 1992, and from 2004-2006 has held an interim clearance (R. 52). He has not had any financial problems or negative judicial interactions (R. 51). He is a model U.S. citizen (R. 53).

Applicant provided six character statements and one witness made a statement at his hearing.⁽²⁰⁾ They described their long-standing, personal and professional knowledge of Applicant and his family. His loyalty, professionalism, and trustworthiness are noteworthy. He is a conscientious, hard-working, competent, honest and highly ethical team player. He scrupulously complies with security policies. He is a valuable asset to his company. I found Applicant's statement at the hearing to be credible in all respects.

Iran is an authoritarian, constitutional, theocratic republic, dominated by the Shi'a Muslim clergy.⁽²¹⁾ Islamic law is the basis of the state's authority. Human rights violations continue, particularly against journalists who speak out against Iran's current government, minority religions, and political activists, who oppose the current ruling regime.⁽²²⁾ Serious mistreatment of prisoners occurs. Human rights problems such as summary execution, torture, arbitrary arrest, prolonged solitary confinement, and official corruption have been reported. Although human rights violations are prohibited by law, the Iranian government does not enforce the law. Iran supported the June 25, 1996, truck bombing of the Khobar Towers in Saudi Arabia, a terrorist act that killed 19 U.S. military personnel and wounded 500.⁽²³⁾ The current Iranian government supports and actively sponsors terrorism by providing resources, guidance and a safe haven to terrorists.⁽²⁴⁾ Iran supports terrorist activity against the U.S. forces in Iraq.

POLICIES

In an evaluation of an applicant's security suitability, an administrative judge must consider Enclosure 2 of the Directive, which sets forth adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into Disqualifying Conditions (DC) and Mitigating Conditions (MC), which are used to determine an applicant's eligibility for access to classified information.

These adjudicative guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these guidelines in conjunction with the factors listed in the adjudicative process provision in Section E2.2, Enclosure 2, of the Directive. An administrative judge's overarching adjudicative goal is a fair, impartial and common sense decision.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

Specifically, an administrative judge should consider the nine adjudicative process factors listed at Directive ¶ E2.2.1: (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.

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, facts must be established by "substantial evidence."⁽²⁵⁾ The government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive. Once the government has produced substantial evidence of a disqualifying condition, the burden shifts to the applicant to produce evidence and prove a mitigating condition. Directive ¶ E3.1.15 provides, "The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." The burden of disproving a mitigating condition never shifts to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).⁽²⁶⁾

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 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 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.

The scope of an administrative judge's decision is limited. 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 that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

Foreign Preference

Under Guideline C, "[w]hen 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." Directive ¶ E2.A3.1.1.

Three of nine foreign preference disqualifying conditions (FP DC) could potentially raise a security concern and may be disqualifying in this case. FP DC 1 applies where there has been an "exercise of dual citizenship." Directive ¶ E2.A3.1.2.1. FP DC 2 applies where an applicant "possess[es] and/or use[s] a foreign passport." Directive ¶ E2.A3.1.2.2. FP DC 3 applies where an applicant has provided "[m]ilitary service or [shown] a willingness to bear arms for a foreign country." Directive ¶ E2.A3.1.2.3.

FC DCs 1 to 3 are applicable because he most recently used his Iranian passport in 2000 and 2006, and he served in the Iranian military from 1973 to 1975. FP DC 2 applies because Applicant retained his Iranian passport until September

2006.

All four foreign preference mitigating conditions (FP MC) could potentially reduce security concerns in this case. FP MC 1 applies where "[d]ual citizenship is based solely on parents' citizenship or birth in a foreign country." Directive ¶ E2.A3.1.3.1. FP MC 2 applies where "[i]ndicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship." Directive ¶ E2.A3.1.3.2. FP MC 3 applies when the "[a]ctivity is sanctioned by the United States." Directive ¶ E2.A3.1.3.3. FP MC 4 applies where an applicant "has expressed a willingness to renounce dual citizenship." Directive ¶ E2.A3.1.3.4.

