



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



In the matter of:)
)
-----) ISCR Case No. 08-01282
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro Se*

January 12, 2009

Decision

WESLEY, Roger C., Administrative Judge:

Statement of Case

On July 14, 2008, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on August 7, 2008, and requested a hearing. The case was assigned to me on September 23, 2008, and was scheduled for hearing on December 2, 2008. A hearing was held on December 2, 2008, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of three exhibits; Applicant relied on two witnesses (including himself) and one exhibit. The transcript (R.T.) was received on December 10, 2008. Based upon

a review of the case file, pleadings, exhibits, and testimony, eligibility to access classified information is denied.

Besides its two exhibits, the Government requested administrative notice of 17 documents: *Background Note: Iran*, U.S. Department of State (March 2008); *Country Specific Information, Iran*, U.S. Department of State (July 2008); *Travel Warning, Iran*, U.S. Department of State (January 2008); *Country Reports on Human Rights Practices - 2007, Iran*, U.S. Department of State (March 2008); *Country Reports on Terrorism, Chapter 3 - State Sponsors of Terrorism Overview*, U.S. Department of State (April 2008); *Iran: State Sponsors of Terrorism*, U.S. Department of State (September 2008); *The President of the U.S., Continuation of the National Emergency with Respect to Iran* (November 2006); *President George Bush, Message to the Congress of the U.S.* (March 2008); *Iran: Nuclear Intentions and Capabilities*, National Intelligence Estimate (November 2007); *Annual Threat Assessment of the Director of National Intelligence for the Senate Select Committee on Intelligence* (February 2008); *William J. Burns, Under Sec. For Political Affairs, U.S. Department of State, Testimony Before the Senate Foreign Relations Comm., the Strategic Challenges Posed by Iran* (July 2008); U.S. Maintains Pressure on Iran (March 2008); *UN Security Council Resolution 103 on Iran's Nuclear Program*, U.S. Department of State (April 2008); *Iranian Pleads Guilty to Attempted Exportation of Arms and Money Laundering*, U.S. Attorney's Office (April 2005); *New York Man Sentenced for Illegally Exporting Stolen NBC Night Vision Lenses for Delivery to Iran*, (August 2005); *Singapore Businessman Convicted of Secretly Diverting U.S. Military and Civilian Aircraft Parts to the Islamic Republic of Iran* (May 2006); *Pennsylvania Company Fined for Export Violations Involving Iran, UAE and Syria* (May 2006).

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292, at 4 n.1 (App. Bd. April 12, 2007); ISCR Case No. 02-24875, at 2 (App. Bd. October 12, 2006)(citing ISCR Case No. 02-18668, at 3 (App. Bd. Feb. 10, 2004)). Administrative notice is appropriate for noticing facts or government reports that are well known. See *Stein*, Administrative Law, Sec. 25.01 (Bender & Co. 2006). For good cause shown, administrative notice was granted with respect to the above-named background reports addressing the geopolitical situation in Iran. *Administrative notice was extended to the documents themselves*, consistent with the provisions of Rule 201 of Fed. R. Evid. This notice did not foreclose Applicant from challenging the accuracy and reliability of the information contained in the reports addressing Iran's current state.

Procedural Issues and Rulings

Before the close of the hearing, Applicant requested leave to supplement the record with written character endorsements. For good cause shown, Applicant was granted seven days to December 8, 2008, to supplement the record. The Government was afforded two days to respond. Within the time permitted, Applicant faxed endorsements from his chief executive officer (CEO) and facility clearance officer (FSO), which were, in turn, e-mailed to me. These submissions are admitted as Applicant's exhibits B and C.

Summary of Pleadings

Under Guideline B, Applicant is alleged to (a) have an aunt and uncle who are citizens and residents of Iran, (b) have an aunt who is employed as an accounting manager for an Iranian government department, (c) have an uncle who is retired from the same Iranian government department, (d) have five maternal aunts who are citizens and residents of Iran, (e) to have told an authorized DoD investigator in March 2007 that he could only be vulnerable to blackmail or coercion by foreign interests if his parents and /or brothers were in danger while traveling to Iran, and (f) to have told the same DoD investigator that he has not renounced his dual citizenship with Iran due to possible threats to his aunts and uncles currently residing in Iran.

