



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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 ----- ) ISCR Case No. 10-07445  
 )  
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 Applicant for Security Clearance )

**Appearances**

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

January 24, 2012

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On March 1, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines C and B for 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 for SORs issued after September 1, 2006.

Applicant replied to the SOR (RSOR) in writing on March 29, 2011, and he initially requested a decision based on a written record, but later requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on October 17, 2011. DOHA issued a notice of hearing on November 1, 2011, and I convened the hearing as scheduled as a Video- Teleconference on November 15, 2011. The Government offered Exhibits 1 through 4, which were received and admitted without objection. Applicant testified on his own behalf and submitted Exhibit A through C, which were also admitted without objection. The record remained open until

December 2, 2011, for Applicant to submit additional documents, and additional documents that were received, have been identified and entered into evidence without objection as Exhibits B through D. DOHA received the transcript of the hearing (Tr) on November 23, 2011. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is granted.

### **Request for Administrative Notice**

Department Counsel requested that I take administrative notice of certain facts relating to the country of the Islamic Republic of Iran (Iran). The request and the attached documents were admitted into evidence as Exhibit 1. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In his RSOR, Applicant admitted all of the SOR allegations, 1.a. 1) and 2), and 2.a. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 63 years old. He was born in Iran in 1948 and moved to the United States in 1975, initially as a student. He became a United States citizen in 1998. He was married from 1982 to 1996 to his first wife, and he has been married since 2001 to his current wife. His current wife was born in Iran and is a United States citizen. He has one daughter and two stepchildren. His daughter is 26 years of age and will soon be graduating from college. She recently got married, and Applicant testified that he paid for the entire wedding. (Tr at 66.)

Applicant is employed by a defense contractor, currently working overseas, and he seeks a DoD security clearance in connection with his employment in the defense sector.

### **Paragraph 1 (Guideline C - Foreign Preference)**

The SOR lists one allegation with two subparagraphs regarding Foreign Preference, under Adjudicative Guideline C. As stated above, Applicant has admitted in his RSOR all of the allegations listed:

1.a. It is alleged in the SOR that Applicant exercised dual citizenship with Iran and the United States in the following manner:

(1) Applicant possessed an Iranian passport that was issued on or about May 20, 2007, and does not expire until May 19, 2012.

(2) Applicant used his Iranian passport to travel to Iran in 2009.

At the hearing, Applicant testified that he acquired his Iranian passport in 2007, to gain access to Iran to see his 87 year old mother, whom he had not seen in approximately 20 years, after she requested that he see her before she died. He stated that she died about 1 ½ months after his visit. He further averred that if he had used his United States passport, he would not have received a visa, and would not have been able to see his mother one last time. He had previously gone back to Iran one additional time in 2000 to attend his sister's funeral. (Tr at 37-42.)

Applicant testified that he had his Iranian passport destroyed, and he had no intention to ever renew it. (Tr at 42-43.) Exhibit A includes a letter from a Security Manager for the United States Marine Corps, indicating that Applicant presented his Iranian passport to a Command Services Attorney, and that on June 1, 2011, the Security Manager shredded the subject passport.

### **Paragraph 2 (Guideline B - Foreign Influence)**

The SOR lists one allegation regarding Foreign Influence, under Adjudicative Guideline B. As stated above, Applicant has admitted in his RSOR the allegation listed:

2.a. Applicant's two brothers and one sister are citizens and residents of Iran. Applicant testified that all three of his siblings are retired, and all of them are older than Applicant. Before retirement, his brothers worked in a refinery, and his sister, a registered nurse, also worked in a refinery. None of them ever worked for the Iranian Government. (Tr at 49-51.)

Applicant also has one brother and one sister who live in Sweden. His brother is a biologist and his sister is a registered nurse; both work in a hospital. Finally, Applicant has a cousin, who lives in the United States and is a civil engineer. He has limited contact with his siblings. He calls them when he returns to the United States, about every six months. (52.)