FP MC 1 does not apply because Applicant's Iranian citizenship is based on his own birth in Iran, rather than being based solely on his parent's citizenship or location of birth. For FP MC 2, Applicant receives some credit because his foreign military service occurred before he obtained U.S. citizenship. However, he used his Iranian passport after becoming a U.S. citizen and FP MC 2 cannot be applied. He receives partial credit under FP MC 3 because of his reliance on the U.S. State Department advice about retention of an Iranian passport, but FP MC 3 cannot be fully applied. *See* ISCR Case No. 98-0252 at 5 (App. Bd. Sep. 15, 1999) (holding federal government must approve, authorize, consent to, or otherwise sanction the use of a foreign passport to apply FP MC 3, and interpreting a general State Department publication concerning dual nationality not to authorize use of a foreign passport).

FP MC 4 applies because he specifically offered to renounce his Iranian citizenship. If his preference to the United States is compared to his preference to Iran, his links or associations with the United States are much stronger, as demonstrated by his oath of allegiance to the United States, his 29-year residence to the United States, and his spouse and children are U.S. citizens. Moreover, his possession and use of an Iranian passport was for convenience to ease entry to and exit from Iran when visiting his family residing in Iran. Use and possession of the Iranian passport was also based in part on the State Department's express recommendation, and not because he wanted to show allegiance or loyalty to Iran. Applicant surrendered his Iranian passport in September 2006. ⁽²⁷⁾ In ISCR Case No. 03-04300 at 3 (App. Bd. Feb. 16, 2006), the Appeal Board held the Judge did not err when she applied FP MC 4 stating:

In concluding Applicant had mitigated the security concerns raised by her acts of foreign preference by application of Guideline C Mitigating Condition 4, the Administrative Judge articulated a rational explanation for her determination-- basing it on such factors as the Applicant's strong ties and loyalties to the United States, the extensive effort undertaken by the Applicant to surrender her passport and renounce her Russian citizenship before the close of the record, and the fact that Applicant's lack of awareness concerning the requirements expressed in the ASDC3I memo and the Guideline C Mitigating Conditions may have affected the timing of her renunciation actions. There are no stated requirements in Guideline C Mitigating Condition 4 concerning when an applicant is required to comply with its provisions.

Applicant's "strong ties and loyalties to the United States" are discussed in the "whole person" section of this decision. As indicated in ISCR Case No. 03-04300, the timing of Applicant's relinquishment of his passport does not bar application of FP MC 4. His Iranian passport was surrendered and it cannot be used for foreign travel. Moreover, Applicant cannot return to Iran using his U.S. passport. The government's security concerns under Guideline C are mitigated. *See* ISCR Case No. 02-13595 at 6 (App. Bd. May 10, 2005) (indicating Judge's decision that Guideline C was mitigated under similar circumstances was sustainable).

Foreign Influence Under Guideline B, 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." Directive ¶ E2.A2.1.1.

One of eight possible foreign influence disqualifying conditions (FI DC) could raise a security concern in this case. FI DC 1 applies where 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." Directive ¶ E2.A2.1.2.1. "Immediate family members" include a spouse, father, mother, sons, daughters, brothers, and sisters. Directive ¶ E2.A2.1.3.1. Applicant's father, mother, two sisters, mother-in-law and sister-in-law are either "immediate family members" or persons to whom

he "has close ties of affection or obligation" or both. They are also citizens of and live in or visit Iran. Although some of these relatives visit or live in the United States for lengthy periods of time, and/or are in the process of emigrating to the United States, the group of relatives are considered as a whole. ⁽²⁸⁾ Even if only one relative lives in Iran, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. *See* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006). The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001). However, such ties do raise a security concern under FI DC 1 and Applicant is required to present evidence of rebuttal, extenuation or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. *Id.*

Security concerns based on foreign influence can be mitigated by showing that any of the five foreign influence mitigating conditions (FI MC) apply. FI MC 1 recognizes that security concerns are reduced when there is "[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." Directive ¶ E2.A2.1.3.1. Notwithstanding the facially disjunctive language of FI MC 1, the Appeal Board has decided that Applicant must prove that his family members, cohabitant or associates are not agents of a foreign power, and are not in a position to be exploited by a foreign power in a way that could force Applicant to chose between the person(s) involved and the U.S. ISCR Case No. 02-14995 at 5 (App. Bd. July 26, 2004).

