



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



In the matter of: )  
 )  
----- ) ISCR Case No. 08-02864  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esquire, Department Counsel  
For Applicant: Alan V. Edmunds, Esquire

September 16, 2009

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant was born in the United States. Applicant, his father, brother, and two uncles have connections to Iran, Germany, or both countries. However, Applicant has not been to Iran, or communicated with anyone living in Iran for more than 15 years. Applicant has more significant connections to Germany. Applicant terminated his access to his German passport. He has significantly greater contacts with the United States than with Germany. He can be expected to resolve any conflict of interest in favor of U.S. interests. Foreign preference and foreign influence security concerns are mitigated. Eligibility for access to classified information is granted.

**Statement of the Case**

On November 3, 2005, Applicant submitted a Security Clearance Application (e-QIP version) (hereinafter SF-86) (Government Exhibit (GE) 1). On December 8, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, alleging security concerns under Guidelines C (Foreign Preference) and B (Foreign Influence) (GE 7). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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. The SOR 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 him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On January 12, 2009, Applicant responded to the SOR and requested a hearing before an administrative judge (GE 8). On February 10, 2009, Department Counsel was prepared to proceed. On February 11, 2009, the case was assigned to an administrative judge. On March 10, 2009, the case was transferred to another administrative judge. On March 16, 2009, DOHA issued a hearing notice setting the hearing for April 21, 2009 (GE 6). Applicant requested a delay in his hearing, and the delay was approved. The case was then transferred to me on April 16, 2009. On April 17, 2009, DOHA issued a hearing notice setting the hearing for May 21, 2009 (GE 4). The hearing was held on May 21, 2009, as scheduled. At the hearing, Department Counsel offered three exhibits (GE 1-3) (Transcript (Tr.) 17-18), and Applicant offered 12 exhibits (Tr. 18-19; AE A-L). There were no objections, and I admitted GE 1-3 (Tr. 18), and AE A-L (Tr. 19). Additionally, I admitted the SOR, response to the SOR and the hearing notices (GE 4-8). On May 29, 2009, I received the hearing transcript. I granted several post-hearing delays to give Applicant time to divest himself of his property in Germany (Hearing Exhibit I). On June 10, 2009, Applicant submitted a letter from an attorney about transfer of his property in Germany (AE M). Department Counsel did not object to the admission of this document, and I admitted it into evidence.

### **Procedural Ruling**

Department Counsel requested administrative notice of facts concerning the Islamic Republic of Iran (hereinafter Iran) (Tr. 10-11). Department Counsel provided supporting documents to show detail and context for these facts in the Administrative Notice request. Applicant and Department Counsel did not object to me taking administrative notice of all of the facts in all of the documents (Tr. 10-11). See the Iran section of the Findings of Fact of this decision, *infra*, for the material facts from Department Counsel's submissions on Iran. During the hearing, it became apparent that Applicant has significantly stronger connections to Germany than to Iran. I advised the parties that I would be taking administrative notice of materials from the Department of State website pertaining to Germany (Tr. 65). There was no objection to my proposal (Tr. 65). The document from the Department of State website, "Background Note: Germany" (June 2009), available at <http://www.state.gov/r/pa/ei/bgn/3997.htm> is labeled Hearing Exhibit II and attached to Applicant's Exhibits.

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. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice in ISCR

proceedings is accorded to facts that are either well known or from government reports. See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

### **Findings of Fact<sup>1</sup>**

Applicant admitted the SOR allegations in his response to the SOR (GE 8). His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 33-year-old senior research scientist (Tr. 21-22). Applicant does not currently possess a security clearance; however, he needs a clearance to enhance his employment (Tr. 21). Applicant earned a bachelor's degree in mathematics and computer science, and a master's degree in computer science in the United States (Tr. 22). He registered for the U.S. selective service system (Tr. 24). His professional goal is to improve the cyber defenses of the United States (Tr. 28).

Applicant was born in the United States. When he was about six months old, Applicant and his family moved to Germany (Tr. 22-23, 36). After completing high school in Germany, Applicant moved back to the United States when he was 17 (Tr. 23, 36). When he was in high school and during the summers when he was in college, he worked in Germany (Tr. 37). Applicant has never married and does not have any children (Tr. 33, 35). He has not served in the U.S. or German military (Tr. 24, 35).

