



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



In the matter of: )  
)  
) ADP Case No. 10-01100  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Ray T. Blank, Esq., Department Counsel  
For Applicant: *Pro se*

March 25, 2011

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant failed to mitigate the trustworthiness concerns based on foreign influence and foreign preference. Applicant's eligibility to occupy an ADP I/II/III position is denied.

**Statement of the Case**

Applicant submitted a Questionnaire for Public Trust Positions (SF 85P) on February 23, 2009. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>1</sup> that it is clearly consistent with national security to grant Applicant eligibility to occupy an automated data processing (ADP) position.

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<sup>1</sup> Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised; and DoD Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation).

On September 1, 2010, DOHA issued Applicant a Statement of Reasons (SOR), which specified the basis for its decision. Specifically, trustworthiness concerns were raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of the adjudicative guidelines (AG).<sup>2</sup>

Applicant answered the SOR on October 5, 2010, and requested a hearing before an administrative judge. The case was assigned to me on December 7, 2010, to determine whether Applicant's eligibility for an ADP position should be granted or denied. DOHA issued a notice of hearing on January 7, 2011, convening a hearing on January 21, 2011. At the hearing, the Government offered exhibits (GE) 1 through 4. GE 1 through 3, were admitted without objection. GE 4 was not admitted, but it was considered for administrative notice purposes. Applicant testified and presented exhibits (AE) 1 through 10, which were admitted without objection. DOHA received the hearing transcript (Tr.) on January 31, 2011.

### **Findings of Fact**

Applicant admitted all of the SOR factual allegations under Guideline C (SOR ¶¶ 1.a(1) through (3) and Guideline B (SOR ¶¶ 2.a through 2.d). He denied, however, that the general concerns stated in these guidelines applied in his case. His admissions are incorporated as findings of fact. After a thorough review of the evidence of record ,including Applicant's answer to the SOR, his answers to DOHA interrogatories, and his testimony, I make the following additional findings of fact.

Applicant is 51 years old. His parents and siblings are citizens and residents of Iran. He was born, raised, and educated in Iran. At age 19, he immigrated to the United States under a student visa and attended a U.S. college from 1978 until 1983. He completed a bachelor's degree in civil engineering in 1983, and a computer programming course in June 1985. After completing his education, Applicant elected to remain in the United States because of a change in regime. In 1979, the Pahlavi regime was ousted by the current Islamic regime. He did not want to be called into military service in Iran. Applicant became a naturalized U.S. citizen in 1995. He has never been married and he has no children.

Applicant's father is 78 years old. He served as a colonel in the Iranian Army, apparently with the Corps of Engineers. Applicant claimed he did not remember his father's duties in the Iranian military. His father retired in 1998, after 33 years of military service. Applicant's father served 19 years as a military officer under the current Islamic regime before he retired.

His parents own an apartment in Tehran. His father receives a \$600 monthly pension for his military service, along with insurance and other benefits from the Iranian government. His mother is 68 years old, and she has always been a homemaker.

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<sup>2</sup> Adjudication of this case is controlled by the AGs implemented by the DOD on September 1, 2006.

Applicant's parents visited him in the United States from September until November 1996, and from November 1998 until January 1999. They were granted permanent resident status in the United States, but their status expired in 2006. Applicant has been trying to convince his brother and his parents to move to the United States, but they would rather live in Iran. Applicant has telephonic contact with his parents at least once a week. He also provides financial support to them. He estimated he gives them approximately \$3,000 to \$4,000 every year. Applicant's brother was drafted into the Iranian Army at age 18, where he served two years. He is currently an engineer working for a private company. He is divorced and has a young daughter.

Until recently, Applicant has had an Iranian passport since he left Iran in 1978. He renewed his Iranian passport every four or five years as needed. In November 2009, Applicant was interviewed by a government background investigator. During the interview, he was asked numerous questions about his contacts with his family in Iran, his travel to Iran, and his possession of an expired Iranian passport. Applicant stated that he maintained his Iranian citizenship because it made it easier to visit his family in Iran. During the interview, Applicant stated his willingness to surrender his Iranian passport. (GE 2)

Applicant renewed his Iranian passport in April 2010, in anticipation of taking a vacation to visit his parents in Iran. He visited the Interest Section of the Islamic Republic of Iran, located in the Embassy of Pakistan, to renew his Iranian passport. The Iranian personnel at the embassy made a copy of Applicant's U.S. passport for their records. Through the years, Applicant always used his Iranian passport to travel to Iran in preference to his U.S. passport because of its convenience, ease of travel, and for security reasons. He used his Iranian passport to travel to Iran in 2004 and 2006.

Applicant explained he did not know that his possession and use of a valid Iranian passport, or that his travel to Iran, could raise security concerns. Because of the security concerns, Applicant cancelled his 2010 trip to Iran, and decided not to travel again to Iran. On January 17, 2011, he surrendered his Iranian passport to the Interest Section of the Islamic Republic of Iran in the Embassy of Pakistan. (AE 1) He promised never to use an Iranian passport again, and not to travel to Iran to avoid raising security concerns. Applicant informed his parents and brother that he is going through the trustworthiness determination process because of his job with a government contractor. He also informed them of the possible risk they face if the government of Iran or others decide to use them as a means of coercing information from Applicant.

Applicant's sister is an Iranian citizen living in Canada as a permanent resident, and apparently she works at a university. Her husband is a resident and citizen of Iran. Currently, he is working in Iran for an Iranian bank. Applicant also has extended family members living in Iran. His mother had two brothers that served as field grade officers in the Iranian military. He believes they retired from the military and are now dead from natural causes.

Applicant has worked in an ADP position (business analyst) for a defense contractor since February 2009. His current employer is sponsoring Applicant for a public trust position. Applicant is considered to be a valuable and productive employee who is reliable, dependable, and trustworthy. He has established a reputation for complying with the rules and regulations required of government contract employees. His supervisors favorably endorsed his eligibility for a public trust position.

Iran is an Islamic Republic where the ultimate political authority is vested in a religious authority. The United States has not had diplomatic ties or consular relations with Iran since its revolution in 1979. In 2009, President Obama continued the 1979 declaration of a National Emergency with respect to Iran due to its extraordinary threat to our national security, foreign policy, and the economy.

The United States objects to Iran's sponsorship of terrorism, its nuclear ambitions, and its violations of human rights. Iran has been designated a state sponsor of terrorism since 1984. Iran has been involved in planning and providing financial support for terrorism activity throughout the Middle East, Europe, and Central Asia. Iran has provided aid in the form of weapons, training, and funding to internationally known terrorist organizations to include HAMAS and other Palestinian terrorist groups, Lebanese Hezbollah, Iraq-based militants, and Taliban fighters in Afghanistan. Iran also trains, equips, and funds Iraqi Shi'a militant groups and refused to bring to justice senior al Qaida members it has detained.

Iran disregards the United Nations Security Council restrictions on its nuclear program. It has repeatedly been in non-compliance with the International Atomic Energy Agency program's international obligations. It continues to enrich uranium. Iran was constructing, in secret until September 2009, a second uranium enrichment plant. The United States Director of National Intelligence has stated that Iran is technically capable of producing enough highly enriched uranium for a weapon in the next few years and would likely choose a missile as its preferred delivery of a nuclear weapon. Iran has the largest inventory of ballistic missiles in the Middle East.

Iran has sought to illegally obtain U.S. military equipment and other sensitive technology. It is also enhancing its focus on U.S. intelligence activities and relies on foreign intelligence partnerships to extend its capabilities.

The Iranian Government has a poor human rights record, which has denigrated through the past year, after the disputed June 2010 elections. Security forces were implicated in custodial deaths and killings of election protesters. Human rights abuses are extensive, including: politically motivated violence, such as torture, beatings, and rape; severe officially sanctioned punishments, including death by stoning, amputation, and flogging; arbitrary arrest and detentions; and lack of judicial independence and fair trials.

The Iranian Government does not recognize dual nationality and will treat U.S.-Iranian dual nationals solely as Iranian citizens. The United States cannot provide

protection or routine consular relations to American citizens in Iran. Iranian authorities have prevented a number of American citizens, who have traveled to Iran for personal reasons, from leaving, and in some cases have detained, interrogated, and imprisoned them.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). The government’s authority to restrict access to classified information applies similarly in the protection of sensitive, unclassified information. As Commander in Chief, the President has the authority to control access to information bearing on national security or other sensitive information and to determine whether an individual is sufficiently trustworthy to have access to such information. See *Id.* at 527.

Positions designated as ADP I and ADP II are classified as “sensitive positions.” Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3. “The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security.” Regulation ¶ C6.1.1.1. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. See Regulation ¶ C8.2.1.

When evaluating an applicant’s suitability for a public trust position, an administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s controlling adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which may disqualify the applicant

from being eligible for access to sensitive information. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security and trustworthiness suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance [or trustworthiness] determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

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 [sensitive] information will be resolved in favor of national security.”

## **Analysis**

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

Under AG ¶ 9 the security concern involving foreign preference arises, “[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.”

Under AG ¶ 10(a), Applicant may be disqualified for the “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.”

Applicant became a naturalized U.S. citizen in September 1995. Although he was issued a U.S. passport shortly after his naturalization, he maintained, renewed, and used his Iranian passport to travel to Iran. He last renewed his Iranian passport in April 2010. He intended to use the Iranian passport during 2010-2011 to travel to Iran to visit his parents and sibling who are citizens and residents of Iran. Applicant used the Iranian passport in preference to the U.S. passport for his personal convenience and security reasons. AG ¶ 10(a) applies.

AG ¶ 11 provides six conditions that could mitigate the foreign preference 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;

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

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

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

On January 17, 2011, Applicant surrendered his Iranian passport to the Interest Section of the Islamic Republic of Iran in the Embassy of Pakistan. He promised never to use an Iranian passport again and to forego traveling to Iran to avoid raising security concerns. He testified that when he applied for his last Iranian passport, Iranian personnel in the Embassy of Pakistan made a copy of his U.S. passport. AG ¶ 11(e) applies, but does not fully mitigate the foreign preference trustworthiness concerns.

It does not fully mitigate the concerns because Applicant exercised his Iranian citizenship after he became a naturalized U.S. citizen, from 1995 until January 2011. During 16 years, he renewed his Iranian passport to use it to travel to Iran to visit his parents and sibling. He has strong bonds of affection and obligation toward his parents. It is likely that Applicant will travel to Iran in the future because his parents and brother are there. He has not expressed a willingness to renounce his Iranian citizenship.

## **Guideline B, Foreign Influence**

Under Guideline B, the government's concern is:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, he or she may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism. AG ¶ 6.

AG ¶ 7 sets out two conditions that could raise a security concern and may be disqualifying in this case. These are:

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

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

AG ¶¶ 7(a) and 7(b) apply because of Applicant's relationships with his parents and brother who live in Iran. His relatives are expected to remain there. Applicant was born in Iran.

Applicant's communications with his parents are frequent, and he provides yearly financial support to them. He visited his parents in Iran and they have come to the United States to visit him. Applicant has strong ties of affection for, or obligation to, his parents and his brother. Applicant's relationships with his parents living in Iran are sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." His relationships with immediate family members in Iran and his desire to help them creates a concern about Applicant's "obligation to protect sensitive information or technology." For example, if the Iranian government or terrorists in Iran wanted to expose Applicant to coercion, it could exert pressure on his parents. Applicant would then be subject to indirect coercion through his relationship with his parents and sensitive or classified information could potentially be compromised.

