



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



In the matter of:	)	
	)	
SSN:	)	ISCR Case No. 07-17245
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government, John B. Glendon, Esquire, Department Counsel  
For Applicant: Pro se

July 28, 2008

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**Decision**

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MASON, Paul J., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA), on March 13, 2006. On February 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under foreign influence (Guideline B). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted his answer to the SOR on February 28, 2008. DOHA issued a notice of hearing on April 25, 2008, and the hearing was held on May 21, 2008. Based on a careful evaluation of all the evidence in the record, Applicant's eligibility of security clearance access is granted.

At the hearing, the government submitted three exhibits (GE). The third exhibit (GE 3, administrative notice exhibit) contains publications from United States Government agencies that describe the government of Iran, its geopolitical problems with its neighbors as well as its internal human rights record, and the various difficulties U.S. citizens face in traveling to the country. At the hearing, testimony was taken from Applicant and two witnesses. He also submitted three exhibits (AE A through AE C). DOHA received the transcript on June 2, 2008.

### **Findings of Fact**

The SOR alleges in paragraph 1 that Applicant's ties and travel to Iran raise foreign influence concerns. He admitted subparagraphs 1.a. through 1.c. The SOR alleges in paragraph 2 that Applicant's possession and use of an Iranian passport shows a preference for a foreign country over the United States (U.S.) Applicant admitted 2.a. explaining the Iranian government only recognizes Iranian passports for entry into the country. In believing he was complying with Section 11.e. of the foreign preference guideline of Directive DoD Directive 5220.6, he indicated he would not use his Iranian passport for as long as DoD mandates it, and his security clearance is active. Applicant is 47 years old. He has worked for his current employer as a network administrator/engineer since 1998. He seeks a security clearance.

### **Foreign Influence**

Applicant emigrated to the U.S. on a student visa with his mother, stepfather, and sister in 1977. The specific reason for his and her move to this country was education. (GE 2, Tr. 33) After spending a year majoring in accounting, Applicant switched majors and schools in about 1983. He graduated from a local university in August 1984 with a Bachelors degree in electrical engineering. Th next year he received his U.S. citizenship in June 1985 while working for his first engineering job from 1984 to about 1992. He worked at two other employers for about six years before beginning employment with his present company in August 1998.

In July 1968, Applicant's wife was born in Iran (SOR 1.a.), and is a citizen of the country. She graduated from an Iranian university with a degree in photography. She also taught English and another language. Applicant met her in July 2004, during one of his seven pleasure trips to the country. His wife came to the U.S. in May 2005 on a fiancé visa, and is currently on track to receive her permanent resident card. They were married in this country five days after her arrival. She gave birth to a daughter in September 2006, and is expecting her second child.

Applicant's mother is a U.S. citizen, having become naturalized in December 1978, a year after she emigrated to the U.S. with Applicant's stepfather, a U.S. citizen, who was born in the U.S. She has not returned to Iran since her emigration in 1977. (Tr. 58) Applicant's stepmother, 69 years old, was born and is a resident citizen of Iran.

(SOR 1.b.) She married Applicant's father<sup>1</sup> in 1978. She worked as an accountant in an Iranian city for a sufficient number of years to draw a pension that she lives on now that she is retired.

Applicant and his father made telephonic contact about once a month between 1977 (when his father remarried his stepmother) and 1998 (when Applicant's father passed away). His father was retired and living on a pension when he passed away. (Tr. 45)

Applicant's stepsister (SOR 1.b.) was born in May 1981, and is a resident citizen of Iran. She currently attends an Iranian university where she lives off-campus. Applicant has visited his stepsister about six times since 2000. Since his stepsister and stepmother live together in the house his stepmother owns, Applicant has telephone contact with them about four times a year. Applicant will inherit nothing from his stepmother. The pension of Applicant's father goes to his stepsister.

Applicant's father-in-law and mother-in-law (SOR 1.b.) were born and are resident citizens of Iran. His father-in-law is 77, and his mother-in-law is 62. His father-in-law was an accountant for an Iranian city, and has been retired for 20 years. He is in poor mental health. Applicant's mother-in-law has always been in a homemaker. His parents-in-law own their own apartment.

Applicant's sister-in-law (SOR 1.d.) was born and is a resident citizen of Iran. She is 38 years old, married, and lives in the same building with Applicant's parents-in-law. Applicant has contacted his parents-in-law and sister-in-law through visits in 2004, 2005 and 2007. He sporadically speaks to his sister-in-law when his wife contacts her by phone. Neither Applicant nor his wife has provided financial support to either side of his family.

Applicant traveled to Iran (SOR 1.c.) on six occasions between 2000 and April 2007. He did not travel before 2000 because he could have been conscripted to serve in the military. He also stated, "My employer does allow for 3 or 4 weeks vacation all taken at once."

Applicant's stepfather was born and is a citizen of the U.S. In addition to Applicant and his sister, the stepfather has two children of his own who were born in the U.S.

### **Foreign Preference**

Applicant's first Iranian passport expired in 1984. He renewed his Iranian passport in 1999 to prepare for his travel to the country in 2000. As noted earlier, he did not travel to Iran before 2000 because he did not want to be drafted into the military. The Iranian government allows Iranian born citizens to enter the country on an Iranian

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<sup>1</sup> Applicant's father worked for the national oil company. He passed away in 1998. (Tr. 39).

passport only. On the six occasions Applicant traveled to Iran, he used his Iranian passport to enter the country, and his U.S. passport<sup>2</sup> to leave. He renewed his Iranian passport in August 2004, and used it in April 2005 and March 2006. In his June 2007 sworn statement explaining the circumstances under which he would not surrender his Iranian passport, Applicant first stated:

I am willing to destroy, surrender, or invalidate my Iranian passport, in order to obtain a security clearance with the U.S. Government. Unfortunately, I cannot relinquish my Iranian passport to the Iranian government because they will not accept it. However, there is a possibility that I might travel back to Iran in the future. I have family that are both citizens and residents of Iran. If this should ever happen, I would relinquish my security clearance, quit my job, and look for another position that does not require a security clearance. (GE 2)

In explanation of his GE 2 statement about turning in his security clearance, Applicant testified that should a time emerge when the government of Iran becomes more friendly to the U.S. than currently, then he might return to the country. (Tr. 65) The only way he will travel back to Iran is to surrender his security clearance and then travel back to Iran. (Tr. 65-67)

Applicant's security manager testified that he did not witness the surrender of Applicant's passport. See, AE A<sup>3</sup> The only matter he could testify to was that Applicant's passport was locked up in a file cabinet. The security manager explained that if Applicant transferred to an unclassified job, the passport would be returned to him; if Applicant transferred to a classified position, then security would annotate the transfer in the government record.

Since becoming an American citizen, Applicant has had no contact with the Iranian government except to renew his Iranian passport. He has never held political office or voted in a foreign election. He has never received foreign education benefits, unemployment, medical benefits, or a pension. During his trips to Iran, Applicant has never been stopped or detained by Iranian authorities.

He has never made any lasting contacts with Iranians. He has never visited the Iranian diplomatic buildings while in Iran. He has never been involved in any activity that would lead to pressure being placed on him. Applicant has no financial interests or property in Iran. If anyone tried to influence or coerce him, he would report the attempt to the appropriate authorities.

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<sup>2</sup> The record is unclear when Applicant first received his US. passport, but he renewed it in 2000. (Tr. 39)

<sup>3</sup> The document is entitled "DESTRUCTION OF PASSPORT." Yet, there is not indication the Iranian passport was destroyed.

Applicant has reported all his trips to his security department. He also reported his marriage to an Iranian citizen to his facility security officer (FSO). The FSO could not say for certain that Applicant told him of the marriage, but concluded that the marriage was the reason for the premature reinvestigation. According to the security manager, Applicant has never had a security violation.

### **Character Evidence**

Applicant's performance rating for 2007 was "4," defined as "superior performance that frequently exceeds what is expected." Applicant's retirement savings account (AE C) at the end of March 2008 was approximately \$199,000.00.

Applicant's stepfather (U.S. citizen) married<sup>4</sup> Applicant's mother in 1977 while working as an executive for a U.S. defense contractor. After grade school, the stepfather's relationship with Applicant has been intermittent because of work assignments in different parts of the world for extended periods of time. The stepfather believes Applicant to be honest. Applicant's sister (who emigrated to the U.S. with Applicant 30 years ago) lives about 40 miles away, and the stepfather intends to spend some time with her.

### **Administrative Notice**

Since the Muslim clergy came to power in the early 1980s, the Islamic Republic of Iran has fostered a poor human rights record through repression of its people<sup>5</sup> as well as through mistreatment of U.S.-Iranian dual citizens.<sup>6</sup> The Iranian government has pursued weapons of mass destruction<sup>7</sup> and supported terrorist activities throughout the Middle East.<sup>8</sup> Applicant is aware of the troubling practices of the Iranian government both inside and outside the government. (Tr. 65)

### **Policies**

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<sup>4</sup> This marriage was actually the stepfather's second marriage. He had two children from his first marriage.

