



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 11-04957
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Stephanie C. Hess, Esquire, Department Counsel  
For Applicant: Mark S. Zaid, Esquire

---

**Decision**

---

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns about his ties to Iran and his exercise of Iranian citizenship while holding U.S. citizenship. Clearance is granted.

**Statement of the Case**

On November 17, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his work as an employee of a federal contractor. After reviewing the results of the ensuing background investigation, Department of Defense (DOD) adjudicators were unable to find that it is clearly consistent with the national interest for Applicant to have access to classified information.<sup>1</sup> DOD subsequently issued to Applicant a Statement of Reasons

---

<sup>1</sup> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

(SOR) alleging facts which raise security concerns addressed in the adjudicative guidelines<sup>2</sup> under Guideline B (foreign influence) and Guideline C (foreign preference).

On June 19, 2012, Applicant responded to the SOR (Answer) and requested a hearing. The case was assigned to me on November 13, 2012, and I convened a hearing on January 9, 2013. DOHA received the transcript of hearing (Tr.) on January 17, 2013.

Department Counsel presented two Government Exhibits (Gx.) 1 - 2. (Tr. 11 - 23) Gx. 1 was admitted without objection, but Gx. 2 was only partially admitted. I sustained Applicant's objection to admission of the report of investigation (ROI) summarizing Applicant's subject interview with a Government investigator on December 13, 2010. (Tr. 16 - 22) The remainder of Gx. 2 was admitted.

The Government also asked that administrative notice be taken of certain facts germane to the issues presented by the pleadings. I granted that request and admitted, as Hearing Exhibit (Hx.) I, Department Counsel's seven-page memorandum, supported by 13 enclosed documents. (Tr. 12 - 14) Applicant and three witnesses testified. Applicant also proffered seven exhibits, which were admitted without objection as Applicant's Exhibits (Ax.) A - G. (Tr. 24 - 25, 42 - 48)

### **Findings of Fact<sup>3</sup>**

Under Guideline B, the Government alleged that Applicant's mother, three brothers, and a sister are citizens and residents of Iran (SOR 1.a); that he has a close friend who is a citizen and resident of Iran (SOR 1.b); and that two of his brothers work for the Iranian Ministry of Health (SOR 1.c). Applicant admitted these allegations. (Answer)

Under Guideline C, the Government alleged that Applicant has maintained and renewed an Iranian passport after he became a U.S. citizen in 1990 (SOR 2.a); and that he used an Iranian passport for numerous trips to Iran after he became a U.S. citizen in 1990 (SOR 2.b). Applicant also admitted these allegations. (Answer) Having reviewed the pleadings, transcript, and exhibits, I make the following additional findings of fact.

Applicant is a 60-year-old dual citizen of the United States and Iran. He was born and raised in Iran, and came to the United States in 1978. He originally intended to receive a master's degree in economics at a U.S. university, but decided to study engineering. In 1982, he received a degree in mechanical engineering. Applicant's wife of 26 years was born and raised in the United States. They have three children, ages

---

<sup>2</sup> The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

<sup>3</sup> I have avoided going into detail about certain aspects of Applicant's background to ensure that personally identifiable information (PII) is not disclosed.

12, 15 and 18, all of whom were born in the United States. They live together in a house Applicant and his wife bought in April 1999. (Answer; Gx. 1; Tr. 93 - 99, 122)

While studying for his master's degree, Applicant also attended an automotive institute and obtained internships in the auto industry. After completing his internships, he was hired by a major U.S. auto manufacturer in 1984. He worked in automobile design and manufacturing for that corporation until 1996. At that time, he decided to open his own car dealership selling the same cars he had helped build for 12 years. He established one of the most successful dealerships in the country, but the downturn in the U.S. economy and advice from his mentor convinced him to look for another career. This led to his current employment as a translator.

In addition to English, Applicant speaks five languages, including at least two languages native to Iran. In 2010, he was hired by a federal contractor to work as a translator. In October 2010, while his security clearance application for that job was pending, he was hired by his current employer to work as a translator supporting important federal law enforcement work overseas. Applicant has worked closely with U.S. law enforcement agencies partnering with foreign law enforcement to counteract foreign organized crime activities. He has placed himself at some personal risk through this work, and he has earned extensive praise from both his U.S. government customers and from senior foreign government officials for his work in this field. (Gx. 1; Gx. 2; Ax. A; Ax. D - G; Tr. 144 - 145, 148 - 150)

A senior federal law enforcement agent, whose overseas operations Applicant supports, also testified. He stated that Applicant is a quality asset whose translation work has provided invaluable insight into the criminal activities being targeted. Applicant's efforts have been directly responsible for recent investigative successes and arrests. Applicant is extremely trustworthy and loyal to the United States. Applicant's enthusiasm for and dedication to the mission at hand cannot be overstated, and he has been trusted with all manner of sensitive information and access to operations. (Ax. A; Ax. F; Ax. G; Tr. 25 - 42)

The owner of the company for whom Applicant works testified at Applicant's hearing. He has more than 30 years experience in military, civilian government, and federal contract work in national intelligence. He has worked extensively in human intelligence, covert operations, and foreign asset recruiting. Before deciding to offer Applicant a job, he interviewed Applicant extensively about Applicant's background and ties to Iran. The witness stated he had no reservations about Applicant's reliability or trustworthiness even if Iran were to try to exploit Applicant's family to obtain information from Applicant. He regards Applicant to be a loyal, patriotic U.S. citizen who can be relied on to notify appropriate authorities if anyone tried to coerce Applicant into compromising sensitive information. (Ax. B; Tr. 49 - 79)

Applicant became a naturalized U.S. citizen in February 1990, and received a U.S. passport at that time. He also had and kept an Iranian passport, which he needed to travel to Iran. That country does not recognize dual citizenship with the United States

and requires Iranian citizens to present an Iranian passport when entering and leaving Iran. Applicant presented both his U.S. and Iranian passports when entering Iran. He renewed his Iranian passport in 2010, but he has not used it. However, on February 23, 2012, he relinquished his Iranian passport to his company facility security officer (FSO) who testified that Applicant is allowed to retrieve it for future travel. The FSO will, however, notify government security officials should Applicant do so. Applicant is willing to renounce his Iranian citizenship. He has no current intent to renew his Iranian passport, and he will not travel to Iran again without prior U.S. government approval or if doing so would jeopardize his security clearance. (Answer; Gx. 1; Gx. 2; Tr. 80 - 91, 128, 131 - 132, 158 - 159)

Before his immigration to the United States, Applicant served as an officer in the Iranian military for two years. This was done to fulfill a mandatory service requirement for all Iranian citizens at the time. He has had no ongoing connection to the Iranian military or government. He is adamantly opposed to and distrustful of the current regime in Iran. He has never voted in Iranian elections, and he has no financial or other assets in Iran. Although his retirement savings in the United States were reduced because of the recent economic downturn, Applicant estimates his total net worth here is about \$450,000. During his career as an automobile dealer, Applicant was active in establishing goodwill for his business in his community. He established programs that coordinated donations of used cars to the needy. He also worked with local school districts to recognize outstanding teachers by giving them a new car to drive for a year. (Gx. 1; Gx. 2; Ax. C; Tr. 104 - 107, 144 - 146)

Like most first-generation immigrants, Applicant has family ties to his country of origin. Applicant's father, who died in April 2000, was a senior government official in Iran. Most of his career was spent working in the government of Shah Mohammad Reza Pahlavi, the U.S.-backed monarch who ruled Iran until he was overthrown in the Islamic Revolution of 1979. Unlike most officials from the previous regime, Applicant avers that his father was asked to stay and work for new government. This he did until it became clear that the new government would not abide by the rule of law. He was offered U.S. citizenship in 1980, but declined for fear of retribution by the new Iranian government against his family. During Applicant's first return visit to Iran in 1988, he was detained at the Tehran airport and questioned extensively about his work and his reason for returning to Iran. However, Applicant has traveled back to Iran to visit his family on eight or nine occasions between 1988 and 2010 without incident. He was not detained or even approached by any Iranian official during any of his subsequent trips. Applicant's mother and siblings have not garnered any attention from the Iranian government because of his late father's status. (Gx. 1; Gx. 2; Tr. 123 - 130)

Applicant is the oldest of five children. He has three brothers and a sister who still live in Iran as Iranian citizens. Applicant's mother is in her 80s, in poor health, and subsists on a survivor's share of her husband's pension. She still lives in the apartment she shared with her husband for nearly 40 years. Applicant's sister is a retired laboratory supervisor who is now a housewife living in the same apartment building. She looks after their mother. Applicant speaks by phone with his mother about two or three

times weekly. His contact with his sister usually occurs if she is with their mother when he calls. Two of Applicant's brothers are doctors. To maintain their licenses to practice medicine, the Iranian Ministry of Health requires physicians, such as Applicant's brothers, to contribute some of their work to state hospitals for benefit of needy patients. Both brothers make their living through their private practices. Applicant speaks by phone with these brothers about two or three times monthly. Applicant's third brother works in the auto industry, much like Applicant did in the United States. Applicant and this brother are somewhat estranged and rarely have contact with each other. Applicant estimates he speaks with this brother about once or twice a year. (Answer; Gx. 1; Gx. 2; Tr. 133 - 141)