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.<sup>3</sup>

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has, as in this case, inimical interests to the United States, an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence collection operations against the United States. The nature of the

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<sup>3</sup> See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).



relationship of Iran with the United States places a significant burden of persuasion on Applicant to demonstrate that his relationships with his parents living in Iran do not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his parents living in Iran who might be coerced by terrorists or other governmental entities in Iran.

The Government produced substantial evidence raising these two potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence to mitigate these trustworthiness concerns. As previously indicated, the burden of disproving a mitigating condition never shifts to the Government.

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

- (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;
- (c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;
- (d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;
- (e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and
- (f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

None of the mitigating conditions apply to this case. Iran is considered to be an extraordinary threat to the national security, foreign policy, and economy of the United States. Iran has been designated a state sponsor of terrorism since 1984, because of its open sponsorship of terrorism.

Iran disregards the United Nations Security Council restrictions on its nuclear program. It has repeatedly been in non-compliance with the International Atomic Energy Agency program's international obligations, and it continues with its ambition to develop nuclear weapons, against the objections of many nations. Iran also has an extensive record of human rights violations. Furthermore, Iran has sought to illegally obtain U.S. military equipment and other sensitive technology. It is also enhancing its focus on U.S. intelligence activities and relies on foreign intelligence partnerships to extend its capabilities.

Finally, the United States has not had diplomatic ties or consular relations with Iran since Iran's revolution in 1979. The Iranian government does not recognize dual nationality and will treat U.S.-Iranian dual nationals solely as Iranian citizens. The United States cannot provide protection or routine consular relations to American citizens in Iran. Iranian authorities have prevented a number of American citizens, who have traveled to Iran for personal reasons, from leaving, and in some cases have detained, interrogated, and imprisoned them.

In November 2009, Applicant was interviewed about his relatives in Iran, travels to Iran, and his expired Iranian passport. During the interview, he offered to surrender his Iranian passport. Knowing the Government's concerns, Applicant renewed his Iranian passport in April 2010, and intended to use it to travel to Iran. He surrendered his Iranian passport in January 2011, only after he realized it would affect his ability to retain his job. Applicant has lived in the United States for 33 years. He is single. He owns no real estate property. He has had a job with a government contractor for the last two years, and he owns a retirement account and some investments. Considering the totality of his circumstances, I find that he has established limited contacts with the United States.

Considering the totality of the facts and circumstances, Applicant could be placed in a position of having to choose between the interests of his family and the interests of the United States. Applicant's contact with his family members in Iran creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. The risk of foreign exploitation is increased because his father served in the Iranian army for 33 years (19 of those years under the current Islamic government), and he receives a government pension. Additionally, some of his uncles were also officers in the Iranian army.

### **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.

The ultimate determination of whether to grant eligibility for a security clearance or public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant immigrated to the United States in 1978; became a naturalized U.S. citizen in 1995; and has been successfully living the American dream for 33 years, the last two working for a government contractor. There is no evidence of any misconduct or security violations. Applicant is considered to be a productive employee and a loyal American. His supervisors consider him to be trustworthy and recommended his eligibility for a position of trust. These factors show responsibility and some mitigation.

On the other hand, there are more substantial circumstances that weigh against Applicant in the whole-person analysis. Applicant's exercise of his Iranian citizenship since 1995 indicates a preference for Iran. Moreover, Applicant's contact with his family members in Iran creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion that he has not mitigated. For all these reasons, I conclude Applicant failed to mitigate the trustworthiness concerns arising from his foreign influence and foreign preference considerations.

### **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
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a-2.d:	Against Applicant

## **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with national security to grant or continue Applicant's eligibility to occupy an ADP I/II/III position. Applicant's eligibility to occupy an ADP I/II/III position is denied.

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JUAN J. RIVERA  
Administrative Judge