



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-12471
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

May 30, 2008

Decision

FOREMAN, LeRoy F., Administrative Judge:

Applicant submitted his security clearance application on January 4, 2007. On December 14, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing security concerns under Guidelines C (Foreign Preference) and B (Foreign Influence). 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 acknowledged receipt of the SOR on December 22, 2007; answered it on January 10, 2008; and requested a hearing before an administrative judge. DOHA received the request on January 14, 2008. Department Counsel was prepared to proceed on January 30, 2008, and the case was assigned to me on February 4, 2008. DOHA issued a notice of hearing on March 13, 2008, scheduling the hearing for April 3, 2008. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5

were admitted in evidence without objection. Applicant testified on his own behalf, and he submitted Applicant's Exhibits (AX) A through L, which were admitted without objection. I granted Applicant's request to keep the record open until April 25, 2008, to enable him to submit additional evidence. On April 20, 2008, Applicant requested that the record be kept open until May 2, 2008, and I granted his request. His request and my ruling are attached to the record as Hearing Exhibit (HX) II. Applicant timely submitted AX M, and it was admitted without objection. Department Counsel's response to AX M is attached to the record as HX III. DOHA received the transcript of the hearing (Tr.) on April 17, 2008. The record closed on May 2, 2008. Eligibility for access to classified information is granted.

Evidentiary Ruling

Department Counsel requested that I take administrative notice of relevant facts about Iran. The request and 10 of its 11 enclosures were not admitted in evidence but are attached to the record as HX I. I declined to take administrative notice based on one of the enclosures, a Congressional Research Service report, because there was no indication that the analysis and conclusions of the author were accepted by any agency of the U.S. as not subject to reasonable dispute. Department Counsel offered the report as GX 5, and it was admitted without objection. The facts administratively noticed are set out below in my findings of fact.

Correction of Transcript

Applicant submitted a list of corrections to the transcript, attached to the record as HX IV. I accepted his proposed changes and adopted them in my decision, but I did not annotate the original transcript.

Findings of Fact

In his answer to the SOR, Applicant admitted all the factual allegations in the SOR and offered explanations. His admissions in his answer to the SOR and at the hearing are incorporated in my findings of fact. I make the following findings:

Applicant is a 52-year-old professor of electrical and systems engineering at a prestigious U.S. university. He also works part-time as an independent consultant for a defense contractor. He has never held a security clearance.

Applicant was born in Iran and obtained a bachelor of science degree from the University of Tehran in June 1978. He came to the U.S. on a student visa, obtained a master's degree in 1979 and a doctorate in 1982. He has been a full-time professor since 1987. He became a U.S. citizen in 1989.

Applicant is one of the preeminent scientists in the U.S. He submitted evidence of 53 honors and distinctions he has received (AX A-H), including an award from the U.S. President for his contributions to the scientific and engineering efforts of the U.S.

(AX B) and selection as one of 50 top scientists worldwide (AX C). He is widely and frequently published in scientific and technical journals (AX I, J). He travels overseas frequently to attend and speak at international conferences, universities, and institutes.

Applicant is very circumspect about revealing sensitive information. When he speaks at or attends international conferences, he provides a narrative biography of his education, honors, and publications, but he protects information about sources of research funding and sensitive consulting positions (Tr. 125-28).

Applicant met his wife while they were both in graduate school in the U.S. They were married in October 1983. His wife was born in Iran, came to the U.S. as a student in 1977, and became a U.S. citizen in 1990. They have two children who are native-born U.S. citizens.

Applicant has owned a home in the U.S. since 1990 (Tr. 129). He and his wife are active in the community. Their younger child is autistic, and Applicant has been very involved in activities for autistic children (Tr. 130-31). He prides himself on having participated in every presidential election, including the primaries, since becoming a citizen (Tr. 132).

Applicant's parents are deceased. He has not traveled to Iran since he came to the U.S. in 1979, and he did not attend his parents' funerals in Iran. He has four living siblings. His older brother came to the U.S. as a political refugee after being detained and interrogated by Iranian authorities, and he is now a citizen and resident of the U.S. (Tr. 86-87). His younger brother is a citizen and resident of Germany. His older sister is a citizen and resident of the U.S., and his younger sister is a citizen and resident of Canada.

Applicant's mother-in-law, father-in-law, sister-in-law, and half-brother-in-law are citizens and residents of Iran. His mother-in-law and father-in-law were divorced many years ago, when his wife was about 12 years old (Tr. 68). They are both retired school teachers (Tr. 69, 71). Applicant's wife is estranged from her father because he abandoned the family after the divorce (Tr. 71). She has visited her family in Iran twice, in 1988 for about two weeks and in 2005 for about six weeks (Tr. 66).

Applicant's mother-in-law visited them while they were still in graduate school. She visited again for more than six months around 1995 and became a permanent U.S. resident. She visited again in 1997 but has not returned to the U.S. again, because she is too old and frail to travel (Tr. 73).

Applicant has never met his wife's father or her sister. His wife has no contact with her father, except for one brief courtesy visit in 2005 (Tr. 68). His wife talks to her mother on the telephone about once a month, sometimes less frequently (Tr. 74). She talks to her sister once every three or four months (Tr. 75). Her sister is a university professor, teaching philosophy or a related field (Tr. 76). Applicant knows little about his wife's sister because he has never met her in person, has no direct contact with her,

and speaks with her briefly only when she calls Applicant's wife (Tr. 75). Applicant and his wife have never met her half-brother, born of another marriage after her parents divorced. They do not know where her half-brother is living.

Applicant and his wife both had Iranian passports before they became U.S. citizens, and they allowed them to expire (Tr. 82). In December 2004, they obtained new Iranian passports so his wife could visit her mother, who is old and in poor health, her sister, and her nieces and nephews (Tr. 103). His wife used her Iranian passport when she visited her family in 2005 (Tr. 84). Applicant also obtained an Iranian passport so that he could accompany his wife if there was a death in the family and she wanted him to accompany her, but he never used it (Tr. 83-84). On April 29, 2008, he destroyed it because of the security issues it raised (AX M).

Applicant recently received an email from a former classmate at the University of Tehran. The date of the email is not reflected in the record. The classmate is an electrical engineer employed by a public utility company in Iran (tr. 94). The classmate obtained the email addresses of several classmates and sent out a general request for email addresses from other classmates (AX K). The emails consist of holiday greetings, jokes, and information about locations of other classmates (Tr. 92). Applicant received congratulations from several classmates when he was named one of the top 50 scientists in the world (Tr. 95). Applicant does not regard the classmate as a close friend, and considers the emails to be very casual. His participation in the email exchange is passive, and he does not provide any information about his work (Tr. 93).

At Department Counsel's request, and without objection from Applicant, I took administrative notice of the following adjudicative facts. Iran is a theocratic Islamic republic dominated by Shia Muslim clergy, with ultimate political authority vested in a learned religious scholar. Iran's government is hostile to the U.S. Current U.S. concerns about Iran are based on its efforts to acquire nuclear weapons and weapons of mass destruction; support for and involvement in international terrorism; support for violent opposition to the Middle East peace process; and its human rights abuses, including summary executions, torture, arbitrary arrest and detention, and restrictions on civil liberties. Iran has provided guidance, training, and weapons to Shia political and militant groups in Iraq. It also provides encouragement, training, funding, and weapons to anti-Israeli terrorist groups in its efforts to undermine the Arab-Israeli peace process, and it advocates the destruction of Israel. The U.S. has designated Iran as a state sponsor of terrorism. The U.S. broke diplomatic relations with Iran in April 1980, prohibits most trade with Iran, and uses multilateral sanctions and diplomatic pressure to contain the threats posed by Iran. Because Iran does not recognize dual citizenship, Iranian-born, naturalized U.S. citizens are considered solely Iranian citizens by the Iranian authorities, and they are required to enter and exit Iran on an Iranian passport. While traveling or residing in Iran, they are subject to surveillance, search, harassment, arrest, and imprisonment.

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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.

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the

facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline C, Foreign Preference

The SOR alleges Applicant exercises dual citizenship with Iran and the U.S. (¶ 1.a); he possessed an Iranian passport issued in December 2004 when he answered DOHA interrogatories in October 2007 (¶ 1.b); and he was issued an Iranian passport in December 2004 after he became a U.S. citizen (¶ 1.c). The concern under Guideline C is as follows: “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.” AG ¶ 9.

Dual citizenship standing alone is not sufficient to warrant an adverse security clearance decision. ISCR Case No. 99-0454 at 5, 2000 WL 1805219 (App. Bd. Oct. 17, 2000). Under Guideline C, “the issue is not whether an applicant is a dual national, but rather whether an applicant shows a preference for a foreign country through actions.” ISCR Case No. 98-0252 at 5 (App. Bd. Sep 15, 1999).

A disqualifying condition may arise from “exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen,” including but not limited to “possession of a current foreign passport.” AG ¶ 10(a)(1). A disqualifying condition also may arise from “any statement or action that shows allegiance to a country other than the United States.” AG ¶ 10(d). Applicant’s possession of an Iranian passport after becoming a U.S. citizen raises AG ¶ 10(a)(1). His application for an Iranian passport after becoming a U.S. citizen raises AG ¶ 10(d).

