



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-03240
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel

For Applicant: *Pro se*

April 1, 2010

Decision

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

Applicant signed a security clearance application (e-QIP) on May 31, 2007. On September 18, 2009, the Defense Office of Hearings and Appeals (DOHA) issued 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, and 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 for SORs issued after September 1, 2006.

In an undated response, Applicant admitted the three charges raised concerning family members in Iran and frequent visits to that country. He also requested a hearing before an Administrative Judge. The case was ultimately assigned to me on November 16, 2009. Department Counsel and Applicant agreed to a January 26, 2010, hearing date. A Notice of Hearing was issued by DOHA on January 13, 2010, setting the

hearing for that date. At the beginning of the hearing, Applicant waived his right to a written 15-day notice regarding the hearing date.¹

The hearing took place as scheduled. Department Counsel submitted two documents which were accepted into the record as exhibits (Exs.) 1-2 without objection. He also presented documents marked I through XVI for administrative notice. Lacking any objection, they were accepted into the record as Ex. 3 (Request for Administrative Notice and Attachments I-XVI). Applicant gave testimony and submitted four documents, accepted as Exs. A-D without objection. Applicant was given through February 2, 2010, to submit any additional materials. The transcript (Tr.) was received on February 2, 2010. No additional documents were received and the record was closed on February 10, 2010. Based upon a review of the case file, exhibits, and testimony, security clearance is denied.

Administrative Notice

The Government requested administrative notice of certain facts related to Iran, as represented in the materials comprising Ex. 3.² Iran is an Islamic Republic where ultimate authority is vested in a religious scholar, the Supreme Leader. The United States (U.S.) has not had diplomatic or consular relations with Iran since 1979, when the U.S. Embassy was seized by students. In 2006, the November 14, 1979, declaration of a National Emergency with Respect to Iran was continued due to Iran's "extraordinary threat to the national security, foreign policy, and economy" of the U.S.³ Iran has challenged the U.S. in Iraq and Afghanistan in order to pursue its objective of becoming a regional power. It has sought to make the U.S. suffer political, economic, and human costs. It has also been designated as a State Sponsor of Terrorism since 1984.⁴ Iran's only significant ally in the Middle East is Syria, another state sponsor of terrorism.⁵ Elsewhere, it has sought to form loose alliances with anti-U.S. governments in the Western hemisphere, such as the Venezuelan government.⁶ Iran is currently

¹ Tr. 8.

² In providing this information, the Government noted that [A]pplicant has done everything in his power to extricate himself from [the Iranian] situation [and] he is doing things the right way," but notes that Applicant's relatives in Iran are in a position to "be exploited, to be manipulated, to be pressured, to be coerced." "That alone. . . creates the heightened risk that the directive under guideline B, 7A, talks about, [in] the disqualifying conditions." Tr. 52-53.

³ President of the U.S., "Continuation of the National Emergency With Respect to Iran," dated Nov. 9, 2006, reprinted in 71 *Federal Register* 66227, Nov. 13, 2006.

⁴ U.S. State Department, *State Sponsors of Terrorism*.

⁵ *Id.*

⁶ *Background Note: Iran* at 7.

seeking to acquire nuclear weapons and other weapons of mass destruction, and to illegally obtain U.S. military equipment and other sensitive technology.⁷

The Iranian government has a poor human rights record.⁸ Its abuses include politically motivated abductions, torture and severe punishment, arbitrary arrest and detention, lack of fair trials, and restrictions on civil liberties.⁹ It has been known to both monitor and conduct surveillance on its citizens, including interception of telephonic and internet communication.¹⁰ The government does not recognize dual nationality and will treat U.S.-Iranian dual nationals solely as Iranian citizens. It has prevented a number of Iranian-American citizens who traveled to Iran for personal reasons from leaving, and in some instances, detained and imprisoned them.¹¹ Iranian security personnel may put visitors under surveillance and search hotel rooms.

Applicant also provided information regarding Iran, including President Barack Obama's March 22, 2009, message to the people and leaders of Iran in celebration of Nowruz.¹² In that speech, the President conveyed his vision of peace between the two countries. Applicant also offered an impressive list of notable Iranian-Americans. It notes famous personalities from a variety of disciplines, ranging from academe and law to entertainment and sports.¹³ A copy of an administrative judge's opinion in ISCR 02-23755 (2004) was also included.¹⁴ In closing, Applicant stated, "[t]here is no question in my mind that [Iran] is [sic] worst regime out there, and that is a challenge not just for the U.S. but for the whole world."¹⁵

Findings of Fact

Applicant is a 46-year-old software engineer with 20 years of experience in his field. He has worked for his present employer, a U.S. government contractor, for approximately 15 years. He has earned a master's degree in computer science and is

⁷ See, e.g., U.S. Department of Commerce, Bureau of Industry and Security, *Pennsylvania Company Fined for Export Violations Involving Iran, UAE, and Syria*, dated Dec. 7, 2007.

