



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 10-04850  
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Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Department Counsel  
For Applicant: *Pro se*

June 26, 2012

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires For Investigations Processing on November 4, 2009. (Government Exhibit 1.) On January 18, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines C and B to Applicant. 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 adjudicative guidelines (AG) effective within the Department of Defense after September 1, 2006.

The Applicant responded to the SOR on February 10, 2012, and February 25, 2012, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on May 4, 2012. A notice of hearing were issued on May 7, 2012, scheduling the hearing for May 30, 2012. At the hearing the Government presented four exhibits, referred to as Government Exhibits 1 through 4 that were admitted without objection. The Applicant presented no exhibits, but testified on his own behalf. The record remained open until close of business on June 11, 2012, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted three Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibit A through C that were admitted without objection. The official transcript (Tr.) was received

on June 11, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **REQUEST FOR ADMINISTRATIVE NOTICE**

Department Counsel requested that I take administrative notice of certain facts concerning the current political conditions in Iran. The Applicant had no objection. (Tr. pp. 18 and 25.) The requested administrative notice was taken. The requests and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

## **FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 49 years of age and married with one son. He has a Doctorate degree in Science and Physics. He is employed as a Director for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant denied the allegations set forth under this guideline. (See Applicant's Answer to SOR dated February 10, 2012.) He also admits each of the allegations. (See Answer to SOR dated February 25, 2012.) The Applicant was born in Tehran, Iran in 1962. He grew up in Iran, and immigrated to the United States for educational purposes in 1983. Being strongly against the regime that took over after the revolution in Iran, in 1984, he received political asylum. In 1986, he received his green card, and in 1992, he became a naturalized United States citizen. He married a dual citizen of Iran and the United States in 1994. By 2002, he had obtained his masters and doctorate degrees in the United States. He had been working in the defense industry for his current employer since 1989. He has held a security clearance for nearly twenty years. He states that he currently holds a position that is two levels under the Chief Executive Officer of the company.

The Applicant considers himself a dual citizen of Iran and the United States. (See Government Exhibit 1.) He testified that he has never attempted to formally renounce his Iranian citizenship because he wants to be able to use his Iranian passport to travel to Iran to see his family. (Tr. pp. 36 and Government Exhibit 1.) If he renounces his Iranian citizenship, he will not be able to enter the country again. He has held an Iranian passport with the original validation since 1984. In 1992, after becoming a naturalized United States citizen, he applied for and obtained another valid Iranian passport. In May 2007, he was issued another Iranian passport that was due to expire in May 2012. He has used his Iranian passport to travel to Iran to visit his family members there in 2002, 2004, 2005, 2006, 2007, 2008, 2009 and 2010. (Tr. p. 44.) With the understanding that his foreign passport could jeopardize his chances of

obtaining a security clearance, the Applicant surrendered his Iranian passport to the security office at his company. They have agreed to return his Iranian passport to him when he wants to travel to Iran to visit his family there. (Tr. p. 38.)

The Applicant explained that his wife is well known in Iran for actively writing, protesting and organizing activities against the Iranian Government. She is a poet, essayist and social political activist. Her writings are banned from publishing inside Iran and the web sites she has been working with are all filtered by the Iranian government. (Applicant's Post-Hearing Exhibit B.) The Applicant fears that if she goes back to Iran, she will be killed or captured. (Tr. p. 42.) The Applicant even fears for his own life when he travels to Iran given his affiliation with his wife. (Tr. p. 61.)

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant denied the allegations set forth in the SOR under this guideline. (See Applicant's Answer to SOR dated February 10, 2012.) He also admits each of the allegations. (See Applicant's Answer to SOR dated February 25, 2012.) The Applicant's father, a brother, father-in-law and mother-in-law are citizens and residents of Iran. Another brother is a citizen of Iran but resides in the United Kingdom. The Applicant contacts his father at least every week or every two weeks. (Tr. p. 30.) He contacts his mother-in-law and father-in-law in Iran every two weeks. (Tr. p. 53.) He visits with his brother in Iran every time he travels there. The Applicant maintains close and continuing contact with his family in Iran. The Applicant's father is a retired banker. His mother-in-law is a retired teacher. His father-in-law is a retired accountant who served in the Iranian Army for twenty years, until he retired as a Colonel. His brother in Iran owns a pencil company. Another brother is a dual citizen of Iran and the United Kingdom and resides part time in Iran and part-time in England. The Applicant's mother passed away in 2007.

The Applicant's spouse is also a dual citizen of Iran and the United States. (See Applicant's Answer to SOR.) In regard to his foreign travel, Applicant has traveled to Iran to visit his father in Iran on numerous occasions as discussed above. When he travels to Iran, he stays with his father. He explained that it is typical for his father to have a family party, that includes his brothers and uncles, when the Applicant comes to Iran to visit. (Tr. p. 50.)

He testified that all of his financial assets are in the United States. His net worth in the United States includes his primary residence, a rental house and a vacation property, as well as bank accounts and a company retirement account. (Applicant's Post-Hearing Exhibit C.)

The Applicant has received a number of awards, commendations and achievements including a certification of recognition from NASA, Technologist of the Year, the NASA space award for Scientist of the Year in 2004, and the JPL award for his contributions to the defense industry. In addition, he has at least 162 scientific

publications and has been extremely instrumental in scientific development. (Applicant's Exhibit A.)