The Appeal Board has held that "An employee of a foreign government need not be employed at a high level or in a position involving intelligence, military, or other national security duties to be an agent of a foreign power" for purposes of FI MC 1. ISCR Case No. 02-24254 (App. Bd. Jun. 29, 2004). In a series of decisions, the Appeal Board has broadly defined "agent of a foreign power." ⁽²⁹⁾

The second prong of FI MC 1 provides that it is potentially mitigating where the "associate(s) in question are not . . . 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 involved and the United States." The Appeal Board interprets this language as establishing an absolute standard; i.e., an applicant must affirmatively prove that there is *no possibility* that anyone might attempt to exploit or influence a foreign relative or acquaintance in the future. *See* ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006) ("[FI MC] 1 does not apply because, as is well settled, it requires that Applicant demonstrate that his relatives are not in a position which could force Applicant to choose between his loyalty to them and his loyalty to the United States."); ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2005).

FI MC 1 does not, by its express terms, exclude from consideration applicants with relatives or associates in countries where terrorism has occurred, any more than it excludes person from countries where there are foreign governments, foreign political organizations, or foreign non-governmental organizations. Rather, it focuses on a very specific type of threat—the risk of a foreign power exploiting an applicant's foreign relatives in such a way as to cause an applicant to act adversely to the interests of the United States. The Appeal Board has limited the applicability of FI MC 1 where there is a history of terrorist activity in the foreign country in question. ISCR Case No. 03-22643 (App. Bd. Jun. 24, 2005); ISCR Case No. 02-22461 at 5 (App. Bd. Oct. 22, 2005).

His father, mother, two sisters, mother-in-law and sister-in-law are citizens of Iran, but they do not work for the government of Iran. The evidence does not establish that his family members living in Iran are agents of Iran or any other foreign power.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. The hostility of Iran to the United States places a "very heavy burden of persuasion" on Applicant to demonstrate that his immediate family members in Iran do not pose security risk and he is not in a position to be forced to choose between loyalty to the United States and his family members. ⁽³⁰⁾ With its adversarial stance and its dismal human rights record, it is conceivable that Iran would target any citizen in an attempt to gather information from the

United States.

There is no evidence that his elderly father and mother, his two sisters, his mother-in-law, or his sister-in-law are or have been, political activists or journalists, challenging the policies of the Iranian government. Likewise, there is no evidence that these relatives work for the Iranian government or military or any news media. There is no evidence that the Iranian government has approached any of his Iranian family for any reason, and in particular, has not approached them since his visits to Iran in 2000 and 2006. There is no evidence that his family living in Iran engages in activities which would bring attention to themselves or that they are even aware of his work. As such, there is a reduced possibility that they would be targets for coercion or exploitation by the Iranian government, which regularly seeks to quiet those which speak out against it. Applicant deserves some credit because of the reduced possibility that Iran will exploit his family, but FI MC 1 cannot be applied in this case because even if there was substantial evidence of the "family members' low-key noncontroversial lifestyle, and the fact that the Iranian government has not contacted them about Applicant in the past, such factors are insufficient to support the application of FI MC 1" because of the nature of the Iranian government and its relationship to the United States. *See* n. 33, *infra* (explaining that absence of evidence does not shift burden to government to prove anything in security clearance cases).

FI MC 3 can mitigate security concerns where "contact and correspondence with foreign citizens are casual and infrequent." Directive ¶ E2.A2.1.3.3. Applicant has monthly contacts by telephone with his family members living in Iran, they visit him or stay with him when they visit in the United States, and he stayed with his sister and her family when he visited Iran in June 2006. He also provides minimal financial support to his parents. FI MC 3 does not apply because his contacts with them are not casual and infrequent. *See* ISCR Case No. 04-12500 at 2, 4 (App. Bd. Oct. 26, 2006) (finding contacts with applicant's parents and sisters in Iran a total of about 20 times per year not casual and infrequent); ISCR Case No. 04-09541 at 2-3 (App. Bd. Sep. 26, 2006) (finding contacts with applicant's siblings in Iran once every four or five months not casual and infrequent).⁽³¹⁾