Applicant has one brother and no sisters (Tr. 22). His brother is a dual citizen of the United States and Germany, who currently resides in Germany (Tr. 23).

### **Foreign preference and Germany**

Although Applicant was born in the United States, he received his German citizenship through his mother, who was a German citizen (Tr. 34). Applicant has held a German passport since he reached the age of 18 (Tr. 39). Applicant reapplied for a German passport, which was issued in July 2003 (SOR ¶ 1.a; Tr. 38). Applicant most recently used his German passport to enter Germany and the European Union in August 2005 and in 2006 (SOR ¶ 1.b; Tr. 40). On November 6, 2008, Applicant surrendered his German passport to his facility security officer (Tr. 26, 37-38; AE A).

Applicant admitted in his SOR response that he used his German citizenship to protect his financial interests in rental and interest income from 1996 to 2008 (SOR ¶ 1.c; GE 8). He could not give any examples of how his German citizenship made any difference in his financial interests (Tr. 47). He explained that his SOR response was his agreement with DOHA's interpretation of the information he provided. As an example of benefits received from the German government, in 2000, Applicant had his wisdom teeth removed in Germany (Tr. 45). His father paid for the portion not paid by the German government (Tr. 46). He has never voted in a German election (Tr. 46). He is

---

<sup>1</sup>The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

not registered to vote in Germany (Tr. 46). He does not have any retirement accounts in Germany (Tr. 46). Although he has a German driver's license, he does not have a German residency registration (Tr. 50).

On December 13, 2007, Applicant told an Office of Personnel Management (OPM) investigator that he was not willing to renounce his German citizenship (SOR ¶ 1.d). Applicant is a German citizen and he intends to remain a German citizen (Tr. 34). On July 22, 2008, Applicant responded to a DOHA interrogatory and said that he had a duty and obligation to follow Germany's law and fulfill the responsibilities of a German citizen (SOR ¶ 1.e).

On November 12, 2008, Applicant responded to a DOHA interrogatory and stated that if a military conflict arose between Germany and the United States, he had "no automatic" answer about which side he would choose (SOR ¶ 1.f). He also said he is bound by the laws of the United States and the laws of Germany, and he intended to keep his obligations to both countries (SOR ¶ 1.g). When his counsel asked him about his allegiance to the United States or Germany, Applicant said, "I will not violate the U.S. laws or Constitution" (Tr. 25).

At his hearing, Applicant explained that if there was a conflict between the United States and Germany he would side with the United States (Tr. 48). He did not want to serve in the German military (Tr. 25). He does not intend to move to Germany (Tr. 48). However, if he was unemployed in the United States, he would consider moving to Germany for employment (Tr. 49). Applicant has a stronger relationship to the United States than to Germany because he has lived his adult life in the United States (Tr. 49). The United States has provided his post-secondary education (Tr. 49). He pays taxes to the United States (Tr. 49). He has an uncle and some cousins who live in the United States (Tr. 50).

### **Foreign Influence of Iran and Germany**

Applicant's father is a dual citizen of Iran and Germany, who resides in Germany. His father is a 78-year-old retiree (Tr. 56). Applicant contacts his father about once a week by telephone and by email about once a month (SOR ¶ 2.a). His father has family members living in Iran (SOR ¶ 2.b). His father practiced medicine in Germany for many years and is now a retired physician (Tr. 29, 51). He retired in the early 1990s (Tr. 30). Applicant's father visits Iran about once each year (Tr. 56). Applicant does not speak Persian and his communication with his Iranian relatives is very limited (Tr. 59). Applicant went to Iran twice when he was 14 or 15, and then did not return (Tr. 63). He does not intend to travel to Iran in the future (Tr. 63). The last time that he talked to a relative living in Iran was when he visited Iran (Tr. 64).

Applicant's mother is a citizen of Germany, who resides in Germany (SOR ¶ 2.c). He contacted his mother about once a week by telephone and by email about once a month (SOR ¶ 2.c). His mother passed away shortly before his hearing, and he traveled to Germany for her funeral in June 2009 (Tr. 26). He used his U.S. passport to secure his planned trip to Germany for her funeral (Tr. 26).

