

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant fled Iran in 1986 to escape family persecution and avoid military service. He was granted refugee status by Canada, became a Canadian citizen in 1992, and became a U.S. citizen in 2005. He has surrendered his Iranian passport and renounced his Iranian citizenship. He is estranged from his brother in Iran, has virtually no contact with two sisters in Iran, and has no contact with nieces in Iran. Four of his siblings and his fiancée are U.S. citizens. Security concerns based on foreign preference and foreign influence are mitigated. Clearance is granted.

CASENO: 06-25202.h1

DATE: 09/14/2007

DATE: September 14, 2007

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In re:	)	
	)	
-----	)	ISCR Case No. 06-25202
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
_____	)	

**DECISION OF ADMINISTRATIVE JUDGE  
LEROY F. FOREMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Candace L. Le'i, Esq., Department Counsel

**FOR APPLICANT**

Joseph V. Kaplan, Esq.

**SYNOPSIS**

Applicant fled Iran in 1986 to escape family persecution and avoid military service. He was granted refugee status by Canada, became a Canadian citizen in 1992, and became a U.S. citizen in 2005. He has surrendered his Iranian passport and renounced his Iranian citizenship. He is estranged from his brother in Iran, has virtually no contact with two sisters in Iran, and has no contact with nieces in Iran. Four of his siblings and his fiancée are U.S. citizens. Security concerns based on foreign preference and foreign influence are mitigated. Clearance is granted.

## **STATEMENT OF THE CASE**

On February 22, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive); and the revised adjudicative guidelines (AG) approved by the President on December 29, 2005, and implemented effective September 1, 2006. The SOR alleges security concerns under Guidelines C (Foreign Preference) and B (Foreign Influence).

Applicant answered the SOR in writing on March 21, 2007, admitted the factual allegations, and requested a hearing. The case was assigned to an administrative judge on May 1, 2007, reassigned to me on July 25, 2007, and heard on August 21, 2007, as scheduled. I kept the record open until September 4, 2007, to enable Applicant to submit additional documentary evidence. I received his evidence on August 31, 2007, and it has been admitted as Applicant's Exhibit (AX) G, without objection. DOHA received the transcript (Tr.) on September 4, 2007.

## **FINDINGS OF FACT**

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant is a 44-year-old scientist employed by a defense contractor to work on communication satellites. He worked for his current employer since September 2005 (Tr. 24). He has never held a security clearance.

Applicant is highly regarded by his supervisor, who described him as goal-oriented, a team player, and a person who thrives on challenges (AX E). Navy officers and civilians who worked with him as program managers repeatedly praised him for the quality of his reports and briefings (AX F).

Applicant was born in Iran. He and his twin brother were the youngest of eight children. His father was not well educated, but he wanted his children to have the opportunity for a college education (Tr. 95). Applicant's two older brothers and two of his sisters were educated in the U.S. His second oldest sister came to the U.S. in 1965 and has been a U.S. citizen since 1985. His twin brother, second oldest brother, and youngest sister also are naturalized U.S. citizens.

Applicant's oldest brother returned to Iran after completing his education and now is the co-owner of a food processing plant in Iran (Tr. 74). According to one of his sisters in the U.S., this brother regrets his decision to return to Iran, and he has applied for immigration to the U.S., where he hopes to retire (Tr. 101-02).

Two of Applicant's sisters declined the opportunity for education in the U.S., and they are now housewives in Iran. They are both older than he. One is 67 years old and the other 56 years old. One sister's husband worked in real estate and had a pharmacy, but he is now retired (Tr. 75). The other sister's husband was a tea merchant who also worked in real estate (Tr. 76). None of his

siblings or their spouses are connected with the Iranian government or military (Tr. 75-76). All his siblings in Iran own their homes and are financially secure.

Applicant's family was targeted by the Iranian government because his father had supported the Shah. His parents were killed in a car accident in 1982 (Tr. 108). After their death, the family continued to suffer harassment by the government (Tr. 81-82).

Applicant became interested in studying physics when he was about 14 years old, teaching himself by borrowing his sister's books (Tr. 99). He wanted to earn a college degree in physics, but he could not leave the country legally until he completed his military obligation (Tr. 99). He fled Iran in 1986 because his family was being persecuted and he was about to be drafted by the Iranian Army to serve in the war with Iraq (Tr. 26-27). He escaped by walking through the mountains to Turkey, where he stayed for about nine months (Tr. 28).

Applicant's twin brother fled Iran at about the same time and went to Belgium (Tr. 80). His brother obtained a college degree in the U.S. and became a U.S. citizen in February 2004.

