



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



In the matter of: )  
 )  
 ) ISCR Case No. 10-05921  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

May 31, 2011

**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for a security clearance to work in the defense industry. Applicant, a naturalized citizen, was born in Iran. His parents and five of his eight siblings are citizens and residents of that country. Applicant also holds a valid Iranian passport that he used to enter Iran in 2004. He failed to mitigate the foreign influence and foreign preference concerns raised in this case. Clearance is denied.

**Statement of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on November 24, 2010, the Defense Office of Hearings and Appeals (the Agency) issued a statement of

<sup>1</sup> This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replaces the guidelines in Enclosure 2 to the Directive.

reasons (SOR) explaining that it was not clearly consistent with the national interest to grant Applicant access to classified information. The SOR is similar to a complaint, and it detailed the factual basis for the action under the security guidelines known as Guideline B for foreign influence and Guideline C for foreign preference.

Applicant timely answered the SOR and requested a decision without a hearing. Department Counsel submitted the Government's written case on January 10, 2011. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on January 25, 2011. He did not object to the items appended to the Government's brief or provide a response to the FORM. These items, with exception of the SOR (identified as Gov X 1), the transmittal receipt letter (identified as Gov X 2) and the Answer (identified as Gov X 3), are admitted as Government's Exhibits (GE) 4 and 5.

The case was assigned to me on April 4, 2011.

### **Evidentiary Rulings**

#### **Request for Administrative Notice**

Department Counsel submitted a written request that I take administrative notice of certain facts about Iran. Applicant did not object to the request, and it was approved. The request and the attached documents were not admitted into evidence but were included in the record as attachments to the FORM. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

Applicant is a 51-year-old engineer/scientist who is employed by a defense contractor. He previously held a clearance from 1992 to 1999 while working for another defense contractor. His clearance became inactive when he changed jobs in 1999. He has worked for his current employer since April 2004.<sup>2</sup>

Applicant immigrated to the United States at age 18 to pursue higher education and received his undergraduate degree in 1984. Applicant became a naturalized citizen in March 1987. His wife of 29 years and his two adult daughters were born in the United States.<sup>3</sup>

Applicant is from a large family. He is one of nine siblings. His parents, who obtained permanent resident status in the United States, are citizens and residents of Iran. Applicant's parents came to the United States in 1990 to live with him. After

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<sup>2</sup> GE 5.

<sup>3</sup> Answer; GE 4.

receiving their green cards in 1994, his parents returned to Iran because his mother became ill and could not obtain access to affordable healthcare in the United States. Once her condition improves, his parents anticipate selling their home and returning to the U.S. to live with Applicant. Currently, Applicant's parents continue to reside in Iran.<sup>4</sup>

In addition to his parents, five of his siblings (two brothers and three sisters) and one sister-in law are also citizens and residents of Iran. One brother is a dentist, the other a retired electrical engineer, his sisters and sister-in-law are housewives. Only one of these siblings, the retired electrical engineer and his wife, has been to the United States. They have held permanent resident status since at least 2006. His remaining three siblings, like Applicant, are naturalized citizens of the United States.<sup>5</sup>

Since immigrating to the United States 32 years ago, Applicant has traveled to Iran twice. Only one trip occurred after Applicant became a naturalized citizen. During his most recent trip in August 2004, Applicant and his three siblings residing in the United States traveled together to Iran for a family reunion. The trip lasted for 15 days. Applicant entered and exited the country using his Iranian passport because U.S. passports cannot be used to enter Iran. Although Applicant has not returned to Iran since 2004, he renewed his Iranian passport in August 2006. This passport will expire in August 2011. Applicant plans to renew the passport if the prohibition on using U.S. passports to enter Iran continues. He maintains the Iranian passport, and by extension his Iranian citizenship, in case he needs to enter the country to visit his parents.<sup>6</sup>

Applicant maintains regular contact with his parents. He telephones them at least once each week and speaks to his siblings if they happen to be at his parents home when he calls. Otherwise, he does not maintain telephonic or electronic communication with his five siblings living in Iran.<sup>7</sup>

Iran is a constitutional Islamic republic with a theocratic system of government in which Shi'a Muslim clergy dominate the key power structures, and ultimate political authority is vested in a learned religious scholar. Iran is 98% Muslim; the remaining 2% is everything else. The United States has not had diplomatic relations with Iran since 1980. In 2008, President Bush stated that "[t]he actions and policies of the Government of Iran are contrary to the interests of the United States in the region and pose a continuing unusual and extraordinary threat to the national security, foreign policy, and economy of the United States." Iran has sought to illegally obtain U.S. military equipment and other sensitive technology. The United States has defined the areas of objectionable Iranian behavior as:

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<sup>4</sup> GE 4.

<sup>5</sup> GE 4-5.

<sup>6</sup> GE 4-5.

<sup>7</sup> GE 4-5.

- Iran's efforts to acquire nuclear weapons and other weapons of mass destruction (WMD);
- Its support for and involvement in international terrorism;
- Its support for violent opposition to the Middle East peace process; and
- Its dismal human rights record.

The U.S. has designated and characterized Iran as the world's leading state sponsor of terrorism. Iran provides critical support to non-state terrorist groups. Iran has sought to make the United States suffer political, economic, and human costs. Further, Iran has engaged in efforts to sow violence and undermine stability in Iraq and Afghanistan, including lethal support for groups that are directly responsible for hundreds of U.S. casualties.

