



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



In the matter of:)
)
) ISCR Case No. 07-04606
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: Thomas M. Abbott, Esq.

January 16, 2008

Decision

LOUGHRAN, Edward W., Administrative Judge:

On September 14, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B, Foreign Influence and Guideline C, Foreign Preference. 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 September 22, 2007, and requested a hearing before an Administrative Judge. The case was assigned to another Administrative Judge on November 5, 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 17, 2007, at Woodland Hills, California. DOHA received the transcript of the hearing (Tr.) on January 4, 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 and 2, and Applicant exhibits (AE) A through T, 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 49-year-old engineer for a defense contractor. He was born in Iran. Applicant was sent to Europe for school in 1974, at about 16 years of age. In 1978 or 1979, Applicant flew from Europe to the U.S. to visit his sister who lived here. His sister sponsored him to remain in the U.S. He attended college and graduate school in the United States, and has a Bachelor of Science degree and two Master of Science degrees from American universities. Applicant became a U.S. citizen in 1987.¹

Applicant's wife was also born in Iran. He met her while she was attending an American university. They married in 1991. She became a U.S. citizen in 1996. They have a ten-year-old son and an eight-year-old daughter, both born in the U.S. Neither child speaks Farsi, or has ever been to Iran.²

Applicant's father passed away in Iran in about 1992. His father was a business owner with no connection to the Iranian government. Applicant's Iranian passport had expired and he did not return to Iran for his father's funeral. He was concerned that Iran might require him to perform military service. His mother is about 89 or 90 years old. Applicant is unsure of her birth date. She is a citizen and resident of Iran. She lives in a multi-story house that her husband left her. She has tenants in the building and receives rent from them. Applicant does not provide her economic support. She has never visited Applicant in the U.S. Applicant has returned to Iran twice since he left in 1974, in 1995 and 1998. Those are the only two occasions Applicant has seen his mother in more than 33 years. He speaks with her on the telephone about four times a year.³

Applicant was the youngest of four brothers and four sisters. There are six remaining children, counting Applicant. The sister he stayed with when he first came to

¹ Tr. at 14-16, 45-47; GE 1, 2; AE O.

² Tr. at 22-25; GE 1, 2.

³ Tr. at 25-30, 48-49; Applicant's response to SOR; GE 1, 2.

the United States was a naturalized U.S. citizen. She died of cancer in 1998. She left two children who were both born in the U.S. A brother died in Iran in about 2002. His three remaining sisters and one brother reside in the U.S. Two of his sisters are U.S. citizens; one sister and one brother are permanent residents.⁴

Applicant has one sibling residing in Iran, his brother who is about five years older than Applicant. His brother works in a private industry in Iran. To Applicant's knowledge, this brother has never worked for the Iranian government. Applicant has seen this brother twice in more than 30 years, once when he returned to Iran in 1995, and again in 1998. Applicant and this brother do not get along, as this brother beat Applicant when they were children. This brother called Applicant about six or seven times in 2006. Applicant believes his brother was looking for some type of absolution for the abuse he heaped on Applicant as a child. Other than those calls, Applicant has had very little contact with his brother. Applicant estimates with the exception of the occasions in 2006, he has spoken to his brother only four or five times in the last 20 years. They last spoke in 2006.⁵

Applicant's mother and brother in Iran do not know what he does for a living or that he applied for a security clearance. Only one of his siblings knows that he applied for a security clearance. His sister, who is an American citizen, helped Applicant compile the family data for his security clearance application.⁶

Applicant's wife's parents are divorced. Her mother is a naturalized U.S. citizen. His wife's step-father is a native-born U.S. citizen. Her siblings are in the United States. Her father resides in Iran, but she has no communication with him.⁷

Applicant considered himself solely a U.S. citizen after he was naturalized, believing that constituted a renunciation of his Iranian citizenship. Iran continued to consider him an Iranian citizen. He renewed his expired Iranian passport in about 1993, in anticipation of returning for a visit to Iran. Applicant consulted the U.S. State Department, which recommended that he not travel to Iran on a U.S. passport, as the U.S. passport could be confiscated and he could be arrested. This is consistent with the advice in the State Department's Consular Information Sheet, as discussed below.⁸ He returned to Iran in 1995, for a trip to pay respects to his deceased father. Applicant stayed at his mother's house and also saw his brother and one sister on the trip. He was sick for most of the trip and did not feel that this gave him the closure that he desired. He renewed his Iranian passport and returned to Iran again in 1998. He once

⁴ Tr. at 30-34, 38-42; GE 1, 2.

⁵ Tr. at 34-37, GE 1, 2.

⁶ Tr. at 42-43.

⁷ Tr. at 57-58.

⁸ Tr. at 49, AE T; HE II.

again stayed at his mother's house and saw his brother and sister. Applicant did not have a clearance at the time, but he reported both trips to his company.⁹

Applicant does not plan on returning to Iran. He did not go to Iran for his brother's funeral in 2002. He has no intention to return for his mother's funeral when she passes away. His Iranian passport expired in 2003, and he did not renew it.¹⁰ In about 2006, Applicant discovered that under the policy in place at the time that he could not possess a foreign passport and obtain a security clearance.¹¹ Applicant called a DoD number for clarification on what to do about the expired Iranian passport. He was told that he should go to the American Embassy. Applicant stated he was already in the U.S., and asked if he could just have someone witness him destroy the passport. The person told him not to do that as the passport could come in handy some day. Applicant realized that the person was not knowledgeable in this area and contacted the Iranian Interests Section of the Pakistan Embassy. He was told to return the passport to them. Applicant sent the expired Iranian passport to the Pakistan Embassy on September 12, 2006, writing in the letter, "I am returning my Iranian passport as I no longer need it and am a single citizen of the USA."¹² On November 8, 2007, he sent another letter to the Iranian Interests Section of the Pakistan Embassy, stating:

This is a clarification of my letter of Sept 12-2006 when I returned my passport to your office. The purpose of this letter is to clearly state that I **denounce** my Iranian citizenship as I am a sole citizen of the United States and have been for almost 20 years.¹³

Applicant is proud to be an American citizen. He votes in U.S. elections. He has substantial U.S. assets, including a house worth more than \$1,000,000, with about a \$380,000 mortgage. He and his wife have savings and investments worth about another \$600,000. Applicant still has affection for his mother, but because he has only seen her twice in the last 30 years, they are not as close as a typical mother-son relationship. He would do nothing to jeopardize his wife and children, and "the security of the United States comes first above everything else." If his mother or brother were ever threatened because of him, he would contact his Security Officer and the U.S. Government security officials. As one witness stated, "[m]y opinion is that [Applicant] wants more than anything to have his children and grandchildren grow up American. In my mind, that is the definition of a man committed to this nation."¹⁴

⁹ Tr. at 49-52; Applicant's response to SOR.

¹⁰ Tr. at 54-55.

¹¹ Memorandum of August 16, 2000, by the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I) entitled "Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudication Guideline." The so-called "Money Memorandum" was superseded by the implementation of the revised adjudicative guidelines on September 1, 2006.

¹² Tr. at 52-54; AE A.

¹³ AE B.

¹⁴ Tr. at 44-45, 48, 56, 60-61; AE G, P-S.

Applicant's counsel submitted numerous character letters on Applicant's behalf. He is described as a man of integrity, a hard-working talented engineer, who is trustworthy, honest, law-abiding, dedicated, professional, and responsible, and a loyal, proud, committed U.S. citizen who should be granted a security clearance. He has received an excellent performance evaluation and various awards, accolades, and references¹⁵.

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:

- 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,

¹⁵ AE C-L.

telephones and fax machines may be monitored, and personnel 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 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 has two family members in Iran, a country that is clearly hostile to the United States.¹⁶ 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 immediate 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 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.;

¹⁶ ISCR Case No. 05-03250 at 5 (App. Bd. Apr. 6, 2007); HE I-XI.

(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 has visited Iran and seen his elderly mother and brother twice in more than 30 years. He and his brother have been estranged for years, and have had minimal contact except for a few years ago when his brother was apparently trying to make amends for his actions against Applicant as a youth. He still has affection for his mother, but described it as less than normal because of their very limited contact. Neither his brother nor his mother has any association with the government of Iran. Applicant's closest family is in the United States. He is most committed to his wife and two children. He has four siblings and their families who are American citizens or permanent residents. His life, career, close family, assets, and allegiance all lie in the United States. I find it unlikely that Applicant would ever be placed in a position of having to choose between the interests of Iran or a terrorist organization and the interests of the U.S. 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) and (b) are applicable. No other mitigating condition is applicable.

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;

(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, but the passport expired in 2003, and was surrendered in 2006. 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.

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.

Applicant considered himself exclusively a U.S. citizen after he was naturalized, believing that conferring of U.S. citizenship constituted a renunciation of his Iranian citizenship. Iran, however, continued to consider him an Iranian citizen. He followed U.S. State Department advice and renewed his Iranian passport to travel to Iran in 1995 and 1998. He has no intention of ever returning to Iran. He surrendered his expired

Iranian passport to the Iranian Interests Section of the Pakistan Embassy and formally renounced his Iranian citizenship. AG ¶¶ 11(b) and (e) are 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 was sent to Europe for school at about 16 years of age. He went from Europe to the U.S. without returning to Iran. He became a U.S. citizen in 1987, 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 33 years ago, he has only returned twice. He did not return to Iran in 1992, when his father passed away. Applicant believed the attainment and oath of becoming a U.S. citizen also served to renounce his Iranian citizenship. Iran felt otherwise and continued to consider Applicant one of its citizens. He wanted to pay respect to his deceased father, so he decided to look into the possibility of traveling to Iran. He followed U.S. State Department advice and renewed his Iranian passport to travel to Iran in 1995 and 1998, as traveling to Iran on a U.S. passport would be dangerous and ill-advised. 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. For the first time in more than 20 years, Applicant returned to Iran in 1995, and visited his mother and brother. Applicant was sick most of the trip and did not attain the sense of closure that he was hoping for. He returned to Iran for the last time in 1998. He has no intention on returning to Iran for any purpose. He did not return in 2002 for his brother's funeral, and he has no intention to return when his elderly mother eventually passes away. Applicant has only seen his mother and brother twice in more than 33 years. He maintains some affection for his mother, but is essentially estranged from his brother. When Applicant decided that he would never return to Iran, surrendered his expired passport, and renounced his citizenship, he was committing to his immediate family and his life in America. He closed the book on his past Iranian life.

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 33 years ago and only returned twice. He has been a U.S. citizen for more than 20 years. His wife is a U.S. citizen. Her mother, step-father, and siblings are all in the U.S. His children were born in the U.S. and have never been to Iran. He has the respect of colleagues and U.S. assets of more \$1,000,000. His mother is about 90 years old. His mother and brother 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 brother were subjected to coercion or duress from the Iranian government or terrorist groups, I further find that with Applicant's deep and longstanding relationships and loyalties in the U.S., including his uncompromising commitment to his country, wife, and children, that Applicant would resolve any attempt to exert pressure, coercion, exploitation, or duress in favor of the U.S.

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 Influence and Foreign Preference.

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

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