⁸ U.S. Department of State, *2008 Human Rights Report: Iran*, dated Feb. 25, 2009.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Iran – Country Specific Information at 1 and Travel Warning: Iran.*

¹² Ex. C (Transcript of Message, Wall Street Journal, dated Mar. 22, 2009).

¹³ Ex. D (Wikipedia.com, List of Iranian Americans, dated Dec, 27, 2009).

¹⁴ Ex. D (ISCR decision).

¹⁵ Tr. 57. In noting this, Applicant stated that he feels he can provide unique insight regarding that country.

pursuing a second master's degree. Applicant has been married for 17 years. His wife, a naturalized U.S. citizen originally from Iran, is also a software engineer.¹⁶ He has lived in the same U.S. city since 1995, where he owns his own home.

Applicant was born in Iran. In 1983, he was 20 years old and the youngest of five children. At the time, Iranian universities were closed and the future looked bleak. He dreamed of a better life in the U.S. With the Iran-Iraq War raging, he escaped from Iran with only a backpack, scaling mountainous regions and paying smugglers to get away. He sought U.S. refugee status first in Turkey, then in Rome. He arrived in the U.S. in 1985, settled, and enrolled in college, where he excelled and graduated *summa cum laude*. He was granted U.S. citizenship in 1990. The accomplishment of becoming an American "had a profound effect" on him, particularly after his struggle to escape the grim situation in Iran.¹⁷ He has endeavored to "give back what I got from this country."¹⁸

Meanwhile, Applicant has worked in his field of expertise, always earning "great appraisals."¹⁹ His successful efforts were reflected in his swift rise to a supervisory position. He feels that applying his knowledge to his employer's mission is a way to give back to the U.S., noting "[m]ost of my life I've lived in this country, and I won't do anything to harm this country."²⁰

Applicant's parents remain citizens of Iran and residents of Tehran, where they lead a middle class lifestyle.²¹ His father is 92 years old and can barely leave home because walking is very difficult for him. He retired before the ouster of the Shah in 1979 and receives a state pension. Applicant noted, "I don't think any regime can do anything to that old man."²² Applicant's mother is 86 years old and suffers from Alzheimer's Disease, so he does not believe any power "can harm her in any shape or form."²³ Applicant's parents are self-sufficient and do not rely on their children for financial support. They receive some physical support from their daughters, who live close by in apartments they own. Of his three sisters, all of whom are citizens and residents of Iran, Applicant's eldest sister is about 66 years old. She and his other two

¹⁶ Tr. 35. Applicant's wife's family are all naturalized U.S. citizens residing in the U.S.

¹⁷ Tr. 28. Applicant noted that the day he became a U.S. citizen was "one of the proudest days of my life."

¹⁸ *Id.*

¹⁹ Tr. 29.

²⁰ Tr. 30.

²¹ Tr. 37.

²² Tr. 30.

²³ *Id.*

older sisters are retired public school teachers. They each receive pensions.²⁴ His brother, who is also older than Applicant, is an eye surgeon working at local hospitals. He has received some training at conferences held in the U.S., where his son is about to begin collegiate studies.²⁵ Applicant maintains contact with his nephew. His brother maintains an upper middle class lifestyle and has a private medical practice. Applicant is unsure whether the hospitals with which he is affiliated are public or private.²⁶ Conversations with family members are limited to pleasantries regarding family members and health. All they know of Applicant is that he works for his present employer, a renowned institution. They do not discuss the nature of his work. Applicant speaks with his parents a couple of times a week.²⁷ He also speaks with his siblings by telephone at times, but only if they are at his parent's home when he calls.²⁸

None of his family members has been harassed by the present or past governmental regimes. They do not talk of topics regarding life in Iran, noting that "we know more about what is happening there than they do" because of television coverage concerning Iran.²⁹ Another reason they do not discuss Iranian situations is because "you don't know who may be listening on that end."³⁰

Applicant visited Iran in 1999, 2002, 2003, 2005, and 2006, to visit his family after not seeing them since he left Iran in 1983. He only returned once his parents were no longer able to travel independently or endure the 20 hour trip to the U.S. When Iran became more lenient regarding travelers, Applicant applied for an Iranian passport and traveled to them.³¹ He eventually relinquished that passport in 2007.³² He did not think his travel to Iran presented a security concern because he knew of other individuals who traveled to Iran and maintained security clearances.³³ On his first trip back,

²⁴ Tr. 31.

²⁵ *Id.*, Tr. 44-45. Applicant does not know if his nephew will remain in the U.S. or return to Iran after graduation, although the two maintain contact.

²⁶ Tr. 32.

²⁷ Tr. 38.

²⁸ Tr. 39. Applicant only calls them directly on New Year's Day.

²⁹ Tr. 40.

³⁰ Tr. 40-41, 46.

³¹ *See also* Tr. 42. U.S. citizens cannot travel on a U.S. passport, so Applicant obtained an Iranian passport.

³² Tr. 33.

³³ Tr. 34.

Applicant had to pay a fine for having previously left the country illegally.³⁴ He never again encountered any difficulties coming or going. Because of his parents' deteriorating physical conditions, he does not foresee returning to Iran.³⁵ He knew when he returned his Iranian passport that he would not and legally could not see his family there again, regardless of the situation.³⁶ He is reconciled with this fact in light of his profession, travel laws and requirements, and the situation between the U.S. and Iran.

In describing his position, Applicant notes, "I am just an employee of the company, [working in a] nine to five kind of job. . . . I'm not into dealings with other external companies or anything else that I would sell products or information or anything like that."³⁷ He has never worked on an aspect of a classified project, having worked primarily with health issues and internal security maintenance.³⁸

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required 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 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." 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.

³⁴ Tr. 42.

³⁵ *Id.*

³⁶ Tr. 43.

³⁷ Tr. 49.

³⁸ Tr. 50-51.

The 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. . . .”³⁹ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.⁴⁰

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 an 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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁴¹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁴² The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁴³ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find Guideline B (Foreign Contacts) to be the most pertinent to the case. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are discussed below.

³⁹ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁴⁰ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴¹ *Id.*

⁴² *Id.*

⁴³ Executive Order 10865 § 7.

Analysis

The concern under Guideline B is that 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. The adjudication 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 or is associated with a risk of terrorism. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions below.

The country at issue is Iran. Since 1979, with the ouster of the Shah and the occupation of the U.S. Embassy in Tehran, the U.S. has had no diplomatic or consular relations with Iran. For over 30 years, it has been cited as an “extraordinary threat to the national security, foreign policy, and economy of the” U.S. It has sought to make the U.S. suffer political, economic, and human costs. Iran has been designated as a State Sponsor of Terrorism, and courts anti-U.S. governments in the Western Hemisphere. Iran seeks to acquire nuclear weapons and weapons of mass destruction, as well as U.S. military equipment and other sensitive technology. Its human rights abuses are numerous, including the surveillance and arbitrary treatment of its citizens. As noted by Applicant, the threat it represents is a challenge not just for the U.S., but for the whole world. Its pursuit of U.S. technology and its sponsorship of terrorism demand that considerations under this guideline be conducted with the highest scrutiny.

The SOR contains three allegations under this guideline. First, that Applicant’s parents are citizens and residents of Iran. Second, that his four siblings are citizens and residents of Iran. Third, that he traveled to Iran five times between 1999 and 2006.

At present, despite their poor health and advanced age, Applicant maintains weekly telephonic contact with his parents. When his siblings, who live nearby and often help their parents, are present, he also speaks with them. He also telephones his siblings on New Year’s Day. His ties to his parents are strained due to their advanced age and health issues. His ties to his sisters appear to be minimal, but understandably familial. Applicant appears to have slightly more contact with his brother. His brother, a physician, has been known to travel to the U.S. for medical conferences. Applicant also maintains contact with his brother’s son, who is either in, or coming to, the U.S. for graduate study. By his own admission, any telephonic conversation is guarded in case their line is under surveillance by the Iranian government or associated powers. Such surveillance is a known tactic practiced by the Iranian government and could lead to adverse repercussions. In light of these considerations, Foreign Influence Disqualifying Conditions 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 exploitation, inducement, manipulation, pressure, or coercion) and 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) apply.

