



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



In the matter of:

Applicant for Public Trust Position

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ADP Case No. 15-03382

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

02/15/2017

Decision

HARVEY, Mark, Administrative Judge:

Applicant emigrated from Iran to the United States in 1976. He frequently communicates with his mother and sister, who are citizens and residents of Iran. He has retained his Iranian passport and intends to use it for future visits to Iran. Foreign influence and foreign preference trustworthiness concerns are not mitigated. Applicant's eligibility to occupy a public trust position is denied.

Statement of the Case

On May 23, 2014, Applicant completed and signed an Electronic Questionnaire for National Security Position (SF 86). (Government Exhibit (GE) 1) On March 26, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant, pursuant to DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, and modified; DOD Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), which became effective on September 1, 2006.

The SOR alleges trustworthiness concerns under Guidelines B (foreign influence) and C (foreign preference). (Hearing Exhibit (HE) 2) The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with the

interests of national security to grant or continue Applicant's eligibility to occupy a public trust position, which entails access to sensitive information. (HE 2) The DOD CAF recommended referral to an administrative judge to determine whether such access to sensitive information should be granted, continued, denied, or revoked. (HE 2)

On April 30, 2016, Applicant responded to the SOR allegations, and he requested a hearing. (HE 3) On July 26, 2016, Department Counsel indicated she was ready to proceed. On August 30, 2016, the case was assigned to me. On October 3, 2016, the Defense Office of Hearings and Appeals issued a hearing notice setting the hearing for October 27, 2016. (HE 1) The hearing was held as scheduled. At the hearing, the Government provided three exhibits; Applicant offered four exhibits; and all exhibits were admitted into evidence without objection. (Tr. 17-21; GE 1-3; Applicant Exhibits (AE) A-D) On November 3, 2016, I received a transcript of the hearing (Tr.).

Procedural Rulings

Department Counsel provided a summary reflecting the facts raising a trustworthiness concern about Applicant's connections to Iran as well as 14 exhibits for administrative notice to support the summary. (GE 4; I-XIV) Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Applicant did not object to me taking administrative notice of the proffered documents, and Department Counsel's request was granted. Department Counsel's summary is quoted without footnotes in the section labeled "Iran" *infra*.

Findings of Fact¹

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.c, and 2.a. (HE 2) His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 59-year-old employee of a contractor, and the same contractor has employed him as a software engineer for 28 months. (Tr. 6, 8, 22) His current annual salary is about \$105,000. (Tr. 38) His net worth is more than \$300,000. (Tr. 39) In 1957, Applicant was born in Iran. (Tr. 23; GE 1) In 1975, he graduated from high school. (Tr. 6) In 1985, he received a bachelor's degree in computer science, math, and management from a U.S. university. (Tr. 6-7) He has taken database and information technology courses at various colleges and universities. (Tr. 7) He has never served in the U.S. military or the military of any other country. (Tr. 7) In 1987, Applicant married,

¹The facts in this decision do not specifically describe employment, names of witnesses, names of other groups, or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

and in 1989, he divorced. (Tr. 7) In 1997, he married his current spouse. (GE 1) His son is 10 years old. (Tr. 8) Applicant has three sisters; one sister lives in the United States, and she is a dual citizen of the United States and Iran; and two sisters are citizens and residents of Iran.

Foreign Influence and Foreign Preference

In 1976, when Applicant was 19 or 20 years old, he emigrated from Iran to the United States by himself, and in 1995, he was naturalized as a U.S. citizen. (Tr. 7, 23) Applicant's son is a U.S. citizen. (Tr. 25) When his son went back to Iran, his son used an Iranian passport. (Tr. 26) Applicant used his Iranian passport to visit Iran. Applicant's Iranian passport is valid through 2018. (Tr. 27) Applicant said that he needed to retain his Iranian passport so that he could visit his mother. (Tr. 28) In the last three years, he has returned to Iran two or three times. (Tr. 28) From 2007 to 2014, he traveled to Iran in 2008, 2010, 2011 (twice), 2012, 2013 (twice), and 2014. (GE 1) When his Iranian passport expires, he intends to renew it. (Tr. 39)

Applicant's father passed away, and SOR ¶ 1.a is mitigated. (Tr. 29-30) His father held commercial, non-government employment in Iran. (Tr. 29-30) His father never served in the Iranian military, and he never held an Iranian Government position. (Tr. 30) His mother is a citizen and resident of Iran. (SOR ¶ 1.b) She is a housewife. (Tr. 30) Applicant communicates with his mother on a weekly basis. (Tr. 35)