Applicant testified that he has no financial interest in Iran. He also averred that his loyalties lie entirely with the United States. (Tr at 70, 78-82.)

### **Mitigation**

Applicant submitted four very positive character letters in Exhibit B. One was from a friend and co-worker who had previously served in the United States Army. He described Applicant as someone who "exemplified selfless service as well as the Army values better than just about anybody I have ever met . . . not only a trustworthy person but also as a role model for all young men such as myself." The second letter was from Applicant's current wife. She wrote that she and her husband both have family in the United States, he a daughter, and she two children and a grandchild, and they plan to continue living in the United States to be close to their relatives. They both feel total loyalty to the United States. The other two letters come from Applicant's daughter and his ex-wife, and they are both very laudatory about his generosity.

Applicant also submitted a mortgage statement showing that he and his wife make monthly payments on their home of \$1,670, and have a balance owed of \$291,490.43, with a late charge due of \$117.30. (Exhibit C.) Finally he submitted a consolidated bank statement, showing that he and his wife have a current bank balance of \$113,357.13. (Exhibit D.)

### **Current Status of Iran**

I take administrative notice of the following facts regarding Iran. Currently, Iran is considered one of the most dangerous adversaries to the interests of the United States. The U.S. has not had diplomatic relations with Iran since April 7, 1980, following the November 1979 Iranian student occupation of the American Embassy in Tehran and the hostage taking of 52 Americans, which was supported by Ayatollah Ruhollah Khomeini, Iran's leader at the time.

The United States Government's concerns with Iran's policies include, but are not limited to the following: (1) its clandestine efforts to acquire nuclear weapons of mass destruction, (2) its sponsorship of international terrorism, (3) its intervention into the internal affairs of Iraq, (4) its aggressive efforts to undermine the Middle East peace process, and (5) its human rights violation against its own people. As a result of these concerns, the U.S. prohibits most trade with Iran.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to 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 the 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 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.” Applicant’s application, receipt, and retention of an Iranian passport, and the use of the Iranian passport, raises foreign preference concerns under disqualifying condition AG ¶ 10 (a) as the “exercise of any right, privilege or obligation of foreign citizenship,” specifically (1) “possession of a current foreign passport.” Since Applicant was willing to revoke and have destroyed his Iranian passport, I find that mitigating condition under AG ¶ 11 (e) “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated” applies to this case. After considering all of the evidence of record under Guideline C, I conclude that the mitigating evidence substantially outweighs any other evidence. I therefore conclude Guideline C for Applicant.

### **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. Those that could be applicable in this case include the following: 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.” Applicant’s siblings, who are citizens and residents of the Iran, a country whose interests are antithetical and inimical to the United States, make AG ¶ 7(a) a concern to the Government.

AG ¶ 8 provides conditions that could mitigate security concerns. I find that AG ¶ 8(b) “there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest,” is applicable to this Applicant and controlling for the following reasons:

Applicant has been a resident of the United States since 1975, more than 36 years, and a citizen of the U.S. since 1998. His wife, daughter and two stepchildren are United States residents and citizens, and Applicant and his wife plan to reside in the United States for the remainder of their lives. His Iranian passport was only obtained to see his mother one last time before she died, and he has had it destroyed. Applicant has significant assets in the United States and no assets outside of the United States. His siblings in Iran are elderly, retired, never worked for the Government of Iran, and Applicant has limited contact with them. Finally, I considered Applicant’s credible testimony of his strong feelings of loyalty to the United States. I therefore conclude Guideline B for Applicant.

### **Whole-Person Concept**

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

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of

rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case under Guidelines C and B. Based on all of the reasons cited above as to why the mitigating conditions apply, and the very powerful attachment of Applicant to the United States, I find that the evidence leaves me with no significant questions and doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has mitigated the security 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:	FOR APPLICANT
Subparagraphs 1.a. (1) and (2):	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a.:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted

Martin H. Mogul  
Administrative Judge