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶10(a)(1) and (d), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. Applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns under this guideline may be mitigated by evidence that “dual citizenship is based solely on parents’ citizenship or birth in a foreign country.” AG ¶ 11(a). This mitigating condition is only partially established because Applicant derived his Iranian citizenship from his parents and place of birth, but he remained in Iran until he was a young adult, about 24 years old.

Security concerns based on possession or use of a foreign passport may be mitigated if “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.” AG ¶ 11(e). Applicant’s destruction of his Iranian passport establishes this mitigating condition.

Guideline B, Foreign Influence

The SOR alleges Applicant’s mother-in-law, father-in-law, sister-in-law, and a half-brother-in-law are citizens and residents of Iran (SOR ¶¶ 2.a and 2.b). It also alleges he maintains contact with a college friend in Iran (SOR ¶ 2.c).

The security concern relating to Guideline B is set out in AG ¶ 6 as follows:

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.

A disqualifying condition under this guideline may be raised by “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.” AG ¶ 7(a). A disqualifying condition also may be raised by “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.” AG ¶ 7(b). Under the old guidelines, any risk of foreign influence was sufficient to raise a potentially disqualifying condition. The new guidelines require a “heightened risk.” Applicant had significant contact with his wife’s mother until 1997 and infrequent, incidental contact since then. He has no direct contact with his wife’s sister, father, or half-brother. He lives with his wife, who has frequent contact with her elderly mother and occasional contact with her sister. He has email contact with a former classmate in Iran who works for the Iranian government. In light of the nature of Iran’s government, these contacts are sufficient to raise AG ¶¶ 7(a) and (b).

Finally, a security concern may be raised if an applicant is “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” AG ¶ 7(d). “[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person’s spouse.” ISCR Case No. 01-03120,

2002 DOHA LEXIS 94 at * 8 (App. Bd. Feb. 20, 2002). Applicant has rebutted this presumption for his wife's father and sister, but he has not rebutted it for his wife's mother. Given the nature of Iran's government, there is a heightened risk of pressure on Applicant's wife's mother, designed to induce his wife to manipulate or influence him. I conclude AG ¶ 7(d) is raised. Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 7(a), (b), and (d), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation's government, its relationship with the U.S., 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 U.S.

Security concerns under the new guidelines can be mitigated by showing that "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." AG ¶ 8(a). The totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Applicant has virtually no contact with his wife's sister and no contact with her father or half-brother. His contact with a former classmate is casual, infrequent, and superficial. I conclude this mitigating condition is established for his sister-in-law, father-in-law, half-brother-in-law, and for his former classmate; but it is not established for his mother-in-law. Considering the totality of his relationships with persons who are citizens and residents of Iran, I cannot fully apply AG ¶ 8(a).

Security concerns under this guideline also can be mitigated by showing "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." AG ¶ 8(b). The Appeal Board has consistently held that an applicant with family members living in Iran

has “a very heavy burden of persuasion” to overcome the security concerns raised by that fact. ISCR Case No. 04-11463 at 4 (App. Bd. Aug. 4, 2006). That burden of persuasion became a virtually impossible burden of persuasion under the old guidelines. 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.¹ It reversed every decision granting a clearance and affirmed every decision but one denying a clearance. One decision denying a clearance was remanded because of a procedural error.²

AG ¶ 8(b) has no counterpart in the old guidelines. It is a fundamental change from the old guidelines, in which the potential for exploitation, manipulation, coercion, or duress could only be mitigated by showing the potential did not exist. In cases involving the old guidelines, the Appeal Board held repeatedly that an applicant should not be put in a position requiring a choice between the interests of his family and the interests of the U.S. and a foreign country. See ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006); ISCR Case No. 03-24933 at 6 (App. Bd. Jul. 28, 2005); ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2005); ISCR Case No. 03-15205 at 3 (App. Bd. Jan. 21, 2005). Under the new guidelines, the administrative judge may weigh the conflict of interests and may conclude, based on the evidence, that the applicant “can be expected” to resolve the conflict in favor of the U.S. interest. In reviewing an administrative judge’s balancing, the Appeal Board “shall give deference to the credibility determinations of the Administrative Judge.” Directive ¶ E3.32.1. Because the

¹ In 2005, the Appeal Board reversed all four appealed decisions granting clearances for Iranian-Americans. See ISCR Case No. 03-24933 (App. Bd. July 28, 2005); ISCR Case No. 02-13595 (App. Bd. May 10, 2005); ISCR Case No. 03-02382 (App. Bd. Feb. 15, 2005); ISCR Case No. 03-15205 (App. Bd. Jan. 21, 2005). It affirmed all nine appealed decisions that denied clearances. See ISCR Case No. 03-24144 (App. Bd. Dec. 6, 2005); ISCR Case No. 03-22974 (App. Bd. Nov. 22, 2005); ISCR Case No. 02-31083 (App. Bd. Oct. 6, 2005); ISCR Case No. 02-30587 (App. Bd. June 15, 2005); ISCR Case No. 02-32581 (App. Bd. June 9, 2005); ISCR Case No. 03-04172 (App. Bd. June 7, 2005); ISCR Case No. 03-00526 (App. Bd. Apr. 7, 2005); ISCR Case No. 02-17178 (App. Bd. Apr. 5, 2005); ISCR Case No. 03-06174 (App. Bd. Feb. 28, 2005). In 2006, the Appeal Board reversed all five appealed decisions granting clearances for Iranian-Americans. See ISCR Case No. 04-08870 (App. Bd. Nov. 29, 2006); ISCR Case No. 04-12500 (App. Bd. Oct. 26, 2006); ISCR Case No. 04-09541 (App. Bd. Sep. 26, 2006); ISCR Case No. 04-11463 (App. Bd. Aug. 4, 2006); ISCR Case No. 02-24566 (App. Bd. July 17, 2006). It affirmed three appealed decisions that denied clearances. See ISCR Case No. 02-28838 (App. Bd. Jun. 12, 2006); ISCR Case No. 03-23259 (App. Bd. May 10, 2006); ISCR Case No. 03-10954 (App. Bd. Mar. 8, 2006). In 2007, the Appeal Board reversed ten decisions granting clearances. See ISCR Case No. 05-12088 (App. Bd. Oct. 24, 2007); ISCR Case No. 05-00939 (App. Bd. Oct. 3, 2007); ISCR Case No. 05-03279 (App. Bd. Sep. 20, 2007); ISCR Case No. 05-04126 (App. Bd. Apr. 19, 2007); ISCR Case No. 04-12435 (App. Bd. Apr. 9, 2007); ISCR Case No. 05-03250 (App. Bd. Apr. 6, 2007); ISCR Case No. 05-00939 (App. Bd. Mar. 14, 2007); ISCR Case No. 04-11369 (App. Bd. Mar. 16, 2007); ISCR Case No. 04-11577 (App. Bd. Feb. 6, 2007); ISCR Case No. 05-04628 (App. Bd. Jan. 24, 2007). It affirmed three decisions denying clearances. See ISCR Case No. 05-14488 (App. Bd. Aug. 10, 2007); ISCR Case No. 06-17164 (App. Bd. Jun. 21, 2007); ISCR Case No. 04-04451 (App. Bd. Jan. 9, 2007). In 2008, the Appeal Board reversed one decision granting a clearance See ISCR Case No. 05-02210 (App. Bd. Jan. 18, 2008).

² ISCR Case No. 04-12732 (App. Bd. Nov. 2, 2006) (violation of procedural rules required remand).

administrative judge's conclusion that an applicant is or is not "expected to resolve any conflict of interest in favor of the U.S. interest" is not reviewed de novo, the Appeal Board may not substitute its judgment for the administrative judge's. Instead, the administrative judge's conclusion may be overturned only if it is "arbitrary, capricious, or contrary to law." Directive ¶ E3.32.3. There is no direct appeal from an Appeal Board decision. If the Appeal Board does not correctly apply the deferential standard of review mandated by the Directive, an applicant's only recourse is a collateral attack in federal district court for failure to follow the Directive. See *Nickelson v. United States*, 284 F.Supp. 2d 387, 393 (E.D. Va. 2003) (requiring agency to follow its own rules in security clearance determinations).

As of April 24, 2008, the Appeal Board had considered seven cases under the new guidelines, affirming four decisions denying clearances³ and reversing three decisions granting clearances.⁴ The Appeal Board has considered only two cases involving the mitigating condition in AG ¶ 8(b) involving Iran. In both cases, it recognized that AG ¶ 8(b) requires a balancing, but it disagreed with the administrative judges' balancing and reversed the decisions granting clearances, thereby continuing its track record over the last three years of having never affirmed a decision granting a clearance to an applicant with family members in Iran.⁵

In applying the AG ¶ 8(b) balancing analysis to the facts of Applicant's case, I have considered that he has lived in the U.S. since 1979, and he never returned to Iran, even for his parents' funerals. He has no living siblings in Iran. Two of his living siblings are citizens and residents of the U.S., one is a citizen and resident of Germany, and one is a citizen and resident of Canada.

I have considered that Applicant's older brother left Iran as a political refugee. The fact that his family has been targeted in the past by Iranian authorities is a two-edged sword. On the one hand, it means that his family is known to Iranian authorities; on the other hand, it means that his family has been subjected to Iranian mistreatment, did not succumb to it, and knows how to deal with it. Moreover, it weighs against any voluntary cooperation with Iranian authorities.

I have considered that Applicant has never met his wife's father, sister, or half-brother. His only familial contact in Iran is with his wife's mother. His only other contact in Iran is through his largely passive receipt of superficial and casual email messages from a former college classmate. Whether the classmate is an Iranian agent searching for intelligence information or recruiting intelligence sources cannot be determined.

³ ISCR Case No. 07-06952 (App. Bd. Arp. 24, 2008); ISCR Case No. 06-23479 (App. Bd. Nov. 28, 2007); ADP Case No. 06-24818 (App. Bd. Oct. 24, 2007); ISCR Case No. 06-04371 (App. Bd. Oct. 18, 2007).

⁴ ISCR Case No. 06-18918 (App. Bd. Mar. 28, 2008); ISCR Case No. 06-25202 (App. Bd. Feb. 22, 2008); ISCR Case No. 06-25183 (App. Bd. Feb. 21, 2008).

⁵ ISCR Case No. 06-18918 (App. Bd. Mar. 28, 2008); ISCR Case No. 06-25202 (App. Bd. Feb. 22, 2008).

What can be determined is that Applicant has not been offered any bait and would not take it if offered.

I have considered that Applicant's wife has lived in the U.S. since 1977 and has returned to visit her family in Iran only twice, that her mother and sister are citizens and residents of Iran, and that her other siblings are citizens and residents of the U.S. and Canada. Applicant's wife's strong connections to the U.S. make it less likely that she could be manipulated directly or through her family members in Iran to influence Applicant.

Finally, I have considered that Applicant's destruction of his Iranian passport makes it impossible for him to visit Iran and demonstrates his willingness to resolve a potential conflict of interest in favor of the U.S. Based on his deep and longstanding relationships and loyalties in the U.S., I conclude AG ¶ 8(b) is established.

Security concerns under this guideline also may be mitigated by showing that "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." AG ¶ 8(c). There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). This presumption does not apply to Applicant's contacts with his wife's mother, but his long relationship with her shows that his contacts, though infrequent, are not casual. On the other hand, his contact with his former Iranian classmate is casual. It is not "infrequent" with respect to the messages initiated by his classmate, but the evidence indicates that Applicant has not responded to the emails, making his participation in the exchange "infrequent." I conclude AG ¶ 8(c) is established for Applicant's contacts with his former Iranian classmate. However, after considering the totality of his relationships, I conclude this mitigating condition cannot be fully applied.

Whole Person Concept

Under the whole person concept, an 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. An 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) the 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 common sense judgment based upon careful consideration of the guidelines and the whole person concept. Some of the factors in AG ¶ 2(a) were addressed above, but some warrant additional comment.

Applicant is an exceptionally dedicated and talented engineer who decided many years ago to make his life in the U.S. He never returned to Iran, even for his parents' funerals. He obtained an Iranian passport primarily because of his devotion to his wife, not because of any feelings of affection or obligation to her family. He was candid, sincere, and very credible at the hearing.

Applicant's wife followed a similar path, returning to Iran only twice in more than 30 years. Applicant has no immediate family in Iran, and his wife has only her mother, a sister, a father with whom she has no relationship, and a half-brother she has never met.

In some respects, Applicant's brilliant career and international reputation make him a high visibility target, but he has carefully controlled information about his research funding and consulting contracts. He is certainly no more vulnerable to terrorism or intelligence gathering efforts than other prominent government and military officials. He never used his most recent Iranian passport, and he readily destroyed it when he learned it raised security concerns.

Applicant has lived in the U.S. for almost 30 years without ever returning to Iran. His wife and two children are U.S. citizens. He is deeply devoted to his wife and children, his work, and the United States. The only conduit for potential foreign influence is through his wife, who also has very strong ties to the U.S. After weighing the disqualifying and mitigating conditions under Guideline C and B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign preference and foreign influence. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25 of Enclosure 3:

| | |
|---------------------------|---------------|
| Paragraph 1, Guideline C: | FOR APPLICANT |
| Subparagraphs 1.a-1.c: | For Applicant |
| Paragraph 2, Guideline B: | FOR APPLICANT |
| Subparagraphs 2.a-2.c: | For Applicant |

Conclusion

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

LeRoy F. Foreman
Administrative Judge