



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



In the matter of: )  
)  
) ISCR Case No. 09-00089  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Esquire, Department Counsel

For Applicant: Sheldon I. Cohen, Esquire

November 13, 2009

**Decision**

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ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, testimony, and exhibits, I conclude that Applicant failed to mitigate the Government’s security concerns under the Foreign Influence adjudicative guideline. His eligibility for a security clearance is denied.

**Procedural and Preliminary Matters**

On September 21, 2005, Applicant signed and certified a security clearance application (SF-86). On May 19, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under 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 within the Department of Defense for SORs issued after September 1, 2006.

On June 4, 2009, Applicant answered the SOR and requested a hearing before a DOHA administrative judge. The case was assigned to me on August 3, 2009. I convened a hearing on August 31, 2009, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. At the commencement of the hearing, Applicant offered a memorandum of law discussing DOHA security clearance decisions issued to U.S. citizens with former Iranian nationality and family contacts with citizens or residents of Iran. This document was identified as Hearing Exhibit (HE) I. Department Counsel's answer to the Applicant's memorandum of law was identified as HE II.

The Government called no witnesses and introduced two exhibits (Ex. 1 and Ex. 2), which were admitted without objection. The Government offered for administrative notice a summary memorandum containing facts about Iran found in 16 official U.S. Government documents. The Government also provided for administrative notice the 16 source documents from which the facts in the summary memorandum were derived. I failed to mark the Government's administrative notice documents at the hearing; however, I mark them now as HE III.

Applicant did not object to my taking notice of the summary memorandum, but he did object to my taking notice of any facts in the 16 source documents that were not contained in the summary memorandum. After discussion with Applicant, I overruled the objection.

Applicant testified on this own behalf and called four witnesses. At the hearing, he introduced 11 exhibits, which were identified as Ex. A through Ex. K and admitted without objection. During the hearing, Applicant acknowledged that his wife and two children acquired Iranian passports for travel to Iran with him in 2004. He also acknowledged that his wife and children still possessed the Iranian passports, which he believed were valid. I left the record open until close of business September 10, 2009, so that Applicant could clarify the status of his family members' Iranian passports. Subsequently, Applicant timely filed an affidavit stating that on September 1, 2009, he shredded and destroyed the Iranian passports of his wife, daughter, and son. Applicant also provided photocopies of identifying photographs and information in the destroyed passports belonging to his wife, daughter, and son. Applicant's attorney provided a statement that he had witnessed Applicant's destruction of the three Iranian passports. I identified Applicant's affidavit and accompanying documents as Ex. L. Department Counsel did not object to the admission of Applicant's Ex. L. DOHA received the transcript (Tr.) of the hearing on September 9, 2009.

## Findings of Fact

The SOR contains three allegations of disqualifying conduct under AG B, Foreign Influence (SOR ¶¶ 1.a. through 1.c.). In his Answer to the SOR, Applicant admitted two allegations and denied one allegation. Applicant's admissions are admitted herein as findings of fact.

After a thorough review of the record in the case, including witness testimony, exhibits, relevant policies, and the applicable adjudicative guideline, I make the following findings of fact:

Applicant is 51 years old and employed as lead software engineer by a government contractor. He has been married twice. He married for the first time in 1983. He and his first wife divorced in 1986. In 1987, he married his current wife, who was born in Burma and is a naturalized U.S. citizen. Applicant and his wife are the parents of two children: a 21-year-old daughter and a 14-year-old son. Applicant has not previously held a security clearance. (Ex. 1; Tr. 76-77, 96-98.)

Applicant was born and raised in Iran. He came to the United States in 1978, at the age of 19, to pursue higher education. In 1983, he earned a Bachelor of Science degree in electrical engineering. In 1997, he earned a Master of Science degree in computer science. He earned both degrees at U.S. institutions. (Ex. 1; Tr. 103.)

When Applicant came to the United States to study, he expected to return to Iran to live and work. However, in 1979, the Iranian Revolution occurred. Applicant's father advised him to remain in the United States because it was not safe for him to return to Iran. Applicant became a U.S. citizen in July 1996. (Ex. 1; Tr. 104-105.)

Applicant's family suffered persecution under the regime established after the 1979 revolution. One of Applicant's brothers was executed by the Iranian regime in 1982, leaving behind a wife and a two-year-old child. After his death, it was determined that he was not guilty of the crime for which he was executed. One of Applicant's sisters and her husband, a physician, were imprisoned for three years because of their alleged connections with the brother who was executed. Another of Applicant's brothers was imprisoned for 1½ years on the false charge that he had stolen a motorcycle. Additionally, the regime concluded that Applicant was a political activist and would not allow his father to exchange money and send it to him for his education in the United States. (Tr. 105-108, 111-119.)

Applicant's parents are no longer living. His mother died in 2005 at the age of 83; his father died in May 2008 at the age of 87. Applicant has two brothers and four sisters who are citizens and residents of Iran. His siblings range in age from 44 to 64. One of his brothers sells insurance; the other brother operates a grocery store. Applicant has had e-mail contact with the teen-aged son of one of his brothers. His four sisters are homemakers: one is married to a carpet salesman; one is married to a physician; and two are married to retired teachers. Among them, Applicant's sisters have 16 children.

Applicant has had e-mail contact with the daughter of one of his sisters. (Ex. 2, 5-9; Ex. A; Ex. B; Tr. 109-112, 137.)

In an interview with an authorized investigator from the U.S. Office of Personnel Management (OPM) in October 2007, Applicant reported that one of his nephews worked for the Iranian government. The nephew's government employment was alleged at SOR ¶ 1.c. In his answer to the SOR, Applicant claimed he lacked sufficient information about the nephew's employment and could neither affirm nor deny the allegation. He therefore denied the allegation. At his hearing, Applicant explained that in about 2002, his mother told him about the nephew's government employment. He did not know if the nephew was currently working for the government of Iran, and he didn't know what kind of work the nephew did. He had no contact with the nephew who reportedly worked for the Iranian government. (Tr. 112-113, 147.)

Additionally, in his October 2007 interview with the OPM investigator, Applicant reported that he spoke with each of his brothers by telephone approximately every three months. He also reported that he spoke with one of his sisters by telephone once a year. His contact with his other three sisters was limited to visits with them when he traveled to Iran to visit family. He also reported telephone contact with a nephew, the son of one of his sisters, every three months. The nephew is a travel agent. (Ex. 2 at 5-6.)

At his hearing, Applicant stated that his 2007 statements about the frequency of his contact with his siblings and their children were no longer accurate. He stated that he no longer communicated with his brothers and his nephew every three months. He also stated he no longer spoke with one of his sisters yearly. He stated that his communications with his siblings had lessened after his father's death in 2008. In response to questions from his counsel, he was unable to recall how many specific contacts he had with his siblings and their children. In response to cross examination, he estimated that he had approximately ten telephone and e-mail contacts with his family members in Iran since his father's death in May 2008. (Tr. 131-137, 144.)

After receiving U.S. citizenship in 1996, Applicant maintained dual citizenship with Iran. In an interview in March 2007, with an OPM investigator, he stated his willingness to relinquish his Iranian citizenship. Applicant traveled to Iran in November 1999, November 2003, December 2004, and September 2007 to visit his parents and other family members. He used his Iranian passport on each of these trips to enter Iran, in accordance with the laws of Iran. (Ex. 2 at 3-4; Tr. 151.)

Applicant's trip to Iran in 1999 was his first trip back to Iran since leaving in 1979 to pursue his education in the United States. He was aware that he was taking risks by returning to Iran because, in the past, he had been identified as an anti-regime activist and he had not fulfilled military service required by the government of Iran. However, he felt the risks were worth taking because his father was ill and suffering from Alzheimer's disease. Despite his concerns, Applicant's 1999 visit to Iran was uneventful. In 2003, he returned to Iran alone to visit his parents. (Tr. 121-123.)

In 2004, Applicant took his wife and two children with him to Iran to visit his parents. To comply with the laws of Iran, his wife and children, who were U.S. citizens, acquired Iranian passports, which they used to enter Iran. When they returned from their trip, Applicant's wife and children retained their Iranian passports. At his hearing, Applicant stated that he believed the passports were in active status. After his hearing, Applicant destroyed the Iranian passports of his wife, his daughter, and his son. (Ex. L; Tr. 124-125, 152-154.)

In 2007, one of Applicant's brothers called him and advised him to return to Iran to visit their father because the father's health had worsened. In response to his brother's plea, Applicant traveled to Iran to visit his father in September 2007. He again used his Iranian passport to enter Iran. (Ex. 2 at 6-7; Tr. 126.)

In his interview with an authorized investigator from OPM, Applicant stated that he planned to keep his Iranian passport as long as his father lived. After his father died in 2008, Applicant surrendered his Iranian passport to an authorized representative of the Iranian government. He does not intend to travel to Iran in the future. He knows that he cannot enter Iran unless he presents an Iranian passport. (Ex. 2 at 6-7; Tr. 126-129.)

Applicant's direct supervisor appeared as a witness. He testified that he had supervised Applicant over a period of six years. He reviewed Applicant's yearly performance ratings and praised his strong work ethic and devotion to mission. He characterized Applicant's work as "excellent." (Ex. D, Ex. E; Ex. F; Ex. G; Ex. H; Tr. 38-64.)

The operations manager and senior vice-president of the government contractor that employs Applicant also testified on his behalf. He stated that Applicant was an excellent employee, hard-working, and very trustworthy. (Tr. 28-36.)

Applicant's wife and his neighbor also testified on his behalf. Both witnesses emphasized Applicant's kindness, helpfulness, good character, and steady temperament. (Tr. 65-94.)

Applicant and his wife submitted a financial statement that showed total assets of \$1.5 million dollars and total liabilities of \$190,000. All of their assets are in the United States. Applicant has no financial interests in Iran. He had a financial interest in the home his father lived in before he died. However, Applicant waived any interest in the property and requested that his share be distributed to the child of his brother who was executed by the Iranian government in 1982. (Ex. C; Tr. 139-140.)

I take administrative notice of the following facts about Iran, which appear in official U.S. government publications:

Iran is a constitutional Islamic republic, founded in 1979 after a revolution that removed the Shah as head of state. Islamic law is the basis for the authority of the

Iranian state. Shi'a Muslim clergy dominate the country's political structure, and ultimate political power rests in a Shi'a religious scholar, who is called the Supreme Leader. (HE III at 1-2.)

The United States has not had diplomatic or consular relations with Iran since 1979. In 2006, the President declared the continuation of a 1979 declaration of a National Emergency with Respect to Iran because of Iran's "extraordinary threat to the national security, foreign policy, and economy of the United States." (HE III, at 1-2.)

Iran engages in clandestine efforts to illegally obtain U.S. military equipment and other sensitive technology and to acquire nuclear weapons and other weapons of mass destruction (WMD). Additionally, Iran sponsors international terrorism, intervenes in the internal affairs of Iraq and Afghanistan, undermines the Middle East peace process, and violates the human rights of the Iranian people. (HE III at 2-5.)

The U.S. State Department warns U.S. citizens and U.S.-Iranian dual citizens to consider carefully the risks of travel to Iran. Some elements of the Iranian regime are hostile to the United States and to U.S. citizens. U.S.-Iranian dual citizens may be subject to harassment or arrest while residing in Iran. Since Iran does not recognize dual citizenship, Iranian authorities consider Iranian born, naturalized U.S. citizens and their children to be solely Iranian citizens. (HE III at 6.)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "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 an 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.

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, which are used 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, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial, and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of

variables known as the “whole person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

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

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

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

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

### **Analysis**

Under Guideline B, Foreign Influence, “[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.” AG ¶ 6.

Additionally, adjudications under Guideline B “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 U.S. citizens to obtain protected information and/or is associated with the risk of terrorism.” AG ¶ 6.

A Guideline B decision concerning Iran must take into consideration the geopolitical situation and the threats to U.S. interests existing in Iran. Since 1979, the United States has had no diplomatic or consular relations with Iran. Iran seeks nuclear weapons, sponsors terrorism, intervenes against U.S. interests in Iraq and Afghanistan, and violates the rights of its own citizens. It seeks to obtain, through illegal means, U.S. military equipment and other sensitive technology.

I have considered all of the disqualifying conditions under the Foreign Influence guideline. The facts of Applicant's case raise security concerns under disqualifying conditions AG ¶¶ 7(a) and 7(b). AG ¶ 7(a) reads: "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." AG ¶ 7(b) reads: "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."

Iran is hostile to U.S. interests and actively works to undermine them. Further, it targets its own citizens and violates their human rights in order to advance its own ends. For these reasons, American citizens with immediate family members who are citizens or residents of Iran could be vulnerable to coercion, exploitation, or pressure.

Applicant was born in Iran and lived there until, as a young man, he left to pursue his education in the United States. In his absence, his family suffered persecution following the Iranian revolution of 1979. One of his brothers was executed for a crime he did not commit. A sister and her husband, a physician, were imprisoned for 3½ years for supporting the brother who was executed. Still another brother was imprisoned for 1½ years on the false charge that he stole a motorcycle. The regime concluded that Applicant, who was studying in the United States, was an "activist" and refused to allow his father the means to send him money for his studies.

Applicant was devoted to his parents who were citizens and residents of Iran. Despite his fears that he might be arrested or detained by the Iranian government, he traveled alone to Iran in 1999 to visit his parents and other family members. He returned to visit them in 2003. In 2004, he took his wife and two children to Iran to visit his parents and family members. In 2007, in response to a call that his father's health was failing, he returned to Iran to visit his father. Applicant's four trips to Iran in eight years demonstrated his close ties with his parents and other family members in Iran.

Applicant's parents are no longer living, His mother died in 2005, and his father died in 2008. At his hearing, he stated that he had surrendered his Iranian passport and no intention to travel to Iran in the future. However, Applicant has two brothers and four sisters who are citizens and residents of Iran. These facts raise security concerns under AG ¶¶ 7(a) and 7(b).



Three mitigating conditions under AG ¶ 8 might be applicable to Applicant's case. If "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.," then AG ¶ 8(a) might apply. If "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 loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest," then AG ¶ 8(b) might apply. If "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," then AG ¶ 8(c) might apply.

When he was interviewed by an authorized investigator from OPM in 2007, Applicant reported that he spoke on the telephone with his two brothers in Iran approximately once every three months. He spoke with one of his four sisters once a year by telephone, and he communicated with his other sisters when he visited in Iran. Additionally, he reported telephone and e-mail communications with other collateral relatives in Iran who were the children of his siblings. These communications with his siblings and their families arose from long-standing familial relationships and suggested concern, affection, and an on-going pattern of contact. Applicant's contacts with his family members were neither casual nor infrequent.

At his hearing, Applicant reported that his communications with his siblings in Iran had diminished since his father's death in May 2008. He was unable to report precisely how many times he had communicated with his brothers, sisters, and collateral family members in the 15 months since his father's death. When he was cross examined, he reported approximately ten telephone and e-mail communications with his siblings since May 2008.

In ISCR Case No. 07-18283 at 4-5 (App. Bd. Apr. 24, 2009), DOHA's Appeal Board discussed the potential vulnerability of an applicant in a Guideline B case who had four siblings living in Iran. Even though the applicant had reported that his communications with his siblings in Iran had diminished since his mother's death in 2007, the Appeal Board noted the applicant's previous pattern of attachment and obligation to his siblings in Iran and further noted that the entire record, when taken together, may demonstrate a security concern when:

that Applicant's close relatives reside in a country whose interests are contrary to those of the U.S. In light of the record as a whole, it is foreseeable that these relatives could be a means through which Applicant could come to the attention of the regime. His family could be a vehicle through which Iran might attempt to coerce Applicant. Despite Applicant's testimony and other evidence that he has no loyalty to Iran, there is not

sufficient evidence to demonstrate that his ties to the U.S. outweigh his sense of obligation to his Iranian relatives.

I conclude that there was insufficient record evidence to establish that Applicant's nephew is employed by the government of Iran. Accordingly, SOR ¶ 1.c. is concluded for Applicant. However, Applicant failed to rebut the Government's allegations that his contacts with his two brothers and four sisters, all citizens and residents of Iran, created a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Applicant's relationships with these individuals could force him to choose between loyalty to them and the security interests of the United States.

At the same time, the record also supports Applicant's strong ties to the United States. He married in the United States, and he and his wife have raised their children here. As a citizen of the United States, he has excelled at his career and has developed substantial financial interests here. I conclude that AG 8(b) applies in part to the facts of Applicant's case. However, an applicant with relatives in Iran, for example, has a much heavier burden to overcome than does an applicant with relatives living in a country with policies that are not contrary to U.S. security concerns. Accordingly, I conclude that neither AG ¶¶ 8(a) nor 8(c) applies in mitigation to the facts of Applicant's case.

Nothing in Applicant's answers to the Guideline B allegations in the SOR suggested he was not a loyal U.S. citizen. Section 7 of Executive Order 10865 specifically provides that industrial security clearance 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."

### **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 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of the whole person concept and all the facts and circumstances surrounding this case. Applicant is a talented, honorable, and hard-working U.S. citizen. He is considered to be a valued employee. He sought to use his experience, skills, and knowledge to serve his adopted country, and he sought a security clearance as a government contractor.

Applicant has six siblings who are citizens and residents of Iran. His mother and father, who died in 2005 and 2008, were also citizens and residents of Iran. Applicant was close to his parents while they were living, and, over the years, he had close and familial relationships with his siblings and some of their children. He donated his share of his father's property to the daughter of his brother who was executed in 1982 by the Iranian revolutionary regime. At some personal risk, he traveled to Iran four times in the past ten years to visit his family members. Applicant is an admirable family member. However, he failed to extenuate or mitigate the security concerns raised by his contacts and relationships with his siblings who are citizens and residents of Iran, a country that poses "an extraordinary threat to the national security, foreign policy, and economy of the United States."

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under AG B.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the amended SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Joan Caton Anthony  
Administrative Judge