Applicant met his future spouse on a visit to Iran. (Tr. 24) His spouse emigrated from Iran to the United States about 20 years ago on a fiancé visa. (Tr. 24) His spouse and her parents are dual citizens of the United States and Iran. (Tr. 25) Her parents mostly live in the United States; however, they also travel to Iran. (Tr. 25)

Applicant's two sisters are citizens and residents of Iran. (Tr. 31; SOR ¶ 1.c) They are not employed outside their homes. (Tr. 31) One of his brothers-in-law was in construction and is now retired, and the other brother-in-law is currently in construction. (Tr. 32) His sisters do not have any association with the government or military of Iran. (Tr. 33) He communicates with his sisters about once every three weeks. (Tr. 35)

Applicant does not have any property or financial interests in Iran. (Tr. 37) Applicant is a diligent and dedicated employee who contributes to his company. He enjoys his work and would prefer to continue in his present employment. (Tr. 44-45) He emphasized that he is a loyal and patriotic American. (Tr. 42-43) He and his family are secular, and they disagree with the actions of the Iranian Government. (Tr. 44-46) There is no evidence that he has any professional or ethical lapses or disclosures of sensitive information.

Character Evidence

Applicant's supervisor favorably endorsed a very positive email about Applicant's professionalism, expertise, and diligence. (AE B) Applicant made important contributions to a project. (AE B)

Iran

- In January, 2014, the Director of National Intelligence assessed that Iran and North Korea are unpredictable actors in the international arena. Their development of cyber espionage or attack capabilities might be used in an attempt to either provoke or destabilize the United States or its partners.
- In February 2015, the Director of National Intelligence assessed that Iran very likely values its cyber program as one of many tools for carrying out asymmetric but proportional retaliation against political foes, as well as a sophisticated means of collecting intelligence.
- Iranian actors have been implicated in the 2012-13 [Distributed Denial of Service] (DDOS) attack against US financial institutions and in the February 2014 cyber attack on the Las Vegas Sands casino company. Iran used cyber espionage, propaganda, and attacks in 2015 to support its security priorities, influence events, and counter threats-including against US allies in the region.
- Iran's intelligence and security services continue to view the United States as a primary threat and have stated publicly that they monitor and counter US activities in the region. In December 2014, computer security experts reported that members of an Iranian organization were responsible for computer operations targeting US military, transportation, public utility, and other critical infrastructure networks.
- The current Iranian government still has not recognized Israel's right to exist, has hindered the Middle East peace process by arming militants, including Hamas, Hizballah, and Palestinian Islamic Jihad, and continues to play a disruptive role in sustaining violence in the region, particularly in Syria.
- Iran has adopted the Joint Comprehensive Plan of Action (JCPOA) and will now begin taking all of the necessary steps outlined in the JCPOA to restrain its nuclear program and ensure that it is exclusively peaceful going forward. Nonetheless, the International Atomic Energy Agency (IAEA), will continue to investigate if there is reason to believe Iran is pursuing any covert nuclear activities in the future, as it had in the past.
- The Islamic Republic of Iran is an ongoing threat to US national interests because of its support to the Assad regime in Syria, promulgation of anti-Israeli policies, development of advanced military capabilities.
- Iran possesses a substantial inventory of theater ballistic missiles capable of reaching as far as some areas of southeastern Europe. Tehran is developing increasingly sophisticated missiles and improving the range and accuracy of its other missile systems.

- In Iraq and Syria, Iran seeks to preserve friendly governments, protect Shia interests, defeat Sunni extremists, and marginalize US influence. Despite Iran's intentions to dampen sectarianism, build responsive partners, and deescalate tensions with Saudi Arabia, Iranian leaders-particularly within the security services-are pursuing policies with negative secondary consequences for regional stability and potentially for Iran. Iran's actions to protect and empower Shia communities are fueling growing fears and sectarian responses.
- In 2015, the U.S. Department of State reaffirmed its 1984 designation of Iran as a State Sponsor of Terrorism, denoting the U.S. Government's determination that Iran has repeatedly provided support for acts of international terrorism.
- In 2015, Iran continued its terrorist-related activity, including support for Palestinian terrorist groups in Gaza, and for Hizballah. Iran used the Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF) and its regional proxy groups to implement foreign policy goals, provide cover for intelligence operations, and create instability in the Middle East. The IRGC-QF is the regime's primary mechanism for cultivating and supporting terrorists abroad.
- A 2015 Human Rights Report reported that the most significant human rights problems were severe restrictions on civil liberties, including the freedoms of assembly, speech, religion, and press; limitations on the citizens' ability to change the government peacefully through free and fair elections; and disregard for the physical integrity of persons, whom authorities arbitrarily and unlawfully detained, tortured, or killed.
- Other reported human rights problems included, for example: disappearances; cruel, inhuman, or degrading treatment or punishment, including judicially sanctioned amputation and flogging; politically motivated violence and repression, such as beatings and rape; harsh and life-threatening conditions in detention and prison facilities, with instances of deaths in custody; arbitrary arrest and lengthy pretrial detention, sometimes incommunicado; continued impunity of security forces; denial of fair public trials, sometimes resulting in executions without due process; the lack of an independent judiciary; political prisoners and detainees; ineffective implementation of civil judicial procedures and remedies; arbitrary interference with privacy, family, home, and correspondence; severe restrictions on freedoms of speech (including via the internet) and press; and harassment of journalists.
- The government severely restricted freedom of speech and of the press and used the law to intimidate or prosecute persons who directly criticized the government or raised human rights problems.