The very nature of Iran's current regime is one with intentions and purposes antithetical to the U.S. and its citizens. Despite the advanced age and infirmity of his parents, Applicant's testimony demonstrated that he is a loving son who regularly speaks to them by phone one or more times each week. Such contact is understandable and should be respected, although, due to their health and age, it sadly must be acknowledged that it will not last forever. The overwhelming majority of Applicant's contact with his Iranian siblings is limited to telephonic conversations shared with one or more of them if he calls his parents when one or more of them is visiting their parents. Regarding those telephone calls, Applicant recognizes that their contact may be monitored, causing their conversations to be guarded. Given the natural need for contact between child and parents, Iran's surveillance of its citizens, its designs against the U.S., its desire to gain U.S. technological information, and its record for unbridled exploitation of its own citizens, Foreign Influence Mitigating Conditions AG ¶ 8(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.) and 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 .

As noted by the Government, Applicant has done everything in his power to divorce himself from his Iranian ties and build a new life in the U.S. He has lived in the U.S. for the majority of his life. He has been a citizen for 25 years. Applicant has married, settled into his community, and bought his own home. He is a long-term employee of a reputable institution, where he has been professionally successful. He is fully Americanized. Applicant's depiction of the day he became a U.S. citizen was credible, profoundly moving, and passionate. Applicant's loyalty to the U.S. is unquestioned and resolute. In relinquishing his Iranian passport, Applicant knowingly severed his ability to ever again enjoy the company of his parents and sisters.

Despite Applicant's early struggles and efforts, his loyalty, and his substantial successes living in the U.S., two concerns remain. While both are transitory, they are significant. First, Applicant's regular weekly calls to his parents pose sufficient risk of monitoring. While conversations are guarded, the relationship reflected in and established by such conversations could pose as great a risk of exploitation as any accidentally unguarded content. Second, Applicant's brother and his brother's son are citizens and residents of Iran who travel or will be traveling between the U.S. and Iran for professional reasons. There is no evidence noting the extent of his nephew's

international travel during his academic program or whether the nephew will ultimately remain in the U.S. and seek U.S. citizenship or return to Iran. Consequently, his status remains vague. What is clear is that Applicant maintains an understandably familial relationship with both men. Their travel not only exposes the Applicant's brother and nephew to Iranian scrutiny and monitoring, but could equally make them or Applicant vulnerable to exploitation or manipulation beyond their control. Consequently, despite Applicant's overt and strong loyalty to the U.S., a conflict exists sufficient to obviate applicability of AG ¶ 8(b) (there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest). Given these two significant, albeit transient, issues, arising as they do in the context of Iranian contacts, foreign influence 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 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 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. Applicant's testimony was highly credible and forthright. He is an intelligent, personable, and happily settled 46-year-old professional. At age 20, he bravely escaped Iran during a time of turmoil in order to seek refuge in the U.S. Since his arrival, he has become a proud and loyal U.S. citizen, achieved academic and professional success, married, bought a home, and settled in a community in which he has lived for 15 years. He refrained from returning to Iran for over two decades, until his parents became too infirm to travel. He then traveled to them, until he became aware that his Iranian passport, a document essential to his passage to Iran, was

professionally problematic. Upon learning this fact, he readily returned his passport, fully knowing it severed all future visits with his parents and, perhaps, his sisters. In so doing, Applicant mitigated security concerns regarding his trips to Iran, as set forth in SOR allegation ¶ 1.c.

Since that time, Applicant has maintained contact with his family only through telephone calls. Knowing their conversations could readily be monitored, their conversations have been discrete. Still, they establish a familial nexus that could lead to scrutiny and exploitation. Moreover, Applicant's brother is a medical professional who has been known to travel to the U.S. Such travel also raises scrutiny and potential exploitation. Finally, Applicant's nephew is in the U.S. or preparing to enter the U.S. in order to pursue a graduate degree program of some duration. The nephew's contact with Applicant and the nephew's travel between the U.S. and Iran could well lead to surveillance resulting in the exploitation, manipulation, or harm of any or all family members. While with other countries, such potential may seem remote, Iran is not only a state sponsor of terrorism, it is known for its aggressive tactics against the U.S., U.S. citizens, and U.S. interests, disregard for privacy and human rights, and pursuit of U.S. technological information. Applicant's current telephonic contact with his family in Iran, and his contact with his more transient brother and nephew, sustain foreign influence security concerns expressed in SOR allegations ¶¶ 1.a-1.b. With such concerns left unmitigated, 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 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 the national interest to grant Applicant eligibility for a security clearance. Clearance denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge