



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-16741
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: John Glendon, Esquire, Department Counsel  
For Applicant: Pro Se

May 14, 2008

**Decision**

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HOGAN, Erin C., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), on February 19, 2007. On January 3, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B, Foreign Influence, and Guideline C, Foreign Preference, 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.

On January 14, 2008, Applicant answered the SOR and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on February 25, 2008. The case was assigned to another administrative judge on February 27, 2008. The case was transferred to me on March 13, 2008. On March 14, 2008, a Notice of Hearing was issued scheduling the hearing for April 3, 2008. The hearing was held as scheduled. The Government offered Government Exhibits (Gov) 1 - 4, which were admitted without objection. The Government requested that administrative notice

be taken of one document with 11 attachments. The document was marked as Administrative Notice Document 1 (Admin Not 1) without objection. Applicant testified and submitted two exhibits which were admitted as Applicant Exhibits (AE) A and B without objection. The record was held open until April 17, 2008, to allow the Applicant to submit further documents. Applicant timely submitted a two-page document that was admitted as AE C without objection. DOHA received the transcript of hearing on April 11, 2008. The record closed on April 17, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Administrative Notice**

Iran is a theocratic Islamic republic. The United States has not had diplomatic relations with Iran since April 7, 1980. The U.S. Department of State has set forth concerns of the United States with Iran's policies as: (1) Iran's efforts to acquire nuclear weapons and other weapons of mass destruction; (2) Iran's support for and involvement in international terrorism; (3) Iran's support for violent opposition to the Middle East peace process; and (4) Iran's dismal human rights record. (Admin Not 1, Doc 1 at 9) The United States has designated Iran as a state sponsor of terrorism. (Admin Not 1, Doc 6 at 2.) The government of Iran's human rights abuses against the Iranian people include summary executions, lack of fair public trials, disappearances, torture, arbitrary arrest and detention, political prisoners and detainees, severe restrictions on freedom of religion, discrimination against women, and severe restrictions on civil liberties including speech, press, assembly, association, movement and privacy. (Admin Not 1, Doc 5 at 1; Doc 4 at 8.)

The U.S. State Department continues to warn U.S. citizens and U.S.-Iranian dual citizens to consider carefully the risks of travel to Iran. Some elements of the Iranian regime remain hostile to the U.S. and U.S. citizens. U.S.-Iranian dual citizens may be subject to harassment or arrest while residing in Iran. (Admin Not 1, Doc 3.) Iranian born, naturalized U.S. citizens, and the children of such persons, are considered solely Iranian citizens by Iranian authorities, since Iran does not recognize dual citizenship. (Admin Not 1, Doc 2 at 1.)

### **Findings of Fact**

In his Answer to the SOR, dated January 14, 2008, Applicant admitted to all the SOR allegations.

Applicant is a 38-year-old test manager employed with a Department of Defense contractor. He has worked for his current employer since August 2006. He has a bachelor's degree in business administration. He is married and has two sons, ages 13 and 14. This is his first time applying for a security clearance. (Tr at 5, 30; Gov 1.)

Applicant was born and raised in Iran. His older brothers immigrated to the U.S. in the mid 1970s to attend school. The plan was to arrange to have Applicant move to

the U.S. to live with his brothers. The Iranian revolution began in 1979. Initially, Applicant could not leave the country. The law was eventually changed and Applicant traveled to Austria and lived with his aunt. In Austria, he unsuccessfully attempted to apply for a U.S. visa. For two years, he lived and studied in France. His brother hired an immigration lawyer who assisted them in obtaining a VISA to the U.S. for Applicant. (Tr at 44-47.)

In 1983, Applicant moved to the U.S. He received his U.S. permanent resident status (i.e. green card) in 1989. He lived with his older brother in a midwestern city, attending high school there. After he graduated from high school, he tried to enlist in the U.S. Air Force but was denied enlistment because he was not a U.S. citizen. He moved to New England and lived with an aunt and two cousins. He attended two years of college. He then moved in with his brother and transferred to another college. In 1992, he graduated with a degree in business administration. (Tr at 48-49; Gov 1.)