Finally, none of the individual family circumstances discussed above are determinative. Rather, these circumstances must be considered together under the "whole person concept," which includes consideration of the absence of evidence concerning: his family's lack of governmental connections; and the absence of financial dependence on the Iranian government. On the other hand, the nature of Iran's government, its human rights record, and its relationship with the United States create "a very heavy burden of persuasion to overcome the security concerns raised by the fact that the Applicant has family members living in Iran." ISCR Case No. 04-11463 at 4 (App. Bd. Aug. 4, 2006) (making findings about Iran's relationship with the United States and the potential for foreign influence, reversing Administrative Judge and ordering denial of clearance).

Applicant's statement about his loyalty to the United States is credible, and there is no reason to believe that he would take any action which could cause potential harm to his U.S. family or to this country. If the Iranian government should threaten harm to his family members living in Iran to obtain classified information from him or otherwise contact him, I am persuaded that he would report this activity to the U.S. authorities. There is no evidence that he has failed to follow the rules or failed to require those around him to do the same on projects requiring security clearances. There is no evidence that he lacks the respect and trust of his employer, his friends, and family or that he lacks honesty and integrity. There is no evidence that he has revealed to his family in Iran the nature of his work or about applying for a security clearance. I cannot, however, find that Applicant has mitigated the government's security concerns as to Guideline B because the absence of evidence does not overcome the heavy burden the Appeal Board has established through case law concerning security clearances for applicant's from Iran.

"Whole Person" Analysis

In addition to the enumerated disqualifying and mitigating conditions as discussed previously, I have considered the general adjudicative guidelines related to the whole person concept under Directive ¶ E2.2.1. The directive lists nine adjudicative process factors which are used for "whole person" analysis. Foreign influence and foreign preference do not involve misconduct, voluntariness of participation, rehabilitation and behavior changes, etc. Accordingly, the eighth adjudicative process factor is probably the most relevant. Directive ¶ E2.2.1.8. The eighth factor provides, "the potential for pressure, coercion, exploitation, or duress."⁽³²⁾ Iran's government is hostile to the United States and does not conform to widely accepted norms of human rights. Applicant has close, multiple family members who live in Iran. He

has frequent contact with them. Under the circumstances, there is a significant possibility of pressure, coercion, exploitation or duress.

As indicated in the statement of facts, there are many other countervailing, positive attributes to Applicant's life as a U.S. citizen that weigh towards granting a clearance. He is patriotic, loves the United States, and would not permit Iran to exploit him. He has close ties to the United States. His closest family members are his wife and three daughters. They are U.S. citizens and live with him. Because his wife and children live in the United States, they are not vulnerable to coercion or exploitation by a foreign power, except possibly indirectly through relatives, who still live or visit Iran. He has lived in the United States 29 years. He owns property in the United States, and most of his Iranian relatives are in the process of moving to the United States. The "whole person" analysis in a Guideline B case should include "the totality of an applicant's conduct and circumstance[s] (including the realistic potential for exploitation)" as well as the eighth factor discussed in the previous paragraph.⁽³³⁾ In this case, Applicant's potential for exploitation is low. I base this finding on his credible and sincere testimony, and I do not believe he would compromise national security, or otherwise comply with any Iranian threats. However, the absence of evidence⁽³⁴⁾ under the Appeal Board's jurisprudence is of very limited probative value, and information about his strong connections to the United States are insufficient to outweigh the Guideline B concerns. *See* n. 30, *supra*. After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude Applicant has not mitigated the security concerns pertaining to foreign influence.

In 2005 and 2006, the Appeal Board addressed Guideline B or C cases involving Iranian Americans on at least twenty-two occasions. While there is no *per se* requirement to deny clearances for U.S. citizens who contact their relatives living in Iran,⁽³⁵⁾ over the last two years the Appeal Board has reversed^{(36), (37)} all decisions except one⁽³⁸⁾ approving clearances, and affirmed^{(39), (40)} all decisions denying clearances. The Appeal Board has made it clear that the character of the Iranian government and an applicant's contacts with family members living in Iran weighs very heavily towards denial of a clearance.