For his answer to the SOR, Applicant admitted some of the allegations in the SOR with explanations, and denied others. He admitted to applying for and holding an Iranian passport to enable him to travel and visit his family in Iran on the two occasions alleged in the SOR, and only because Iranian authorities would not permit him to exit Iran without a valid Iranian passport (his was expired). He admitted to using his Iranian passport to enable him to enter and exit Iran, fearing that if he showed his U.S. passport it could be confiscated, and renewing his expired Iranian passport in 2003 to ensure his getting out of Iran. Applicant admitted, too, that his father-in-law and mother-in-law are citizens and residents of Iran, but claimed that it is unlikely that his in-laws would be pressured by Iranian authorities, and that if they were, he would resist any pressures and immediately report the event to his FSO and seek assistance from the proper authorities. Applicant denied exercising dual citizenship, claiming that neither Iran nor the U.S. recognize dual citizenship, since they do not have diplomatic relations with one another. Applicant provided additional background material about his emigration to the U.S., his educational pursuits in the U.S., his work history and professional reputation he enjoys within his company, and his maintained familial relationships.

Findings of Fact

Applicant is a 47-year-old information technology manager for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant's background

Applicant was born and raised in Iran and attended private schools there. He immigrated to the U.S. in 1978 at the age of 16 to pursue his education (R.T., at 72). At the time, Iran was an important ally of the U.S., and Applicant considered U.S.-Iran relations to be good (R.T., at 73-74). Shortly after his arrival in the U.S., he began to notice increasing anti-American demonstrations in Iran in the unfolding revolution in Iran that would culminate in the toppling of the Shah in 1979 (R.T., at 75-78). After completing his high school education in the U.S., Applicant studied in U.S. colleges and received a bachelor of arts degree in international relations in 1986 (see ex. 1; R.T., at 82-83).

Applicant applied for and was granted permanent residence status in 1986 (R.T., at 81-82). He became a naturalized U.S. citizen in April 1992 (see ex. 1; R.T., at 82). He obtained a U.S. passport in October 2000, and has continually possessed a valid one thereafter. Applicant renewed his expired Iranian passport in August 1997, once he learned he would need one to travel to Iran (R.T., at 105). He had permitted his Iranian passport to expire after obtaining his U.S. passport, and then subsequently renewing it. *See infra*.

Applicant's wife (W) was born in Iran in 1979, and was raised by Iranian parents who are citizens of Iran and still reside in that country. Applicant met W in 1997 while on a trip to Turkey to visit relatives (R.T., at 40-41). Applicant returned to Iran (for the first time since immigrating to the U.S.) in September 1999 to visit his own parents and meet W's parents (R.T., at 45-46, 87-88). Concerned about possible conscription into the Iranian Army as a dual national, he paid \$1,000.00 to buy out his military obligation before embarking on his trips to Iran (R.T., at 87).

When traveling to Iran in 1999, Applicant used his Iranian passport out of perceived necessity: He was advised that he could not enter and exit the country without a valid Iranian passport, irrespective of whether he was also a U.S. citizen who possessed a valid U.S. passport (see response; R.T. at 89-90). Iran and the U.S. have no diplomatic relations, and Applicant was impressed that Iran does not recognize an Iranian's citizen's dual citizenship with another country (R.T., at 90). Nevertheless, Applicant does not consider himself to be a dual citizen, but rather an exclusive citizen of the U.S. (R.T., at 91, 95-96)

W immigrated to the U.S. in November 2000 on a fiancé visa (R.T., at 41) that required she marry within 90 days of her arrival in the U.S. (R.T., at 41-42). W and Applicant married within 30 days of her arrival, and W became a naturalized U.S. citizen in 2005 (R.T., at 43). Only Applicant's parents and brother attended this wedding ceremony (R.T., at 55-56); W's parents remained in Iran (R.T., at 55). W has no political affiliations (R.T., at 47). Her parents have since applied for immigration to the U.S. and recently were interviewed at the U.S. Embassy in Dubai (R.T., at 51-52). W expects her parents' visas to be approved soon

Applicant and W returned to Iran in June 2003 to exchange their marriage vows in a formal wedding (R.T., at 54-55). They each relied on their Iranian passports for entry and exit into Iran. When Applicant showed his Iranian passport to Iranian airport authorities upon their arrival in Iran, he was told his passport had expired and would need to be renewed before he could depart from Iran (R.T., at 117-18). He showed the authorities his U.S. passport as well and was told it could not be used to facilitate his exit from the country; even though he was a dual U.S. citizen (R.T., at 93-94). To use his U.S. passport would require an Iranian visa, which Iranian authorities do not provide to its Iranian citizens (R.T., at 94, 119-22). So, Applicant renewed his Iranian passport while in Iran and used it in his return to the U.S. Applicant documents the surrender of his Iranian passport to his FSO in December 2008 (see ex. A; R.T., at 97). He hedged some on renouncing his Iranian citizenship.

