DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 08-10712
SSN:	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: James F. Duffy, Esq., Department Counsel
For Applicant: *Pro Se*

January 22, 2010

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant completed a security clearance application (SF-86) on May 25, 2008. On April 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline C (Foreign Preference) and Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised Adjudicative Guidelines (AG) promulgated by the President on December 29, 2005, and effective for SORs issued after September 1, 2006.

In a response notarized on May 6, 2009, Applicant admitted one of the two allegations set forth in the SOR under Guideline C and both allegations raised under Guideline B. He also declined a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated September 2, 2009. Applicant received the FORM on September 10, 2009, but failed to respond to its contents. On November 3, 2009, the Director, DOHA, forwarded the case for assignment to an administrative judge. It was assigned to another administrative judge on November 3, 2009, then reassigned to me

on December 7, 2009, because of case load considerations. Based on a review of the case file and exhibits, I find Applicant failed to meet his burden regarding the security concerns raised. Security clearance is denied.

Findings of Fact

Applicant is a 42-year-old senior software engineer who has worked for the same government contractor since May 2008. He has over a decade of experience in his field and has earned a master's degree in engineering. Married, he is the father of two children. This case involves allegations that Applicant exercises dual citizenship and possesses a foreign passport. Additionally, foreign influence concerns are alleged concerning Applicant's mother, a sister, and a brother, all of whom are citizens and residents of Iran. In choosing an administrative determination without a hearing, Applicant chose to rely on the written record. Because his submissions are brief, the facts of record are limited.

Administrative notice is taken with regard to Iran.[1] Specifically, it is noted that Iran is a theocratic republic. The United States (U.S.) has not had diplomatic or consular relations with Iran since November 1979. Iran was designated as a state sponsor of terrorism in January 1984 and remains the most active state sponsor of terrorism.[2] In March 2008, it was officially noted that "the actions and policies of the government of Iran are contrary to the interests of the United States in the region and pose a continuing unusual and extraordinary threat to the national security, foreign policy, and economy of the United States."[3] Iran's efforts to acquire nuclear weapons and other weapons of mass destruction concern the United States.[4] Over the years, it has sought to illegally obtain United States military equipment and other sensitive technology.[5] It has a poor and worsening record with regard to human rights, including the monitoring of the social activities of its citizens, politically motivated abductions, arbitrary arrests, a lack of judicial independence, and torture. [6]

In 1967, Applicant was born in Iran. In 1986, he immigrated to Canada, a constitutional monarchy with a parliamentary government and strong democratic traditions. He continued with his education and became a Canadian citizen in 1994. He completed his education at the master's level in 1996. The following year, he accepted a new position located in the United States (U.S.) and moved to this country. In 1998, he married a U.S. citizen and, in 2005, he became a U.S. citizen.

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[1] FORM at 2-9; *see* supporting documents I - XVI.

[2] FORM at 4.

[3] FORM at 3; *Message to the Congress of the United States*, dated Mar. 11, 2008.

[4] FORM at 5.

[5] FORM at 6.

[6] FORM 6-7.

Today, Applicant is a dual citizen of both the U.S. and Canada. He has not returned to Iran since his emigration from that country. He maintains his Canadian citizenship in order to remain eligible for benefits from the Canadian Pension System, into which he contributed for over a decade while living and working there.[7] He may return to Canada upon retirement.[8] Applicant has traveled extensively through Europe, with the vast majority of his travel taking place before 2005. Shortly before becoming a U.S. citizen in 2005, he renewed his Canadian passport. It was valid through January 10, 2010. Through at least May 2009, when he responded to the SOR, Applicant had not used his Canadian passport since becoming a U.S. citizen. In his SOR response, he noted his willingness to renounce his dual-citizenship and surrender his Canadian passport.

Applicant has two older brothers. One is a citizen and resident of Canada, while the eldest brother remains a citizen and resident of Iran. Applicant maintains regular contact with his Canadian brother through monthly telephone conversations and conducts weekend visits every couple of years. His contact with his eldest sibling, a physician who is now over 60 years of age, is minimal. They speak by telephone about once a year. The two last visited in person during his brother's visit to the U.S. in 2004, following a 2003 visit convened in Europe.[9] There is no information as to whether this brother receives or may receive any form of state pension, subsidy, or benefit, or has ever worked for a foreign government.

