



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



In the matter of:)
)
-----) ISCR Case No. 07-07418
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: *Pro Se*

October 16, 2008

Decision

HARVEY, Mark W., Administrative Judge:

Applicant used and continues to possess a currently valid Iranian passport, which he obtained to facilitate travel to Iran. He visited his aunt living in Iran in 1996, 2003 and 2005, and communicates with her about once a month. Security concerns pertaining to foreign preference and foreign influence are not mitigated. Eligibility for a security clearance is denied.

Statement of the Case

On May 4, 2005, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or Security Clearance Application (SF 86) (Item 1). On April 18, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him (Item 2), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2,

1992, as amended, modified and revised.¹ The SOR alleges security concerns under Guidelines B (Foreign Influence) and C (Foreign Preference). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On June 2, 2008, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing (Item 4). A complete copy of the file of relevant material (FORM), dated August 1, 2008, was provided to him, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.² Applicant did not provide additional documents within the 30 days. On October 10, 2008, the case was assigned to another administrative judge and on October 15, 2008, the case was transferred to me.

Administrative Notice

Department Counsel asked me to take administrative notice concerning materials related to the Islamic Republic of Iran (Iran) summarized in an 8-page document entitled Administrative Notice, dated August 1, 2008, as well as the contents of the attachments listed at pages 7-8 (Item 7). The attachments are provided to “provide elaboration and context” for the facts in pages 1-7. *Id.* at 1. Applicant did not object to Department Counsel’s request.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings, is to notice facts that are either well known or from government reports. See Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Department Counsel’s request for administrative notice is granted.

¹On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006. The revised Adjudicative Guidelines are applicable to Applicant’s case.

²Defense Office of Hearings and Appeals (DOHA) transmittal letter, is dated August 5, 2008; and Applicant’s receipt is signed and dated August 12, 2008. The DOHA transmittal letter informed Applicant that he had 30 days after Applicant’s receipt to submit information.

Findings of Fact³

Applicant admitted the SOR allegations and provided explanations concerning the security concerns raised in the SOR (Item 4). His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant left Iran in 1976 when he was 16-years-old (Item 4 at 2, Item 5). He has lived in the United States for 32 years (Item 4). He is now 48-years-old. He received his masters degree in 1995 (Item 1). He married in 1990 (Items 1, 4). His spouse and his son were born in the United States, and are U.S. residents (Item 4). His mother, brother and sister are naturalized U.S. citizens (Items 4, 5). He has never served in the U.S. military (Item 1). He has not left employment under adverse conditions or been fired in the last seven years (Item 1). He has no prior felony convictions, offenses involving firearms or explosives, or offenses involving drugs or alcohol (Item 1). He does not use illegal drugs (Item 1). He became a U.S. citizen in 1991 (Item 4).

Applicant's aunt is a citizen and resident of Iran (SOR ¶ 1.a). She is 83-years-old (Items 4 and 5). She "helped raise [Applicant] as a child, and [he] feels he has a responsibility to help her with her medical problems" (Item 5). He visited his aunt in 1996, 2003 and 2005 (Item 4). He purchased medicine and other health care products for her (Item 5). She is seriously ill (Item 4). When Applicant went to Iran in 2003, he brought his wife and son along and they visited her (Item 5). When Applicant went to Iran for about two weeks in 2005, he traveled alone and visited his aunt (Item 5). In 2005, he purchased a hearing aid for her (Item 5). Her husband died in 2001. He speaks to her about once a month (Items 4 and 5). Most of his communications with her are to check on her health (Item 4). She is not affiliated with the Iranian government (Item 5). She is a retired nurse (Item 5). Applicant considers his relationship with his aunt to be a "close family relationship" (Item 5 at 2).

Applicant's SOR response emphasized his strong connections to the United States and his very limited connections to Iran (Item 4). He promised that he would resolve any conflict that might develop in favor of the United States.

