

DATE: November 19, 2007

In re:

SSN: -----

Applicant for Security Clearance

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) ISCR Case No. 07-03764
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**DECISION OF ADMINISTRATIVE JUDGE
MARC E. CURRY**

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's possesses an Iranian passport which he has used on three occasions since 1995 to facilitate travel to Iran to visit his parents and sister. He has a close relationship with them, talking to his parents once per week, and his sister approximately once per month. This generates foreign preference and foreign influence security concerns that he failed to mitigate at the hearing. Clearance is denied.

STATEMENT OF THE CASE

On August 1, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) explaining why it was not clearly consistent with the national interest to grant or continue a security clearance. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended. He answered the SOR on August 16, 2007, admitting all of the allegations, and requesting a hearing.

The case was assigned to me on September 20, 2007. On October 1, 2007, DOHA issued a notice of hearing scheduling it for October 23, 2007. During the hearing, I received two government exhibits, one Applicant exhibits, and Applicant's testimony. DOHA received the transcript on October 31, 2007.

RULINGS ON EVIDENCE

At department counsel's request, I took administrative notice of several relevant adjudicative facts about Iran. They are as follows:

1. Iran is hostile to the interests of the United States, and the State Department has designated it as a state sponsor of terrorism;
2. Iran is attempting to acquire weapons of mass destruction;
3. Iran has an abysmal human rights record. The abuses include summary executions, lack of fair public trials, arbitrary arrest and detention, and severe restrictions on civil liberties including speech, press assembly, association, movement, and privacy; and,
4. Iranian security forces have at times monitored the social activities of its citizens, entered homes and offices, monitored phone conversations, and opened mail without court authorization.¹

FINDINGS OF FACT

_____The SOR admissions are incorporated into the findings of fact. In addition, I make the following findings of fact.

Applicant is a 48-year-old married man with two children ages 15 and 10. He was born in Iran and emigrated to the U.S. in 1978 to attend college. By 1984, he had obtained both an undergraduate degree and a master's degree in nuclear engineering.² He became a naturalized U.S. citizen in 2002.³

¹See generally, Hearing Exhibits I-VIII.

²Tr. 31.

³Exhibit 1 at 4.

Currently, Applicant is the vice president of development for an information technology company.⁴ Among other things, he develops secure methods for authenticating identification cards, helps the military develop solutions for identifying friend or foe on the battlefield, and “provides security solutions in currency and documents of value” for banks.⁵

Both of Applicant’s parents are Iranian citizens and residents. His father is a retired banker, and his mother is a homemaker.⁶ He talks to them approximately once per week.⁷ Every few years his parents visit him in the U.S.⁸ These visits last approximately two to five months.

Applicant has two sisters. One is a U.S. naturalized citizen and resident.⁹ The other is an Iranian citizen who currently lives in the United Kingdom with her husband while he attends graduate school. When he finishes, they intend to return to Iran.¹⁰ Applicant talks to this sister once every one to four weeks.

Applicant’s father-in-law is deceased. His mother-in-law is an Iranian citizen and resident. Before retiring, she worked in a government agency responsible for providing insurance and retirement benefits.¹¹ Each summer, she travels to the U.S. to visit Applicant’s family, and stays for six to seven months. When she is in Iran, Applicant rarely talks to her.¹²

Applicant visited his relatives in Iran in 1995, 1999, and 2001.¹³ In 1995, he obtained an Iranian passport which he used each time he visited. He only uses his Iranian passport when traveling to Iran. He does not use his U.S. passport because the entry process for U.S. citizens is too onerous.¹⁴ His passport expires in 2011.

POLICIES

⁴Tr. 32.

⁵Tr. 33.

⁶Tr. 36.

⁷Tr. 46.

⁸Tr. 38.

⁹Tr. 40.

¹⁰Tr. 39.

¹¹Tr. 44.

¹²Tr.46.

¹³Tr. 35; Exhibit 2 at 2.