After he graduated from college, Applicant went back to Iran because his father was seriously ill. Applicant was subject to the Iranian military draft. When he returned to Iran, he had three choices. He could join the Iranian Army. He could go to school, or he could pay \$16,700 to buy his military service requirement. He chose to attend school. He could not return to the U.S. because the Iranian government would not allow him to leave. Applicant obtained a degree in business administration from an Iranian university. After he graduated, he could choose to enter the Iranian military or he could buy his military service requirement. A change in the law reduced the price to \$4,000 so Applicant bought his way out of his military service obligation. He was then allowed to obtain an Iranian passport. He moved back to the United States within a few months in July 1999. (Tr at 56-58.)

Applicant lived in Iran from 1992 to 1999. During this time, he met his wife. They married in 1992. Their two children were born in Iran. (Tr at 53-55.) When Applicant moved back to the U.S. in 1999, his wife and children remained behind in Iran with family members. On May 15, 2003, Applicant became a U.S. citizen. When he returned to the U.S., he had to wait three years to apply for U.S. citizenship. (Tr at 55, 58-61; see Gov 1, Certificate of Naturalization.) Once Applicant became a U.S. citizen, he took action to sponsor his wife and children into the U.S. (Tr at 61-62.)

In 2003 and 2004, Applicant traveled to Iran to visit his family and to assist with his family's immigration paperwork. He and his wife traveled from Iran to the United Arab Emirates on several occasions in 2003 and 2004 in order to visit the U.S. Embassy to process immigration forms. There was a problem with his wife's fingerprints. She was required to provide her fingerprints several times. In July 2004, his family moved to the U.S. Applicant claims that his children are U.S. citizens. His wife is a permanent resident of the U.S. and is in the process of applying for U.S. citizenship. (Tr at 13-15, 40, 68, 101.)

Applicant possesses a valid Iranian passport. It was issued on September 20, 1998 and had an expiration date of September 20, 2003. On September 10, 2003,

Applicant arranged to have his Iranian passport extended to September 19, 2008. Applicant also has a U.S. passport that was issued on May 19, 2003, with an expiration date of May 18, 2013. Applicant traveled to Iran on his Iranian passport because he believed it to be safer and convenient. After the hearing, he turned his Iranian passport into his Facility Security Officer (FSO). (Tr at 38-39, 65-66; AE C.) He does not intend to renew his Iranian passport and never intends to travel to Iran ever again. His home is in the U.S. (Tr at 35, 37.)

In response to Section 9, Where You Have Lived, on Applicant's e-QIP application, which asks "Provide a detailed entry for each place you have lived in the last 7 years. All periods must be accounted for in your list. Do not list a permanent address when you were actually living at a school address, etc. You may omit temporary military duty locations under 90 days (list your permanent address instead)." Applicant listed the places he lived over the past 27 years which was more than the 7 year time frame required by the question. In the fourth entry, he listed a U.S. address (his brother's address) for the time period between August 1998 to August 2000. In the fifth entry, Applicant listed a U.S. address (his brother's address) for the time period between January 1990 and August 1998. The U.S. address is not accurate because Applicant resided in Iran between 1992-1999. Applicant could not explain why he listed a U.S. address during a time period when he was living in Iran. (Tr at 62-64; Gov 1.)

Applicant's father passed away in 2000. He did not travel to Iran for his father's funeral. (Tr at 74-79.) His mother is a naturalized citizen living in the U.S. His grandmother is a citizen of and resides in Iran. In a signed, sworn statement dated March 23, 2007, he indicated he telephones his grandmother once a week. (Tr at 71; Gov 2.) He has two brothers and one nephew who are naturalized citizens residing in the U.S. On his mother's side of the family, he has three aunts and one uncle who are citizens of and reside in Iran. His last contact with his aunts and uncles was 2004 when he traveled to Iran. The last contact that he had with his father's relatives was 1997-1998. (Tr at 75, 78.)

Applicant's mother-in-law passed away in 2006-2007. His wife traveled to Iran on one occasion prior to her death to care for her and traveled to Iran to attend her funeral. Applicant stayed home with the children. (Tr at 78, 84.) Applicant's father-in-law lives in Iran but obtained permanent resident status in the U.S. this past year. He stayed with Applicant and his family over the past month. Currently, he is visiting his son in Florida before he travels back to Iran. He lives part of the year in Iran. He is a retired oil executive. He had a high level position as the second or third person in charge of a refinery. (Tr at 80-81; Gov 2.) Applicant's wife is close to her father. (Tr at 102.)

Two of Applicant's brother-in-laws are citizens of and reside in Iran. One is an accountant. The other does administrative work. His wife speaks with her brothers on the phone at least once a month. About three to four times a year, Applicant talks with his brothers-in-law when they call his wife. (Tr at 102-103; Gov 2.)

Applicant inherited an interest in an apartment in Iran from his father. His mother has power of attorney and handles all business related to it. He never receives anything from it. He owns his home, and his investments are in the United States. He has no overseas investments. (Tr at 85-89.)

A process manager at Applicant's company testified on his behalf. She has worked with Applicant over the past three years. He used to work for her. They now work on projects together from time to time. She states that Applicant is thorough and detail oriented. She holds him in high regard and finds him trustworthy. During a six month period when she was working at the company's overseas office, Applicant was placed in charge and kept her informed while she was gone. A co-worker testified that he met Applicant nine years ago at a former place of employment. They have been friends since. They currently work together on a daily basis. Applicant became his manager in July 2007. He states Applicant is an excellent manager. He trusts him like he would trust a member of his family.

Applicant's former manager from a previous job testified that he has known Applicant since 2002. They developed a strong friendship and deep mutual respect for one another. He describes Applicant as honest and considers himself truly blessed to come to this country. He believes he will do whatever is in the best interest of the country. (AE A.)

A performance evaluation covering the periods of February 2007 to February 2008 indicates that Applicant's overall performance rating as "exceeds requirements." He is described as "extremely reliable and trustworthy" Further comments state, "He sets the performance bar high for himself and leads by example. He has gone above and beyond the call of duty numerous times. He is a great asset to the organization and to his team members." (AE B.)

## **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.

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**

The security concern relating to the guideline for Foreign Preference is set out in AG ¶9:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

The guideline notes several disqualifying conditions that could raise security concerns. Foreign Preference Disqualifying Condition (FP DC)10(a) (*exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport*); and FP DC ¶ 10(b) (*action to acquire or obtain recognition of a foreign citizenship by an American citizen*) apply. Applicant has a

valid Iranian passport. He obtained the passport on September 20, 1993, prior to his U.S. citizenship. However, he applied for an extension of his Iranian passport on September 10, 2003, after having become a U.S. citizen. His Iranian passport does not expire until September 19, 2008. He used the Iranian passport when he traveled to Iran.

The guideline also includes examples of conditions that could mitigate security concerns arising from Foreign Influence.

FP MC ¶ 11(a) (*dual citizenship is based solely on parents' citizenship or birth in a foreign country*) does not apply. While Applicant obtained his dual citizenship based on his birth in Iran, he exercised his dual citizenship by applying for and using a Iranian passport after becoming a U.S. citizen in May 2003.

FP MC ¶ 11(e) (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*) applies. After the hearing, Applicant provided proof that he surrendered his Iranian passport to his Facility Security Officer. FP MC ¶ 11(e) applies. He has no intention to renew his Iranian passport when it expires in September 2008.

Applicant has mitigated the Foreign Preference concerns. Guideline C is found for Applicant.

## **Guideline B, Foreign Influence**

The security concern relating to the guideline for Foreign Influence is set out in AG ¶6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

The guideline notes several disqualifying conditions that could raise security concerns. Of the Foreign Influence Disqualifying Conditions (FI DC), the following apply to Applicant's case.

Foreign Influence Disqualifying Condition (FI DC) ¶ 7(c) (*contact with a 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*) applies as a result of

Applicant's relatives who are citizens of and reside in Iran. His grandmother and two brother-in-laws are citizens of and reside in Iran. His father-in-law resides in Iran for part of the year. Foreign Influence Disqualifying Condition (FI DC) ¶ 7(b) (*connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group or country by providing that information*) applies for the same reason. There is a rebuttable presumption that an applicant has ties of affection for, or obligation to, his spouse's immediate family members. (ISCR Case No. 02-03120, February 20, 2002, at 4.)

Foreign Influence Disqualifying Condition (FI DC) ¶ 7(d) (*sharing living quarter with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion*) applies with respect to Applicant's wife. Applicant's wife continues to have close contacts with her brothers and father who reside in Iran. Her contact with her relatives raise the potential to create a heightened risk of foreign inducement, manipulation, pressure or coercion.

Though not alleged in the SOR, Foreign Influence Disqualifying Condition (FI DC) ¶ 7(e) (*a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence of exploitation*) was potentially raised due to Applicant's ownership interest in an apartment he inherited from his father. Applicant's mother handles all of the affairs pertaining to renting out the apartment and receives the money in return. I find that FI DC ¶ 7(e) is not applicable pertaining to Applicant's interest in the apartment because he receives minimal, if any, benefit from it. All of his other assets are in the United States.

The guideline also includes examples of conditions that could mitigate security concerns arising from Foreign Influence.

Foreign Influence Mitigating Condition (FI MC) ¶ 8(a) (*the nature of the relationship with foreign persons, the country in which these persons are located, or the position 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.*) Family contacts and ties with persons in a foreign country are not automatically disqualifying but require the applicant to present evidence in mitigation and extenuation that he qualifies for a security clearance. Iran's hostile relationship with the United States and the country's poor human rights record place "a heavy burden of persuasion on applicant to show his family members do not pose a security risk. (See, ISCR Case No. 04-11463 at 4 (App. Bd. Aug 4, 2006). Applicant has not met that burden. Applicant's family ties in Iran are significant enough to raise foreign influence concerns. The risk is heightened due to the nature of the Iranian government.

FI MC ¶ 8(b) (*there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, or 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*) applies. In order for FI MC ¶ 8(b) to apply, Applicant must meet at least one of the conditions outlined. The first condition is that there is no conflict of interest because the individual's sense of loyalty or obligation to the foreign person(s) is minimal. This condition is not met because Applicant's relationship with his grandmother who lives in Iran cannot be considered minimal. He contacts her once a month. His relationship with his in-laws residing in Iran cannot be considered minimal. His father-in-law recently visited them for about a month. He is returning to Iran soon. Applicant contacts his father-in-law at least once a month when he resides in Iran. His wife contacts her brothers who live in Iran once a month. Applicant occasionally speaks with them as well.

The second condition of FI MC ¶ 8(b) is that individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict in favor of the U.S. interest. Applicant first came to the U.S. in 1983. He attended high school and college in the U.S. However, he moved back to Iran in 1992 and lived there for six years. While it appears that the Iranian government prevented him from returning to the U.S. by confiscating his passport, he did not disclose his residence in Iran on his e-QIP application. He gave his brother's U.S. address instead. This raises concerns about his credibility and whether he was attempting to hide the full extent of his contact in Iran. Although his wife and two children reside with him in the U.S., FI MC ¶ 8(b) cannot be applied.

FI MC ¶ 8(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*) is not applicable. Applicant's relationship with his family members and in-laws who live and reside in Iran cannot be considered casual and infrequent.

I find for Applicant with respect to SOR ¶ 1.f. This SOR paragraph alleges that Applicant traveled to the United Arab Emirates in 2003 and 2004 to complete his spouse's immigration documents to the U.S. As mentioned in the allegation, the purpose of travel to the United Arab Emirates was to process his wife's U.S. immigration documents. Since the U.S. does not have diplomatic relations with Iran, there is no U.S. embassy located in Iran. There is no foreign influence concern raised by this allegation.

### **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 common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has received numerous accolades from friends and co-workers pertaining to his integrity, honesty and work ethic. While the favorable testimony and strong letters of support state that Applicant is a man of integrity and loyalty, they do not reduce the very significant security threat posed by Applicant’s family members in Iran. The government need not prove an applicant is a bad person before it can deny or revoke access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control. An applicant with good character and personal integrity can pose a security risk because the applicant has close relatives in a country that is hostile to the United States. (ISCR 01-26893, dated October 16, 2002, at 9-10.) A further concern is raised due to Applicant’s inability to explain why he listed a U.S. address on his security application during a time when he was living in Iran.

Guideline B is a security concern that affects Applicants through no fault of their own. The current nature of the Iranian government and the hostile relationship between Iran and the U.S. make it a substantial burden to mitigate the concerns raised under foreign influence. Applicant’s significant personal relationships and contacts within the U.S. do not outweigh the concerns raised by having relatives who are citizens and reside in Iran. Foreign Influence security concerns are not mitigated.

### **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
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against Applicant

Subparagraph 2.e:  
Subparagraph 2.f:

Against Applicant  
For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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ERIN C. HOGAN  
Administrative Judge