<sup>5</sup> *Country Reports on Human Rights Practices - 2006 Iran*, U.S. Department of State, bureau of Democracy, Human Rights and Labor, dated March 6, 2007.

<sup>6</sup> *Travel Warning: Iran*, U.S. Department of State, Bureau of Consular Affairs, dated January 3, 2008.

<sup>7</sup> *Background Note: Iran*, U.S. Department of State, Bureau of Near Eastern Affairs, dated June 2007.

<sup>8</sup> *Country Reports on Terrorism 2006, Chapter 3 - State Sponsors of Terrorism overview*, U.S. Department of State, Office of the Coordinator for Counterterrorism, dated April 30, 2007; *Making America Safer by Defeating Extremists in the Middle East*, State by President of the United States, released by the Office of the White House Press Secretary, August 28, 2007; *Annual Threat Assessment for the Senate Select Committee on Intelligence*, Director of National Intelligence, February 5, 2008.

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 flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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 ¶ 2b. requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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.

### **Foreign Influence (FI)**

The security issues connected to foreign influence are familial ties, contacts, and/or proprietary/financial interests that could be used to generate a heightened risk or a potential conflict of interest by forcing an applicant into a position of having to choose between the foreign entity and the U.S.

## Foreign Preference (FP)

Acting in a way that shows that an individual has a tangible preference for a foreign country over the U.S.

## Analysis

### Foreign Influence (FI)

6. *The Concern.* “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 U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.”

The government has established a preliminary basis for denying Applicant’s security clearance application. Applicant’s stepmother, stepsister, father-in-law, mother-in-law, and sister-in-law are resident citizens of Iran. While Applicant’s wife is still a citizen of the country, she has not been a resident for more than three years. The circumstances raise security concerns under the FI guideline because it makes Applicant potentially vulnerable to coercion and pressure. Foreign Influence (FI) disqualifying condition (DC) 7.a. (*contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or a resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*) applies. The risk of Applicant’s vulnerability to pressure and influence is heightened by the enmity that the Iranian government holds for U.S. interests. Though the DOHA Appeal Board has stated there is no *pro se* rule regarding any foreign country, the policies and practices of the Iranian government impose a heavy burden on an applicant to demonstrate he warrants a security clearance. See, ISCR Case No. 01-26983 (October 16, 2002)

Applicant’s contacts with his stepmother and stepsister since 1977 have been periodic. He maintains telephone contact with them about 3 or 4 times a year. Between 2000 and April 2007, Applicant traveled to Iran six times to see both family members. Applicant’s contacts with his stepmother and stepsister have existed for 30 years without any interference of the Iranian government. Even though it is impossible to say with certainty what is likely to happen in future, the absence of manipulation by the Iranian government against his stepmother and stepsister for 30 years is credible evidence that the chances of exploitation being exerted upon and through them in the future is low. Due to the sporadic nature of Applicant’s contacts with his father-in-law, mother-in-law, and sister-in-law, the chances of the Iranian government trying to reach Applicant through them must be assessed as numerically greater, but overall still very low.

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*), and FI DC 7.d. (*sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion*) apply even though FI DC 7.a., FI DC 7.b., and FI DC 7.d. overlap considerably in their reach. The potential for conflict and the heightened risk for foreign influence is triggered by Applicant's relatives who are resident citizens of a foreign country. As noted there is a heightened risk that is assuaged by Applicant's credible statements and testimony that he would resist and report any foreign influence to the appropriate authorities.

FI DC 7.d. applies based on fact that Applicant's wife moving with Applicant in May 2005 and becoming his wife. Though she is an Iranian citizen, she intends to become a U.S. citizen, and is on track to receive her permanent resident visa.

Three of the six mitigating conditions (MC) under the FI guideline may apply to the facts and circumstances of this case:

FC MC 8.a. (*the nature of the relationships 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.*);

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, government, or country is minimal, or the individual has such deep and long lasting 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*);

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*).