Applicant would prefer to keep his Iranian citizenship to make it easier for him to return to Iran should the need arise (R.T., at 91). Expressly afforded an opportunity to consider an affirmative renunciation of his Iranian citizenship after the hearing and document his intentions, Applicant did not provide any post-hearing documentation.

W's parents are citizens and residents of Iran (R.T., at 49-50). Her father is a mechanical engineer for a publicly owned cement company (R.T., at 49). She does not know whether it is owned by the Iranian government. Her mother is a homemaker (R.T., at 50). Besides her parents, W has a brother who lives in the Ukraine. W's parents have recently taken their first steps towards eventually immigrating to the U.S. and recently were interviewed at the U.S. Embassy in Dubai (R.T., at 51-52, 111). Before they can obtain visas to travel to the U.S., however, they must complete another U.S. interview (R.T., at 100). While W expects her parents' visas to be approved soon, she could provide any specific time estimates for an approval date (R.T., at 60). Applicant and W love W's parents and maintain regular contact with them; specifically, W's talks with her parents monthly, while Applicant communicates with them only once every three months on average (R.T., at 61-62). Both are committed to protecting W's parents (R.T., at 63). They both expect W's parents to emigrate to the U.S. if and when visas are approved for them (R.T., at 60-61).

In 2007, W made a trip to Iran (without Applicant) to visit her parents who had been pressing her to come see them (R.T., at 58, 98-99). On this trip, W used her retained Iranian passport to enter and exit Iran; there were no other viable options available to her (R.T., at 65, 98). This passport is scheduled to expire soon, and Applicant will need to renew the passport should she ever elect to return to Iran (R.T., at 65-66). She made no public vow to surrender her Iranian passport, and retains the option to renew it should circumstances warrant that she return to Iran.

Neither Applicant nor W are aware of any potential pressures or coercive measures that could be applied to bear on any of Applicant/W's family members residing in the U.S. (his immediate family), or in Iran (W's family). Applicant assures that should he become aware of any pressures or coercion on any of his family members, he would resist the same and notify his FSO (R.T., at 101-02). If called to arms in a hypothetical war with Iran, Applicant would be willing to bear arms against Iran in behalf of the U.S. (R.T., at 110).

Applicant has never served in the Iranian military or voted in an Iranian election. He has no assets in Iran and considerable real estate (valued near \$800,000.00) and other assets (including shares in his company valued at around \$9,000.00 and a retirement account valued about \$30,000.00) in the U.S. (R.T., at 107). He estimates his U.S.-based net worth to be around \$900,000.00 (R.T., at 108). Applicant has no vested educational, medical, or retirement benefits in Iran and no contingency plans to obtain any. His parents immigrated to the U.S. a number of years ago and currently reside in the U.S. His only sibling is his brother who immigrated to the U.S. with Applicant in 1979 and (like Applicant) became a naturalized citizen of the U.S. His brother (who is divorced with no children) continues to reside in the U.S. (R.T., at 109). Applicant has had nothing to do with the Iranian government since immigrating to this country and has never worked for the Iranian government in any capacity. Applicant does have a living

aunt (contacts unclear) who resides in Iran, and a number of distant cousins “here and there” (R.T., at 113). To the best of his knowledge, none of these cousins have any employment or relationships with the Iranian government (R.T., at 114).

Political and economic background of Iran

According to official U.S. State Department documents, Iran is an Islamic republic that is constitutionally constructed and has a head of state, an elected president and counsel of ministers, a legislative body composed of a 290-member Islamic consultative assembly, and a judiciary (see *Background Note on Iran, supra*, at 5). Throughout its long history, Iran has been ruled by numerous dynasties. Following a nationalist uprising against the Shah in 1905, Iran enacted a limited constitution in 1906. Two years later, oil was discovered, and Iran began its steady ascension to a modern, secularized political system. Under the reign of Reza Shah Pahlavi (an Iranian officer, who seized control of the government in 1921), Iran enacted policies of modernization and secularization, established a central government and reasserted its authority over the tribes and provinces (see *Background Note on Iran, id.*, at 3). During the Allied occupation of western Iran in 1941, the Shah was forced to abdicate and was succeeded by his son, Mohammad Reza Pahlavi (see *Background Note on Iran, id.*).

