

DATE: January 9, 2008

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 07-02027

**DECISION OF ADMINISTRATIVE JUDGE
CAROL G. RICCIARDELLO**

APPEARANCES

FOR GOVERNMENT

Melvin Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 55-year-old scientist who has worked for a defense contractor for five years. He immigrated from Iran in 1977, and became a naturalized citizen in 1989. He is married and has two children born in the U.S. He returned to Iran on two occasions to visit his incapacitated mother. He has destroyed his Iranian passport, renounced all ties to Iran and intends to never return. Applicant has successfully mitigated all security concerns raised under Guideline C, foreign preference and Guideline B, foreign influence. Applicant is not a security risk. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on August 28, 2007 detailing the basis for its decision—security concerns raised under Guideline C (foreign preference) and Guideline B (foreign influence) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005 and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR in writing on September 12, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on November 16, 2007. With the consent of the parties, I convened a hearing on December 11, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government offered two exhibits that were marked as GE 1-2 and admitted without objection. The Government also requested I take Administrative Notice of official U.S. State Department documents that were marked as Hearing Exhibit I. Applicant did not object and I took administrative notice of the documents. Applicant testified on his own behalf and offered two exhibits that were marked as AE A-B and were admitted without objection. DOHA received the hearing transcript (Tr.) on December 17, 2007.

FINDINGS OF FACT

Applicant is a 55-year-old senior scientist who has worked for a defense contractor since 2003. He is married and has two children. Applicant was born in Iran and moved to the U.S. in 1977 to study and obtain an advanced degree. He holds a doctorate in physics and prior to his federal employment he taught physics at several universities.¹ He became a naturalized U.S. citizen in 1989. His wife was born in Iran and is also a naturalized citizen of the U.S. Both of his children, 11 and 7 years old, were born in the U.S. and are citizens.

Applicant vehemently denies he is a dual citizen of Iran and the U.S.² He does not consider himself a dual citizen and specifically stated that when he became a U.S. citizen he pledged his allegiance only to the U.S. He has lived in the U.S. for 31 years and considers all of his emotional ties to be to the U.S. Applicant's wife's parents are deceased and her only sibling, a sister, lives in California. She has no contact with anyone from Iran.

Applicant's mother was a permanent resident of the U.S.³ She split her time living with both Applicant and his brother, who lived in New Jersey, for periods of six to nine months and then about every 18 months she would return to Iran for a couple of months. On her last trip to Iran in 1991, she became ill and was unable to travel back to the U.S. She developed Alzheimer's disease about five

¹Tr. 28.

²Tr. 23, 28, 36.

³Tr. 27.

years ago and remained in Iran until her death two months ago. During the past several years her disease progressed and she was unable to recognize any of her children.⁴

Applicant felt a duty and obligation of a loving son to visit his mother in Iran. He had not returned to Iran for 18 years. Iran would not issue him a visa because he was born in Iran and was now an American citizen.⁵ He was frightened they would harass him because he had changed his name from a traditional Muslim name to a traditional American name.⁶ Applicant was required to obtain an Iranian passport if he wanted to visit his sick mother in Iran. Applicant obtained an Iranian passport and visited his mother twice before her death. His stays lasted approximately 12-14 days. He did not return for her funeral.⁷ With his mother's passing, Applicant has no desire or sense of duty to return to Iran and has destroyed his expired Iranian passport by shredding it on December 6, 2007, in the presence of his security manager.⁸ He intends to never return to Iran. He was unaware of a formal procedure to renounce any ties to Iran due to his birth there, but he is willing to comply with such, if they exist.⁹

When his mother was living, Applicant offered to his siblings living in Iran, money to assist in the care of his mother. They told him they did not need the money and that she was being cared for. However, as a gesture of affection and concern for his mother he sent them approximately \$1,000 a year.¹⁰

Applicant has two brothers and a sister who are citizens and permanently live in Iran. None of them worked for the government of Iran. They are all retired and do not receive government pensions. They are 71, 65 and 63 years old respectively. Applicant has offered to sponsor them to immigrate to the U.S., but none is interested in moving at their age.¹¹ Applicant does not feel obligated to them in anyway because he has made the offer. He contacts them approximately twice a year, once on the Persian New Year and again on their birthday.¹² He also has a sister who is a Canadian citizen who lives in Canada, but visits Iran about once a year, because she has property that she checks on. Her husband is deceased.¹³ Applicant has two other brothers, one is a U.S. citizen

⁴Tr. 39-40.