Applicant's brother is a dual citizen of Germany and the United States, who resides in Germany (SOR ¶ 2.d; Tr. 53). His brother lived in the United States for two years in the early 1990s and then returned to Germany (Tr. 53). He is in contact with his brother by telephone about once a month (SOR ¶ 2.d). His brother was drafted into and served in the German military for the required time period (Tr. 53). His brother works for a private company in Germany (Tr. 53). His brother is not married (Tr. 54).

Applicant's uncle (A), who lives in the United States, was a professor at an Iranian University during the 1980s. Uncle A has traveled back to Iran as recently as 2008 (SOR ¶ 2.e). Uncle A has lived in the United States since the 1990s (Tr. 57). Uncle A is probably still an Iranian citizen (Tr. 58). Applicant did not think uncle A was receiving a pension from the Iranian government (Tr. 58).

Applicant's uncle (M) was a city civil servant in Iran (SOR ¶ 2.f; Tr. 54). He is currently retired (Tr. 55). Applicant has not had any contact with uncle M for many years (Tr. 56). Applicant's father probably had contact with uncle M; however, Applicant did not know the extent of the contact (Tr. 56).

Applicant's uncle (H) lives in France and retains his Iranian citizenship (Tr. 59). Applicant met uncle H when he visited France several years ago (Tr. 59).

Applicant co-owned a house and rental property located in Germany with his brother (SOR ¶ 2.g). On December 31, 2008, the German house was sold (Tr. 30). Applicant's share of the sales proceeds was about 20,000 Euros (Tr. 40). He deposited the 20,000 Euros in his U.S. bank account (Tr. 41).

Applicant has a half interest in another German property with an appraised value of approximately 700,000 Euros (SOR ¶ 2.g; Tr. 41-42). His brother is a co-owner (Tr. 41-42). This property is a two-family unit, and his father lives in part of the dwelling (Tr. 41). Applicant's father used part of the unit several years ago as commercial office space (Tr. 44). There is a mortgage of 20,000 Euros on the property (Tr. 46). The rent has varied from about 300 Euros to about 3,000 Euros per month (Tr. 43). Applicant stopped receiving any rental income from the property in November or December of 2008 (Tr. 42). They are trying to sell the property for about 600,000 Euros (Tr. 43). He does not own any other properties in Germany (Tr. 34, 47). On June 10, 2009, Applicant provided a letter from his German attorney indicating confirmation of a "contract of mandate regarding the sale of [his] real estate . . . . After consultation with the tax consultant, [his attorney] will submit a proposal for further proceedings" (AE M).

Applicant has a bank account in Germany valued at about 6,000 Euros (SOR ¶ 2.h; Tr. 44). At the hearing, Applicant said he intended to close the account (Tr. 30).

Applicant traveled to Germany in 1999, 2000, 2001, 2002, 2003, 2004, and 2005 to visit family members and friends (SOR ¶ 2.i). Applicant has three friends in Germany, and he visits them when he goes to Germany (Tr. 59, 60). He does not regularly

communicate with one of his friends (Tr. 60). He sends an email or calls the other two friends about once a month (Tr. 61-62).

Applicant does not have a criminal record (Tr. 33). He owns his home in the United States, which is valued at about \$87,000 (Tr. 35). His home does not have a mortgage (Tr. 35). He has about \$30,000 in his U.S. savings and checking accounts (Tr. 35). He has about \$10,000 in his U.S. IRA and about \$25,000 in his U.S. 401(K) plan (Tr. 35).

## References

Applicant provided several good performance evaluations from his employers (Tr. 26; AE B-D). He received a marketing award from his employer (Tr. 28; AE H). He completed 22 hours of community emergency response training to assist him as a volunteer with the community emergency response team (Tr. 27; AE F, G, I).

Appellant provided a letter from another friend, who has known him for six years.<sup>2</sup> She has lived with Applicant and traveled to Germany with Applicant. She described him as honest, caring, and helpful. Applicant is civic-minded and patriotic. He actively participated at caucus meetings and other U.S. election activities.

Applicant's friend and colleague of many years described him as a "role model of excellence and integrity" (AE E). He has made an influential, positive impact on his friend's life (AE E).