Domestic turmoil swept Iran in 1978 as the result of heated religious and political opposition to the Shah’s rule and political/economic programs (especially the Shah’s internal security and intelligence service). And in February 1979, exiled religious leader Ayatollah Ruhollah Khomeini returned from France to direct a revolution resulting in a new, theocratic republic guided by Islamic principles. Iran’s 1979 constitution allocates the duties of the chosen religious leaders and governing bodies in such a way that their duties often overlap. Legislative issues on which the Majles (Iran’s legislative governing body) and the Council of Guardians (making up Iran’s religious leadership) fail to agree are resolved by the Council of Expediency (a body created by Ayatollah Khomeini in 1988). Following the Ayatollah’s death in June 1989, the Assembly of Experts (an elected body of senior clerics) chose the outgoing president of the republic (Ali Khamenei) to be the Ayatollah’s successor as national religious leader (see *Background Note on Iran, id.*, at 4).

Iran’s post-revolution has been marked by an eight-year war with Iraq, internal political struggles and unrest, and economic disorder. Its post-revolution regime has been associated with human rights violations and political turmoil, including the seizure of the U.S. Embassy in November 1979 by Iranian militants and the hostage taking of 52 Americans (see *Background Note on Iran, supra*, at 6). Succeeding power struggles have severely eroded the center and left of Iran’s political institutions, leaving only the clergy. Both human rights and state sponsored terrorism remain serious problems in Iran and the Middle East. According to State Department reports, Iran’s Islamic Revolutionary Guard Corps and Ministry of Intelligence and Security Forces have been directly involved in terrorist acts, and continue to support Palestinian groups with leadership cadres in Syria and Lebanese Hizballah to use terrorism in pursuit of their goals (see *Country Reports on Human Rights Practices 2007, supra*, at 1-5; *Country Reports on terrorism, Chapter 3 - State Sponsors of Terrorism Overview, supra*, at 1-2). State Department reports claim Iranian authorities continue to provide military support

and guidance to some Iraqi militant groups that target Coalition and Iraqi security forces and Iraqi civilians (see *Country Reports on Terrorism, Chapter 3 - State Sponsors of Terrorism Overview, id.*).

Long estranged from the West, Khomeini's regime charted regional goals that curtail the presence of the U.S. and other outside powers in the region. Iran's Islamic foreign policy continues to stress (1) vehement anti-U.S. and anti-Israel positions, (2) elimination of outside influence in the region, (3) support for Muslim political movements abroad, (4) critical support to non-state terrorist groups, and (5) considerable increase in diplomatic contacts with developing countries (see *U.S. Dept. of State Background Note on Iran, supra*; *Iran: Country Reports on Human Rights Practices-2007, supra*, at 1-16; *Country Reports on Terrorism 2007, Chapter 3 - State Sponsors of Terrorism Overview, supra*, at 1-2). In this vein, Iran maintains regular diplomatic and commercial relations with Russia and the former Soviet republics. Of special U.S. concern has been Russian sales of military equipment and technology to Iran (see *U.S. Dept. of State Background Note on Iran, id.*, at 8).

Potential obstacles to improved relations between Iran and the U.S. include Iranian efforts to acquire technology that could be used to develop nuclear weapons and other weapons of mass destruction; 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 (see *Statement of President George W. Bush, Message to the Congress of the U.S., supra*; *President of the U.S., Continuation of the National Emergency with Respect to Iran, supra*; *National Intelligence Estimate, Iran, Nuclear Intentions and Capabilities, supra*; *Annual Threat Assessment of the Director of National Intelligence for the Senate Select Committee on Intelligence, supra*).

