



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

ISCR Case No. 07-01512

Applicant for Security Clearance

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel

For Applicant: Thomas M. Abbott, Esq.

February 12, 2008

Decision

LOUGHRAN, Edward W., Administrative Judge:

On May 18, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline C, Foreign Preference and Guideline B, Foreign Influence. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on July 2, 2007, and requested a hearing before an Administrative Judge. The case was assigned to another Administrative Judge on November 1, 2007, and reassigned to me on November 28, 2007. DOHA issued a notice of hearing on November 28, 2007, and I convened the hearing as scheduled on December 18, 2007, at Woodland Hills, California. DOHA received the transcript of the hearing (Tr.) on January 10, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Stipulation

Department Counsel and Applicant stipulated to the admissibility of government exhibits (GE) 1 through 3, and Applicant exhibits (AE) A through V, and the exhibits were admitted. The stipulation was marked Hearing Exhibit (HE) XII.

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Iran. Applicant's counsel did not object. The request and the attached documents were not admitted into evidence but were included in the record as HE I through XI. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant is a 58-year-old engineer for a defense contractor. He was born in Iran. Applicant came to the United States when he was in his early 20s to attend college. He has a Bachelor of Science degree and a Master's degree from American universities. Applicant became a U.S. citizen in 1980. He has held a security clearance for about 20 years without incident.¹

When he was a young man, Applicant served his mandatory two years in the Iranian military under the Shah's regime, when Iran was an ally of the United States. He came to the U.S. after his military commitment to attend college. He met and married his wife while in college. They have been married for more than 30 years. His wife is a native born U.S. citizen. They have a 29-year-old son born in the United States while Applicant was at graduate school. He is also an engineer and has worked for the same company as Applicant and holds a security clearance. He does not speak Farsi, and has never been to Iran.²

Applicant's father passed away in Iran in the early 1990s. His mother is in her late 70s. She has never worked outside the home. She is an Iranian citizen but has U.S. permanent residence status. For about the last 20 years she has split her time between the U.S. and Iran. She is presently living in Iran. Her last stay in the U.S. was in 2006. She lives in a condominium in Iran close to two of Applicant's sisters. She receives a pension from the company in Iran that Applicant's father worked for before he retired.³

Applicant was one of ten children. Eight of his brothers and sisters are still alive. Five of his siblings are living in the U.S. They and their families are all U.S. citizens. Applicant has three sisters who remain as citizens and residents of Iran. His oldest

¹ Tr. at 13-16, 45-47, 68; GE 1, 2; AE A.

² Tr. at 23-27, 44-47; GE 1, 2.

³ Tr. at 27-30, 35, 41; Applicant's response to SOR; GE 1, 2.

sister is in her early 60s. She does not work outside the home. Her husband is retired. They have four children; three still live in Iran. One child lives in a country that is a U.S. ally. Applicant has periodic telephonic communication with this sister. He does not provide her any financial support. She has never visited Applicant in the U.S.⁴

Applicant's second sister living in Iran is in her mid-40s. Her husband works for a private company. She does not work. They have two children. His third sister in Iran is in her early 40s. Her husband is retired from a private company. They have three children. Applicant communicates with these two sisters about two to three times a year. He does not provide financial support to either of these sisters. Neither of these sisters have ever met or spoken with Applicant's son. They do not speak English and he does not speak Farsi.⁵

Applicant's mother and sisters in Iran do not know what he does for a living or that he has a security clearance. No one in Applicant's family has ever worked directly for the Iranian government or has any connection to any terrorist organization.⁶

Applicant has returned to Iran on four occasions since he first came to the U.S. His first return was in the 1970s when his brother died. His next trip to Iran was in the early 1990s when his father passed away. Applicant was working for a defense contractor holding a security clearance at the time. His travel to Iran was discussed at the highest level of his company. He was told to speak with the State Department. Applicant was visited by a State Department representative. He was briefed for about two and a half hours. Applicant's Iranian passport was long expired at that point. He was instructed to obtain an Iranian passport and was told not to carry his U.S. passport to Iran. He was given instructions on what to say if asked where he works. He was given a letter and instructions to travel to Iran via an allied country. Applicant was met upon arrival at the allied country by a representative of that country and he provided the representative with the letter from the State Department. The representative held Applicant's U.S. passport while he traveled to Iran. No one in Iran showed any special interest in Applicant. When Applicant returned from Iran, he again flew through the same allied country. He was again met at the airport by representatives of that country who returned his U.S. passport.⁷

As the oldest son, Applicant inherited his father's property. He returned to Iran about one year after his father died and signed everything over to his mother. Security personnel from his company made the same arrangements for Applicant to travel through the allied country, leaving his U.S. passport with personnel from the allied government until he returned. He again attracted no special interest.⁸

⁴ Tr. at 30-35; GE 1, 2.

⁵ Tr. at 35-41; GE 1, 2.

⁶ Tr. at 41-42; 70.

⁷ Tr. at 48-54.

⁸ Tr. at 54-56.

Applicant's last visit to Iran was in the early 2000s. His wife had never met his sisters or seen his country of origin and wanted to visit. He consulted with his security personnel. He was told that he should obtain another Iranian passport as the last one expired. His wife obtained an Iranian passport as the wife of an Iranian citizen. They again flew through the allied country but were not met by representatives of that country.⁹

When Applicant discovered that possession of a foreign passport was a security concern, he surrendered his Iranian passport to his company's security officer in July 2007. The security officer destroyed the passport. Applicant does not intend to renew or obtain another Iranian passport under any circumstance. He has decided that he will not return to Iran. His mother may return to the U.S. to live. He has resigned himself to the fact that he will not be able to visit his mother if she becomes sick in Iran and he will not return to Iran if she dies there. He does not consider himself a dual citizen. To the extent that Iran considers him an Iranian citizen, he would be more than willing to renounce his Iranian citizenship.¹⁰

Applicant does not have any Iranian assets. His U.S. assets are worth well over \$1,000,000. He votes in U.S. elections and has never voted in an Iranian election. He is involved in community and charitable events.¹¹

Applicant's counsel submitted numerous character letters on Applicant's behalf. He is described as a man of integrity, honest, trustworthy, truthful, hard-working, talented, dedicated, professional, responsible, strong-willed, independent, and not someone who could be easily manipulated. They believe he is a loyal, proud, U.S. citizen who should be granted a security clearance. One reference stated he would trust his life to Applicant. Another stated he trusted his son to Applicant by naming him the child's godfather. Applicant has been regularly promoted in his company to a high executive level position and supervises more than 1,000 employees. He is very highly regarded and considered a valuable asset. He has received excellent performance evaluation and various awards and accolades.¹²

Iran

Iran is a constitutional Islamic republic with a theocratic system of government in which Shi'a Muslim clergy dominate the key power structures, and ultimate political authority is vested in a learned religious scholar. The U.S. has not had diplomatic relations with Iran since 1980. The President's National Security Strategy has stated that the United States "may face no greater challenge from a single country than from Iran." The U.S. Government has defined the areas of objectionable Iranian behavior as:

⁹ Tr. at 56-59.

¹⁰ Tr. at 59-60, 68-69, 79-80; AE A.

¹¹ Tr. at 47, 61-63; AE N-U.

¹² AE A-K, M.

- Iran's efforts to acquire nuclear weapons and other weapons of mass destruction (WMD);
- Its support for and involvement in international terrorism;
- Its support for violent opposition to the Middle East peace process; and
- Its dismal human rights record.

Iran's intervention in the internal affairs of Iraq is also a concern.

The U.S. has designated and characterized Iran as the most active state sponsor of terrorism. Iran provides critical support to non-state terrorist groups.

The government of Iran has committed numerous, serious human rights abuses against the Iranian people. Abuses include political killings and incarceration; summary executions, including of minors; disappearances; religious persecution; torture; arbitrary arrest and detention, including prolonged solitary confinement; denial of due process; severe restrictions on civil liberties - speech, press, assembly, association, movement and privacy; severe restrictions on freedom of religion; official corruption; violence and legal and societal discrimination against women, ethnic and religious minorities, and homosexuals; trafficking in persons; and child labor.

The State Department continues to warn U.S. citizens to consider carefully the risks of travel to Iran. U.S. citizens who were born in Iran and the children of Iranian citizens—even those without Iranian passports who do not consider themselves Iranian—are considered Iranian citizens by Iranian authorities, since Iran does not recognize dual citizenship. Therefore, despite the fact that these individuals hold U.S. citizenship, under Iranian law, they must enter and exit Iran on an Iranian passport, unless the Iranian government has recognized a formal renunciation or loss of Iranian citizenship. U.S.-Iranian dual nationals have been denied permission to enter/depart Iran using their U.S. passport; they even had their U.S. passports confiscated upon arrival or departure. U.S.-Iranian dual citizens have been detained and harassed by the Iranian government. Iranian security personnel may place foreign visitors under surveillance. Hotel rooms, telephones and fax machines may be monitored, and personal possessions in hotel rooms may be searched.

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available,

reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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. . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the 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.

Section 7 of Executive Order 10865 provides that 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline C, Foreign Preference

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. Two are potentially applicable in this case:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

(1) possession of a current foreign passport;

(2) military service or a willingness to bear arms for a foreign country;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

Applicant possessed and used an Iranian passport while a U.S. citizen. AG ¶ 10(a) applied at one point. The renewal of his Iranian passport while a U.S. citizen could raise concerns under AG ¶ 10(b), as an action to obtain recognition of his Iranian citizenship. Applicant's mandatory service in the Iranian military before he became a U.S. citizen does not raise any disqualifying condition.

Conditions that could mitigate Foreign Preference security concerns are provided under AG ¶ 11:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship;

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) use of a foreign passport is approved by the cognizant security authority.

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and,

(f) the vote in a foreign election was encouraged by the United States Government.

Iran continued to consider Applicant an Iranian citizen after he was naturalized as a U.S. citizen. He followed the advice of security personnel and the U.S. State Department and renewed his Iranian passport to travel to Iran twice in the early 1990s, and again in the early 2000s. His use of the Iranian passport was at the recommendation of the U.S. State Department. He does not consider himself a dual national, but to the extent that Iran considers him an Iranian citizen, he is very willing to

renounce that citizenship. When he became aware that the passport was a security concern, he surrendered it to his company's security officer who destroyed it. Applicant's foreign military service occurred before he became a U.S. citizen. AG ¶ 11(a) is partially applicable. AG ¶¶ 11(b) and (e) are applicable. AG ¶ 11(d) is at least partially applicable. AG ¶ 11(c) would be applicable if it was necessary to mitigate Applicant's foreign military service.

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 7:

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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 7(a), "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" is potentially disqualifying. Similarly under AG ¶ 7(b), "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" may raise security concerns. Applicant's mother and three sisters are in Iran, a country that is clearly hostile to the United States.¹³ It is considered the most active state sponsor of terrorism, and the government of Iran has committed numerous, serious human rights abuses against its people. Applicant's family in Iran creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. It also creates a potential conflict of interest. AG ¶¶ 7(a) and (b) have been raised by the evidence.

AG ¶ 8 provides conditions that could mitigate security concerns:

(a) 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

¹³ ISCR Case No. 05-03250 at 5 (App. Bd. Apr. 6, 2007); HE I-XI.

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.;

(b) 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;

(c) 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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and,

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant came to the U.S. as a young man to pursue his education. While here he obtained two loves, his wife and his new country. He met his U.S. citizen wife while he was in college and his son was born while he was in graduate school. He obtained a job as an engineer for a defense contractor and has held a security clearance for about 20 years without incident. He is committed to his wife and son. He has five siblings and their families who are American citizens. His life, career, assets, and allegiance all lie in the United States, as does much of his family. His mother and sisters in Iran have no connection to the Iranian government and are unaware of what Applicant does for a living or that he holds a security clearance. Under those circumstances, it is unlikely Applicant will be placed in a position of having to choose between the interests of the Iranian government, a terrorist organization, or his family members in Iran and the interests of the United States. I further find there is no conflict of interest, because Applicant has such deep and longstanding relationships and loyalties in America, that he can be expected to resolve any conflict of interest in favor of the United States. AG ¶ 8(a) is partially applicable. AG ¶ 8 (b) is applicable. No other mitigating condition is applicable.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's

conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): “(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) 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.” Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant was born in Iran. He came to the U.S. to attend college. He met a U.S. citizen and married her. They have a son who was born in the U.S. 29 years ago. Applicant became a U.S. citizen in 1980, and his life and immediate family are now here. Applicant is an established, highly regarded engineer, with considerable U.S. ties and assets. Since Applicant left Iran more than 35 years ago, he has only returned four times. When he returned to Iran, he followed the advice and the elaborate arrangements put in place by the State Department and traveled on an Iranian passport. The renewal of his Iranian passport was not because Applicant maintained a sense of loyalty or allegiance to Iran; it was the only viable option for Applicant to travel to Iran, and the method suggested by the State Department. He has surrendered the passport to his security officer who destroyed it. He does not consider himself an Iranian citizen. To the extent that Iran considers him one of its citizens, he is very willing to renounce that citizenship. He has no intention on returning to Iran for any purpose, even if his elderly mother becomes ill or passes away.

I considered the totality of Applicant’s family ties to Iran, a country that is clearly hostile to the United States, and the heavy burden an applicant carries when he or she has family members in a hostile country. Iran is the most active state sponsor of terrorism and has a dismal human rights record. That is not a good combination. I also note that Applicant left Iran more than 35 years ago and only returned four times. He has been a U.S. citizen for more than 27 years. His wife is a native born U.S. citizen. His son was born in the United States, does not speak Farsi, and has never been to Iran. He has a high level job, the respect of colleagues, and U.S. assets of well over \$1,000,000. His elderly mother has permanent residence status in the U.S., and splits her time between the U.S. and Iran. She is currently living in Iran. His mother and sisters have no connection to the Iranian government. These facts minimize any potential for pressure, coercion, exploitation, or duress. Applicant was sincere, open, and honest at the hearing. In the unlikely event that his mother or sisters were subjected to coercion or duress from the Iranian government or terrorist groups, I find that because of his deep and longstanding relationships and loyalties in the U.S., including his uncompromising commitment to his country, wife, and son, that Applicant would resolve any attempt to exert pressure, coercion, exploitation, or duress in favor of the United States.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his Foreign Preference and Foreign Influence.

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
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Subparagraph 1.a:	For Applicant
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Subparagraph 1.b:	For Applicant
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Paragraph 2, Guideline B:	FOR APPLICANT
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Subparagraph 1.a:	For Applicant
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Subparagraph 1.b:	For Applicant
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Subparagraph 1.c:	For Applicant
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Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

EDWARD W. LOUGHRAN
Administrative Judge