Based on the Appeal Board's Guideline B jurisprudence pertaining to cases involving Iranian-Americans, who have frequent contacts with family members living in Iran, Applicant's security eligibility and suitability cannot be approved. I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors"⁽⁴¹⁾ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under Enclosure 2 of the Directive. Applicant has failed to mitigate or overcome the government's case. I conclude Applicant is not eligible 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: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against 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 a security clearance for Applicant. Clearance is denied.

Mark W. Harvey

Administrative Judge

1. Exhibit 2, Electronic Standard Form (SF) 86, Security Clearance Application is dated December 20, 2004, on the first and last pages. There is no allegation of falsification of this SF 86 in the statement of reasons (SOR).
2. Exhibit 5 (Statement of Reasons (SOR), dated August 16, 2006) at 1-2. Exhibit 5 is the source for the remainder of this paragraph.
3. Exhibit 6 (Applicant's response to SOR, notarized on September 13, 2006 and received at DOHA on September 18, 2006).
4. *Id. supra* n. 3, is the source for all factual assertions in this paragraph.
5. Exhibit 2, *supra* n. 1, section 1.1, at 1.
6. *Id.* section 6.1, at 2.
7. *Id.* section 5, at 2.
8. *Id.* section 11, at 5.
9. *Id.* section 8, at 3.
10. *Id.* section 3, at 1; R. 41.
11. Exhibit 6, *supra* n. 3, at 1 is the source for the facts in the remainder of this paragraph, and the next paragraph, except as specifically indicated.
12. *Id.* at 8; R. 60. SOR ¶ 1.b alleges that Applicant previously possessed and intended to renew his Iranian passport.
13. Exhibit 6, *supra* n. 3, at 1; R. 60. SOR ¶ 1.c alleges that Applicant used his Iranian passport to enter and exit Iran in June 2000. He subsequently visited Iran for 3 ½ weeks in June 2006.
14. Exhibit D, at 1-2.
15. *See* n. 14, *supra* and R. 65-66.
16. Exhibit F.
17. Exhibit B (letter from Embassy of Pakistan, Interests Section of the Islamic Republic of Iran); R. 50.
18. The Civil Code of Iran, Article 988, provides several preconditions for abandoning Iranian citizenship, including approval of the Council of Ministers of Iran. Exhibit C at 3; R. 64, 87. *See e.g.*, ISCR Case No. 04-04451 at 3 (A.J. June 16, 2006).
19. Exhibit 5 (Statement to Special Investigator for the Office of Personnel Management, Investigations Service, dated

January 31, 2005), at 2-3.

20. Exhibit A and R. 17-33 are the sources for the facts in this paragraph.

21. Exhibit I (U.S. Department of State, Consular Information Sheet, Iran, April 3, 2006) at 1; Exhibit II (Iran Bureau of Near Eastern Affairs Report, dated October 2006) at 1; and Exhibit III (Country Reports on Human Rights Practices - 2005: Iran Bureau of Democracy, Human Rights, and Labor Report, dated October 12, 2006) at 1 are the sources for this sentence and the next sentence.

22. Exhibit III, *supra* n. 21 at 1-28 is the source for this sentence and the next four sentences.

23. Exhibit V ("Recognizing Iran as a Strategic Threat: An Intelligence Challenge for the United States," Staff Report of the House Permanent Select Committee on Intelligence, Subcommittee on Intelligence Policy, dated August 23, 2006) at 17.

24. Exhibit II, *supra* n. 21, at 8; Exhibit IV (Country Reports on Terrorism, Chapter 6 - State Sponsors of Terror, Overview, Office of the Coordinator for Counterterrorism, dated April 28, 2006) at 1; Exhibit V, *supra* n. 20 at 17-19 are the sources for this sentence and the next sentence.

25. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

26. "The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, [evaluates] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and [decides] whether Applicant [has] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

27. The Memorandum of Assistant Secretary of Defense Arthur L. Money, dated August 16, 2000 mandates that, "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." The Appeal Board thoroughly discusses the applicability to the Money Memorandum in ISCR Case No. 03-10390 (App. Bd. Apr. 12, 2005).

28. *See e.g.*, ISCR Case No. 02-24566 at 3 (App. Bd. July 17, 2006) (noting security concerns because applicant's brother and mother-in-law live in Iran); ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005) (indicating low relevance if foreign relatives spend part of each year in the United States).

29. The discussion in this opinion of FI MC 1 relies heavily on and occasionally quotes without attribution the discussion of this same issue in ISCR Case No. 03-10312 at 6-9 (A.J. May 31, 2006). *See also* ISCR Case No. 03-10954 at 3 (App. Bd. Mar. 8, 2006) (attorney/consultant to an entity controlled by a foreign ministry is an "agent of a foreign power"); ISCR Case No. 03-19101 at 6 (App. Bd. Jan. 21, 2006) (part-time secretary for the Ministry of Religion is an "agent of a foreign power"); ISCR Case No. 02-2454 at 4-5 (App. Bd. June 29, 2004) (employee of a city government was an "agent of a foreign power"); ISCR Case No. 03-04090 at 5 (App. Bd. Mar. 3, 2005) (employee of the Israeli government is an "agent of a foreign power"); ISCR Case No.02-29143 at 3 (App. Bd. Jan. 12, 2005) (a member of a foreign military is an "agent of a foreign power").

30. *See* ISCR Case No. 02-13595 at 3 (App. Bd. May 10, 2005) (stating an applicant has "a very heavy burden of persuasion to overcome the security concerns" when parents and siblings live in Iran). *See also* ISCR Case No. 04-11463 at 4 (App. Bd. Aug. 4, 2006) (articulating "very heavy burden" standard when an applicant has family members living in Iran).

31. In regard to FI MC 3, the Appeal Board had determined that contacts with relatives living in a foreign country must be both casual and infrequent. *See* ISCR Case No. 04-12500 at 4 (App. Bd. Oct. 26, 2006). Moreover, contacts with such family members are presumed to be "not casual." *Id.* In the analysis of countervailing evidence, it is legal error to give significant weight to any of the following facts or factors: applicant's ties to the United States (ISCR Case No. 02-13595 at 5 (App. Bd. May 10, 2005)); lack of prominence of relatives living in Iran (*Id.*); "family members' low-key and noncontroversial lifestyle, and the fact that the Iranian government has not contacted them about Applicant" (ISCR Case No. 04-12500 at 4 (App. Bd. Oct. 26, 2006)); one relative living in Iran is sufficient to negate FI MC 1 (ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006)); a foreign relative's fragile health (ISCR Case No. 02-29403 at 4 (App. Bd. Dec. 14, 2004)), advanced age (ISCR Case No. 02-00305 at 7 (App. Bd. Feb. 12, 2003)), financial independence (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)), or lack of financial dependency upon applicant (ISCR Case No. 03-15205 at 4 (App. Bd. Jan 21, 2005)); foreign relatives spend part of each year in the U.S. (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)); the lack of any connection between the foreign relative and the foreign government in question (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)); the absence of any attempt at exploitation in the past (ISCR Case No. 03-15205 at 4 (App. Bd. Jan. 21, 2005)); a foreign country's friendly relationship with the U.S., its stable, democratic government, or its extensive foreign military agreements with the U.S. (ISCR Case No. 02-22461 at 5-6 (App. Bd. Oct. 27, 2005)); and an applicant's "refusal to travel to Iran" and "meticulous work habits and practice of strictly following the rules relating to his work" (ISCR Case No. 03-15205 at 3 (App. Bd. Jan. 21, 2005)).

32. *See* ISCR Case No. 02-24566 at 3 (App. Bd. July 17, 2006) (stating that an analysis under the eighth whole person factor apparently without discussion of the other factors was sustainable); ISCR Case No. 03-10954 at 5 (App. Bd. Mar. 8, 2006) (sole whole person factor mentioned is eighth factor in discussion of Judge's whole person analysis for Iranian-American's case).

33. *Compare* ISCR Case No. 03-23259 at 2 (App. Bd. May 10, 2006) (noting Judge did not assess "the realistic potential for exploitation" but affirming denial of clearance based on contacts with Iranian family members); *with* ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006) (remanding grant of clearance because Judge did not assess "the realistic potential for exploitation").