The Applicant has contacts with Iran. Accordingly, it is appropriate to discuss the situation in Iran at this time. I have taken administrative notice of the current political conditions in Iran. These include the fact that Iran has no diplomatic relations with the United States, Iran's efforts to acquire nuclear weapons and other weapon of mass destruction, its support for and involvement in international terrorism, its support for violent opposition to the Middle East peace process, and its dismal human rights records. I have considered the fact that Iranian Government officials at all levels commit serious abuses of their power and authority. It is a Totalitarian Government, that supports terrorists activities, and it is rampant with crime and instability. The overall deteriorating security situation in Iran, the human rights abuses, and the government corruption elevates the cause for concern in the case. The United States may face no greater challenge from a single country than from Iran.

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern, which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

### Foreign Preference

9. *The Concern.* When 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.

#### Condition that could raise a security concern:

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

(1) possession of a current foreign passport.

#### Conditions that could mitigate security concerns:

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

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

### Foreign Influence

6. *The Concern.* 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.

#### Conditions that could raise a security concern:

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

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.

#### Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct and surrounding circumstances;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which the participation was voluntary;

- f. The presence or absence of rehabilitation and other permanent behavioral changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct, which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to classified information.

The DoD Directive states, “The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination.” The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence, which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

The Government must make out a case under Guidelines C (Foreign Preference) and B (Foreign Influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse situation and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated and that the Applicant presently qualifies for a security clearance.

An individual who has foreign connections and is subject to foreign influence may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

## CONCLUSION

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

Under Foreign Preference, Disqualifying Condition 10.(a) *exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport applies.* Mitigating Condition 11(b) *the individual has expressed a willingness to renounce dual citizenship,* and 11.(e) *the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated also apply, but are not controlling in this case.*

Under Foreign Influence, Disqualifying Condition 7.(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;* and 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.* None of the mitigating conditions are applicable.

The evidence shows that the Applicant is a dual citizen of Iran and the United States. He has used his Iranian passport after becoming a United States citizen to travel to Iran to visit his family there numerous times. He renewed his Iranian passport in May 2007 that does not expire until 2012. His Iranian passport is surrendered but not destroyed, and will be returned to him upon his request. He also indicates that if he does not have his Iranian passport he cannot travel to Iran to see his family, which is a priority for him. Under these particular circumstances, a situation may occur that could potentially cause the Applicant to become subject to foreign exploitation, inducement, manipulation, pressure, or coercion against the interests of the United States. Therefore, the possibility of foreign influence exists that could create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is vulnerable to foreign preference. Accordingly, I find against the Applicant under Guideline C (Foreign Preference).

Despite the fact that the Applicant has lived in the United States for well over twenty years, and has significant financial assets here, he is still very close to his family in Iran. He wants to be able to visit his father in Iran and continue to possess his Iran passport in order to do so. Furthermore, it is noted that the current political situation in Iran elevates the cause for concern in this case. Iran is an active promoter of terrorism and a collector of intelligence that poses a significant risk to the United States.

The evidence further shows that the Applicant has a strong bond and affection with his foreign family members that include his blood relationships as well as the marital relationships. The Applicant's connection to his spouse and her well known reputation in Iran also presents an added risk to the national security. The Applicant

can easily be targeted for his affiliation to his wife. Furthermore, the fact that the Applicant continues to travel to Iran on a regular basis is of concern. Accordingly, any individual who could potentially cause the Applicant to become subject to foreign exploitation, inducement, manipulation, pressure, or coercion is of utmost concern to the United States. In this case, there may be the possibility of foreign influence that could create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is vulnerable to foreign influence. Accordingly, I find against the Applicant under Guideline B (Foreign Influence).

I have also considered the “whole-person concept” in evaluating the Applicant’s eligibility for access to classified information. The Applicant is a 49 year old, high-ranking defense-industry executive, who has worked in the industry for over twenty years. He is highly respected in his field and has made significant contributions in the industry. However, he wants to be able to travel to Iran to visit his family on an Iranian passport whenever he so desires. Coupled with his wife being a known target of the Iranian government, he clearly poses a significant security risk for the United States. He is aware of DoD policy that prohibits possession of a foreign passport while holding a security clearance and under the particular facts of this case, strict adherence to this policy is required. However, he cannot guarantee such compliance.

Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole-person assessment of poor judgment, untrustworthiness, unreliability, a lack of candor, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

This Applicant has failed to demonstrate that he is sufficiently trustworthy, and that he clearly meets the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guidelines C (Foreign Preference) and B (Foreign Influence).

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the SOR.



## **FORMAL FINDINGS**

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.  
Subpara. 1.a.: For the Applicant

Paragraph 2: Against the Applicant.  
Subpara. 2.a.: Against the Applicant  
Subpara. 2.b.: Against the Applicant  
Subpara. 2.c.: Against the Applicant  
Subpara. 2.d.: Against the Applicant  
Subpara. 2.e.: Against the Applicant  
Subpara. 2.f.: Against the Applicant

## **DECISION**

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson  
Administrative Judge