Iranian Passport

After becoming a U.S. citizen in 1991, Applicant renewed his Iranian passport in 1996 and 2006 (Item 4, SOR ¶¶ 2.a and 2.b). He used his Iranian passport to travel to Iran in 2003 and 2005 (Item 4, SOR ¶ 2.c). His Iranian passport will not expire until 2011 (Item 4). He would not have renewed his Iranian passport if he had known it would jeopardize his security clearance (Item 4). He offered to relinquish his Iranian passport and take action to establish that his Iranian passport could not be renewed or re-

³Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits. Items 4 (response to SOR) and 5 (responses to Interrogatories) are the sources for the facts in this section unless stated otherwise.

acquired (Item 4). Retention of his security clearance “is far more important to [Applicant] than visiting his aunt” (Item 4 at 2).

On August 1, 2008, Department Counsel suggested to Applicant how he could mitigate security concerns about Guideline C, Foreign Preference, stating:

As of June 2, 2008, the date of his SOR Answer, he still possessed a valid Iranian passport. According to the Directive, subparagraph 11(d) and (e), the only mitigating conditions which related to the instant facts, the government may consider applicant’s behavior mitigated and an unlikely security threat, if he can show that the passport use has been officially approved by the cognizant security authority **or that the passport has been surrendered to the cognizant security authority or otherwise invalidated.** In the present case, there is no good-faith reason to apply any of the two mitigating conditions.

FORM at 9 (emphasis added). Applicant did not turn-in his Iranian passport to his security officer or destroy it in the presence of his security officer.

Iran⁴

Iran is a “‘constitutional, theocratic Islamic republic in which Shi’a Muslim clergy dominate the key power structures’ and ‘ultimate political authority is vested in a learned religious scholar.’” (Item 7 at 1-2) (internal citations omitted). Iran engages in clandestine efforts to acquire nuclear weapons and other weapons of mass destruction (WMD), sponsors international terrorism, intervenes in the internal affairs of Iraq, undermines the Middle East peace process, and violates the human rights of the Iranian people. The United States and its allies are attempting to block Iran’s goals of obtaining nuclear weapons and other WMD and to counter Iran’s efforts to destabilize Iraq and other Middle East countries.

Iran is one of the most active state sponsors of terrorism. The United States is concerned about the possibility that terrorists could eventually obtain WMD from Iran. Iran supports terrorists who attack Israel and Shiite militias who have encouraged, facilitated and engaged in sectarian violence in Iraq.

Iranian born, naturalized U.S. citizens, should carefully consider the risks of travel in Iran because they are still considered Iranian citizens by Iranian authorities. Iran does not recognize dual citizenship. The Iranian government has harassed and detained dual citizens of the United States and Iran.

⁴ Item 7 and its attachments are the sources for the facts in this section. See *also* Administrative Notice, *supra*.

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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by "substantial evidence,"⁵ demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).⁶

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This

⁵See Directive ¶ E3.1.14. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁶"The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the relevant security concern is under Guidelines B (Foreign Influence) and C (Foreign Preference).

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

if the individual has divided loyalties or foreign financial interests, [he or she] 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 indicates two conditions that could raise a security concern and may be disqualifying in this case:

(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

(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's aunt is a citizen and resident of Iran. He visited her in Iran in 1996, 2003 and 2005. He has monthly contact with her. He has provided medicine and a hearing aid to her. She is receiving a pension from her employment as a nurse. She is sick and vulnerable to Iranian pressure. He continues to possess a valid Iranian passport.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an Applicant has frequent, non-casual contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. The complicated, sometimes hostile relationship of Iran with the United States places a heavy, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationship with his aunt does not pose a security risk and that he is not in a position to be forced to choose between loyalty to the United States and his aunt.⁷ With its poor human rights record, and political and military adversarial relationship with the United States, it is conceivable that Iran would target any Iranian citizen or former citizen living in the United States in an attempt to gather valuable information from the United States.

Applicant's connections to his aunt create a potential conflict of interest because this relationship is sufficiently close to raise a possible security concern about his desire to help his aunt living in Iran and Iranian authorities' potential attempt to pressure or coerce him through his aunt to provide classified information.

