



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-06030
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace Le'i, Esquire, Department Counsel  
For Applicant: Michelle L. Perry, Esquire

February 7, 2007

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**Decision**

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MOGUL, Martin H., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on February 3, 2006. On July 31, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines C and B for Applicant. 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 replied to the SOR (RSOR) in writing on September 12, 2007, and requested a hearing before an Administrative Judge. I received the case assignment on November 13, 2007. DOHA issued a notice of hearing on January 4, 2008, and I convened the hearing as scheduled on January 23, 2008. The Government offered Exhibits (Ex.) 1 through 3, which were received without objection. Applicant testified on his own behalf and had four additional witnesses testify. Through counsel, he also submitted Exhibits A through E, without objection. DOHA received the transcript of the

hearing (Tr.) on January 31, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the country of Iran. The request and the attached documents were admitted into evidence as Exhibit 3. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In his RSOR, Applicant admitted SOR allegations 1.b., 2.a., and 2.b., with explanations. He denied 1.a. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, the testimony of Applicant and the other witnesses, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 34 years old and was born in Iran in 1974. He moved to the United States in 1979, with his father and his grandmother, and he has lived in the U.S. since that time. He became a naturalized United States citizen in 1996. Applicant received a Bachelor of Science degree in 1995, and a Masters of Science degree in 1997, from a United States university. Applicant is married, and his wife, who was also born in Iran, came to the United States in 2000, and became a United States citizen in 2004. Applicant and his wife do not have any children.

Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

### **Paragraph 1 (Guideline C - Foreign Preference)**

1.a. It is alleged in the SOR that Applicant exercised dual citizenship with Iran and the United States. Applicant contends that he has not engaged in any of the responsibilities or duties of being a Iranian citizen, nor has he been to Iran since he left when he was five years old. He has also not considered himself to be an Iranian citizen or a dual citizen of Iran and the United States. The only potential exercise of Iranian citizenship is the application for and receipt of an Iranian passport, after he became a United States citizen, which is alleged in the SOR as 1.b., and which will be reviewed below.

1.b. It is alleged in the SOR that Applicant applied for and was issued an Iranian passport, on May 12, 2004, even though he had become a United States citizen on September 5, 1996, and received a United States passport on September 25, 2000. His Iranian passport is not scheduled to expire until June 12, 2009.

Applicant testified that he and his wife had contemplated traveling to Iran to see Applicant's mother-in-law. They learned that they could not enter Iran with United States passports, since they both were born in Iran. However, neither Applicant nor his wife, ever traveled to Iran as they became concerned that as members of the Baha'i faith they may not be treated well in Iran. They also never used their Iranian passports.

When Applicant became aware of the concerns of the U.S. Government with his retaining a foreign passport, both he and his wife surrendered their passports to the Facility Security Officer (FSO) of his employer, who destroyed both passports. Applicant submitted a letter from the FSO (Exhibit E), who verified that she had destroyed both Iranian passports. The FSO also testified at the hearing, and she reiterated that she had shredded both passports, and placed them in her company's safe.

I can not find that Applicant's application and receipt of his Iranian passport, in the way described above, indicated a preference for another country over the United States or exhibited the exercise of dual citizenship with Iran and the U.S.

Finally, while Applicant testified that he does not consider himself a citizen of Iran as he has lived in the United States since he was five, and he has become a U.S. citizen, he did submit into evidence a letter that he sent on October 15, 2007, to the Embassy of Pakistan, Interests Section of the Islamic Republic of Iran, (Exhibit B) in which he stated, "I renounce and disavow any claim to Iranian citizenship."

When he was questioned as to what he would do if a representative of a terrorist group in Iran threatened his family in Iran if he did not cooperate with them, he testified, "Well obviously, I wouldn't turn over any information whatsoever, and I would just notify the authorities." (Tr at 78).

## **Paragraph 2 (Guideline B - Foreign Influence)**

2.a. Applicant's mother is a citizen and resident of Iran. Applicant testified that his father and mother were divorced when he was one year of age. Since that time he never lived with her, growing up instead with his father and grandmother.

