



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-10760
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Raashid Williams, Esq., Department Counsel  
For Applicant: *Pro se*

January 18, 2012

**Decision**

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LYNCH, Noreen A., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application on May 12, 2010. On July 6, 2011, the Defense Office of Hearings and Appeals (DOHA) sent him a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing security concerns under Guideline B. DOHA acted 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) implemented by the Department of Defense on September 1, 2006.

Applicant received the SOR and requested a hearing before an administrative judge. The case was assigned to me on September 27, 2011. DOHA issued a notice of hearing on October 28, 2011, scheduling the hearing for November 29, 2011.

Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified, presented two witnesses, and did not submit any documents. DOHA received the transcript (Tr.) on December 5, 2011.

### **Administrative Notice**

Department Counsel requested that I take administrative notice of relevant facts about Iran. The request and supporting documents are attached to the record as HX. Applicant did not object to documents. (Tr. 14) I took administrative notice as requested by Department Counsel. The facts administratively noticed are set out below in my findings of fact.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the factual allegations in the SOR under Guideline B (Foreign Influence) and offered explanations. He denied the overall statement that he is subject to foreign influence. He provided additional information to support his case. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 28-year-old employee of a defense contractor. He is a U. S. citizen, born in the United States, of parents who are Iranian. He attends graduate courses, but has not received his degree. He received an undergraduate degree in 2007. Applicant has not held a security clearance. He has worked for his employer since March 2010. Applicant has never traveled to Iran. Applicant is single and has no children. (GE 1)

Applicant's mother is a citizen and resident of Iran. She divorced Applicant's father when Applicant was three years old. Applicant had no contact with his mother during his childhood. His paternal grandmother, who lives in the United States, raised him. He did not speak to his mother until he was 24 years old. He also stated that she suffers from depression and never had custody of him. Applicant's father had full custody and they stayed in the United States. His father has no contact with Applicant's mother.

In 2006, Applicant, at the request of his father, agreed to sponsor his mother to immigrate to the United States. He went to Dubai, where she received permission to immigrate. His mother came to the United States, but was not able to assimilate and returned to Iran. She has visited on two separate occasions. (Tr. 40) Her last visit was 2010. The United States issued her a permanent resident status in 2007. Applicant believes he has spoken to her on the phone since August 2010 once every other month.

Applicant's grandfather is a citizen and resident of Iran. Applicant states that he has spoken to his grandfather approximately five times in his life. Applicant was vehement that he has had very little relation with his mother's side of the family. None of his mother's family knows what Applicant does for a living. (Tr.45)

Applicant's aunt and cousin live in Iran. He has never met his cousin. He met his aunt on one occasion in 2007 when she assisted his mother travelling to Dubai. He has not spoken to her since. He has never met the rest of his maternal family. (Tr. 44) Applicant acknowledged that some cousins "text" him about coming to the United States. He refers them to the State Department. He does not have any emotion connection with any his mother's family. (Tr. 46)

Applicant explained at the hearing that he has "a strong revulsion against the Islamic Republic of Iran." He does not have ill feelings about the people, but rather the government violations of people's rights. He was candid when he spoke about "blogging" on the matter. He does this in English and does not talk about the nature of his work. His Farsi is not strong. He speaks Farsi, but does not have the ability to translate or read and write in a strong capacity. (Tr. 36)

Applicant expressed his love for the United States. He contributes to the community in various ways. He has no financial assets in Iran. He points to a history of working for the United States and its interests, including, but not limited to, teaching to foreign nationals here and abroad. He has no family member who works for the Iranian government. He has no friends or contacts in Iran. His ties and loyalty are to the United States.

Applicant acknowledged and disclosed on his security clearance application that he worked for a nonprofit organization in 2009 for approximately three months. This was in the form of an internship. (Tr. 72) He is not active in the organization. The nonprofit organization advocates for human rights in Iran.

Applicant's project manager recommends him for a security clearance. He has known Applicant for less than two years, but he has daily interaction with him. He describes Applicant as a superior technician who is well respected throughout the organization. (Tr. 20) Applicant's technical knowledge and ability to converse with all levels in the company is a great asset. Applicant has never displayed inappropriate behavior or made inflammatory comments when discussing world events. He is aware of the issues dealing with Applicant's Iranian family.

Applicant's housemate testified that he has known Applicant for about one year. The witness testified that, in his opinion, Applicant is proud to be an American citizen. He is passionate about conflict resolution and becoming a peace-builder in the United States. His character is beyond reproach, and there is no reason to question his ability to protect classified information. (Tr. 29) Applicant studies conflict resolution/analysis and is outspoken about the current Iranian regime. He is solid, honest person. Applicant's housemate (who is also a fellow student) testified that he refers to his mother as his "biological mother." He does not see that Applicant has any emotional ties with her. He has discussed with Applicant what might occur if Applicant experienced duress due to his relatives in Iran. (Tr. 30) Applicant states that he would be quite vocal in a public manner and would be unwilling to compromise himself.

I take administrative notice of the following facts about Iran. It is appropriate to look at the current situation regarding the United States and Iran. Iran is an Islamic Republic where ultimate political authority is vested in a religious leader. The United States has not had diplomatic or cultural relations with Iran since November 1979. On November 12, 2010, President Obama continued the November 14, 1979 declaration of a National Emergency with Respect to Iran “to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran. Iran has been designated a State Sponsor of Terrorism since 1984, and remains the most active State Sponsor of Terrorism.