Applicant was given refugee status by Canada in 1987 (Tr. 29). He chose Canada instead of the U.S. because it was easier to enter Canada (Tr. 28-29). He obtained a bachelor's degree in applied physics in 1990, a master's degree in theoretical physics in 1992, and a doctorate in theoretical physics in 1997 (Tr. 25-26). He became a Canadian citizen in 1992 (Tr. 30).

At the time Applicant entered Canada, one of his sisters was a citizen and resident of the U.S. and another sister was a permanent resident of the U.S. (Tr. 29-30). In 1988, Applicant applied for residency status in the U.S., sponsored by his sister, but his application was not granted until 1999, after he had become a Canadian citizen and was in a postdoctoral fellowship program in Canada (Tr. 32). He moved to the U.S. in 2000 and became a U.S. citizen in 2005 (Tr. 32).

Applicant applied for an Iranian passport in 1997 and returned to Iran in August 1999, looking for a wife. He used his Iranian passport instead of his Canadian passport. He stayed with his siblings (Tr. 70-71). He testified that he "didn't have much luck in Canada," was lonely, and wanted to be married. Two unspecified "distant relatives" had daughters who were potential candidates for an arranged marriage. Applicant spent four to five weeks meeting with them, and he returned in 2001 to be married. He was divorced in January 2003 (Tr. 33-34). His ex-wife has remarried and lives somewhere in the U.S. (Tr. 34). He has not returned to Iran since 2001 (Tr. 72).

Before his visit to Iran in 1999, he paid about \$2,000 to the Iranian government to purchase an exemption from military service (Tr. 72-73). He used one of his brothers in the U.S. to act as an intermediary (Tr. 73). When he attempted to leave Iran, he was detained and held in jail for about 24 hours, until his sister in Iran posted bail, using her house as collateral. His Iranian passport was not returned to him until the Iranian authorities determined he was not involved in any anti-government activities while in Canada. He does not know if he forfeited the bail posted by his sister. (Tr. 64-68.)

Applicant testified he was unaware his possession of an Iranian passport raised a security concern until he received the SOR (Tr. 35). In May 2007, he mailed his Iranian passport, which had expired in April 2007, to the Iranian Interests Section of the Embassy of Pakistan (AX B; Tr. 36). His passport was returned to him with a renewal application (Tr. 39-40). He surrendered the

passport again on August 20, 2007, with a cover letter explaining that he did not desire to renew it (AX B). He testified at the hearing that he intended to renounce his Iranian citizenship (Tr. 42). He renounced his Iranian citizenship in writing on August 30, 2007, shortly after the hearing (AX G at 3-4).

Applicant is now engaged to be married to a native of Iran who came to the U.S. in 1984 and became a citizen and resident of the U.S. His fiancée's parents are deceased, and she has no family in Iran. She has a daughter who was born in the U.S. She has a brother who lives and works in the U.S. and a sister in Malaysia (Tr. 83). The record does not reflect the citizenship of her siblings. She and her brother had an interest in family real estate in Iran, but they recently gave a power of attorney to someone in Iran to dispose of it (Tr. 84-85).

Applicant and his fiancée purchased a home in December 2006 (AX C; Tr. 47-50). Applicant also owns a partnership share of an office building (AX D; Tr. 55). He has a 401(k) retirement account with his employer and an IRA (Tr. 56).

Applicant testified he has no contact with his brother in Iran. They last spoke three or four years ago (Tr. 51). He and his brother had disagreements about the division of property inherited from their father. He trusted his brother to sell the property and divide the proceeds, but his brother kept everything (Tr. 91).

Applicant calls his two sisters in Iran once a year, on the Iranian New Year (Tr. 52). He is not close to his sisters in Iran, who are considerably older than he (Tr. 90). He has several nieces in Iran, but he has no contact with them (Tr. 52). When asked if he would travel to Iran if any of his siblings were ill or dying, he emphatically responded that he would not (Tr. 53).

Applicant's second oldest sister, a citizen of the U.S. since 1985 and a retired school counselor, testified Applicant is not a social person and he has little contact with siblings in the U.S. (Tr. 94-95, 97, 103). Applicant testified he sees her and his older brother once every couple of months (Tr. 77), but she testified she had not seen Applicant in five months (Tr. 102). He is closer to his twin brother, whom he sees once every couple of weeks (Tr. 77). He has not seen his other sister for two years (Tr. 77).

At Department Counsel's request, and without objection from Applicant, I took administrative notice of relevant adjudicative facts about Iran (Hearing Exhibit (HX) I; Tr. 14). Iran is a theocratic Islamic republic dominated by Shia Muslim clergy, with ultimate political authority vested in a learned religious scholar. Current U.S. concerns about Iran are based on its efforts to acquire nuclear weapons and weapons of mass destruction; support for and involvement in international terrorism; support for violent opposition to the Middle East peace process; and its human rights abuses, including summary executions, torture, arbitrary arrest and detention, and restrictions on civil liberties. Iran has provided guidance, training, and weapons to Shia political and militant groups in Iraq. It also provides encouragement, training, funding, and weapons to anti-Israeli terrorist groups in its efforts to undermine the Arab-Israeli peace process (HX I at 1-5).

The U.S. has designated Iran as a state sponsor of terrorism. The U.S. broke diplomatic relations with Iran in April 1980, prohibits most trade with Iran, and uses multilateral sanctions and diplomatic pressure to contain the threats posed by Iran (HX I at 3).

Iran does not recognize dual citizenship. As a result, Iranian-born, naturalized U.S. citizens are considered solely Iranian citizens by the Iranian authorities, and they are subject to surveillance, search, harassment, arrest, and imprisonment while traveling or residing in Iran (HX I at 5).

## **POLICIES**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the Guidelines. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, the disqualifying conditions and mitigating conditions under each specific guideline, and the factors listed in AG ¶¶ 2(a)(1)-(9).

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in persons with access to classified information. However, the decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. “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). The Guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

## **CONCLUSIONS**

### **Guideline C (Foreign Preference)**

The SOR alleges Applicant exercises dual U.S.-Iranian citizenship (SOR ¶ 1.a) and possesses an active Iranian passport (SOR ¶ 1.b). The concern under this guideline is as follows: “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.” AG ¶ 9. A disqualifying condition may arise from “exercise of any

right, privilege or obligation of foreign citizenship after becoming a U.S. citizen” including but not limited to “possession of a current foreign passport.” AG ¶ 10(a)(1). Applicant’s continued possession of an active Iranian passport after becoming a U.S. citizen raises this disqualifying condition.

Since the government produced substantial evidence to raise the disqualifying condition in AG ¶10(a)(1), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. Applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns under this guideline may be mitigated by evidence that “dual citizenship is based solely on parents’ citizenship or birth in a foreign country.” AG ¶ 11(a). They also can be mitigated by evidence that “the individual has expressed a willingness to renounce dual citizenship.” AG ¶ 11(b). Finally, they can be mitigated by evidence that “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.” AG ¶ 11(e). All three mitigating conditions are established in this case.

### **Guideline B (Foreign Influence)**

The SOR alleges Applicant’s brother, two sisters, and a niece are citizens and residents of Iran (SOR ¶¶ 2.a, 2.b, and 2.c). It also alleges Applicant traveled to Iran in August 1999 and May 2001 (SOR ¶ 2.d).

The concern under this guideline is as follows: “Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.” AG ¶ 6.

A disqualifying condition may be raised by “contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.” AG ¶ 7(a). A disqualifying condition also may be raised by “connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information.” AG ¶ 7(b). The totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation's government, its relationship with the U.S., 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 U.S.

Applicant had contact with his siblings in Iran in 1999 and 2001 when he stayed with them in connection with his marriage to an Iranian woman. He has become estranged from his brother and had no contact with him for three years. He has several nieces in Iran but has no contact with any of them. He has minimal contact with his two sisters in Iran. Nevertheless, given the repressive government in Iran and its hostility to the U.S., his family ties in Iran create the "heightened risk" in AG ¶ 7(a) and the potential conflict of interest in AG ¶ 7(b), thereby raising these two disqualifying conditions.

Family ties with persons in a foreign country are not, as a matter of law, automatically disqualifying under Guideline B. However, such ties raise a *prima facie* security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant. *See* Directive ¶ E3.1.15; ISCR Case No. 99-0424, 2001 WL 675725 at \*12 (App. Bd. Feb. 8, 2001).

Security concerns under this guideline may be mitigated by showing that "the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S." AG ¶ 8(a). Although Applicant is not close to his siblings in Iran, the nature of the Iranian government, its hostility to the U.S., and its abysmal human rights record may well place Applicant in a position of having to choose between the interests of his family and the interests of the U.S. Whether he is likely to choose his family over the U.S. is not relevant to this mitigating condition, but it is relevant to AG ¶ 8(b), discussed below. I conclude the mitigating condition in AG ¶ 8(a) is not established.

Security concerns under this guideline also may be mitigated by showing "there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest." AG ¶ 8(b). When Applicant fled Iran, his three older brothers and two of his sisters had left to study in the U.S., his two sisters who remained in Iran were significantly older than he, and his parents had been dead for about four years. He fled to escape from family persecution, but without any apparent concern for the two sisters he left behind.

Applicant has never been close to any of his siblings, including those in the U.S., except his twin brother. He is estranged from his oldest brother because of a property dispute. He has minimal

contact with his two sisters in Iran, who are older than he and not as well educated. He expressed no concern about the economic consequences of forfeiting bail when he left Iran in 1999, even though his sister had used her house as collateral. When asked whether he would travel to Iran if his siblings were ill or dying, he responded immediately and definitively in the negative.

Applicant's demeanor when talking about his siblings in Iran was detached and without emotion. He demeanor did not change, even when his sister testified about him at the hearing.

Since adolescence, Applicant has devoted himself to his own education and scientific pursuits. He appears to live in an intellectual, unemotional world. I conclude his sense of loyalty and obligation to his siblings in Iran is "minimal" within the meaning of AG ¶ 8(b). On the other hand, his professional life, financial holdings, and his future are all in the U.S. His twin brother, the one sibling with whom he has a relatively close relationship, is a citizen and resident of the U.S. I conclude AG ¶ 8(b) is established.

Security concerns under this guideline also may be mitigated by showing that "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation." AG ¶ 8(c). There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). Applicant has rebutted that presumption with respect to his older brother and his nieces, because he has no contact with them. He testified he calls his two sisters only once a year, but he did not describe the content or extent of those conversations. Since the burden is on Applicant to establish a mitigating condition, I conclude AG ¶ 8(c) is only partly established, because there is insufficient evidence to show that his annual calls to his sisters are "casual."

### **Whole Person Analysis**

In addition to considering the specific disqualifying and mitigating conditions under each guideline, I have also considered: (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 applicant's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. AG ¶¶ 2(a)(1)-(9). Some of these factors have been discussed above, but some merit additional comment.

The nature of the Iranian government, its relationships with the U.S. and the rest of the world, and its abysmal human rights record are factors that weigh heavily against granting Applicant a clearance, but they are not dispositive. There is no *per se* rule disqualifying applicants with family ties to Iran. See ISCR Case No. 99-0424, 2001 WL 675725 at \*12. The evidence, including the testimony of Applicant's second oldest sister and his demeanor at the hearing, demonstrates that his attitude toward his siblings in Iran is detached and dispassionate. He has been pursuing his dream of higher education and a scientific career for more than 20 years. His dream and his future is in the U.S. Applicant is vulnerable to having his loyalty tested by pressure, coercion, or duress against his Iranian siblings. However, after considering all the evidence, hearing his testimony, and observing his demeanor, I conclude he would resolve any conflict between the interests of his Iranian siblings and the interests of the U.S. in favor of the latter.

Applicant's short marriage to an Iranian woman does not fit squarely into any of the disqualifying or mitigating conditions. The evidence shows that his return to Iran and selection of an Iranian bride was not a reflection of any preference for Iran, but merely the product of his loneliness and inability to find a suitable mate in Canada. His personality, as exhibited during the hearing and described by his sister, suggests that his courtship skills may have been lacking. The assistance of the unspecified "distant relatives" offered an opportunity to find a suitable mate in a familiar cultural setting, without the necessity of the traditional Western rite of courtship. His previous marriage raises no issues of foreign influence, because his ex-wife lives in the U.S., has remarried, and they have no contact. His recent engagement to a U.S. citizen strongly indicates that his previous unsuccessful marriage is a closed chapter in his life.

I have weighed the enumerated disqualifying and mitigating conditions under Guidelines C and B; considered the nature of the Iranian government, its human rights record, its involvement in international terrorism, and its efforts to foster instability in neighboring countries; considered the totality of Applicant's family ties as well as each family tie; and evaluated all the evidence in the context of the whole person. I conclude Applicant has mitigated the security concerns based on foreign preference and foreign influence. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him a security clearance.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline C:

FOR APPLICANT

Subparagraph 1.a:

For Applicant

Subparagraph 1.b:

For Applicant

Paragraph 2. Guideline B:

FOR APPLICANT

Subparagraph 2.a:

For Applicant

Subparagraph 2.b:

For Applicant

Subparagraph 2.c:

For Applicant

Subparagraph 2.d:

For Applicant

### **DECISION**

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

LeRoy F. Foreman  
Administrative Judge