



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-00422
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Paul M. DeLaney, Esq., Department Counsel  
For Applicant: *Pro Se*

June 23, 2008

**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant failed to mitigate the Foreign Influence security concerns raised by his four siblings in Iran. Eligibility for access to classified information is denied.

On March 24, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline 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 answered the SOR in writing on April 4, 2008, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the government’s written case on April 25, 2008. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns.

Applicant received the FORM on April 30, 2008. He responded on May 21, 2008, with a letter and seven pages of documents. I received the case assignment on May 29, 2008. I have marked the seven pages of documents as Exhibit (Ex.) A, and they are admitted.

## **Procedural and Evidentiary Rulings**

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Iran. Applicant did not object. The request for administrative notice is approved. The request and the attached documents are not admitted into evidence but are included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

Applicant is a 47-year-old engineer for a defense contractor. He was born in Iran. Applicant came to the United States when he was in his early twenties to attend college. He graduated from an American college and also obtained a Master of Science degree from an American university. He became a U.S. citizen in 1993. Applicant's wife was born in a country in the western hemisphere. She became a U.S. citizen in 1985. They have two children who were born in the United States, ages 17 and 15.<sup>1</sup>

Applicant visited Iran on three occasions between about 2000 and 2006, when his parents were ill. His parents are now both deceased. He traveled to Iran using an Iranian passport, which has since been relinquished.<sup>2</sup>

Applicant has two brothers and two sisters who are citizens and residents of Iran. None of his siblings are employed by the government of Iran. His brothers and sisters have never visited him in the United States. Applicant speaks with them on the telephone about once or twice a year.<sup>3</sup>

When Applicant's mother passed away, the family home was inherited by Applicant and his four siblings. The house is old and is not worth much. Applicant has declared his desire to divest himself of any property right he might have in the house. He does not have any other Iranian assets. He has considerable U.S. assets. He has a stable work history. Applicant is not a member of Iran's official religion and has expressed disdain for their repressive regime.<sup>4</sup>

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<sup>1</sup> Items 5, 6; Applicant's response to FORM.

<sup>2</sup> Items 4, 5, 6.

<sup>3</sup> Items 4, 5, 6; Applicant's response to FORM.

<sup>4</sup> *Id.*

## Iran

Iran is a constitutional Islamic republic with a theocratic system of government in which Shi'a Muslim clergy dominate the key power structures, and ultimate political authority is vested in a learned religious scholar. The U.S. has not had diplomatic relations with Iran since 1980. The President's National Security Strategy has stated that the United States "may face no greater challenge from a single country than from Iran." The U.S. Government has defined the areas of objectionable Iranian behavior as:

- Iran's efforts to acquire nuclear weapons and other weapons of mass destruction (WMD);
- Its support for and involvement in international terrorism;
- Its support for violent opposition to the Middle East peace process; and
- Its dismal human rights record.

Iran's intervention in the internal affairs of Iraq is also a concern.

The U.S. has designated and characterized Iran as the world's leading state sponsor of terrorism. Iran provides critical support to non-state terrorist groups.

The government of Iran has committed numerous, serious human rights abuses against the Iranian people. Abuses include political killings and incarceration; summary executions, including of minors; disappearances; religious persecution; torture; arbitrary arrest and detention, including prolonged solitary confinement; denial of due process; severe restrictions on civil liberties - speech, press, assembly, association, movement and privacy; severe restrictions on freedom of religion; official corruption; violence and legal and societal discrimination against women, ethnic and religious minorities, and homosexuals; trafficking in persons; and child labor.

The State Department continues to warn U.S. citizens to consider carefully the risks of travel to Iran. U.S. citizens who were born in Iran and the children of Iranian citizens, even those without Iranian passports who do not consider themselves Iranian, are considered Iranian citizens by Iranian authorities, since Iran does not recognize dual citizenship. Therefore, despite the fact that these individuals hold U.S. citizenship, under Iranian law, they must enter and exit Iran on an Iranian passport, unless the Iranian government has recognized a formal renunciation or loss of Iranian citizenship. U.S.-Iranian dual nationals have been denied permission to enter/depart Iran using their U.S. passport; they even had their U.S. passports confiscated upon arrival or departure. U.S.-Iranian dual citizens have been detained and harassed by the Iranian government. Iranian security personnel may place foreign visitors under surveillance. Hotel rooms, telephones and fax machines may be monitored, and personal possessions in hotel rooms may be searched.

## 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 to be used 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, Administrative Judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the 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 adverse 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 7:

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 conditions that could raise security concerns under AG ¶ 7. Three are potentially applicable in this case:

- (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;
- (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
- (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 or exploitation.

Applicant's two brothers and two sisters are citizens and residents of Iran, a country that is clearly hostile to the United States.<sup>5</sup> It is considered the world's leading state sponsor of terrorism, and the government of Iran has committed numerous, serious human rights abuses against its people. His siblings' presence in Iran creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. It also creates a potential conflict of interest. AG ¶¶ 7(a) and (b) have been raised by the evidence. Applicant's minimal interest in the family home in Iran is insufficient to raise a disqualifying condition. SOR ¶ 1.c is resolved in Applicant's favor.

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<sup>5</sup> ISCR Case No. 05-03250 at 5 (App. Bd. Apr. 6, 2007).

Conditions that could mitigate Foreign Influence security concerns are provided under AG ¶ 8:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant has been in this country for more than 25 years and has been a U.S. citizen since 1993. His wife is an American citizen and his two children were born in the United States. However, because of his close family ties to Iran and the nature of the government of Iran, I am unable to find any of the mitigating conditions to be fully applicable.

### **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) 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant was born in Iran. He came to the U.S. when he was in his early twenties and became a U.S. citizen in 1993. His wife and two children are U.S. citizens. He has a stable work history and considerable U.S. assets. Applicant agreed with Department Counsel's characterization of the Iranian government and expressed disdain for its repressive regime.

I considered the totality of Applicant's family ties to Iran, a country that is clearly hostile to the United States, and the heavy burden an applicant carries when he or she has family members in a hostile country. Iran is the world's leading state sponsor of terrorism and has a dismal human rights record. His four siblings are citizens and residents of Iran. That raises considerable security concerns that Applicant was unable to mitigate.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the Foreign Influence security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

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

## **Conclusion**

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

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Edward W. Loughran  
Administrative Judge