In addition to objecting to its sponsorship of terrorism, the United States also has specific objections to Iran’s nuclear weapons ambitions, and its violations of human rights. In addition to their troubling nuclear program, Iran has also sought to illegally obtain U.S. military equipment and sensitive technology. However, it must also be stated that the United States has allowed American companies to trade with Iran, despite a trade embargo.

The Iranian Government has a poor human rights record. Human rights abuses included the following: 1) politically motivated violence including torture, beatings, and rape; 2) severe officially sanctioned punishments, including death by stoning, amputation, and flogging; 3) arbitrary arrests and detentions; 4) lack of judicial independence and of public fair trials; 5) severe restrictions on civil liberties, including freedoms of speech, press, assembly, association, movement, and privacy; and 6) monitoring social activities of citizens.

“The Department of State warns U.S. citizens to carefully consider the risks of travel to Iran. Dual national Iranian-American citizens may encounter difficulty in departing Iran.” The Iranian government does not recognize dual nationality and will treat U.S.-Iranian dual nationals solely as Iranian citizens. As the United States does not have diplomatic or consular relations with Iran, it cannot provide protection or routine consular services to American citizens in Iran. Iranian authorities have prevented a number of American citizens, who have traveled to Iran for personal reasons, from leaving, and in some cases have detained, interrogate and imprisoned them.

### **Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## Analysis

### Guideline B, Foreign Influence

The SOR alleges Applicant's mother, grandfather, aunt and cousin are citizens and residents of Iran. (¶ 1.a-1.d)

The security concern under this guideline is set out in AG ¶ 6:

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.

Three disqualifying conditions under this guideline are relevant. First, a disqualifying condition may be raised by “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.” AG ¶ 7(a). Second, a disqualifying condition may be raised by “connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information.” AG ¶ 7(b). Third, a security concern may be raised if an applicant is “sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.” AG ¶ 7(d).

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002). Finally, friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation’s government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to

government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

Applicant is a U.S. citizen. He was born in the United States of Iranian parents. His parents divorced when he was three years old. Applicant had no contact with his mother or her family who lived in Iran for more than 20 years. He considers her his “biological mother” as he was raised by his grandmother in the United States. He has never travelled to Iran and has no financial ties in the country. He has no friends or contacts in Iran. He never had an Iranian passport.

Applicant’s mother, grandfather, and cousins live in Iran. “[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person’s spouse.” ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at \* 8 (App. Bd. Feb. 20, 2002). Applicant has not rebutted this presumption.

After considering the totality of Applicant’s family ties to Iran as well as each individual tie, I conclude that Applicant’s family ties are sufficient to raise an issue of a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Applicant last saw his mother in 2010. He sometimes talks to her on the phone. Based on his distant relationship with his mother, I conclude that AG ¶¶ 7(a), (b), and (d) are raised.

Security concerns under this guideline can be mitigated by showing that “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.” AG ¶ 8(a).

Security concerns under this guideline can be mitigated by showing “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.” AG ¶ 8(b).

Applicant does not maintain a relationship with his grandfather, aunt, or cousins who live in Iran. He has only seen his mother a few times during his life. It is a stretch to say he maintains a relationship with his mother. If such, it is minimal at best. I find AG 8(c) applies because his familial relationships in Iran are minimal.

Applicant was born in the United States. His father and family are in the United States. He has no family member who knows what he does for a living. He has no ties to Iran as far as a passport or birth documentation. He has no assets in Iran. There is no indication that Applicant's relatives are in positions or are involved in activities that would place Applicant in a position of having to choose between his family and those of the United States. Applicant has actively participated against the current government of Iran. He was raised by his paternal grandmother in the United States. In light of Applicant's close ties to the United States, he would not chose his relatives in Iran over his life in the United States. I find mitigating AG 8(a) and 8(b) apply.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An 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 have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a U.S. citizen who has lived in the United States his entire life. He was articulate, candid, sincere, and credible at the hearing. Applicant's home is in the United States. He has never travelled to Iran. Applicant has been successful in his work in the United States. His current employer recommends him for his professionalism and integrity.

Applicant is firmly entrenched in the United States. All of his assets are located in the United States. Although Applicant has a mother, grandfather, and cousins in Iran, I am convinced that he will resolve any issues in favor of the United States.

There is no evidence any of the individuals at issue are involved with, or under scrutiny, by interests antithetical to the United States. His family members in Iran do not know the specifics of his work.



Regarding Applicant's life in the United States, he is an American citizen, with a stable family, social, and professional life. His life is focused here. He is admired by his peers. His academic career has blossomed in the United States. He is active in his community. There is no evidence indicating that he may be manipulated or induced to help a foreign power or interest. He credibly stated he would report any attempts to influence him to security. In light of these facts and the country at issue, I find that Applicant successfully mitigated foreign influence concerns.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign influence. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegation in the SOR:

Paragraph 1, Guideline B (Foreign Influence): FOR APPLICANT

Subparagraph 1.a-d: For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Noreen A. Lynch  
Administrative Judge