The government of Iran has committed numerous, serious human rights abuses against the Iranian people. Abuses include political killings and incarceration; summary executions, including of minors; disappearances; religious persecution; torture; arbitrary arrest and detention, including prolonged solitary confinement; denial of due process; severe restrictions on civil liberties - speech, press, assembly, association, movement and privacy; severe restrictions on freedom of religion; official corruption; violence and legal and societal discrimination against women, ethnic and religious minorities, and homosexuals; trafficking in persons; and child labor.

The State Department continues to warn U.S. citizens to consider carefully the risks of travel to Iran. U.S. citizens who were born in Iran and the children of Iranian citizens, even those without Iranian passports who do not consider themselves Iranian, are considered Iranian citizens by Iranian authorities, since Iran does not recognize dual citizenship. Therefore, despite the fact that these individuals hold U.S. citizenship, under Iranian law, they must enter and exit Iran on an Iranian passport, unless the Iranian government has recognized a formal renunciation or loss of Iranian citizenship. U.S.-Iranian dual nationals have been denied permission to enter/depart Iran using their U.S. passport; they even had their U.S. passports confiscated upon arrival or departure. U.S.-Iranian dual citizens have been detained and harassed by the Iranian government. Iranian security personnel may place foreign visitors under surveillance. Hotel rooms, telephones and fax machines may be monitored, and personal possessions in hotel rooms may be searched.

## **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 to be 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, administrative judges apply the guidelines 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.

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

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

Section 7 of EO 10865 provides that adverse 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**

Under this guideline, “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” (AG ¶ 6).

The country at issue, Iran, is specifically noted for its association with and sponsorship of terrorist. Iran also engages in clandestine efforts to illegally obtain U.S. military equipment and other sensitive technology. Consequently, given the heightened risk associated with that country, a high degree of scrutiny is warranted.

Applicant's parents and five siblings are citizens and residents of Iran, a sponsor of terrorist activity, a collector of sensitive information, and a country with interests antithetical to the United States. AG ¶ 7(a), "contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of, or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion," applies.

The following mitigating conditions under AG ¶ 8 are potentially applicable:

(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 assertions that his family is not involved with the government are not sufficient to mitigate the foreign influence concerns. An applicant's relatives' obscurity does not provide a meaningful measure of whether an applicant's circumstances pose a risk, when, for example, the relatives are subject to the authority of a regime that is hostile to the U.S. and has a dismal human rights record.<sup>8</sup> Furthermore, as the Appeal Board has observed:

There is no good reason to assume that a foreign country with an authoritarian government that has been . . . involved in state-sponsored terrorism would have compunctions about exerting influence or pressure on its citizens just because they lack prominence or live modest, ordinary lives.<sup>9</sup>

Under these circumstances AG ¶ 8(a) does not apply.

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<sup>8</sup> See, e.g., ISCR Case No. 07-13696 at 5 (App. Bd. Feb. 9, 2009); ADP Case No. 05-17812 at 3 (App. Bd. Jun. 11, 2007).

<sup>9</sup> ISCR Case No. 03-24933 at 8 (App. Bd. Jul 28, 2005).

Despite Applicant's significant ties to the U.S., his wife, his daughter, and four of his eight siblings, AG ¶ 8(b) does not apply to this case. Applicant's sense of obligation and loyalty to his parents is just as strong. Indeed, Applicant has not renounced his Iranian citizenship or surrendered his Iranian passport because he needs to be able to visit his parents whenever he feels compelled to do so.

Applicant's relationships with at least four of his siblings living in Iran may be classified as casual and infrequent. However, his relationship with his parents with whom he maintains regular contact and his brother and sister-in-law who consider Applicant's home in the U.S. their own, cannot be classified as such. Therefore, AG 8(c) does not apply.

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

Under this guideline, "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." (AG ¶ 9) Applicant's use of an Iranian passport to travel to Iran in 2004 triggers the application of AG ¶ 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."

Applicant's contention that he used his Iranian passport to enter Iran only because use of his U.S. passport is prohibited has little probative value. As the Appeal Board noted, "[t]he negative security significance of acts indicative of foreign preference is not negated or diminished merely because an applicant engages in those acts for personal reasons or for personal convenience." (ISCR Case No. 99-0254 at 3 (Feb. 6, 2000)).

None of the mitigating conditions available under AG ¶ 11 are applicable because Applicant has not surrendered the passport. He has stated his intention to renew the passport, which expires in August 2011, as long as he is unable to travel to Iran using his U.S. passport.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In doing so, I have also considered the whole-person concept. Although Applicant has established significant ties to the U.S. in the 32 years he has resided in the United States, 24 of those as a naturalized citizen, his ties to family members in Iran remain strong. Applicant's relationship with his parents, one brother and his sister-in-law, all of whom hold permanent resident status in the U.S. and reside with Applicant when in the U.S., cannot be dismissed as casual. Applicant's strong connection to his family is also evident in his decision to apply for and renew his Iranian passport since becoming a U.S. citizen so that he can visit his elderly parents in Iran when needed. Based on these relationships along with the extraordinary threat Iran poses to the national security, foreign policy, and economy of United States, I conclude that Applicant failed to mitigate the foreign influence and foreign preference concerns.

### **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

    Subparagraphs 1.a-1.c:                      Against Applicant

Paragraph 2, Guideline B:                      AGAINST APPLICANT

    Subparagraphs 2.a-2.e.:                      Against Applicant

### **Conclusion**

In light of all of the circumstances, 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.

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Nichole L. Noel  
Administrative Judge