The U.S. response to Iran's problematic policies and behavior has been to try to convince Iran to abandon its nuclear weapons ambitions, cease its support of terrorist groups, and begin the process of forging constructive partnerships in the region. Looking to the future, the U.S. has made it abundantly clear to the Iranian government that Iran has an historic opportunity to restore the confidence of the international community in its nuclear intentions and provide its own people important access to technology, nuclear energy, education, and foreign investment (see *Testimony of Under Secretary William J. Burns, The Strategic Challenges Posed by Iran, supra*, at 4-8). This dual track strategy of the U.S. is broad based and is designed to build cooperative relationships with Iran and promote Iran's relationship with the international community. The strategy has yet to produce any material results, and remains a work in progress.

State Department country reports cite significant restrictions on the right of citizens to change their government, summary executions (minors included), disappearances, torture and severe punishments (such as amputations and flogging), violence by vigilante groups with ties to the government, poor prison conditions, arbitrary arrest and detention (including prolonged solitary confinement), lack of judicial independence and fair public trials, political prisoners and detainees, excessive government violence in Kurdish areas and unknown groups in Arab regions of the country, severe restrictions on civil liberties and freedom of religion, official corruption, government transparency deficiencies, legal and societal discrimination against women,

ethnic and religious minorities, trafficking in persons, incitement of anti-Semitism, severe restriction of workers' rights, and child labor (see *Iran, Country Reports on Human Rights Practices-2007, supra*, at 1-24).

Addressing reports of human rights violations in Iran, the UN General Assembly adopted a human rights resolution on Iran in December 2005 that expressed serious concern at the continuing use of torture in Iran and cruel, trafficking in persons, inhuman and degrading treatment or punishment, such as floggings and amputations, as well as public executions (see *Iran, Country Reports on Human Rights Practices-2007, supra, id.*, at 3-24).

Even though Iran's constitution prohibits arbitrary arrest and detention, these practices remain common. Its regular and paramilitary security forces that share responsibility with Iranian police for law enforcement and maintaining order are reported to have committed numerous, serious human rights abuses in recent years (see *Iran, Country Reports on Human Rights Practices-2007, Iran, supra.*). Security forces responsible for arrest and detention often do not inform family members of a prisoner's welfare and locations, and often deny visits by family members and counsel.

State Department travel warnings urge U.S. citizens to carefully consider the risks of travel to Iran (see *Travel Warning, Iran, 2008, supra*), a country with which the U.S. does not currently have diplomatic or consular relations. Citing Iran's non-recognition of dual citizenship and general declination to permit the Swiss to provide protective services for U.S. citizens who are also Iranian nationals, Americans who travel to Iran are strongly encouraged to register through the State Department's travel registration website (see *Travel Warning, Iran, 2008, id.*).

Dual citizens residing or visiting in Iran are subject to all Iranian laws affecting U.S. citizens, as well as laws applicable to persons of Iranian nationality that impose special obligations on citizens of that country (see *Travel Warning, Iran, 2008, id.*; *Iran, Country Specific Information, supra*, at 1-2). Dual nationals remain subject to Iran's military service requirements and can be conscripted into service while on Iranian soil. While such conscripted service seems unlikely to confront Applicant, given his age, longstanding U.S. citizenship, and avowed intent not to return to Iran, it remains a possibility. Reports indicate, too, that Iranian security personnel may at times place foreign visitors under surveillance, and even arrest or detain Iranian-Americans suspected of "acting against national security" (see *Iran, Country Reports on Human Rights Practices-2007, supra*, at 5-6; *Iran, Country Specific Information, id.*, at 2-3).

Because the Iranian government does not recognize dual nationality and will treat U.S.-Iranian dual nationals as Iranian citizens, regardless of their U.S. naturalization status, dual nationals who enter Iran only on a U.S. passport risk detention absent persuasive proof of their formal renunciation or loss of their Iranian citizenship (see *Iran, Country Specific Information, Iran, supra*, at 1-2). Applicant and W each manifest considerable awareness of Iran's historical treatment of dual nationals, and have taken measures to accommodate Iranian border practices through their use of Iranian passports to enter and exit the country (see ex. 3; R.T., at 65, 93-94).