Another of Applicant's friends and colleagues, who has known him since 2007, described him as a "gifted individual with a strong sense of duty and responsibility to the organization he works for" and the U.S. government (AE K). He indicated Applicant is loyal, honest, thoughtful, and generous with a "true desire to improve the country he lives in" (AE J). Applicant's talent, character, and qualifications make him a valuable asset to the United States.

## Iran<sup>3</sup>

Iran is a constitutional, theocratic Islamic republic in which Shi'a Muslim clergy dominate the key power structures and ultimate political authority is vested in a learned religious scholar. Iran engages in clandestine efforts to acquire nuclear weapons and other weapons of mass destruction (WMD), sponsors international terrorism, intervenes in the internal affairs of Iraq, undermines the Middle East peace process, and violates the human rights of the Iranian people. The United States and its allies are attempting to block Iran's goals of obtaining nuclear weapons and other WMD and to counter Iran's efforts to destabilize Iraq and other Middle East countries. Iran has sought to illegally obtain U.S. military equipment and other sensitive technology.

---

<sup>2</sup> A May 19, 2009, letter from his friend provides the source for the facts in this paragraph.

<sup>3</sup>The facts in the section concerning Iran are from the Department Counsel's documents submitted for Administrative Notice.

Iran is one of the most active state sponsors of terrorism. The United States is concerned about the possibility that terrorists could eventually obtain WMD from Iran. Iran supports terrorists who attack Israel and have encouraged, facilitated and engaged in sectarian violence in Iraq.

Iranian born, naturalized U.S. citizens, should carefully consider the risks of travel in Iran because they are still considered Iranian citizens by Iranian authorities. Iran does not recognize dual citizenship. The Iranian government has harassed and detained dual citizens of the United States and Iran.

The Iranian government has a poor human rights record. The Iranian government sponsors torture, stoning, amputation and other severe punishments of Iranian citizens. Civil liberties in Iran are severely restricted.

### **Germany<sup>4</sup>**

The relationship between Germany and the United States has been close since the end of World War II. Germany is a key partner in U.S. relations with Europeans in the North Atlantic Treaty Organization (NATO) and the European Union.

More than 7 million Germans have immigrated over the last three centuries, and today nearly a quarter of U.S. citizens claim German ancestry. U.S. policy toward Germany is to preserve a close and vital relationship with Germany, not only as friends and trading partners, but also as allies. During the 45 years in which Germany was divided, the large American military presence in West Germany showed the U.S. commitment to preserving peace and security in Europe.

As NATO allies, the United States and Germany work closely together to maintain peace and freedom, especially in Europe with recent emphasis on peace keeping in the Balkans. Germany is an important contributor to our common effort in Afghanistan, providing about 3,500 military personnel to the NATO ISAF mission, making it the third-largest troop contributor after the United States and the United Kingdom.

Germany is a U.S. ally in the campaign against terrorism. The United States and Germany share a common commitment to an open and expanding world economy. Personal ties between the United States and Germany extend beyond immigration to include extensive foreign exchange programs, vast tourism in both directions, and the presence in Germany of large numbers of American military personnel and their dependents.

The United States is Germany's second-largest trading partner. Two-way trade in goods totaled \$152 billion in 2008. Major U.S. export categories include aircraft,

---

<sup>4</sup> The facts in this section concerning Germany are from the U.S. State Department website, "Background Note: Germany," (June 2009). See Procedural Ruling section, *supra*, at 2.

electrical equipment, telecommunications equipment, data processing equipment, and motor vehicles and parts.

## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the Applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [A]pplicant concerned.” See Exec. Or. 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the Applicant that may disqualify the Applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the



criteria listed therein and an Applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the Applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An Applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

### **Analysis**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude Guidelines C (Foreign Preference) and B (Foreign Influence) are the relevant security concerns with respect to the allegations set forth in the SOR.

### **Foreign Preference**

AG ¶ 9 articulates the Government's concern about foreign preference, stating, "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." Conditions under AG ¶ 10 that could raise a security concern and may be disqualifying in this case include:

(a) 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 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.

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

Applicant became a U.S. citizen by virtue of his birth in the United States. His parents took him to Germany when he was about six months old, where he was raised, received educational and medical benefits, and exercised other attributes of German citizenship. He returned to the United States when he was 17 years old; however, he obtained and used a German passport after returning to the United States. Disqualifying conditions under AG ¶¶ 10(a)(1) and 10(a)(3) apply. Although he admitted in his SOR response that he used his German “citizenship to protect [his German] financial or business interests,” at his hearing he said he was agreeing with DOHA’s interpretation in the SOR of his conduct. There was no record evidence of a specific advantage he received in his business or financial relationships due to his German citizenship. AG ¶ 10(a)(5) is not established. Applicant made several statements in response to DOHA interrogatories that showed he had not fully abandoned his relationship with Germany. He said he would obey the laws of Germany; he was not willing to renounce his German citizenship; and he wanted to retain his German citizenship. He said he would comply with the requirements of German citizenship. These statements show a sufficient loyalty or bond to Germany to establish AG ¶ 10(d).

Under AG ¶ 11, conditions that could mitigate security concerns include:

(a) dual citizenship is based solely on parents’ citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship;

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) use of a foreign passport is approved by the cognizant security authority;

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and

(f) the vote in a foreign election was encouraged by the United States Government.

Applicant's exercise of the rights, privileges, or obligations of German citizenship occurred when Applicant was a minor, except for his possession and use of his German passport to enter Germany. On November 6, 2008, Applicant surrendered his German passport to his facility security officer. AG ¶¶ 11(c) and 11(e) apply. The applicability of these two mitigating conditions cannot be applied to fully mitigate Guideline C concerns because his statements responding to interrogatories showing some loyalty and bond to Germany are more problematic.<sup>5</sup> Such concerns are mitigated under the Whole Person Concept, *infra*.

### **Foreign Influence**

AG ¶ 6 explains the security concern about "foreign contacts and interests" stating:

if the individual has divided loyalties or foreign financial interests, [he or she] 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.

AG ¶ 7 indicates two conditions that could raise a security concern and may be disqualifying 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; and

(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.

Applicant was born in the United States and moved to Germany when he was six months old. He spent the next 17 years in Germany. He attended German primary and secondary schools. He received medical, educational, and other benefits from the German government. After returning to the United States, he used a German passport

---

<sup>5</sup> See ISCR Case No. 08-05869 at 5 (App. Bd. Jul. 24, 2009) (deciding that these two mitigating conditions were insufficient to mitigate "profound consequences of a voluntary decision by a U.S. citizen to serve in [Australia's] military" under Guideline C).

to enter Germany almost every year for the last nine years. His father and brother are citizens of Germany. His brother is also a citizen of the United States. Applicant communicates frequently with his father, brother, and two German friends. Additionally, his father goes to Iran annually and communicates frequently with his family in Iran. Applicant's father and uncles are Iranian citizens. One of Applicant's uncles and some cousins live in Iran.

The mere possession of close family ties with a person living in a foreign country or who is a citizen of a foreign country, is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an Applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence collection operations against the United States. The relationship of Iran with the United States, places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his and his father's relationship with family members who are citizens of Iran or living in Iran do not pose a security risk. Additionally, Applicant's relationships with his father, brother, and two German friends living in Germany, and his statements about his German citizenship raise security concerns, although to a much lesser degree because of Germany's close relationship with the United States, adherence to the rule of law, and democratic government.

Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to protect his family members living in Iran from harm, pressure, enticement, or coercion.<sup>6</sup> With Iran's negative human rights record, support for terrorism, and the high levels of crime in Iran as well as other political, economic and military problems in the country, it is conceivable that anyone living in Iran might be targeted by governmental or non-governmental criminal elements in an attempt to gather information from the United States.

Iran has sought to illegally obtain U.S. military equipment and other sensitive technology from the United States. Applicant's connections to his family living in Iran

---

<sup>6</sup> An applicant with relatives in Iran, for example, has a much heavier burden to overcome than an applicant with relatives living in Germany. See ISCR Case No. 02-13595 at 3 (App. Bd. May 10, 2005) (stating an applicant has "a very heavy burden of persuasion to overcome the security concerns" when parents and siblings live in Iran). See *also* ISCR Case No. 04-11463 at 4 (App. Bd. Aug. 4, 2006) (articulating "very heavy burden" standard when an applicant has family members living in Iran); ISCR Case No. 07-12471 at 9 (A.J. May 30, 2008) (listing numerous recent cases involving U.S. citizens with Iranian connections whose clearances were denied, and citing no recent cases where the Appeal Board affirmed the grant of a clearance for someone with immediate family members living in Iran).

raise a sufficient concern to require careful scrutiny. An evaluation is necessary about any possible desire for him to assist relatives living in Iran by providing sensitive or classified information.

Department Counsel produced substantial evidence of Applicant's contacts with his relatives who are citizens of Iran or Germany or live in Iran or Germany to raise the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(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.

AG ¶ 8(a) partially applies; however, AG ¶¶ 8(c), 8(d), and 8(e) do not apply because the U.S. government has not encouraged his involvement with Iranian or German citizens, his travel to Germany, or other German connections. Applicant has frequent contact with his father, brother, and two friends. His father has frequent contact with his brother, who lives in Iran. Additionally, Applicant has gone to Germany almost every year for the last nine years. His contacts with family members and friends living outside the United States are sufficiently frequent to raise the possibility of his being

forced to choose between the United States and the welfare of his relatives or friends, who are citizens of Germany or Iran and/or living in Germany or Iran. Applicant is not able to fully meet his burden of showing there is “little likelihood that [his relationships with his relatives who are Iranian citizens] could create a risk for foreign influence or exploitation.”

AG ¶ 8(b) fully applies. There is no evidence that his relatives, who are German or Iranian citizens and/or are living in Germany or Iran are or have been political activist(s), challenging the policies of the German or Iranian governments. There is no evidence that terrorists, criminals, or the German or Iranian governments have approached or threatened Applicant or his relatives living outside the United States for classified or sensitive information. As such, there is a reduced possibility that his relatives living overseas or Applicant himself would be targets for coercion or exploitation. While the government does not have a burden to prove the presence of such evidence, if such record evidence were present, Applicant would have a very heavy evidentiary burden to overcome to mitigate foreign influence security concerns.

A key factor in the AG ¶ 8(b) analysis is Applicant’s “deep and longstanding relationships and loyalties in the U.S.” He established that “he can be expected to resolve any conflict of interest in favor of the U.S. interest.” Applicant is a native-born, U.S. citizen. He received his post-secondary education in the United States. Applicant resides in the United States, and would not move to Germany unless he could not find employment in the United States and could find employment in Germany. One of his uncles lives in the United States. His brother, who lives in Germany, is a U.S.-born citizen. He has bank accounts, a 401(K) account, and a home in the United States, and he is divesting himself of financial interests in Germany. His employment is in the United States. He has participated in the U.S. political process. He is a volunteer in U.S. emergency medicine.

AG ¶ 8(f) partially applies because Applicant is divesting himself of financial interests in Germany. This mitigating condition can only mitigate AG ¶ 7(e), which provides, “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.”

In sum, Applicant’s connections to Germany or Iran are less significant than his connections to the United States. His connections to the United States taken together are sufficient to fully overcome the foreign influence security concerns. Any residual foreign influence security concerns are mitigated under the Whole Person Concept, *infra*.

### **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 commonsense judgment based upon careful consideration of the guidelines and the whole person concept. I have incorporated my comments under Guidelines C and B in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

A Guideline B and C decision concerning Iran or Germany must take into consideration the geopolitical situations in those two countries, as well as the dangers existing in them.<sup>7</sup> Iran has sought to illegally obtain U.S. military equipment and other sensitive technology. It has very serious economic, military, political, judicial/legal and social problems. Iran sponsors terrorism and is hostile to the United States. If Iran could obtain important classified information through threatening Applicant's relatives living in or visiting Iran, it is a reasonable possibility that Iranian authorities would take those actions.

The United States' relationship with Germany is completely different from its relationship with Iran. The United States and Germany are closely related. From the end of World War II in 1945 to the present time, Germany has been one of the United States' closest military and diplomatic allies. Through most of those years the United States and West Germany confronted the Soviet Union and its satellite countries in Central Europe. The relationship between the United States and Germany was especially close in the area of national security. Hundreds of thousands of U.S. military personnel have served in Germany (some for many years), and many have German-born spouses and children. Numerous German personnel have trained in the United States. Currently, German and U.S. military personnel serve together under combat conditions in Afghanistan. This very close relationship is one of mutual trust, where highly classified information is routinely shared between Germany and the United States. It is extraordinarily unlikely that Germany would use Applicant's relatives living in Germany to attempt to obtain classified information from Applicant.

Applicant's relationships with his two uncles and cousins living in Iran are too remote to cause security concerns. Applicant last visited Iran when he was 15 years old, about 18 years ago. He has not communicated with his family in Iran since he was 15 years old. If there is any concern about Iran, it is because Applicant's 78-year-old father travels to Iran on an annual basis. Theoretically, during one of those visits, Iranian

---

<sup>7</sup> See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole person discussion).

authorities could use Applicant's father to coerce Applicant. Applicant could 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 United States, especially because the Iranian government engages in lawless activities (sponsors terrorism, etc.). Because Iran behaves in a lawless manner, the probability is increased that Iran may attempt to harm or pressure Applicant's relatives to gain some kind of advantage over Applicant. Nevertheless, Applicant's relationship with the United States is so much stronger than his relationship with Iran, I am confident he would inform security authorities of any Iranian attempt to obtain classified information from him.

Applicant's relationship with Germany is much more significant than his relationship with Iran. Applicant traveled to Germany on an annual basis for the last nine years. He had a German passport until 2008, which he used to travel to Germany until recently. He frequently communicates with his father, brother, and two friends, who live in Germany. Applicant is a German citizen because his mother was a German citizen. He has a German driver's license; however, he does not have a German residency registration.

Applicant is not willing to renounce his German citizenship. He intends to remain a German citizen. He said that he had a duty and obligation to follow Germany's laws and fulfill the responsibilities of a German citizen. If a military conflict arose between Germany and the United States, Applicant had "no automatic" answer about which side he would choose. He also said he is bound by the laws of the United States and the laws of Germany, and he intended to keep his obligations to both countries. When his counsel asked him about his allegiance to the United States or Germany, Applicant said, "I will not violate the U.S. laws or Constitution."

At his hearing, Applicant explained that if there was a conflict between the United States and Germany he would side with the United States. He did not want to serve in the Germany military. He does not intend to move to Germany. However, if he was unemployed in the United States, he would consider moving to Germany for employment. Applicant has a stronger relationship with the United States than to Germany because he has chosen to live, and has lived, his adult life in the United States. The United States has provided his post-secondary education. He pays taxes to the United States. He has an uncle and some cousins who live in the United States. I find his statements about his preference for the United States over Germany to be credible.

His communications establish ties of affection to his German family members. However, it is extraordinarily unlikely that Germany would use Applicant's family living in Germany to induce or coerce him into providing classified information.

The circumstances militating towards approval of a clearance are more significant. Applicant was born in the United States. He left Germany 18 years ago, just after graduating from high school. He has earned his bachelor's and master's degrees at U.S. universities. He and his facility security officer documented the termination of his access to his German passport. Applicant provided employment evaluations and



statements from friends. His character references, marketing award, and voluntary support of emergency services evidence his dedication, responsibility, trustworthiness, professionalism, reliability, integrity, and active involvement in his community. Although the possibility of attempted exploitation of Applicant is relatively low, Applicant's strong connections to the United States and especially to his U.S. community and employment establish "such deep and longstanding relationships and loyalties in the U.S., he can be expected to resolve any conflict of interest in favor of the U.S. interest." See AG ¶ 8(b).

After weighing the evidence of his connections to Germany, to Iran, and to the United States, and all the facts in this decision, I conclude Applicant has carried his burden of mitigating the foreign preference and foreign influence security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors"<sup>8</sup> and supporting evidence, my application of the pertinent factors under the Adjudicative Process, all the evidence in this decision, and my interpretation of my responsibilities under the Guidelines. For the reasons stated, I conclude he is eligible for access to classified information.

### **Formal Findings**

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

Paragraph 1, Guideline C:	FOR APPLICANT
Subparagraphs 1.a to 1.g:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a to 2.i:	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.

---

Mark Harvey  
Administrative Judge

---

<sup>8</sup>See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).