⁷An applicant with relatives in Iran, for example, has a heavier burden to overcome than an applicant with relatives living in other countries. See ISCR Case No. 02-13595 at 3 (App. Bd. May 10, 2005) (stating an applicant has "a very heavy burden of persuasion to overcome the security concerns" when parents and siblings live in Iran). See *also* ISCR Case No. 04-11463 at 4 (App. Bd. Aug. 4, 2006) (articulating "very heavy burden" standard when an applicant has family members living in Iran); ISCR Case No. 07-12471 at 9 (A.J. May 30, 2008) (stating "Between January 9, 2007 and January 18, 2008, the Appeal Board decided 36 appeals involving Iran under the old guidelines, and it reversed 20 decisions granting clearances and affirmed 15 decisions denying clearances." And listing at 9 n.1 the pertinent cases). The Appeal Board's trend of denying clearances for Applicants with Iranian connections has continued into October 2008. See ISCR Case No. 07-13209 (App. Bd. Oct. 6, 2008) (holding clearance denial affirmed); ISCR Case No. 07-07928 (App. Bd. Oct. 1, 2008) (same); ISCR Case No. 07-07635 (App. Bd. Aug. 22, 2008) (same); ISCR Case No. 07-06030 (App. Bd. Jun. 19, 2008) (reversing grant of clearance).

The Government produced substantial evidence of Applicant's contacts with his aunt, his relationship with her, and his travel to Iran in 1996, 2003 and 2005 to raise the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(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.;

(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.

AG ¶¶ 8(a) and 8(c) cannot be applied with respect to Applicant's relationship with his aunt. Applicant has an emotional bond with his aunt. He communicates with her regularly and frequently. His relationship with her requires a closer examination because of those contacts and his admission of care and concern for her welfare and well being. Although Applicant's close relationship with his aunt and his support for her is an important positive reflection on his character, the same close relationship raises security concerns for possible foreign influence.

There is no evidence that his aunt has been a political activist, challenging the policies of the Iranian Government. There is no evidence she currently works for or has ever worked for the Iranian Government or military or any news media. There is no

evidence that terrorists or the Iranian Government have approached or threatened Applicant or his aunt for any reason. There is no evidence that these his aunt living in Iran currently engages in activities which would bring attention to her or that they or other Iranian elements are even aware that Applicant works for a government contractor or might have access to classified information. As such, there is a reduced possibility that these relatives would be targets for coercion or exploitation. *But see* n. 8, *infra* (discussing limited weight that can be given to the absence of such information).

Applicant deserves some credit because of the reduced possibility that Iran will exploit his aunt because of the low profile she has in Iranian society. Applicant's close relationship with his aunt, his frequent contacts with her, and the nature of the Iranian Government and its complicated, and contentious relationship to the United States, all weigh against mitigating security concerns. See ADP Case No. 05-17812 at 2, 3 n.2 (App. Bd. Jun. 11, 2007) (finding contacts with siblings in PRC "once every two or three months" not to be casual and infrequent); ISCR Case No. 04-12500 at 2, 4 (App. Bd. Oct. 26, 2006) (finding contacts with applicant's parents and sisters a total of about 20 times per year not casual and infrequent); ISCR Case No. 04-09541 at 2-3 (App. Bd. Sep. 26, 2006) (finding contacts with applicant's siblings once every four or five months not casual and infrequent).⁸

Applicant's deep relationship with his wife and son and his strong connections to the United States tends to mitigate foreign interest security concerns. Applicant has "such deep and longstanding relationships and loyalties in the U.S., [he] can be