Character assessments

Applicant has received excellent endorsements from his company's management. His CEO describes Applicant as a dependable manager who has never given him reason to doubt his trustworthiness (see ex. B; R.T., at 103). Applicant's FSO characterizes Applicant as trustworthy and conscientious and a valued manager since joining his company in 2003 (see ex. C). The FSO expressed his familiarity with the oath of U.S. citizenship that Applicant took at his naturalization ceremony in 2003 (ex. C). This oath includes a renunciation of allegiance and fidelity to any foreign state or sovereign and a corresponding commitment to support and defend the Constitution and laws of the U.S. This recited oath does not include any expressed renunciation of foreign citizenship as a condition of acceptance of U.S. citizenship (see ex. C). Both Applicant and W are in agreement that Iranian recognition of their status as U.S. citizens, exclusively, requires an express act of renunciation by Applicant.

Policies

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by administrative judges in the decision making process covering DOHA cases. These Guidelines require the administrative judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the administrative judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the administrative judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Foreign Preference

The Concern: 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. See Adjudicative Guidelines (AG), ¶ 9.

Foreign Influence

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 United States citizens to obtain protected information and/or is associated with a risk of terrorism (see Adjudicative Guidelines, ¶ 6).

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted facts alleged in the Statement of Reasons, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

Analysis

Born and raised in Iran, Applicant became a naturalized U.S. citizen in 1992. He met his wife (a dual citizen with Iran) in 1997, and married her in 1999. Security concerns focus on Applicant's exercise of dual citizenship with Iran through his possession and use of an Iranian passport. Security concerns are also directed at the citizenship and residency status of W's parents who are Iranian citizens residing in Iran. Applicant and his wife and family have deep roots in Iran, a country historically known to practice terrorism, and to exercise repression and human rights abuses against its own citizens, as well as dual citizens who visit the country.

Foreign preference issues

Dual citizenship concerns necessarily entail allegiance assessments and invite critical considerations over acts indicating a preference or not for the interests of the foreign country over the interests of the U.S. The issues, as such, raise concerns over Applicant's preference for a foreign country over the U.S.

By virtue of his birth to parents of Iranian descent, Applicant was endowed with Iranian citizenship, which could be renounced by his expressed intention or actions. This, Applicant has never done, out of love for his native country (not its government). Since becoming a naturalized U.S. citizen, Applicant has taken no actions and exercised no Iranian privileges that can be fairly characterized as active indicia of dual citizenship, save for his limited use of his Iranian passport when traveling to Iran to visit his spouse and her family. He has not voted in Iranian elections or served in the Iranian military.

By all accounts, all of Applicant's assets are located in the U.S., where he has resided since 1979. He has accepted no preferential educational, medical or other benefits from Iran (save for renewing and using his Iranian passport) since becoming a naturalized U.S. citizen. Nor has he ever performed or attempted to perform duties, or otherwise acted so as to serve the interests of Iran in preference to the interests of the U.S. since becoming a naturalized U.S. citizen.

Because Applicant possessed and used his Iranian passport on several occasions before surrendering it to his FSO in 2008, the Government may apply disqualifying condition (DC) ¶ 10(a), which provides:

exercise of any right, privilege or obligations 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 foreign passport;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country; and
- (7) voting in a foreign election.

However, Applicant's use of his Iranian passport was limited to the three times he used it to enter and exit Iran in 1999 and 2003. He never voted in an Iranian election and never served in the Iranian military. He has never sought to hold political office in Iran or used his Iranian citizenship to protect his financial or business interests. His demonstrated loyalties and commitments have consistently been directed to the U.S. and its institutions and core values.

By relinquishing his Iranian passport, Applicant has complied with the mitigation requirements of MC ¶ 11 (e), "the passport has been destroyed, surrendered to the

cognizant security authority, or otherwise invalidated,” of AG ¶ 18. And while his surrendering his Iranian passport to his assistant FSO does not automatically mitigate any past use of the passport to enter and exit Iran, his recited limited use of the passport is insufficient by itself to demonstrate Applicant’s preference for Iran over the U.S.

Failure to satisfy a mitigating condition may be taken into account when assessing an applicant’s overall claim of extenuation, mitigation, or changed circumstances, but may not be turned into a disqualifying condition. See ISCR Case No. 01-02270 (Appeal Bd. Aug. 29, 2003). That Applicant may wish to keep his Iranian citizenship out of love for his birth country is not sufficient reason either to preclude him from mitigating security concerns over his holding dual citizenship, if those rights do not entail his exacting preferential retirement privileges from Iran.

Whole person precepts favor Applicant’s preference for the U.S. over Iran. He is a U.S. citizen by birth and has always demonstrated his loyalty and commitments to the U.S. His principal financial interests are situated in the U.S. And his time spent in Iran on his two acknowledged visits were each relatively brief and devoted to visits to W and her family. The high praise he is accorded by his program manager and FSO reinforce his credible assurances that he is a patriotic U.S. citizen dedicated to protecting U.S. security interests.

Overall, Applicant persuades that his preference is with the U.S. He satisfies his proof burden in several ways: demonstrated lack of any prior exercise of any privileges associated with his Iranian citizenship, save for his limited use of his Iranian passport. Applicant absolves himself of foreign preference concerns and carries his evidentiary burden on the presented issue of whether his preference lies with his adopted country (U.S.) or his native country (Iran). Favorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.d of Guideline C.

Foreign influence issues

The Government also urges security concerns over risks associated with Applicant’s wife (a naturalized U.S. citizen who retains dual citizenship with Iran and an Iranian passport) and her parents, who are citizens of Iran and reside there. Key to the Government’s foreign influence concerns are W’s possession and use of an Iranian passport to visit her parents in Iran. This close relationship between Applicant, W and her parents makes them potentially vulnerable to coercion and non-coercive measures because of where W’s parents live and her travel access to them. Because Iranian government military and intelligence authorities have a history of violating Iranian and international laws and diplomatic protocols, they are more likely to use improper and/or illegal means to obtain classified information in Applicant’s possession or control through W and her parents.

By virtue of the Iranian citizenship and residency of W’s parents in Iran and W’s personal access to them through her use and retention of an Iranian passport, they present potential heightened security risks covered by 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 resident in a foreign country if that contact creates a

heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion,” of the Adjudication Guidelines for foreign influence. The citizenship/residence status of these family members in Iran pose potential concerns for Applicant because of the risks of undue foreign influence that could compromise sensitive or classified information under Applicant's possession and/or control.

Although none of W's family have any identified Iranian prior military or government service, or other demonstrated links to the Iranian government, they remain vulnerable to potential compromise and coercion for so long as they reside in Iran. Were either of these family members to be placed in a hostage situation, Applicant could be subject to conflicts over ensuring his family's well being and protecting classified information. For this reason, DC 7(b), “connection 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,” is applicability to the facts of this case. True, none of W's immediate family residing in Iran have any history to date of being subjected to any coercion or influence. These historical antecedents do limit the severity of a conflict situation. However, the absence of any past coercive measures taken by Iranian authorities does not absolve Applicant from coercive risks in the future given Iran's rich history of hostage taking and abusive measures taken against its own citizens.

Still, upon fully considering Applicant's explanations about his wife's strong relationships with her parents, W's own accounts of her visits and regular contacts with her parents residing in Iran, and W's continued access to her parents through her retained Iranian passport, risks of undue foreign influence on Applicant, his wife and her family members residing in Iran, cannot be safely discounted. Applicant/W's contacts with W's parents are significant and ongoing (though quite understandable), and are clearly of the magnitude that could make them subject to a heightened security risk of pressure or compromise under Guideline B.

The Adjudicative Guidelines governing security clearances do not dictate *per se* results or mandate particular outcomes for any chosen set of guidelines covering risks of foreign influence. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing. Personnel security assessments necessarily embrace similar risk assessments under the new Directive guidelines for assessing foreign influence risks and concerns associated with the individual's having family abroad, which include both common sense assessments of country risks and information available from public sources.

Unlike the old Adjudicative Guidelines, though, the new ones do take into account the country's demonstrated relations with the U.S. as an important consideration in gauging whether the particular relatives with citizenship and residency elsewhere create a heightened security risk. The geopolitical aims and policies of the particular foreign regime involved do matter.

As demonstrated, Iran has long been known to be a repressive country, who has committed numerous, serious human rights abuses in recent years, and shown little respect for the rule of law. The U.S. has no diplomatic relations with Iran. Iran remains a country on the State Department's state terrorist list, and one with a known history of hostage taking and human rights abuses of wide magnitude and scope. Iran is consistently characterized as a country hostile to American political and security interests since the 1979 fall of the Shah of Iran and ensuing establishment of an Islamic republic with close ties and support to non-state terrorist groups. Based on reported terrorist activities in the country and in other countries in the region with support links to Iran, Iran cannot be deemed to provide an acceptable political and security environment for managing hostage risks. Without such assurances, no reasonable conclusions can be reached that Applicant's wife (for so long as she holds for potential use her Iranian passport) and parents are not in a position to be exploited by Iranian authorities.