Applicant also has a childhood friend in Iran with whom he still keeps in touch. His friend is a taxi driver who shares Applicant's love of outdoor activities, such as hunting and rock climbing. Applicant has infrequent contact with his friend. He last saw his friend, his mother, and his siblings in 2010, when he last traveled to Iran. (Answer; Gx. 1; Gx. 2; Tr. 141 - 144)

Concerning his foreign travel, Applicant acknowledged that visiting Iran is risky. He will not take his wife and children there to visit. Now that he has a job requiring a security clearance, he is careful to conceal from his family the nature of his work. He tells them he is still in the car business and that he has been working to start a car dealership overseas. He also testified that he will immediately notify his company FSO if anyone tries to extract classified information directly from him or through his personal ties in Iran. (Tr. 130, 139 - 140, 143, 146 - 147)

As requested, I have taken administrative notice of certain facts about Iran as contained in Hx. I. In 1979, the U.S.-backed Shah of Iran was overthrown in favor of a theocratic government based on Islamic law. Despite occasional gains by more moderate Muslim clerics in the government, the Islamic Republic of Iran remains under the control of fundamentalists dedicated to a repressive form of government in furtherance of strict adherence to the Koran. Iran's regime has amassed a dismal human rights record. Government entities have been involved in an increased number of abductions, summary executions, disappearances, torture, and other unacceptable practices designed to preserve the government's hold over its citizens. The State Department has also advised U.S. citizens not to travel to Iran, and has noted instances where dual U.S.-Iranian citizens have been singled out for special monitoring and detention.

Iran's global interests are directly antithetical to those of the United States. To further their regional and global goals, Iran has become an active collector of economic information and has an active espionage service which targets U.S. interests and information. Iran is also an active sponsor of terrorism, which targets the interests of the United States and its allies. Finally, the potential for Iran to develop, proliferate, and ballistically deliver nuclear weapons and other weapons of mass destruction is seen by the U.S. as a major threat to regional and possibly global stability.

## Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>4</sup> and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole person” concept, those factors are:

(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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>5</sup> for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.<sup>6</sup>

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of

---

<sup>4</sup> See Directive. 6.3.

<sup>5</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>6</sup> See *Egan*, 484 U.S. at 528, 531.

any reasonable doubt about an applicant's suitability for access in favor of the Government.<sup>7</sup>

## Analysis

### Foreign Influence

The facts established by Department Counsel's information and by Applicant's admissions raise security concerns about Applicant's ties to Iran. As stated in AG ¶ 6:

[f]oreign 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.

More specifically, available information requires application of the following AG ¶ 7 disqualifying conditions:

(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.

It is uncontroverted that Iran's interests are diametrically opposed to those of the United States. Its internal human rights practices and its sponsorship of international terrorist groups are clear indications that Iran's government is willing to coerce its own citizens to gain sensitive information about U.S. interests. Applicant himself acknowledged that traveling to Iran is risky, and that his family and friends there should not be told what he does for a living or that he might have access to classified information. Additionally, two of Applicant's brothers have a tangential connection to the Iranian government through Ministry of Health licensing requirements that part of their work take place in state-run hospitals.

---

<sup>7</sup> See *Egan*; AG ¶ 2(b).

By contrast, Applicant's ties to his mother, siblings, and a childhood friend may be mitigated based on information that supports one or more of the following AG ¶ 8 mitigating conditions:

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; or

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

The mitigating conditions at AG ¶¶ 8(d), 8(e) and 8(f) are not pertinent here. As to the remaining conditions, Applicant has not established that AG ¶¶ 8(a) and 8(c) apply. His ties to his family in Iran are, by definition, close. He also has ongoing contacts with a boyhood friend in Iran. Applicant has regular contact with his mother and all but one of his siblings. Before he applied for a security clearance, he traveled to Iran every two years or so to visit his family and friends. Given the nature of the Iranian regime and its willingness to repress its own citizens, it is implausible to conclude that the presence of Applicant's family and at least one close friend in Iran does not create a potential of coercion or conflicting interests.

