



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-01260
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline H. Jeffreys, Esquire, Department Counsel  
For Applicant: Thomas M. Abbott, Esq.

July 28, 2008

**Decision**

---

HOGAN, Erin C., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), on February 15, 2007. On April 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, 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 April 24, 2008, Applicant answered the SOR and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on May 20, 2008. The case was assigned to me on May 27, 2008. On June 5, 2008, a Notice of Hearing was issued scheduling the hearing for June 25, 2008. The hearing was held as scheduled. The Government offered Government Exhibits (Gov) 1 - 2, which were admitted without objection. The Government requested that administrative notice be taken of one document with 12 attachments. The document was marked as

Administrative Notice Document I (Admin Not I) without objection. Applicant testified and submitted 17 exhibits which were admitted as Applicant Exhibits (AE) A - Q without objection. DOHA received the transcript of hearing on July 3, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **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 62-year-old senior electronic engineer employed with a Department of Defense contractor. He has worked for the same employer since 1975. The company has changed names several times due to mergers and buyouts. He has a bachelor of science degree in electronic engineering. He has held a security clearance since 1975 with no security incidents. He is divorced and has four adult sons. (Tr at 13-18, 20-22; Gov 1.)

Applicant was born and raised in Iran. He attended elementary and high school in Iran. His senior year he attended a boarding school in Tehran. He applied to attend the University of Tehran but was not accepted. In 1963, at the age of 18, Applicant immigrated to the U.S. He attended high school and night school in order to learn

English. He worked various jobs and attended college, eventually earning his college degree. (Tr at 13-15.)

Applicant met and married his first wife in the U.S. She is an American citizen, born and raised in the U.S. Two sons were born of the marriage. They are now 39 and 40. The marriage ended in divorce. In September 1982, Applicant remarried. His second wife is an American citizen, born and raised in the U.S. Two sons were born of the marriage. They are now 24 and 22. His second marriage ended in divorce in October 2003. (Tr at 20-23; Gov 1, sections 13/15, 14/15; AE P.) All of Applicant's sons were born and raised in the U.S. They have never traveled to Iran. None of his son's speak Farsi. His two older sons live in another state and operate their own businesses. His oldest son has two children, ages five and three. His second youngest son serves on active duty in the U.S. Navy. His youngest son resides with Applicant and is a college student. (Tr at 23-25.)

Applicant's brother is a U.S. citizen and resides in another state. He is a medical doctor. Applicant and his brother speak over the telephone about once a month. He last saw his brother four years ago when his brother attended a conference nearby the city where Applicant resides. (Tr at 28, 50, 55.)

His mother is 90-years-old and lives in the same city in Iran where Applicant grew up. His mother is a housewife. Applicant's father was a doctor. He passed away in the 1970s. His mother is a housewife. His sister is 58-years-old and resides in Iran. She takes care of his mother. She was an urban planner but Applicant is not sure what she does now. She used to be married but he is not sure of the status of her marriage. He no longer speaks to his mother on the telephone because she has difficulty hearing. The last time he spoke to his mother was about a year and half ago. He talks to his sister about two to three times a year to see how things are doing. Her son is an Iranian citizen currently attending college in a European country. Applicant is not sure what his nephew intends to do after graduation but is pretty sure that his nephew does not want to return to Iran. He used to talk on the telephone with his nephew about once a month. He now talks to his nephew about four times a year. His nephew calls him. None of his family members know what Applicant does for a living. (Tr at 25-33, 50; Gov 2 at 19, 29.)

Since moving to the U.S. in 1963, Applicant has not traveled back to Iran. He did not attend his father's funeral when he passed away in the 1970s because he did not think it was safe. He has no intention of traveling to Iran. His mother came to the U.S. to visit Applicant and his brother in the 1970s, and once again in 1985. His sister traveled to the U.S. with his mother in the 1970s. The last time Applicant physically saw his mother was in 1985. He has never traveled outside the U.S. after moving to the U.S. He does not send money to his mother, sister, or nephew. He does not intend to travel to Iran when his mother dies. He has no contact with any other Iranian citizens. He does not have Iranian friends. (Tr at 25-34.)

On March 30, 1973, Applicant became a U.S. citizen. He states that the U.S. is a land of opportunity. If you work hard and go the school, you can improve your situation in life. Applicant started out mowing lawns on weekends for \$2 and now earns \$100,000/year. (Tr at 34-35; AE I; AE M.) Applicant does not own any property in Iran and has no assets in Iran. Applicant owns his home in the U.S. All of his investment and retirement benefits are located in the U.S. (Tr at 36-37; AE K; AE L.)

In 2005, at the suggestion of his brother, Applicant obtained an Iranian passport. He obtained the passport in order to obtain a power of attorney for his sister to give her control over his mother's possessions should something happen to his mother. He had to have a valid Iranian passport in order to obtain a power of attorney that was valid in Iran. His brother did this as well. Applicant never used his Iranian passport for travel. He surrendered his Iranian passport to his security official, who destroyed it. He does not intend to apply for another Iranian passport. (Tr at 42-45, 51; Gov 1, section 7; Gov 2 at 2-4, 27-28, 33-54; AE O.)