Applicant also has a sister who is a resident and citizen of Iran. She is his eldest sibling and nearly 20 years older than Applicant. They last saw each other at a family reunion in Canada in 2006. Prior to this visit, they visited during a trip to Europe in 2002. She is retired, but there are no facts regarding her former profession except a note that, like the rest of her family, she has no affiliation with any government or foreign country. There is no information as to whether she receives a state pension, subsidy, or other government benefit. Applicant's sister resides with their mother, who is in her late 70s. Consequently, Applicant and his sister converse by telephone whenever he calls his mother in Iran, which is about three or four times a year.

In 2002, Applicant saw his mother for the first time in 17 years. They last saw each other during the 2006 family reunion. In the interim, they maintained occasional contact by telephone. Applicant's mother is also retired, but there is no information regarding her former profession or whether she receives any form of state subsidy, benefit, or retirement.

[7] The pension fund is akin to Social Security. Applicant has no idea of his pension's current value. He recognizes that it may generate minimal retirement income, but would like to "maintain its viability as an addition to his retirement when that day comes." Item 6 at 6.

[8] Item 6 at 4.

[9] *Id.* at 5-6; FORM at 13.

None of Applicant's relatives have been approached by any foreign agents or interests regarding Applicant, his work, or his current application for a security clearance. There has been no indication of any hostile interest in either Applicant or his family members. Applicant stated that his family members "have no government ties and [he sees] no reason for their existence to influence [his] life here in the United States where [he owns] a home and [has] established [him]self with a wife of 10 years and two young children."[10]

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole person concept." An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

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

The United States Government (Government) must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ."[11] The burden of proof is something less than a preponderance of evidence.[12] The ultimate burden of persuasion is on the applicant.[13]

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government

[10] Response to the SOR, dated May 6, 2009.

[11] *See also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

[12] *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

[13] ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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."[14] "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."[15] Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.[16] The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant's character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Guideline C (Foreign Preference) and Guideline B (Foreign Influence) are the most pertinent AGs to the case. Applicable conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Guideline C – Foreign Preference

Under Guideline C, "[w]hen 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." Here, Applicant maintained a Canadian passport which only recently expired and which, presumably, he still possesses. He continues to maintain dual citizenship with Canada to retain his investment in its state pension fund and to maintain the option of returning to Canada upon retirement. Such facts raise security concerns under foreign preference disqualifying condition (FP DC) AG ¶ 10(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; . . . (3) accepting educational, medical, retirement, or social welfare, or other such benefits from a foreign country; . . . (5) using a foreign citizenship to protect financial or business interests in another country. . . ."). Arguably, FP DC AG ¶ 10(d) ("any statement or action that shows allegiance to a

[14] *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

[15] ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

[16] *Id*.

country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship") also applies with regard to Applicant's exercise of dual citizenship. Consequently, the burden shifts to Applicant to overcome the case against him and mitigate security concerns.

Applicant possesses a Canadian passport. He has not used it since becoming a U.S. citizen and he has expressed his willingness to surrender it. The passport expired on January 10, 2010. Therefore, it is no longer current, as contemplated under AG ¶ 10(a) (1). Foreign preference mitigating condition (FP MC) AG ¶ 11(e) ("the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated") also applies to the extent the passport became invalid upon expiration and there is no evidence that it has been renewed.

With regard to Applicant's statement that he might return to Canada upon retirement, security concerns could be raised by the inference that Applicant's allegiance to Canada is superior to his allegiance to the United States. Such an inference would give rise to AG ¶ 10(d), noted above. Applicant, however, expressed his willingness to renounce his dual citizenship, raising FP MC AG ¶ 11(b) ("the individual has expressed a willingness to renounce dual citizenship").

Remaining at issue is Applicant's eligibility for a Canadian pension, regarding which he has not expressed a willingness to renounce. The guideline does not distinguish between the intention to accept and the actual acceptance of foreign pension benefits. In both circumstances, the individual has an ongoing financial tie to a foreign country. Moreover, while Applicant confirmed that the amount at issue is not significant, the guideline does not discount potentially nominal sums and the facts fail to reveal sufficient information regarding his overall financial situation. While this future interest may be a nominal consideration in his overall retirement planning, it remains sufficiently valid to raise security concerns which Applicant failed to mitigate. Security concerns remain unmitigated.