34. There is no record evidence to contradict Applicant's testimony that establishes: (1) any connection or contact between Applicant and any foreign government; (2) any financial interests between Applicant and any foreign nation, or any foreign business concern; (3) his failure to follow the rules or his failure to require those around him to do the same on projects requiring security clearances; (4) any lack of the respect and trust of his employer, his friends, or family; and (5) a problem in the areas of honesty or integrity. I conclude, however, that the government has no burden to present such evidence, and the absence of evidence does not support application of any mitigating conditions. *See* ISCR Case No. 02-21927, 2006 DOHA LEXIS 229, at *39-*41 (A.J. May 17, 2006) (discussing absence of evidence and relationship to burden shifting). For example, as indicated in ISCR Case No. 02-22461 at 10 (App. Bd. Oct. 27, 2005), there is no reason for Iran to contact him until he receives access to classified information, and lack of foreign financial interests do not mitigate Guideline B security concerns based on an applicant's relationship with relatives. *See* ISCR Case No. 04-02233 at 3 (App. Bd. May 9, 2006). Of course, Applicant has had a security clearance in the past, and Iran has not contacted him or his relatives living in Iran.

35. *See* ISCR Case No. 03-23259 at 2 (App. Bd. May 10, 2006) (stating that although FI MC 1 may be precluded, "the totality of an applicant's conduct and circumstance (including the realistic potential for exploitation) may still warrant a favorable application of the relevant general factors," but without citing any such relevant circumstances or applicable caselaw).

36. In 2006, the Appeal Board reversed all five appealed decisions that approved clearances for Iranian-Americans. *See* ISCR Case No. 04-08870 (App. Bd. Nov. 29, 2006); ISCR Case No. 04-12500 (App. Bd. Oct. 26, 2006); ISCR Case No. 04-09541 (App. Bd. Sep. 26, 2006); ISCR Case No. 04-11463 (App. Bd. Aug. 4, 2006); ISCR Case No. 02-24566 (App. Bd. July 17, 2006).

37. In 2005, the Appeal Board reversed all four appealed decisions that approved clearances for Iranian-Americans. *See* ISCR Case No. 03-24933 (App. Bd. July 28, 2005); ISCR Case No. 02-13595 (App. Bd. May 10, 2005); ISCR Case No. 03-02382 (App. Bd. Feb. 15, 2005); ISCR Case No. 03-15205 (App. Bd. Jan. 21, 2005).

38. In 2006, the Appeal Board remanded one appealed decisions that denied a clearance for an Iranian-American. *See* ISCR Case No. 04-12732 (App. Bd. Nov. 2, 2006) (holding violation of procedural rules required remand).

39. In 2006, the Appeal Board affirmed all three appealed decisions that denied clearances for Iranian-Americans. *See* ISCR Case No. 02-28838 (App. Bd. Jun. 12, 2006); ISCR Case No. 03-23259 (App. Bd. May 10, 2006); ISCR Case No. 03-10954 (App. Bd. Mar. 8, 2006), *see also* ISCR Case No. 03-23236 (App. Bd. Feb. 17, 2006) (holding that delivery of Iranian passport to employer was insufficient to demonstrate relinquishment of passport).

40. In 2005, the Appeal Board affirmed all nine appealed decisions that denied clearances for Iranian-Americans. *See* ISCR Case No. 03-24144 (App. Bd. Dec. 6, 2005); ISCR Case No. 03-22974 (App. Bd. Nov. 22, 2005); ISCR Case No. 02-31083 (App. Bd. Oct. 6, 2005); ISCR Case No. 02-30587 (App. Bd. June 15, 2005); ISCR Case No. 02-32581 (App. Bd. June 9, 2005); ISCR Case No. 03-04172 (App. Bd. June 7, 2005); ISCR Case No. 03-00526 (App. Bd. Apr. 7, 2005); ISCR Case No. 02-17178 (App. Bd. Apr. 5, 2005); ISCR Case No. 03-06174 (App. Bd. Feb. 28, 2005).

41. *See* ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).