Applicant's superiors, peers and subordinates all give Applicant stellar reviews of his work performance. (AE A-G.) They include a senior manager at Applicant's company who has known Applicant professionally for over 20 years. He states Applicant has unique technical abilities. Applicant's ability to work with others on a very diverse team has always impressed him. Applicant is a great mentor to younger, junior employees. He diligently follows company rules. (AE A.) The Security Manager at Applicant's company states she has known and worked with Applicant for over 30 years. She sees him on a weekly basis. She is not aware of any security violations by Applicant. She finds him trustworthy. (AE D.) The Vice President of Operations has known Applicant for 25 years. They started out in the same department when they began their careers. At present, Applicant works in the department that he leads. He states Applicant is an integral part of the organization's success. Applicant is a person of high integrity. In the past 25 years, he has not seen anything in Applicant's character, work ethic, or behavior that would cause him to question Applicant's qualification to retain his clearance. (AE G.) All of the individuals who submitted references on Applicant's behalf were aware of the security issues raised in the SOR.

Applicant's performance evaluations for 2005, 2006, and 2007 indicate that he meets or exceeds requirements. (AE H.) His work ethic has been recognized through numerous awards and decorations throughout this career. (AE N.) Applicant's son who serves on active duty in the U.S. Navy wrote a letter on his father's behalf. He currently serves on an aircraft carrier. He states that his father's love for America is one of the reasons why he enlisted in the Navy. His father is very proud that his son is serving in the U.S. Navy. Applicant is a great father who loves his family. He states that his father is always working and loves his work. He takes pride in being a mentor to the younger employees at work. (AE Q.)

## 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

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 because Applicant's mother and sister are citizens of and reside in Iran, a country that is clearly hostile to the U.S. An additional concern is raised because Applicant's nephew is a citizen of Iran, residing in Europe. 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*) may also raise security concerns. The Iranian government has committed serious human rights abuses against its people. Applicant's immediate family in Iran creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. It also creates a potential conflict of interest.

The guideline also includes conditions that could mitigate security concerns arising from Foreign Influence. I find the following Foreign Influence Mitigating Conditions (FI MC) apply to Applicant's case.

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 met that burden. While Applicant has family ties in Iran, the people he is closest to, his four sons and two grandchildren, are citizens of and reside in the U.S. While Applicant has contact with his family members overseas, he does not travel to Iran to visit them. He does not call them on a regular basis. He has never sent them money. It is unlikely that Applicant will be placed in a position to choose between his family members 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, 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. While Applicant's mother and sister reside in Iran, he has lived in the U.S. for most of his life. Applicant has lived in the U.S. since 1963 after moving here as an 18-year-old. He attended college in the U.S. He has been a U.S. citizen for 35 years. He has possessed a security clearance and worked in the defense industry for over 33 years. He has not traveled back to Iran since he immigrated to the United States 45 years ago. In fact, he has never traveled outside the U.S. He has not seen his mother since 1985. He did not travel to Iran to attend his father's funeral. He has no intention of returning to Iran. All of his assets are in the U.S. The people he cares most about, his four sons, were born and raised in the U.S. His sons have never traveled to Iran. Applicant's deep and longstanding relationships and loyalties in the U.S. indicate Applicant can be expected to resolve any conflict of interest in favor of U.S. interests. FI MC ¶ 8(b) applies.

Applicant's deep and longstanding relationships and loyalties in the U.S. outweigh any potential for conflict because of Applicant's relationship to his mother and sister who reside in Iran or his nephew, a citizen of Iran residing in Europe.

### **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. I considered the totality of Applicant's family ties to Iran, a country that is hostile to the U.S., and the heavy burden an applicant carries when he has family members in a hostile country. I considered that Applicant is a highly regarded engineer who has lived in the U.S. for over 45 of his 62 years. He became a U.S. citizen in 1973. He has never returned to Iran since moving to the U.S., even when his father passed away in the 1970s. Both of his wives were U.S. citizens. His children were born and raised in the U.S. They have never been to Iran. All of his children reside in the U.S. All of his assets are located in the U.S. His mother has visited him only twice during the 45 years he has lived in the U.S. He has not seen his mother in 23 years. He has worked with the defense industry since 1975. Over this 33 year period, he held a security clearance with no security violations. His superiors, peers and co-workers comment favorably about his integrity, character, and work ethic. While Applicant's family members living in Iran raise a potential security threat due to the very nature of familial relationships, Applicant's significant ties to the U.S. mitigate the security threat. His deep and longstanding relationships and loyalties in the U.S. strongly support the premise that Applicant would resolve any attempt to exert pressure, coercion, exploitation, or duress in favor of the U.S.

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. In Applicant's case, his significant personal relationships and contacts within the U.S. outweigh the concerns raised by having relatives who are citizens and reside in Iran. Overall, the record evidence leaves no questions or doubts as to Applicant's eligibility and suitability for a security clearance. Foreign Influence security concerns are 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 B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant



## **Conclusion**

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

---

ERIN C. HOGAN  
Administrative Judge