Applicant saw his mother on one occasion, when he was 14 and his mother came to the United States. He has not seen her since then. He contacted her approximately five years ago as he was in the process of getting married, and according to his faith he is strongly encouraged to get approval from each biological parent. After that his contact became a little more frequent, but in the last few years his contact is extremely sporadic. His mother has telephoned him, but according to the testimony of Applicant and his wife, he usually does not return calls to her. He indicated that he now has no interest in having contact with her, since he has no affection for her.

2.b. Applicant's father-in-law, mother-in-law, and brother-in-law are citizens and residents of Iran. However, Applicant has averred that since they are members of the Baha'i faith, they are not allowed to hold government jobs, teach school or attend college in Iran.

To ensure that their presence in Iran will not remain a security risk, Applicant has convinced his parents-in-law to emigrate from Iran to the United States. Exhibit C consists of Petitions for Alien Relatives that have been filed on behalf of his wife's parents and a copy of a check made to the Department of Homeland Security in the amount of \$355 for each parent. Applicant's mother-in-law also signed a letter indicating that she and her husband plan to immigrate to the United States as soon as their petitions are approved (Exhibit D).

Applicant owns two homes in the United States, one in which he lives and the other as a rental property. He does not own any property outside of the U.S. He testified that since becoming a U.S. citizen he votes in all elections.

The president, vice-president and FSO of Applicant's employer testified on behalf of Applicant. They extolled his virtues as loyal, trustworthy and conscientious about security.

### **Current Status of Iran**

I take administrative notice of the following facts regarding Iran. Currently, Iran is considered one of the most dangerous adversaries to the interests of the United States. The U.S. has not had diplomatic relations with Iran since April 7, 1980, following the November 1979 Iranian student occupation of the American Embassy in Tehran and the hostage taking of 52 Americans, which was supported by Ayatollah Ruhollah Khomeini, Iran's leader at the time.

The United States Government's concerns with Iran's policies include, but are not limited to the following: (1) its clandestine efforts to acquire nuclear weapons of mass destruction, (2) its sponsorship of international terrorism, (3) its intervention into the internal affairs of Iraq, (4) its aggressive efforts to undermine the Middle East peace process, and (5) its human rights violation against its own people. As a result of these concerns, the U.S. prohibits most trade with Iran.

### **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**

Under AG ¶ 9 the security concern involving foreign preference arises, "[W]hen 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."

Applicant's application and receipt of an Iranian passport raises foreign preference concerns under Disqualifying Condition DC 10 (a), the exercise of the privilege of foreign citizenship.

However, Applicant did destroy or invalidate his foreign passport, by turning it over to his FSO, who has shredded it and maintains the remains in the company safe. Additionally, he renounced his Iranian citizenship to the proper Iranian authorities. Therefore, I find that Mitigating Conditions (MC) (b) and (e) under this guideline apply to this case. After considering all of the evidence of record on Guideline C, I conclude that the mitigating evidence substantially outweighs the disqualifying evidence.

### **Guideline B, Foreign Influence**

AG ¶ 6 expresses the security concern regarding 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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying (DC). Those that could be applicable in this case include the following: (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; (d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion. Applicant's relatives, including his mother, father-in-law, mother-in-law, and brother-in-law, who are citizens and residents of Iran, a country whose interest is inimical to the United States, make DC (a) and (d) a concern to the Government.

AG ¶ 8 provides conditions that could mitigate security concerns (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 in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

I find that MC (b) is applicable to this Applicant and strongly controlling for the following reasons: Applicant, who is 34 years old, immigrated to the United States when he was 5 and has lived the great majority of his life here. He has been a U.S. citizen for 12 years, and he is married to a naturalized U.S. citizen. He received two college degrees in the U.S. While he did not consider himself an Iranian citizen, he sent a letter to the Iranian authorities to renounce his Iranian citizenship. He has also had his Iranian passport destroyed. He has been able to acquire two homes in the United States, and he has no property outside of the U.S. His contact with his biological mother is almost non-existent and to minimize any potential risk, he is in the process of having his parents-in-law move to the United States. Finally, Applicant has received many positive and laudatory recommendations from individuals that have known him over many years. I therefore, conclude Guideline B for Applicant.

### **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. Based on all of the reasons cited above as to why MC (b) applies, I also find that the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance under the whole person concept. For all these reasons, I conclude Applicant mitigated the security concerns.

### **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

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

### **Conclusion**

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

Martin H. Mogul  
Administrative Judge