¹⁴*Id.*

The adjudicative guidelines, as revised December 29, 2005, and implemented September 1, 2006, apply to the analysis of this case. In addition to brief introductory explanations for each guideline, they are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (disqualifying conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (mitigating conditions).

The mere presence or absence of a disqualifying or mitigating condition is not dispositive of a case.¹⁵ Instead, their analysis is part of a broader adjudicative process which involves the consideration of all available, reliable information about the person, past and present, favorable and unfavorable.

As part of this process, a number of variables known as the "whole person concept" must be evaluated. Specifically these are: (1) the nature 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 age of the applicant; (5) the extent to which the 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.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly consistent with the national interest."¹⁶ In reaching this decision, I have drawn only those conclusions that are based on the evidence contained in the record.

The government is responsible for presenting evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

CONCLUSIONS

Foreign Preference

"When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States."¹⁷ Here, Applicant's possession of an Iranian passport triggers the application of Foreign Preference Disqualifying Condition 10(a)(1): *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 [including] possession of a foreign passport.*

¹⁵ISCR Case No. 03-12882 (App. Bd. July 20, 2005).

¹⁶*See generally*, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

¹⁷Adjudicative Guideline (AG) Paragraph 9.

Applicant applied for the Iranian passport and used it to travel to Iran before he became a U.S. citizen. When he applied, however, he had been living in the U.S. for 16 years. Also, his only testimony about the Iranian passport was how it facilitated his entry into Iran to enable him to visit his family members; he expressed no intention of destroying it or surrendering it to the cognizant security authority. Consequently, Foreign Preference Mitigating Condition 11(c): *exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen*, applies, but has minimal probative value. Applicant has not mitigated the foreign preference security concern.

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.”¹⁸ Here, Applicant’s contacts with his parents, sister who is an Iranian citizen and mother-in-law raise the issue of whether Foreign Influence Disqualifying Condition (FI DC) 7 a): *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or a resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*, applies. Although friendly countries can engage in activities involving coercion, persuasion or duress of an individual to gather classified information as readily as hostile countries, the risk of such activity is heightened with hostile countries because such countries are “not likely to have scruples about pressuring one of its citizens” to obtain classified information.¹⁹

Iran is both intensely authoritarian and hostile to the United States. Consequently, FI DC 7(a) applies to Applicant’s relationship with these family members.

I have considered all of the mitigating conditions and conclude none apply. The fact that Applicant maintained a strong relationship with his relatives from his country of origin after emigrating to the United States is admirable. However, positive attributes in some circumstances can generate security concerns just as readily as negative ones. In the case of a hostile, authoritarian country like Iran, Applicant bears a heavy burden to demonstrate that his relationship with family members who are citizens of Iran does not create a vulnerability to coercion. His argument that it is unlikely such coercion would occur because it did not occur 20 years ago when he worked with more sensitive information than he does currently, does not meet this burden. He has failed to mitigate the foreign influence security concern.

Whole Person Concept

¹⁸AG Paragraph 6.

¹⁹ISCR Case No. 02-04786 (App. Bd. June 27, 2003, at 5).

I have considered all of the whole person factors, particularly the potential for pressure, coercion, exploitation, or duress; and the likelihood of continuation.²⁰ Applicant's immediate family are all U.S. citizens, and he has lived here for nearly 30 years, obtaining an education, and developing a highly successful career. These positive factors do not outweigh the potential for coercion generated by his vulnerability to coercion created by the presence of close family members in Iran, and his continued possession of a an Iranian passport. His equivocal statements regarding whether he would use the Iranian passport to travel to Iran in the future was particularly problematic. Clearance is denied.

FORMAL FINDINGS

_____ Paragraph 1 - Guideline C:	AGAINST APPLICANT
Subparagraph 1.a - 1.c:	Against Applicant
Paragraph 2 – Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a - 2.c:	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.

Marc E. Curry
Administrative Judge

²⁰AG ¶¶2(a)8-9.