



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



In the matter of:)	
)	
)	ISCR Case No. 10-04144
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace L. Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

11/08/2012

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on December 8, 2008.¹ The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on April 23, 2012, detailing security concerns under Guideline B, Foreign Influence, Guideline C, Foreign Preference, and Guideline E, Personal Conduct. 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

¹Applicant completed security applications (SF-86) on May 23, 2001 and December 2, 2002, which are part of the record. GE 1; GE 2.

Adjudicative Guidelines For Determining Eligibility for Access to Classified Information (AG) implemented on September 1, 2006.

Applicant received the SOR on May 9, 2012, which he answered on May 16, 2012. Applicant requested a hearing before an administrative judge. DOHA received the request, and Department Counsel was prepared to proceed on July 17, 2012. I received the case assignment on July 20, 2012. DOHA issued a Notice of Hearing on August 8, 2012, and I convened the hearing as scheduled on August 29, 2012. The Government offered exhibits (GE) marked as GE 1 through GE 9, which were received and admitted into evidence without objection. Applicant testified. He submitted one exhibit marked as AE A, which was received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on September 7, 2012. I held the record open until September 30, 2012, for Applicant to submit additional matters and to arrange a date for a witness to testify by video-conference. Applicant timely submitted AE B - AE E, which were marked and admitted without objection. He did not arrange a date for his witness to testify as he had not been able to locate his witness. The record closed on September 30, 2012.

Procedural Rulings

Continuance

Prior to the hearing, Applicant requested a continuance of the hearing date to allow a witness time to get permission to testify at his hearing. Applicant's request was denied by Order dated August 21, 2012. He was advised that the record would be held open until the end of September 2012 to allow him time arrange a date for his witness to testify by video-telephone conference.

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Iran. Applicant objected to this request, arguing that the facts in the document had nothing to do with him and he had nothing to do with the Iranian government or the Iranian people. His objection was overruled. The request was not admitted into evidence, but was included in the record as Hearing Exhibit 1. The facts administratively noticed will be limited to matters of general knowledge and matters not subject to reasonable dispute, and are set out in the Findings of Fact below.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a and 2.a (1)-(3) of the SOR. His admissions are incorporated herein as findings of fact. He

denied the factual allegations in ¶¶ 1.b, 2.a, 2.a(4) and 3.a-3.h of the SOR.² He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 62 years old, works as a security trainer and specialist for a Department of Defense contractor. Applicant was born in Iran and immigrated to the United States in 1974 with his family. At that time, the Shah of Iran ruled. After attending college for a few years, Applicant enlisted in the United States Army in late 1978. After nearly 22 years of service, he retired from the Army in late 2000 at the rank of master sergeant (E-8). Applicant spent most of his Army career as a Special Forces Green Beret. He received numerous awards and ribbons during his years of service, including seven Good Conduct Medals, two Meritorious Service Medals, six Joint Service and Army Commendation Medals, National Defense Medal, Southwest Asia Service Medal with two bronze service stars, two Army Achievement medals, Armed Forces Expeditionary Medals, and overseas awards. After retiring from the Army, Applicant began working as a contractor on overseas assignments. He has spent much of the last 11 years working in high-risk conflict areas of the world. For most of the last 34 years, Applicant has worked overseas with the Army and as a contractor, and he has held a security clearance during these years. Two friends and former Special Forces members wrote letters highly praising Applicant's work and reputation in the Special Forces unit. Both consider him highly trustworthy and a loyal American. They considered him dependable, reliable, and skilled at his work. During all his years of work, Applicant sustained injuries on three occasions.³

Foreign Influence and Foreign Preference

Applicant completed his college degree after he retired. He became a naturalized U.S. citizen in March 1982. His mother was born in Iran, became a U.S. citizen, and lived in the United States for many years before she died. His two sisters and two brothers are naturalized U.S. citizens who reside in the United States. Applicant's father immigrated to the United States in 1974. His father, who was the Chief of Police under the Shah, returned to Iran in 1985, after the change in government leadership, on a

²When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

³GE 6; GE 8; AE B - AE D; Tr. 49-50, 145-147.

business trip. His father was killed on this trip. His uncle administered his father's estate in Iran and helped his mother obtain a pension from the Government of Iran.⁴

Applicant does not have any assets in Iran. He owns two houses in the United States. About a year ago, Applicant purchased a second house, where he now lives. One brother, who is disabled, and his mother lived in the first house which he purchased in 1993 and used as his official address for many years. Applicant lived in this house when he was at home.⁵

Applicant's elderly uncle is a citizen and resident of Iran. His uncle, who is approximately 75 years old, retired 15-20 years ago from his position as one of the heads of the Iranian Drug Enforcement Agency. Applicant has no idea why his uncle was never a target of the Iranian government after the fall of the Shah. Applicant last saw his uncle in 1986 and last spoke with his uncle in late 2011 or early 2012. He does not know if his uncle receives any benefits from the Iranian government or if the Iranian government has approached his uncle.⁶

Applicant's brother continues to live in Applicant's first house. This brother talks with Applicant's uncle in Iran two to four times a year. Applicant will talk with his uncle if he is at the house where his brother lives when the uncle calls, which may be once a year. Applicant does not independently contact his uncle by telephone, email, or letter nor does his uncle contact him independently.⁷

Applicant is fluent in Farsi, Dari, Arabic, and English.⁸ He has a working knowledge of Spanish. Because of his heritage, Applicant blends with Afghani and Middle Eastern people. Applicant called the United States his country and his government at the hearing. He does not feel any allegiance or obligation to Iran.⁹

Applicant has not traveled to Iran since his departure in 1974.¹⁰ Applicant entered the United States in 1974 on his Iranian passport. After becoming a U.S. citizen in 1982, Applicant obtained a U.S. passport, which he routinely renews. Applicant renewed his

⁴GE 1 - GE 3; Tr. 51-53, 96, 103.

⁵Tr. 53, 86.

⁶Tr. 53, 105-107.

⁷Tr. 54-58, 92-97.

⁸English is Applicant's second language, which may impact his communication skills and ability to fully complete his answers to the e-QIP.

⁹GE 7, Personal Interview on September 9, 2011; Tr. 227.

¹⁰Applicant's family members do not travel to Iran. Tr. 52.

Iranian passport in 1983 and 1986. His Iranian passport expired in 1989.¹¹ Around 2000, Applicant expressed an intent to visit his uncle in Iran. His family expressed serious concern about this intent because if he traveled on his U.S. passport, he would be killed, particularly if the Iranian government learned he was a Green Beret. They convinced him that it was not safe for him to visit Iran. Applicant concurs with his family's view about the dangers to him if he were to travel to Iran. In 2000, Applicant renewed his Iranian passport for five years, which was extended for five more years. His Iranian passport expired in 2010 and has not been renewed. At the hearing, he indicated that he would not travel to Iran in the future, even for his uncle's funeral, because he is concerned about his possible arrest by the Iranian government should it learn about his career as an Army Green Beret and because Iran is on the Department of State's list of terrorist countries. He believes that Iran knows about all Iranians in the United States, but he does not know if Iran has any specific knowledge about his family.¹²

Applicant renewed his Iranian passport in 1983 and 2000 by mailing the required documents to the Pakistani Embassy in Washington D.C. In 1986, he mailed the required documents to the Algerian Embassy in Washington D.C. to extend his passport. In 2005, Applicant presented, in person, the required documents to extend his Iranian passport to staff at the Pakistani Embassy in Washington D.C.¹³ Both the Pakistani and Algerian embassies had authority to act on behalf of the Iranian government in this matter. He never attempted to obtain his Iranian passport at an overseas embassy. During his September 2011 personal subject interview, Applicant indicated that he obtained the Iranian passport at the request of another U.S. agency, but would not reveal the name of the agency. He also told the investigator that he used his Iranian passport as identification while working on official government business overseas. At the hearing and in his answers to interrogatories, he denied that he made this statement, indicating that he always left his Iranian passport at home when he traveled. He used his U.S. passport or a black U.S. Department of State passport whenever he traveled overseas and for identification. He also used a military identification card, which is part of the record.¹⁴

Applicant retains possession of his Iranian passport. He has kept the passport for memory and sentimental reasons and as a souvenir. He may display it in his house for these reasons. On his three security clearance applications in the record, Applicant advised that he had dual citizenship with Iran, but he denied dual citizenship during his

¹¹This passport carried this notation: "This passport is not valid for traveling as an immigrant." GE 7.

¹²Tr. 52, 99-10, 110.

¹³The summary of his personal interview on November 9, 2011 erroneously indicated that he renewed his Iranian passport at the Iranian consulate in New York City. Iran does not have a consulate in New York. GE 7; Tr. 141-144.

¹⁴GE 4; GE 5; GE 7 - Summary of personal subject interviews on August 13, 2003 and September 9, 2011; Tr. 59-65, 110-122, 124-129.

2003 subject interview, where he also denied possessing an Iranian passport. He indicated at the hearing and during his September 2011 interview that he would renounce his Iranian citizenship, but he has not formally written to the Iranian consulate renouncing his Iranian citizenship because he does not want to bring himself to the attention of the Iranian government. He does consider himself an American.¹⁵

Applicant's family knows that he served in the U.S. Army and that he works for the U.S. government overseas. He does not discuss the specifics of his work with his family.¹⁶

Personal Conduct

Applicant completed his most recent security clearance application (e-QIP) on December 16, 2008, while in Afghanistan. The SOR alleges five intentional falsifications in his answers. SOR allegation 3.a alleges that Applicant falsified his answer in Section 17 of his 2008 e-QIP and Section 14 of his 2002 and 2001 SF-86 when he answered "no" about his contacts with a foreign government, its embassies or consulates, or representatives inside or outside the United States. The allegation asserts that he did not disclose his visits to foreign embassies to obtain or renew his Iranian passport. SOR allegation 3.b alleges that Applicant falsified all three security applications when he failed to acknowledge that he had an active Iranian passport.¹⁷

Applicant denies any contact with foreign governments or embassies for any reason outside of his work. He did not consider his entrance into the Pakistan embassy to submit the paperwork to renew his Iranian passport in 2005 as a contact. He viewed a contact with a Pakistan embassy as "face to face" to do something at the embassy outside of submitting paperwork for his Iranian passport. He mailed his earlier requests to renew his Iranian passport and did not consider the mailing as a contact.¹⁸ Concerning the Iranian passport, Applicant stated at first that it was not an active passport, but after a careful review of the dates of the e-QIP and issuance of his Iranian passport, he said his failure to acknowledge this passport was a mistake.¹⁹

SOR 3.c alleges that Applicant falsified his answer to the questions in Section 22 of his e-QIP when he failed to disclose the circumstances of his termination from jobs with two employers in the last 7 years. When Applicant completed his 2008 e-QIP, he answered "no", but then stated:

¹⁵Tr. 59-63, 124-126, 147-149.

¹⁶Tr. 58, 108-110.

¹⁷SOR.

¹⁸Tr. 64-69, 151-158.

¹⁹Tr. 68-69, 159-165.

I was working for [employer] on 2006 as a US embassy guard commander. We had PM that didn't listen to and after 90 days told me that I have to leave We will talk to yu [you] in our office in state. He didn't tell me drictlly [directly] that I have to quit my jo [job].

This statement from Applicant's e-QIP contains numerous grammatical and typographical errors.²⁰

On November 18, 2005, the senior director for his then employer wrote an email to Applicant advising Applicant that it was releasing him from his employment agreement with the company. The senior director advised Applicant that it was exercising its right to terminate Applicant without cause under the early termination clause of the employment agreement because Applicant demonstrated poor judgment, lack of responsibility for personal actions, and lack of accepting guidance and direction from senior leadership. The senior director and the company provided no other reasons to Applicant for terminating the contract. However, in a letter dated December 21, 2005, the company provided the Government with an incident report listing numerous issues with Applicant. Included in this list was a rumor, or in legal terms embedded hearsay, that Applicant was fired from a contract with another employer. Applicant denies being fired.²¹

SOR paragraph 3.d alleges that Applicant intentionally falsified information in section 14/15 of his 2008 e-QIP when he did not list his uncle in Iran as a relative. Applicant did not list his uncle on his 2001 and 2002 SF-86 applications. He explained that he did not list his uncle because he had not had any contact with him in 30 years.²²

Finally, SOR paragraph 3.e alleges that Applicant intentionally falsified his 2008 e-QIP because he did not list all the countries he had visited in the last seven years. Travel on U.S. government orders was exempted, but not travel as a contractor. Applicant listed Afghanistan and Iraq, but not trips to Columbia, Jordan, Pakistan, Singapore, Thailand, Sudan, Mexico, Germany, Spain, United Arab Emirates, and Azerbaijan. Applicant traveled to the Sudan, Columbia, and Pakistan on a black passport for the State Department to teach hostage rescue to police departments and special units. On his way to or from the United States, from or to Pakistan or Afghanistan, Applicant traveled though the United Arab Emirates, Azerbaijan, or Jordan. He would stay one night in a hotel before traveling on to the United States. He acknowledged that he vacationed in Mexico and Thailand. He worked in Singapore and Spain while on active duty and for the State Department in Germany. He does not know why Mexico, Germany, Columbia, Pakistan, and the Sudan were not listed on his e-QIP.

²⁰GE 3.

²¹SOR; GE 3; GE 9; Response to SOR; Tr. 82.

²²SOR; GE 1-3; Tr. 73. Applicant had not seen his uncle since 1986, which more than 20 years prior to his completion of his 2008 e-QIP. Throughout the hearing, Applicant routinely mixed up dates and time. Based on this other information in the record, this time frame is incorrect..

He did not consider his one-night stay in the other countries a visit to the country as he was passing through the country on his return trip to the United States.²³

Under the Personal Conduct guideline, the SOR alleges three employment related issues (3.f, 3.g, and 3.h). Two issues related to Applicant's employment with Company A and one issue relates to Company B. In November 2005, Company A sent Applicant an email and a letter, stating that it was exercising its contractual right to terminate Applicant's employment without cause. Company A cited poor judgment, lack of responsibility for personal actions, and lack of accepting guidance and direction from senior leadership as its reasons to terminate the contract. Company A later filed an incident report on his termination. The report listed numerous issues with Applicant's employment, which are personnel issues, including 1) creating a degraded security situation which constituted a serious breach of security at the U.S. Embassy in Afghanistan and Applicant's temporary exclusion from the Embassy grounds, and 2) employment termination by Company B under unfavorable circumstances. Company A did not provide a copy of this incident report to Applicant.²⁴

Applicant denies being fired from Company B. After a change in supervisors, certain events took place at the work site, which led to Applicant file a discrimination complaint against his supervisor. Company B recalled him to the United States to discuss the situation. After this meeting, Applicant received no further job assignments. The incident report based its conclusion that Applicant was fired on statements of Company B trainers, which is embedded hearsay, not on a formal letter from Company B. Concerning the incident at the Embassy while he worked for Company A, Applicant acknowledged that he parked a car in front of the U.S. Embassy, while he delivered two boxes and obtained some papers. Applicant acknowledged that the security guard was required to report his parking of the car, but denies that his actions constituted a security breach, since the incident was investigated by security, and his access was reinstated. From this report and Applicant's testimony, it is clear that the work situation between Applicant and Company A did not work for multiple reasons.²⁵

Administrative Notice

I take administrative notice of the following facts. In 1979, the Iranian Revolution occurred, which ended the rule of the Shah of Iran. In December 1979, Iranian rulers prepared a new constitution which defines the political, economic and social order of this Islamic Republic. Iran is now an authoritarian, constitutional, theocratic republic, dominated by Shi'a Muslim clergy. Although human rights violations are prohibited by law, the Iranian government does not enforce the law. Human rights violations continue, particularly against journalists who speak out against Iran's current government,

²³GE 7; Tr. 73-82.

²⁴SOR; GE 9.

²⁵GE 9; Tr. 82, 168-175.

minority religions, such as the Baha'i faith, and political activists, who oppose the current ruling regime. Serious mistreatment of prisoners occurs. Because Iran does not recognize dual citizenship, Iranian-born, naturalized U.S. citizens are considered solely Iranian citizens by the Iranian authorities, and are required to enter and exit Iran on an Iranian passport. While traveling or residing in Iran, they are subject to surveillance, search, harassment, arrest, and imprisonment. More recently, Iran has prevented a number of Iranian-American citizens from leaving Iran, and in some cases, Iran has charged individuals with espionage and being a threat to the regime, including American citizens, not of Iranian birth or descent.

Iran's government is hostile to the United States, and the United States does not have a diplomatic relationship with Iran. Current U.S. concerns about Iran are based on its efforts to acquire nuclear weapons and weapons of mass destruction, support for and involvement in international terrorism, and support of violent opposition to the Middle East peace process and efforts towards democracy. Iran has provided guidance, training, and weapons to Shia political and militant groups in Iraq and other Middle East countries. It also provides encouragement, training, funding, and weapons to anti-Israeli terrorist groups and other terrorists groups in its efforts to undermine the Arab-Israeli peace process, as well as advocating the destruction of Israel. The United States has designated Iran as a state sponsor of terrorism. In 1979 in Executive Order 12170, the President declared a national emergency with respect to Iran pursuant to the International Emergency Powers Act (50 U.S.C. 1701-1706). The national emergency continues. The United States continues to have significant concerns about Iran's plans to develop nuclear weapons and weapons of mass destruction. Iran actively seeks to obtain dual use technologies from the United States. Iran has dramatically increased the depth and complexity of its intelligence operations, including cyber capabilities, against the United States in recent years. Iran has shown more interest in recent years in attacking the United States at home.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

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

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

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

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

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

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

Applicant's immediate family, which includes his brothers and sisters, are citizens and residents of the United States. His parents are deceased. Thus, no security concern is raised by these family members. His elderly uncle is a citizen and resident of Iran, and has regular contact with one of Applicant's brothers. Applicant owns the house where his brother lives. Applicant last saw his uncle in 1986. Applicant does not initiate telephone, email, or written contact with his uncle, and his uncle does not initiate any contact with him. Applicant may speak with his uncle about once a year if Applicant is in the United States and at his brother's home. When he was in the United States, Applicant lived with this brother until about one year ago, when Applicant purchased the house where he now lives. Applicant has worked overseas for much of the last 34 years. He has not traveled to Iran since his departure in 1974. His family relationship is not *per se* a reason to deny Applicant a security clearance, but his contact with his uncle must be considered in deciding whether to grant Applicant a clearance. The Government must establish that this family relationship creates a risk of foreign exploitation, inducement, manipulation, pressure, or coercion by terrorists or would create a potential conflict of interest between his obligations to protect sensitive information and his desire to help his family member who may be threatened by terrorists.

In determining if such a risk exists, I must look at Applicant's relationship and contact with his uncle and his brother's contact with his uncle as well as the activities of the government of Iran and terrorist organizations within this country. The risk that an applicant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. Applicant's and his brother's relationships and contacts with his uncle in Iran raise a heightened risk of security concern because the terrorist threats to safety and security are real and of great concern. The evidence of record shows that the Iranian government engages in espionage activities in the United States and that it targets U.S. citizens in the United States or Iran by exploiting, manipulating, pressuring, or coercing them to obtain protected information. Thus, the concern that the Iranian government will seek classified information is high.

Under the guideline, the potentially conflicting loyalties must be weighed to determine if an applicant can be expected to resolve any conflict in favor of U.S.

interests. In determining if Applicant's contacts in Iran cause security concerns, I considered that Iran and the United States do not have a diplomatic relationship, and that Iran actively supports terrorism and terrorist organization. The human rights issues in Iran, the conduct of the Iranian government towards U.S.-Iranian citizens, and the terrorist organizations in Iran that target U.S. citizens and interests continue to be a concern. While none of these considerations by themselves dispose of the issue, they are all factors to be considered in determining Applicant's vulnerability to pressure or coercion because of his family members in Afghanistan. Because of the significant lawless activities of the Iranian government and its support of terrorism, Applicant and his brother's occasional contacts with his uncle raise a heightened risk under AG ¶¶ 7(a) and (b).

AG ¶ 8 provides conditions that could mitigate security concerns:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(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.

Applicant's relationship with his family members is not a basis to deny him a security clearance; however, his burden of proof on mitigation under AG ¶ 8(a) requires him to provide information that shows that his family is not subject to coercion. His brother has not lived in Iran for more than 30 years, and his brother has no association or contacts with the Iranian government. However, his uncle held a high position in the Iranian Drug Enforcement Agency from which he retired. His uncle has not been targeted by the Iranian government or terrorists, nor has his uncle suffered any abuses from the Iranian government or been threatened by terrorists. Applicant's immediate and closest family members are citizens and residents of the United States. Applicant owns no property nor does he have financial assets in Iran. Applicant's contact with his uncle occurs only when Applicant is in the United States and is the result of a telephone call by his uncle to his brother. When he works overseas, Applicant does not contact his uncle, and he does not discuss his work with his siblings. Balancing these factors as well as Applicant's many years of service in the Army Special Forces against the conduct of the Iranian government, I find that Applicant would resolve any conflict in

favor of the U.S. interests. Likewise, any threats by terrorists organizations against Applicant's uncle in Iran would be resolved in favor of U.S. interests because Applicant's relationship with his uncle is casual and infrequent. Applicant will be unable to help his uncle in Iran if there are threats to him as Applicant fears returning to Iran. His loyalties are to the United States, not Iran or terrorist organizations. Applicant has mitigated the Government's security concerns as to his family contacts specified in the SOR under AG ¶¶ 8(a), 8(b), and 8(c).

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."

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

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

(1) possession of a current foreign passport; and

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

Applicant possesses an expired Iranian passport, which was active until two years ago. After gaining U.S. citizenship, Applicant continued to periodically renew his Iranian passport. He is a dual citizen of the United States and Iran. AG ¶¶ 10(a)(1) and 10(b) apply in this case.

AG ¶ 11 provides conditions that could mitigate security concerns:

(b) the individual has expressed a willingness to renounce dual citizenship;

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

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

Applicant expressed a willingness to renounce his Iranian citizenship during his interview and at the hearing. He has not taken formal steps to do so he does not want to raise the interest of the Iranian government in him. AG ¶ 11(b) applies. Since the record lacks any evidence the Iranian passport has been approved by the cognizant security

authority, AG ¶ 11(d) is not applicable. Finally, Applicant's Iranian passport expired two years ago. Applicant has not returned to Iran since his departure 38 years ago, and he has no future intent to return because he fears arrest and imprisonment by the Iranian government. While he considered visiting Iran about 10 years ago, he credibly testified to reconsidering his decision after talking with his family and reevaluating the possibilities of harm to him by the Iranian government. AG ¶ 11(e) applies because his Iranian passport is invalidated. Applicant has mitigated the security concerns under Guideline C.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

For AG ¶ 16(a) to apply, Applicant's omission must be deliberate. Applicant's failure to list his departure from Company B as a termination is not an omission because Applicant denied he was terminated and the only evidence of record supporting this allegation is unreliable rumor. The Government established that Applicant omitted material facts from his May 2001 SF-86, December 2002 SF-86, and December 2008 e-QIP, when he failed to acknowledge that he had an active Iranian passport and that he had contacted the Algerian and Pakistan embassies to obtain this passport. The Government also established that Applicant omitted material facts from his 2008 e-QIP when he did not list his uncle in Iran as a relative, failed to list all the countries he visited, and did not fully explain the circumstances surrounding his departure from Company A. This information is material to the evaluation of Applicant's trustworthiness and honesty. In his response, he denied intentionally falsifying his answers to these questions. He again denied intentional falsification of his answers at the hearing. When the allegation of falsification is controverted, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.²⁶

Applicant did not deliberately fail to provide information about his contacts with the Pakistani and Algerian Embassies because he did not consider mailing or personally delivering the papers to renew his Iranian passport a contact. Given his past work experience, which involved face-to-face contact with embassy personnel in many countries for matters related to work, his understanding of the meaning of contact is not unreasonable. While Applicant did not acknowledge any employment terminations, he did provide an explanation on his 2008 e-QIP which indicated problems existed with his employment at Company A. His explanation is not a model of clarity, but it is sufficient to give the Government notice of a problem at the workplace and does not indicate an intent to falsify his answer. Since Applicant has not seen his uncle who lives in Iran in 26 years and his failure to list his uncle as a relative in earlier security clearance applications did not raise a security concern, his failure to identify his Iranian uncle on his 2008 e-QIP does not reflect intentional falsification. Because Applicant viewed his overnight stays in Jordan, United Arab Emirates and Azerbaijan as mere stopovers on his travels between the United States and Afghanistan or Pakistan, his failure to list these countries was not intentional falsification. Likewise, his failure to list other countries where he worked on behalf of the United States government or vacationed reflected carelessness not intentional conduct because he did list three countries where he worked, which is an acknowledgment that he traveled overseas. The Government has not established intentional falsification for the allegations in SOR ¶¶ 3.a, 3.c, 3.d and 3.e, which are found in favor of Applicant.

²⁶See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

Concerning his failure to acknowledge the existence of an active Iranian passport for 10 years, Applicant was fully aware that he had obtained this passport. While he never used this passport, his nonusage does not excuse his failure to acknowledge the existence of the passport. He has not provided a reason for not acknowledging that he had this passport. The Government has established its case as to SOR allegation 3.b under AG ¶ 16(a).

SOR allegations 3.f and 3.g arise out of Applicant's working relationship with Company A. This employer exercised its contractual right to terminated its employment contract with Applicant without cause, meaning that it could end the employment relationship for any reason. The Company advised Applicant in general terms about its reasons for terminating him. In a separate document not given to Applicant, Company A outlined its specific issues with Applicant including an incident at the U.S. Embassy in 2005. The Government has established its case as to these two allegations under AG ¶¶ 16 (c) and (e).

Finally, the Government has not established that Applicant was terminated from his job with Company B. The Government relies on an embedded hearsay statement in an incident report from Company A. Applicant denies that he was fired from his job with Company A, and the record contains no documentation from Company A which reflects that Applicant was terminated for cause or for any reason. SOR allegation 3.h is found in favor of Applicant.

AG ¶ 17 provides conditions that could mitigate security concerns:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Based on the information in the record, the working relationship between Applicant and Company A involved numerous conflicts which resulted in the termination of their contractual relationship. Applicant's long and successful career in the Army and his successful working relationship with prior and subsequent employers substantiates a finding that his problems with Company A arose as a result of the circumstances unique to the work environment in which he found himself. Applicant recognized that the disagreements existed, but these disagreements and the subsequent termination of his employment contract do not raise a security concern. The incident report created after Applicant left his employment outlines numerous issues with which Applicant disagrees. Company A provided no supporting documentation for its allegations, making this

document nothing more than a list of complaints not properly verified when the problems could be verified.²⁷ Applicant acknowledged that the security guard at the gate to the U.S. Embassy properly reported that Applicant's car was parked at the gate, but denied that his action created a degraded security situation because, after an investigation by Embassy security, his access to the Embassy was reinstated within a week of the incident. Applicant has mitigated the security concerns as SOR allegations 3.f and 3.g.

Applicant has not mitigated the security concerns about his intentional failure to acknowledge the existence of his Iranian passport under the Guideline E mitigating factors.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant successfully served in the United States Army for 22 years in war zones and in dangerous situations. He continues to serve the United States as a contractor in the war

²⁷The circumstances surrounding the termination of Applicant's employment contract with Company A raise numerous personnel issues which will not be addressed in this decision.

zones of Iraq and Afghanistan. He is an American citizen and considers the U.S. government his government. He has no loyalties to Iran or any of its citizens. Applicant's direct contacts with Iran are nonexistent, and his contact with his one relative in Iran is sparse. Applicant worked in an unfavorable work environment while employed by Company A. While problems clearly existed between he and Company A, these problems are not a reason to deny him a security clearance. His father was killed on a visit to Iran in 1985, and Applicant fears harm to himself should he return to Iran. When he actually considered a trip to Iran about 10 years ago, his family convinced him that it would be too dangerous for him to return. He agrees with their assessment and has no plans to return in the future. He wants to keep a copy of his Iranian passport as a memento to his heritage, not to use for travel to Iran which he has not visited in more than 38 years. He appears to have an attachment to the passport as a tie to his heritage. Although he has rendered admirable service to the United States for many years, his failure to acknowledge the existence of his Iranian passport in three security clearance applications and in his personal subject interview in 2003 raises serious questions about his judgment which he has not overcome in this case. Applicant is a loyal citizen of the United States. His loyalty is not in question in this process, but his judgment is. His eligibility for a security clearance is based upon a determination that the issues raised in the SOR do not create a situation for him where he can be pressured, coerced, or exploited because of his actions and Iranian uncle. After a careful consideration of all the evidence in the record, a concern continues about his failure to be truthful on his security applications and in an personal subject interview.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guidelines B (Foreign Influence) and C (Foreign Preference), but he has not mitigated the security concerns raised under Guideline E (Personal Conduct).

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.a(1):	For Applicant
Subparagraph 2.a(2):	For Applicant
Subparagraph 2.a(3):	For Applicant
Subparagraph 2.a(4):	For Applicant

Paragraph 3, Guideline E:

AGAINST APPLICANT

Subparagraph 3.a:	For Applicant
Subparagraph 3.b:	Against Applicant
Subparagraph 3.c:	For Applicant
Subparagraph 3.d:	For Applicant
Subparagraph 3.e:	For Applicant
Subparagraph 3.f:	For Applicant
Subparagraph 3.g:	For Applicant
Subparagraph 3.h:	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. Eligibility for access to classified information is denied.

MARY E. HENRY
Administrative Judge