Nonetheless, Applicant presented extensive information in support of AG ¶ 8(b). Applicant has lived and worked in the United States since 1978. He has been a naturalized citizen since 1990. He married a native-born U.S. citizen with whom he is raising three children born here. All of his assets and interests are in the United States,



and he has a significant net worth comprised solely of U.S.-based assets. Applicant worked in the U.S. automotive industry from 1984 until 2010. His ownership of an auto dealership was highly successful, due in significant part to his community involvement. Since beginning his current employment in 2010, Applicant has impressed his government customers with his dedication and professionalism. He has also demonstrated that he protects sensitive information and is committed to the interests of the United States. Witnesses with significant national security experience, who have worked closely and continuously with Applicant, testified that he would not compromise classified information even if his family were pressured by the Iranian government. Further, he recognizes that his personal and professional circumstances now require that he is clearly committed to U.S. interests. He has gone to great lengths to conceal from his family and his childhood friend the fact that he might have a security clearance and the fact that he is working in support of the U.S. government. Applicant testified credibly that his response to such actions by Iran would be consistent with his obligation to protect U.S. interests. As discussed under Guideline C, below, he has no plans to travel to Iran as he has in the past. On balance, I conclude Applicant has mitigated the security concerns raised by his ties to Iran.

### **Foreign Preference**

Applicant used his Iranian passport several times after he became a U.S. citizen and received a U.S. passport. In 2010, before he applied for a security clearance, he renewed his Iranian passport for five more years. Applicant also disclosed that he served in the Iranian military for two years. These facts are sufficient to raise a security concern about foreign preference, which is expressed at AG ¶ 9, as follows:

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.

More specifically, available information requires application of the disqualifying condition at 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. This includes but is not limited to: (1) possession of a current foreign passport...(2) military service or a willingness to bear arms for a foreign country.

Applicant's military service in Iran was compulsory for all Iranian citizens and occurred more than 30 years ago. It has no bearing on Applicant's current suitability for a security clearance. However, his continued use and recent renewal of an Iranian passport after becoming a U.S. citizen in 1990 requires application of AG ¶ 10(a)(1). Applicant explained that he only used his Iranian passport for entry to Iran because that

country does not recognize dual citizenship with the United States and does not accept U.S. passports.

In response to the security concerns raised under this guideline, Applicant presented sufficient information to support application of the following AG ¶ 11 mitigating conditions:

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

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

Applicant unequivocally stated his willingness to renounce his Iranian citizenship, and he relinquished his current Iranian passport, which has never been used, to his company's FSO. His FSO testified that Applicant is entitled to retrieve the passport; however, the FSO is also required to notify his superiors and security officials should Applicant do so. For his part, Applicant averred that he does not intend to renew his foreign passport. All of Applicant's travel to Iran occurred before he began working for his current employer and before he applied for a security clearance. Applicant testified that he does not intend to travel to Iran, and would only do so with the knowledge and permission of the appropriate U.S. security officials. What Applicant may do in the future is a matter of speculation; however, his testimony was credible, especially when taken with that of his witnesses on the same issues.

I found Applicant to be credible and straightforward in his testimony about his passports and other issues in this case. He established that he is not likely to show preference for the interests of Iran or any other nation over those of the United States. I conclude that AG ¶¶ 11(b) and 11(e) apply, and that he has mitigated the security concern under this guideline.

### **Whole-Person Concept**

I have evaluated the facts and have applied the appropriate adjudicative factors under Guidelines B and C. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is a mature, responsible adult who now has spent nearly 35 years – more than half his life – studying, working, and raising a family in the United States. He already was a successful business man and active member of his community when he decided to change careers in 2010 and work to support U.S. interests. His reputation as a translator is excellent, and he is highly regarded for his dedication to his work and his commitment to sensitive U.S. operations at home and abroad. He has a solid track record of working with and safeguarding sensitive information. Government and private industry officials with extensive experience in the intelligence and law enforcement fields are confident that Applicant would not compromise U.S. interests. A fair and commonsense assessment of the

record as a whole shows that Applicant has mitigated the security concerns raised by the information about his foreign contacts and his exercise of foreign citizenship.

### **Formal Findings**

Formal findings 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
Subparagraphs 1.a - 1.c:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a - 2.b:	For Applicant

### **Conclusion**

In light of all of the foregoing, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

---

MATTHEW E. MALONE  
Administrative Judge