⁸In ISCR Case No. 06-17838 at 4 (App. Bd. Jan. 28, 2008), the Appeal Board discussed the precedential value of the decisions predating the revision of the Adjudicative Guidelines indicated in n. 1, *supra*, and determined where the language of the Directive is unchanged or not substantively altered, the precedent remains valid. AG ¶ 8(c) apparently adopted the Appeal Board's interpretation of Foreign Influence Mitigating Condition 1 (FIMC 1) under the previous guidelines. The Appeal Board had determined that contacts with relatives living in a foreign country must be both casual and infrequent to apply FIMC 1. See ISCR Case No. 04-12500 at 4 (App. Bd. Oct. 26, 2006). Moreover, contacts with such family members are presumed to be "not casual." *Id.* In the analysis of countervailing evidence, it is legal error to give significant weight to any of the following facts or factors: applicant's ties to the United States (ISCR Case No. 02-13595 at 5 (App. Bd. May 10, 2005)); lack of prominence of relatives living in a foreign country (*Id.*); "family members' low-key and noncontroversial lifestyle, and the fact that the Iranian government has not contacted them about Applicant" (ISCR Case No. 04-12500 at 4 (App. Bd. Oct. 26, 2006)); one relative living in a foreign country may be sufficient to negate FIMC 1 (ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006)); a foreign relative's fragile health (ISCR Case No. 02-29403 at 4 (App. Bd. Dec. 14, 2004)), advanced age (ISCR Case No. 02-00305 at 7 (App. Bd. Feb. 12, 2003), financial independence (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005), or lack of financial dependency upon applicant (ISCR Case No. 03-15205 at 4 (App. Bd. Jan. 21, 2005)); foreign relatives spend part of each year in the U.S. (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)); the lack of any connection between the foreign relative and the foreign government in question (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)); the absence of any attempt at exploitation in the past (ISCR Case No. 03-15205 at 4 (App. Bd. Jan. 21, 2005)); a foreign country's friendly relationship with the U.S., its stable, democratic government, or its extensive foreign military agreements with the United States (ISCR Case No. 02-22461 at 5-6 (App. Bd. Oct. 27, 2005)) and an applicant's "refusal to travel to Iran" and "meticulous work habits and practice of strictly following the rules relating to his work" (ISCR Case No. 03-15205 at 3 (App. Bd. Jan. 21, 2005)). Notwithstanding the Appeal Board's position, I conclude that many of these attributes are pertinent to the analysis in this case under the whole person concept.

expected to resolve any conflict of interest in favor of the U.S. interest.” His wife and son are U.S. citizens, and reside in the United States. Applicant has lived in the United States for 32 years. His mother, brother and sister are naturalized U.S. citizens. Applicant, his spouse and his son are fully inculcated with U.S. values. All of his property and investments are in the United States, and he has no property or investments in Iran. He has many friends and colleagues in the United States. He is a loyal, dedicated and trustworthy U.S. citizen.

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.”

AG ¶ 10(a)(1) describes one condition that could raise a security concern and may be disqualifying in Applicant’s 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.” Applicant renewed his Iranian passport after becoming a U.S. citizen. He continues to possess an Iranian passport that will continue to be valid until 2011, establishing AG ¶ 10(a).

AG ¶ 11 provides conditions that could mitigate security concerns:

- (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.

None of the mitigating conditions apply. Although he offered to invalidate or relinquish his Iranian passport in his SOR response, he did not actually do so.

Department Counsel reminded him in the FORM that he could mitigate Foreign Preference concerns through AG ¶¶ 11(d) and 11(e), however, he did not take action to effectuate these provisions.⁹

Whole Person Concept

In all adjudications, the protection of our national security is the paramount concern. 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 his or her acts, omissions, and motivations as well as various 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. Under the whole person concept, the Administrative Judge should consider the nine adjudicative process factors listed at Directive ¶ E2.2.1:

- (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) the voluntariness of participation;
- (6) the presence or absence of rehabilitation and other pertinent 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 Directive ¶ E2.2.3, “The ultimate determination of whether the granting or continuing of eligibility for a security clearance is clearly consistent with the interests of national security must be an overall common sense determination based upon careful consideration” of the guidelines and the whole person concept.

Applicant promised to report any Iranian contact seeking information to law enforcement authorities. I found this promise to be sincere and credible. However, in ISCR Case No. 06-24575 at 4 (App. Bd. Nov. 9, 2007), the Appeal Board reversed an administrative judge's decision to grant a PRC Applicant's clearance because he gave too much weight to the Applicant's “strong ties to the U.S.” and determined there was insufficient evidentiary support for the conclusion that he “can be trusted to resolve any conflict of interest . . . in favor of the U.S.” The Applicant in ISCR Case No. 06-24575 said he would not act against the U.S. if faced with the choice. However, the Appeal Board gives such promises little weight in their *de novo* review of the evidence,¹⁰ stating:

⁹ In the decretal paragraph, I find “For Applicant” with respect to SOR ¶ 2.a because the Iranian passport he renewed in 1996 is no longer valid. The foreign preference allegations concerning his Iranian passport are adequately addressed in SOR ¶¶ 2.b and 2.c.

¹⁰ The Supreme Court in *United States v. Raddatz*, 447 U.S. 667, 690 (1980) succinctly defined the phrase “de novo determination”:

An Applicant's stated intention as to what he would do in the future is of relatively little weight, given the record in this case. See ISCR Case No. 03-09053 at (App. Bd. Mar. 29, 2006) ("An applicant's stated intention about what he or she might do in the future under some hypothetical set of circumstances is merely a statement of intention that is not entitled to much weight, unless there is record evidence that the applicant has acted in a similar manner in the past under similar circumstances.")

Id. at 4. See also ISCR Case No. 07-00029 at 4 (App. Bd. Dec. 7, 2007) (criticizing the administrative judge's reliance on PRC-Applicant's promise to choose the U.S. over PRC should a conflict arise, and reversing the administrative judge's decision to grant a clearance). I respect the Appeal Board's position and give little weight to Applicant's promise to report any such contacts that might occur.

A Guideline B decision concerning Iran must take into consideration the geopolitical situation in Iran, as well as the dangers existing in Iran.¹¹ Iran's relationship with the United States has significantly changed over the decades and is likely to change again in the future. Iran was an important U.S. ally after World War II until removal of the Shah, but is not in an adversarial relationship with the United States. Iran has a poor human rights record. Iran seeks weapons of mass destruction, and supports terrorism.

There are significant factors supporting approval of Applicant's access to classified information. Applicant has lived in the United States for 32 years. He became a U.S. citizen in 1991. His wife and son are U.S. citizens and residents of the United

[This legal term] has an accepted meaning in the law. It means an independent determination of a controversy that accords no deference to any prior resolution of the same controversy. Thus, in *Renegotiation Board v. Bannerkraft Clothing Co.*, 415 U.S. 1, 23 [(1974)], the Court had occasion to define "*de novo* proceeding" as a review that was "unfettered by any prejudice from the [prior] agency proceeding and free from any claim that the [agency's] determination is supported by substantial evidence." And, in *United States v. First City National Bank*, 386 U.S. 361, 368 [(1967)], this Court observed that "review *de novo*" means "that the court should make an independent determination of the issues" and should "not . . . give any special weight to the [prior] determination of" the administrative agency.

(internal footnotes omitted). In ISCR Case No. 05-01820 (App. Bd. Dec. 14, 2007), the Appeal Board criticized the administrative judge's analysis, supporting grant of a clearance for a PRC-related Applicant, and then decided the case itself. Judge White's dissenting opinion cogently explains why credibility determinations and ultimately the decision whether to grant or deny a clearance should be left to the judge who makes witness credibility determinations. *Id.* at 5-7. See also ISCR Case No. 04-06386 at 10-11 (App. Bd. Aug. 25, 2006) (Harvey, J., dissenting) (discussing limitations on Appeal Board's authority to reverse hearing-level judicial decisions and recommends remanding cases to resolve material, prejudicial error).

¹¹ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole person discussion).

States. His property and assets are in the United States and he has no assets in Iran. Applicant is a law-abiding U.S. citizen, and there is no evidence of any performance or work-related problems. He compellingly described his loyalty to the United States, rather than to the Iran. I found his statements to be honest, candid and credible.

One element increasing the foreign influence security concern is Applicant's frequent contacts with his aunt, and his visits to Iran to see her. He communicates with her on a monthly basis. Applicant clearly has a close relationship with his elderly aunt living in Iran. She is vulnerable to Iranian coercion and non-coercive measures because of her Iranian citizenship and where she lives. She also receives a pension for her work as a nurse, and the Iranian government could exert pressure on her and Applicant by threatening to stop or stopping her pension. Because Iranian government and intelligence personnel may violate Iranian or international law, they are more likely to use improper and/or illegal means to obtain classified information through his aunt.

After carefully weighing the evidence of his connections to Iran and to the United States, I conclude Applicant has failed carry his burden of mitigating the foreign influence and foreign preference security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors"¹² and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. For the reasons stated, I conclude he is eligible for access to classified information.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline C:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraphs 2.b and 2.c:	Against Applicant

¹²See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

Conclusion

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 eligibility for a security clearance for Applicant. Clearance is denied.

Mark W. Harvey
Administrative Judge