⁵Tr. 37-38.

⁶Tr. 25.

⁷Tr. 32, 42.

⁸AE A.

⁹Tr. 40-41, 50.

¹⁰Tr. 42-44, 47.

¹¹Tr. 26.

¹²*Id.* and 31, 40.

¹³Tr. 34-35.

living in New Jersey, and the other is a Canadian citizen living in Toronto. He speaks with both frequently.¹⁴

Applicant's supervisor notes he has made significant contributions to the Department of Defense in a variety of areas and supporting different programs. He has demonstrated enthusiasm, insight and a keen sense of dedication in advancing the programs in support of national security. He is seen as a person with integrity and coupled with his talented, inventive and unique skills he is considered a valued employee.¹⁵

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.¹⁶ The U.S. has not had diplomatic relations with Iran since 1980.¹⁷ The President's National Security Strategy has stated that the United States "may face no greater challenge from a single country than from Iran."¹⁸

The U.S. Government has defined the areas of objectionable Iranian behavior as:

- Iran's efforts to acquire nuclear weapons and other weapons of mass destruction;
- Its support for and involvement in international terrorism;
- Its support for violent opposition to the Middle East peace process;
- Its dismal human rights record; and
- Iran's intervention in the internal affairs of Iraq.¹⁹

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.²⁰

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;

¹⁴Tr. 48-49.

¹⁵AE B.

¹⁶Country Reports on Human Rights Practices-2006; Iran, U.S. Department of State Bureau of Democracy, Human Rights, and Labor, dated March 6, 2007 (Country Reports on Human Rights) at 1, 7.

¹⁷Background Note: Iran, U.S. Department of State Bureau of Near Eastern Affairs, dated June 2007 (Background Note) at 7.

¹⁸Country Report on Human Rights at 20.

¹⁹Background Note; Country Reports on Terrorism 2006, U.S. Department of State Office of the Coordinator for Counter-Terrorism, dated April 30, 2007 (country Report on Terrorism). .

²⁰Country Report on Terrorism, at 2.

official corruption; violence and legal and societal discrimination against women, ethnic and religious minorities, and homosexuals; trafficking in persons; and child labor.²¹

_____ The State Department continues to warn U.S. citizens to consider carefully the risks of travel to Iran. The children of Iranian citizens are considered Iranian citizens by Iranian authorities, since Iran does not recognize dual citizenship. As a result, U.S.-Iranian dual citizens have been detained and harassed by the Iranian government.²²

POLICIES

“[N]o one has a ‘right’ to a security clearance.”²³ 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.”²⁴ The President 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.”²⁵ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”²⁶ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁸ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.²⁹ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.³⁰

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3

²¹*Id.*

²²Travel Warning: Iran, U.S. Department of State Bureau of Consular Affairs, dated May 31, 2007.

²³*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²⁴*Id.* at 527.

²⁵Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

²⁶ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²⁷*Id.*

²⁸*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

²⁹Executive Order 10865 § 7.

³⁰*See* Exec. Or. 10865 § 7.

of the Directive to be considered in evaluating a person's eligibility to hold a security clearance. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the revised adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

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

CONCLUSIONS

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

Foreign Preference

Foreign Preference is a security concern 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.

Based on all of the evidence I have considered Foreign Preference Disqualifying Condition (FP DC) 10(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 foreign passport...*). Applicant is recognized as a citizen of Iran because he was born there. After becoming a U.S. citizen he obtained an Iranian passport and traveled to Iran on two occasions to visit his ailing mother. I find the above disqualifying condition applies.