Guideline B – Foreign Influence

Guideline B states that "[f]oreign 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." The guideline further states that adjudication under this section should consider the identity of the country at issue and "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." In this case, the country at issue with regard to Guideline B and Applicant's relatives abroad is Iran. The record is replete with information regarding Iran, with which the U.S. has been on strained terms for over 30 years. Iran was designated as a state sponsor of terrorism in January 1984 and remains an active sponsor of terrorism. It has sought to illegally obtain U.S. military equipment and sensitive technology. Consequently, the situation presented demands heightened scrutiny.

The facts presented emphasize the minimal contact Applicant has with those family members residing in Iran who are at issue in the SOR, specifically his mother, sister, and his eldest brother. While contact may be infrequent, there is a rebuttable presumption that an applicant's contacts with immediate family members are not casual[17] and that the necessary Guideline B inquiry concerns both ties of affection and ties of obligation.[18]

Applicant speaks on the telephone with his mother and sister about every three or four months. While they did not visit for nearly 17 years, Applicant resumed visits with his mother in 2002. He saw both his mother and sister at a family reunion in Canada in 2006. While he only speaks with his elder brother about once a year, they visited together in 2003 and 2004. Such facts raise Foreign Influence Disqualifying Condition (FI DC) AG ¶ 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") and FI DC AG ¶ 7(b) ("connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.").

Applicant failed to provide any information regarding Iran in response to the FORM. Moreover, while Applicant may consider his relationships with his Iranian relatives casual, his request for a determination on the written record preempts further inquiry into his family dynamics and precludes substantiation of his assessment. Further, he failed to elaborate on his family members' lives in Iran, for example, whether they received or are eligible to receive state benefits. He also offered scant facts regarding his present life in the U.S., noting little more than the facts that he immigrated to the U.S. in 1997, that he is employed in the U.S., that his wife and children are U.S. citizens, and that he owns his own home.

Consequently, Foreign Influence Mitigating Condition (FI MC) AG ¶ 8(a) ("the nature of the relationship with foreign persons, the country in which these persons are located, or the position or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S."), FI MC AG ¶ 8(b) ("there is no conflict of interest, either because of 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"), and FI MC AG ¶ 8(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") do not apply. None of the remaining

[17] ISCR Case No. 00-0484 at 4 (App. Bd. Feb. 1, 2002).

[18] ISCR Case No. 02-04786 at 5 (App. Bd. Jun. 27, 2003).

mitigating conditions apply. Because Applicant failed to address the concerns related to the security issues raised, security concerns remain unmitigated.

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 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the "whole person" factors. Although the facts of record are few, multiple factors speak in his favor. He is a mature man who left his family and Iran as a young man to start a new life abroad. He earned a master's degree in Canada and has traveled extensively. Married, he is raising two U.S.-born children and owns a home in the U.S.

Multiple facts, however, also speak against Applicant. In choosing an administrative determination, Applicant relied on a written record which was less than comprehensive. There are insufficient facts regarding Applicant's current investments and holdings to gauge his need for a Canadian pension. While he expressed a willingness to renounce his Canadian citizenship, there is no evidence he is equally willing to renounce his right to state pension payments in the future. Aside from his current financial situation, there are few facts concerning Applicant's roots in either his present community or in the U.S.

Similarly, insufficient facts are presented with regard to his relatives in Iran, the depth of their familial relationships, or his sense of loyalty to them. Other questions remain unaddressed, obviating the mitigation of security concerns regarding foreign influence. Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information and

security clearance determinations should err, if they must, on the side of denials. There are no facts bringing Applicant's loyalty or commitment to the U.S. into question. His reliance on a less than comprehensive written record leaves significant questions unresolved under both applicable guidelines, either of which are sufficient to find security concerns are left unmitigated. Consequently, he failed to meet his burden of persuasion. Therefore, I conclude it is not clearly consistent with national security to grant Applicant a security clearance. Clearance is denied.

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

Conclusion

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

ARTHUR E. MARSHALL, JR.
Administrative Judge