Even though Applicant's spouse, stepmother, stepsister, father-in-law, and sister-in-law, are resident citizens of Iran, only two of Applicant's family members worked for a city government in Iran. Applicant's stepmother and father-in-law worked as accountants for a city in Iran. Applicant's stepmother is retired and his father-in-law has been retired for 20 years. He is in poor mental health. None of the other family members have ever been employed by or agents of the Iranian government. Because there is no evidence that Applicant's family members have ever been targeted or exploited by the Iranian government to reach him in 30 years, the chances of the Iranian government pressuring him through his relatives in the future are low. Applicant has been working for defense contractors since 1985, and has held a security clearance for about eight



years with his current employer. While he admittedly has a close relationship with his stepmother and stepsister, he has successfully convinced me that his sense of responsibility to both the U.S. and his employer means he will successfully work through any conflict in favor of the U.S. FI MC 8.a. FI MC 8.b. resolves SOR 1.a., and 1.b. in Applicant's favor. I find for Applicant under SOR 1.c. Even though some of the trips were up to a month in duration, thereby exposing Applicant to exploitation and duress, I conclude the allegation in Applicant's favor for the same reasons that I have found the other two allegations in his favor.

FI MC 8.c. is inapplicable to this case. Evidence that an applicant has contacts with an immediate family member in a foreign country raises a rebuttable presumption the contacts are not casual in nature. ISCR Case No. 00-0484 at 5, (App. Bd. Feb. 1, 2002) Applicant's contacts with his listed family members are periodic rather than sporadic or nonexistent. Hence, the contact or communication cannot be considered casual and infrequent.

### **Foreign Preference (FP)**

9. *The Concern.* "When an individual acts in such a way as to indicate a preference for a foreign country over the U.S., then he or she may be prone to provide information or make decision that are harmful to the interests of the U.S."

Applicant renewed his Iranian passport in 1999 and 2004, and used the passport to enter Iran on seven occasions between 2000 and April 2007. The renewal and use came after he received his U.S. citizenship in 1985. FP DC 10.a.1. (*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 passport*) applies.

Applicant's view toward keeping his Iranian passport has evolved since he provided his sworn statement in June 2007. Though he seemed initially reluctant to turn over his Iranian passport, he has successfully persuaded me he understands that pursuant to the mitigating condition of the Directive, the Iranian passport must be destroyed or otherwise invalidated because it is incompatible with possession of a security clearance.

Applicant's honesty in having hopes that relations between Iran and the U.S. improve to a level where he can travel to the country does not show an impermissible emotional attachment (preference) for Iran that automatically disqualifies him under the FP guideline, especially with the significant evidence of Applicant's developing ties to the U.S. since his arrival in 1977.

While Applicant renewed his Iranian passport two times, and used it several times after receiving his U.S. citizenship in 1985, his conduct must be viewed in the context that he was not aware that his continued use of the Iranian passport was security disqualifying. His reluctance to surrender his Iranian passport because of the

polices of the Iranian immigration service, must also be weighed in understanding his conduct. Having expressed a preference solely for the U.S. during the security investigation and at the hearing, and having found his testimony credible, Applicant has demonstrated by his actions that his sole preference is for the U.S. In conclusion, FP MC 11.e. (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*) applies to find the FP guideline in Applicant's favor.

### **Whole Person Concept (WPC)**

My finding for Applicant under the FI and FP guidelines must still be evaluated in the context of nine variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors: (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 the participation was 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.

Applicant came to the U.S. in 1977 with his stepfather, mother and sister. In 1984, he received his Bachelor's degree in electrical engineering. In 1985 he was naturalized as a U.S. citizen. For the next 13 years, he worked for defense contractors. In August 1998, he began working for his current employer as a network administrator/engineer, and received a security clearance. He officially briefed his security office of his trips to Iran. I also believe he told them of his pending marriage to an Iranian citizen in May 2005. While he has six family members who are citizens of Iran, his wife has been living with him in the U.S. since May 2005, and intends to become a U.S. citizen. His mother and sister are naturalized U.S. citizens. Applicant has no property or financial interests in Iran, but he has saved about \$200,000.00 in stocks and other financial instruments in his U.S. retirement savings account. He and his wife have a two-year-old child and are expecting a second child in the near future. Considering the whole person with the disqualifying and mitigating conditions, I find Applicant has satisfied his heavy burden of persuasion under the FI and FP guidelines.

### **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 (Foreign Influence, Guideline B):	FOR APPLICANT
Subparagraph 1.a.	For Applicant
Subparagraph 1.b.	For Applicant
Subparagraph 1.c.	For Applicant

Paragraph 2 (Foreign Preference, Guideline C): FOR APPLICANT

Subparagraph 2.a.

For Applicant

Subparagraph 2.b.

For Applicant

**Conclusion**

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

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Paul J. Mason  
Administrative Judge