Based on Applicant's case-specific circumstances, MC 8(a), "the nature of the relationships with foreign persons, the country in which these persons are located, or the persons or activities of these 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 a foreign individual, group, organization, or government and the interests of the U.S." is not available to Applicant. Neither Applicant nor his wife and parents residing in Iran can be characterized as sufficiently insulated from potential pressures and influence from the Iranian government and its military and intelligence officials to warrant application of this mitigating condition.

Of some benefit to Applicant is 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 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." Applicant's demonstrated loyalty and commitment to the U.S. and its institutions and values and the absence of any history of coercive measures taken against any of W's family members are well supported in this administrative record and Applicant's very limited contacts and ties with these same aunts and uncles

Applicant's demonstrated loyalty, patriotism, and professional commitments to the U.S., while considerable, are not enough to neutralize all potential conflicts that are implicit in his relationships with his spouse and his wife's parents. MC 8(c), "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create risk for foreign influence or exploitation," has some applicability based on Applicant's own infrequent contacts with his wife's parents residing in Iran. Application of MC 8(c) is necessarily very limited, though, because of the frequent communications W maintains with her parents residing in Iran.

One other mitigating condition has mixed application to Applicant's situation. MC 8(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," has some prospective value based on Applicant's assurances of reporting his travel plans to Iran, and his long absence from the country (no visits since

2003). But there is really no documented record of Applicant's prior reporting of his contacts with members of his wife's family, respectively, to warrant any more than minimal consideration at this time. Historically, our Appeal Board has accorded very little weight to stated intentions to take corrective steps in a hypothetical set of circumstances, absent record evidence that an applicant has acted similarly under comparable circumstances. See ISCR Case No. 07-00029, at 4 (App. Bd. Dec. 7, 2007); ISCR Case No. 06-24575, at 4 (App. Bd. Nov. 9, 2007).

Given that Iran remains a hostile country with no diplomatic relations with the U.S., and one that lacks a secure infrastructure and track record for respecting human rights and the rule of law, the risk of a pressure or influence situation involving an immediate or extended family member of Applicant's cannot be safely discounted. Iran's strategic location and political character, W's retention of her Iranian passport, and the residency of her parents in Iran, all combine to create security concerns over risks of direct or indirect pressure or influence of a family member of Applicant's by Iranian authorities.

Security concerns over W's possession of an Iranian passport and strong Applicant/W concerns over the well being of W's parents residing in Iran are significant and promise to remain as long as (a) the parents continue to reside in Iran and (b) Iran remains a country hostile to geopolitical U.S. interests. These concerns are not sufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand risks of exploitation and pressure attributable to his familial relationships and contacts with his wife's parents domiciled in Iran.

Whole person assessment does not permit mitigation of Applicant's exposure to potential painful choices over ensuring the safety and well being of W and her parents and protecting U.S. national security interests. To his credit, Applicant is a fully Americanized U.S. citizen with demonstrated strong loyalties and commitments to U.S. core values. The trust he has inspired with his manager and FSO and promises to report any Iranian pressures or contacts to his FSO are encouraging indicators he cannot be pressured or coerced.

After carefully considering Applicant's familial connections in the U.S. and Iran and the risks of Applicant submission to Iranian pressures should W and/or her parents be pressured or coerced by Iranian authorities at some time in the foreseeable future, the weighted risks of a compromise remain too substantial to become manageable ones at this time under a whole person assessment of all of the critical circumstances considered in this case.

Overall, any potential security concerns attributable to Applicant's relations with his wife and their respective family members residing in Iran are insufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand risks of undue influence attributable to his wife's status with her Iranian passport and familial relationships with her parents in Iran. Unfavorable conclusions warrant with respect to the allegations covered by sub-paragraphs 1.a and 1.b of Guideline B.

In reaching my decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in E2(a) of the Adjudicative Process of Enclosure 2 of the Directive.

Formal Findings

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE C (FOREIGN PREFERENCE);	FOR APPLICANT
Sub-paras. 1.a through 1.d:	FOR APPLICANT
GUIDELINE B: (FOREIGN INFLUENCE):	AGAINST APPLICANT
Sub-paras. 1.a and 1.b:	AGAINST APPLICANT

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge