



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-06559
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Pamela C. Benson, Esquire, Department Counsel  
For Applicant: *Pro se*

August 25, 2010

**Decision**

HOWE, Philip S., Administrative Judge:

On August 9, 2007, Applicant submitted his security clearance application (SF 86). On August 6, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines C (Foreign Preference) and B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on September 17, 2009, and requested a hearing before an administrative judge. I received the case assignment on December 2, 2009. DOHA issued a Notice of Hearing on December 2, 2009, setting the hearing for December 16, 2009.

I convened the hearing as scheduled on December 16, 2009. Applicant waived the 15 day notice requirement in the Directive. (Tr. 11)

The Government offered Exhibits 1 through 5, which were received without objection. Under the general designation of Exhibit 6, 16 documents were also received into evidence pursuant to the Government's request that I take administrative notice of information relating to Iran. Applicant testified and submitted Exhibits A through CC, which were received without objection. DOHA received the hearing transcript (Tr.) on January 5, 2010. I granted Applicant's request to keep the record open to submit copies of his exhibits.

I also kept the record open to receive any information on the reciprocity issue of Applicant's security clearance issued by another government agency. (Tr. 11-13) If the clearance existed, DOHA may have to issue a clearance pursuant to the reciprocity provisions of the NISPOM Section 2-204. The Government submitted that information on July 14, 2010. Applicant responded to the proffer on August 4, 2010. The Government submitted rebuttal information on August 5, 2010. I marked those documents as Hearing Exhibits 1-3. The record closed on August 6, 2010. I reopened the record on August 12 and 13, 2010, to obtain the current status of the Iranian passport Applicant had. I received an email from Applicant and his security officer on August 13, 2010, with information on the passport. I marked that document as Hearing Exhibit 4. The government did not object to that document. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **Procedural and Evidentiary Rulings**

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Iran. (Tr. 21) The request and the attached documents were admitted into evidence as Exhibit 6. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 32 years old. He is unmarried. Applicant has a college degree, a law degree, and a graduate law degree from a Belgian university. He works for a defense contractor. He was born in Iran in 1977. His family immigrated to the United States in 1983 when Applicant was six years old. Since then, he has lived in the United States continuously except for his year in Belgium studying law, and two trips to Iran in 2000 and 2009. (Tr. 47-52, 60, 70; Exhibits 1, 3, 5, R-T)

Applicant's father, mother, and brother live in the United States. His brother works for a private company in the United States. His parents are retired and living in the United States. They are all naturalized U.S. citizens, as is Applicant. They are also dual citizens with Iran because Iranian law does not recognize the renunciation of that citizenship. Applicant became a naturalized U.S. citizen in January 2000. (Tr. 53, 70-72; Exhibits 1-5)

Applicant had an Iranian passport issued before Applicant became a U.S. citizen. It was issued in 1998 and expired in May 2004, and was extended to June 2, 2008. After he became a naturalized U.S. citizen in 2000, Applicant retained that passport until it expired. In 2008 Applicant signed an application for an Iranian passport given to him by his father. His father prepared and processed the necessary paperwork with the Iranian government to renew Applicant's passport. The passport was issued in January 2009 and is valid until 2014. Applicant's passport was until August 12, 2010, in his parent's safe deposit box or in Applicant's possession at his home. Applicant's parents and brother obtained Iranian passports at the same time. Applicant used the earlier passport to travel to Iran in the summer of 2000 to visit his father's mother after he became a U.S. citizen in January 2000. They used the newly issued Iranian passports to visit the father's mother in 2009 in Iran. Both visits lasted about three weeks and were family visits only. Applicant's parents and brother went at the same time. Applicant's grandmother, aunt and uncle, all of whom are his father's relatives, live in Iran and are citizens of that country. His grandmother is 95 years old. The Iranian passport is used because entry into Iran is easier with it. Iranian law does not recognize dual citizenship and requires the use of the Iranian passport. (Tr. 52-57, 61-66, 74, 76; Exhibits 1-5, L, Hearing Exhibit 4)

Applicant is not certain what property he might inherit in Iran from his father. His father will inherit from his mother. Applicant told the government investigator on January 31, 2008, he did not want to renounce his Iranian citizenship at that time because of his inheritance potential. Applicant's aunt is retired and has some land near the Caspian Sea in Iran. Applicant's uncle is an engineering consultant. No one works for the Iranian Government. Applicant does not maintain any regular contact with his Iranian relatives except to call his grandmother every six months. (Tr. 61-66; Exhibit 3)

Applicant would be willing to destroy his Iranian passport to obtain a security clearance. He has never voted in an Iranian election. He has not served in the Iranian military and has an exemption from service that his father arranged. Applicant does not intend to renew his passport. He has no present plans to travel again to Iran or strong interest in returning there. On August 12, 2010, I requested an update on the location of the Iranian passport. Applicant responded on August 13, 2010, that this passport was in his possession. Later in the day his security officer emailed that he now had control of the passport in his office. Applicant had nine months from the date of the hearing to surrender or destroy his Iranian passport and did not do so. (Tr. 55-59, 68, 76, Hearing Exhibit 4)

Applicant submitted letters of support for his clearance based on his skills needed by his employer. He submitted two employee evaluations showing he meets or exceeds expectations. Applicant included two "outstanding performance reward" certificates. (Exhibits M to V)

Applicant proclaimed his loyalty to the U.S. He does not have any financial interests outside the U.S. He asserts he has no direct or strong ties to anyone in Iran. His life since the age of six years has been spent in the United States with his family. (Tr. 70, 76)

Applicant received a secret security clearance in February 2007. That clearance was granted by the Defense Industrial Security Clearance Office. Based on that clearance, another agency granted Applicant a secret security clearance in February 2007. Pursuant to National Industrial Security Program Operating Manual (NISPOM) Section 2-204, the Department of Defense is not required to grant a reciprocal security clearance based on the other agency's clearance granted to Applicant. A year after obtaining his security clearance he applied for a new Iranian passport. (Hearing Exhibits 1-3)

I take administrative notice of the following facts regarding Iran:

Iran is a constitutional Islamic republic with a theocratic system of government in which Shi'a Muslim clergy dominate the key power structures, and ultimate political authority is vested in a learned religious scholar. The U.S. has not had diplomatic relations with Iran since 1980.<sup>1</sup>

The U.S. Government has defined the areas of objectionable Iranian behavior as: (1) Iran's efforts to acquire nuclear weapons and other weapons of mass destruction; (2) Its support for and involvement in international terrorism; (3) Its support for violent opposition to the Middle East peace process; (4) Its dismal human rights record; and (5) Iran's intervention in the internal affairs of Iraq.<sup>2</sup> The U.S. has designated and characterized Iran as the most active state sponsor of terrorism. Iran provides critical support to non-state terrorist groups.<sup>3</sup>

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

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<sup>1</sup> U.S. Department of State, *Background Note: Iran*, dated March 2008 and 2009.

<sup>2</sup> *Id.*

<sup>3</sup> U.S. Department of State, *State Sponsors of Terrorism*, April 30, 2009, and December 14, 2009.

legal and societal discrimination against women, ethnic and religious minorities, and homosexuals; trafficking in persons; and child labor.<sup>4</sup>

The State Department continues to warn U.S. citizens to consider carefully the risks of travel to Iran. U.S. citizens, who were born in Iran and are the children of Iranian citizens, even those without Iranian passports who do not consider themselves Iranian, are considered Iranian citizens by Iranian authorities, since Iran does not recognize dual citizenship. Therefore, despite the fact that these individuals hold U.S. citizenship, under Iranian law, they must enter and exit Iran on an Iranian passport, unless the Iranian government has recognized a formal renunciation or loss of Iranian citizenship. U.S.-Iranian dual nationals have been denied permission to enter and depart Iran using their U.S. passports; they even had their U.S. passports confiscated upon arrival or departure. U.S.-Iranian dual citizens have been detained and harassed by the Iranian government. Iranian security personnel may place foreign visitors under surveillance. Hotel rooms, telephones and fax machines may be monitored, and personal possessions in hotel rooms be searched.<sup>5</sup> (Exhibit 6, E, W-BB)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

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

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is

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<sup>4</sup>U. S. Department of State, *2009 Human Rights Report: Iran, Country Reports on Human Rights Practices*, dated February 25, 2009.

<sup>5</sup> U.S. Department of State, *Travel Warning: Iran*, dated July 1, 2009.

responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline C, Foreign Preference**

Under AG ¶ 9 the security concern involving foreign preference arises:

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.

AG ¶ 10 describes four conditions that could raise a security concern and may be disqualifying. Two conditions apply:

(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; and

(5) using foreign citizenship to protect financial or business interests in another country.

Applicant was born in Iran. He obtained an Iranian passport before he became a U.S. citizen in 2000. That passport was extended in 2004 until 2008. He obtained another Iranian passport in 2009 that expires in 2014. That passport was in the

possession of his parents in their safe deposit box until August 13, 2010. It is now in the possession of his security officer. AG ¶ 10 (a) 1 applies.

Applicant renewed his Iranian passport at his father's request to make it easier for him to enter Iran to visit his father's family. He did so voluntarily after obtaining U.S. citizenship and he used the passport in 2009 after being granted a security clearance. It also allows Applicant to protect any property or financial interests he may have in property his grandmother, aunt and uncle own. AG ¶ 10 (a) 5 applies.

After the Government raised a potential disqualification, the burden shifts to Applicant to establish any appropriate mitigating condition. AG ¶ 11 provides four conditions that could mitigate security concerns:

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

Applicant was born in Iran. His citizenship is derived from that circumstance. His dual citizenship is based on the Iranian law that does not allow Iranian citizens to renounce their citizenship after obtaining citizenship in another country. He had an Iranian passport before becoming a U.S. citizen in 2000. AG ¶ 11(a) applies and AG ¶ 11(c) partially applies for actions done before Applicant became a U.S. citizen. It does not apply to actions after 2000 when Applicant became a U.S. citizen.

Applicant recently expressed a willingness to relinquish his Iranian passport, if it were necessary for him to do so to obtain a security clearance and maintain his employment. He did not state he would renounce the Iranian citizenship although he admitted he was an Iranian citizen at the same time he became a U.S. citizen and had a security clearance. AG ¶ 11(b) does not apply. AG ¶ 11(e) does not apply because Applicant did not surrender his passport to his security officer, having left it in his parents' safe deposit box, until August 13, 2010. Applicant showed his preference for his Iranian passport, and access to that country, on the passport by doing nothing for nine months after his hearing.

## Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

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.

AG ¶ 7 describes four conditions that could raise a security concern and may be disqualifying:

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

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information;

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion;<sup>6</sup> and

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant's two trips, in 2000 and 2009, coupled with the Iranian government's anti-American actions and statements, give rise to security concerns that if Applicant

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<sup>6</sup> The mere possession of close family ties with a person in 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).



had access to classified information he could be subject to a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion by the Iranian authorities. Applicant had access to classified information after he received a security clearance in 2007. He travelled to Iran in 2009 while having that security clearance. AG ¶ 7 (a) and (b) apply.

Applicant's parents and brother are dual citizens of the United States and Iran, as is Applicant. They live in the United States. His grandmother, aunt, and uncle live in Iran and are Iranian citizens. Their presence in Iran and Applicant's work in the U.S. could create a heightened risk of foreign inducement, manipulation, pressure, or coercion by Iranian authorities based on their past human rights violations. The Iranian authorities could pressure Applicant's relatives to get Applicant to disclose classified information to keep them safe from criminal penalties or harassment by the Iranian authorities. AG ¶ 7(d) applies.

Applicant's possibility of inheritance from his father of property currently owned by his grandmother, aunt, and uncle are financial interests in Iran. Applicant wants to protect that inheritance possibility. Applicant could be subject to foreign influence or exploitation to protect his inheritance. AG ¶ 7(e) applies.

After the Government raised a potential disqualification, the burden shifted to Applicant to establish any appropriate mitigating condition. AG ¶ 8 provides conditions that could mitigate security concerns:

- (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; 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.

Iran's bellicose statements and actions in recent years, and the lack of diplomatic relations with the U.S., are a security concern when Applicant traveled there in 2009. Applicant argues that his grandmother is 95 years old and his aunt and uncle are not involved with the Iranian government. Then Applicant asserts he has only made two trips in nine years to Iran to visit those family members. He speaks with his grandmother only every six months. He does not communicate with his aunt and uncle. These connections are encouraged by Applicant's father, who arranged for a renewal of Applicant's Iranian passport and who kept the passport in his safe deposit box. His father is driving this continued Iranian connection.

However, Applicant is an educated professional capable of making his own decisions. He exercised very poor judgment after becoming a U.S. citizen and obtaining a security clearance by then renewing his Iranian passport and traveling to Iran in 2009. While Applicant does not intend to renew the passport in 2014, and has no plans to visit Iran again, he took no action to destroy the passport after he received the SOR in August 2009. It is likely Applicant will be placed in a position to choose between the interests of the United States, Iran, and his family. AG ¶ 8 (a) does not apply.

Applicant came to the United States at six years of age. He has lived here continuously, except for one year of education in Belgium. His family is here and his parents retired from jobs in the United States. His brother lives and works in the United States. They are all naturalized U.S. citizens. Applicant has a long-standing relationship with the United States. This country is the only one he really knows because he grew up here. His familial connections in Iran are severely periodic and likely to end when his aged grandmother dies. They are very minimal associations with those family members. AG ¶ 8(b) does not apply because Applicant shows a preference for Iran after becoming a U.S. citizen and getting a security clearance so he could work for a defense contractor and have access to classified information.

Applicant has infrequent contacts with his grandmother in Iran beyond two visits and semi-annual telephone calls. He has no contacts with his aunt and uncle in Iran. He only made two trips with his family to Iran in the past ten years. Those contacts are casual and infrequent. But Applicant has made two trips to Iran specifically to visit his grandmother. AG ¶ 8(c) applies partially. But it is so slight it cannot control this determination.

Applicant's possibility of inheriting property in Iran is unknown. His father will inherit first when Applicant's grandmother dies. The father could sell the property before he dies. The possibility of Applicant inheriting is slight but it might result in a conflict of interest for Applicant. AG ¶ 8 (f) does not apply.

### **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 an applicant's

conduct and all relevant 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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 considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. There is a significant risk of terrorism and human rights abuses in Iran. More importantly for security purposes, terrorists are hostile to the United States and actively seek classified information. Terrorists could attempt to use Applicant's grandmother, aunt and uncle to obtain such information. But Applicant's relationship with these three people is so slight that the potential for pressure, coercion, exploitation, or duress is virtually nonexistent. Applicant only made two trips within a decade to Iran for a total time of six weeks in country. His travels are infrequent and motivated by his father's desires to have the family visit his mother in Iran. Applicant did not initiate these trips.

Applicant has been in the United States for the past 26 years. He grew up here and obtained his education here. He became a U.S. citizen in 2000. His connection to the United States is deep and strong. Applicant has no relationship with Iran outside his father's family members. Applicant declared he will not renew his Iranian passport and does not have plans to travel again to Iran. His inheritance possibility of some property in Iran is minimal. However, Applicant exercised very poor judgment by expressing a preference for Iran by obtaining a new Iranian passport after becoming a U.S. citizen, and more importantly, being granted a security clearance so he could work with classified information in the employ of a defense contractor. He also exercised poor judgment retaining his Iranian passport for nine months after the hearing while knowing it was a security concern to the government.

Applicant did not mitigate the foreign preference and foreign influence security concerns. Overall, the record evidence leaves doubt as to Applicant's present eligibility and suitability for a security clearance. I conclude the "whole-person" concept against Applicant because of his poor judgment regarding his connections to Iran.

## 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.a.1:	Against Applicant
Subparagraph 1.a.2:	Against Applicant
Subparagraph 1.a.3:	Against Applicant
Subparagraph 1.a.4:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant

## Conclusion

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

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PHILIP S. HOWE  
Administrative Judge