I have considered all the Foreign Preference Mitigating Conditions (FP MC). I especially considered FP MC 11(a) (*dual citizenship is based solely on parents' citizenship or birth in a foreign country*), FP MC 11(b) (*the individual has expressed a willingness to renounce dual citizenship*), and FP MC 11(e) (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*). Applicant is considered a citizen by Iran because he was born there. However, he also acknowledged his citizenship by obtaining and validating his Iranian passport after he became a U.S. citizen. So his citizenship is not based solely on his birth, but also by his later actions of using his Iranian birth to obtain an Iranian passport. I find FP MC 11(a) does not apply. It is important to note that Applicant obtained an Iranian passport for the sole purpose of visiting his sick mother and not for any political or other reason. He felt a duty and obligation as a loving son to visit his mother. He did so on two occasions. Applicant credibly testified that he does not consider himself a dual citizen and when he became a U.S. citizen he renounced his Iranian citizenship. Iran's

regulations required him to obtain a passport if he wanted to see his mother before she died. He does not intend on ever returning to Iran. He has destroyed his Iranian passport in the presence of his security officer. He is willing to follow any requirements Iran may impose on him to formally renounce any perceived ties he may have with that country. I find FP MC 11(b) and (c) apply.

Foreign Influence

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.

I have considered all of the Foreign Influence Disqualifying Conditions (FI DC) and especially FI DC 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*) and FI DC 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*). Applicant has two brothers and a sister living in Iran with whom he speaks twice a year. He has a sister who is a Canadian citizen, who travels to Iran annually. Applicant traveled to Iran in 1999 and 2002. Iran is a country that has a poor human rights record and terrorist components creating a heightened risk of foreign influence. I find both of the above disqualifying conditions apply.

I have considered all of the Foreign Influence Mitigating Conditions (FI MC) especially (FI MC 8(a) (*the nature of the relationships with the foreign person, 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.*), FI MC (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 to the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest*), and FI MC 8(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*). Applicant visited Iran twice to see his mother since becoming a U.S. citizen. His mother has died and he credibly testified that he will never return to Iran. He had provided his siblings with money for his mother in the past, but with her passing this is no longer an issue. He has brothers and a sister who are citizens and residents of Iran. At one time, Applicant offered to sponsor them to immigrate to the U.S. They did not want to and Applicant does not feel any moral obligation to them. He has minimal contact with them twice a year to wish them greetings on the new year and for their birthday. He has contact with his sister in Canada who travels to Iran. However, Applicant's total and unconditional obligation and commitment is towards his wife and children in the U.S. His contact with family members who have ties with Iran is casual and infrequent. He never intends to return to Iran and believes he has fulfilled his moral obligation by

his offer to sponsor his siblings. Applicant has no interest in Iran and has infrequent contact with his relatives there. His sense of loyalty is exclusively to the U.S. His wife and children are U.S. citizens and he sees no reason why he would return or feel compelled to take action to aid Iran. He has no financial or business interests in Iran. He has been a U.S. citizen for 18 years and but for his mother becoming ill he would likely have never returned. All of Applicant's trips to Iran were prior to him applying for a security clearance. There is little likelihood that Applicant has any conflict of interest, but if he did it is clear, due to his longstanding loyalty to the U.S. and the likely minimal nature of the conflict, he would resolve it in favor of the U.S. I find all the above mentioned mitigating conditions apply.

Whole Person Analysis

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered the whole person in evaluating the case. I considered Applicant's credibility, demeanor and responsiveness when testifying. Applicant is a loyal American who returned to his birth country because his mother was ill. His mother is deceased and although he has some family remaining in Iran his contacts are infrequent. Applicant's life is now and has been since 1977 connected to the U.S. Iran required he obtain a passport for entry to visit his mother. He visited her in Iran twice before she died. He has since destroyed his passport and is willing to renounce his citizenship and any ties with Iran. After weighing the disqualifying and mitigating conditions under Guidelines C and B, and evaluating 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. I find Applicant is not a security risk. 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
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	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
Subparagraph 2.e:	For Applicant

DECISION

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

Carol G. Ricciardello
Administrative Judge