- The government restricted and disrupted access to the internet, monitored private online communications, and censored online content. The government collected personally identifiable information in connection with citizens' peaceful expression of political, religious, or ideological opinion or beliefs.
- The Iranian government does not recognize dual nationality and will treat U.S.-Iranian dual nationals solely as Iranian citizens subject to Iranian laws. Thus, U.S. citizens who were born in Iran, who became naturalized citizens of Iran (e.g., through marriage to an Iranian citizen), and children of such persons—even those without Iranian passports who do not consider themselves Iranian—are considered Iranian nationals by Iranian authorities. 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. Dual nationals sometimes have their U.S. passports confiscated and may be denied permission to leave Iran or encounter other problems with Iranian authorities.
- Iranian authorities have prevented a number of U.S. citizen academics, scientists, journalists, and others who traveled to Iran for personal/cultural/business reasons from leaving the country and in some cases have detained, interrogated, and imprisoned them on unknown or various charges, including espionage and being a threat to the regime. U.S. citizens of Iranian origin should consider the risk of being targeted by authorities before planning travel to Iran.
- Iranian security personnel may at times place foreign visitors under surveillance. Hotel rooms, telephones, and fax machines may be monitored, and personal possessions in hotel rooms may be searched.
- In October 2011, the Office of National Counterintelligence Executive reported that Iran has aggressive programs for developing and collecting U.S. civilian and dual-use technologies, specifically in one area of advanced materials and development: nanotechnology. The United States continues to charge and convict individuals involved with the illegal export, or attempted illegal export, of restricted and dual-use technology to Iran.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a [public trust position].” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). The Government’s authority to restrict access to classified information applies similarly in the protection of sensitive, unclassified information. As Commander in Chief, the President has the authority to control access to information bearing on national security or other sensitive information and to

determine whether an individual is sufficiently trustworthy to have access to such information. See *Id.* at 527.

Positions designated as ADP I and ADP II are classified as “sensitive positions.” Regulation ¶¶ C3.1.2.1.1.7, C3.1.2.2, and C3.1.2.1.2.3. “The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security.” Regulation ¶ C6.1.1.1. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. See Regulation ¶ C8.2.1.

When evaluating an applicant’s suitability for a public trust position, an administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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.

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which may disqualify the applicant from being eligible for access to sensitive information. 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 suitability for a public trust position. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her access to sensitive information[.]” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

The protection of national security and sensitive records is paramount. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security.”

Analysis

Foreign Influence

AG ¶ 6 explains the trustworthiness concern about “foreign contacts and interests” stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] 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 has two conditions that could raise a trustworthiness concern and may be disqualifying in this case:

- (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.

Applicant's mother and two sisters are citizens and residents of Iran. His mother and two sisters have no association with the Iranian Government. He frequently communicates with his mother and two sisters. Over the last 10 years, he has traveled to Iran about 10 times. He does not own any property in Iran, and he does not provide any financial assistance to anyone in Iran.

The mere possession of close family ties with a family member living in Iran is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood whether an applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in counterinsurgency, terrorists cause a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The relationship of Iran with the United States, places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his family members living in Iran do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist a family member living in Iran.

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, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives or terrorists from Iran seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not possible to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services. Department Counsel produced substantial evidence of Applicant's contact with his mother and two sisters has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence trustworthiness concerns including:

(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; and

(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 Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's eligibility [for a public trust position], there is a strong presumption against the grant or maintenance of a [public trust position]. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising [trustworthiness] concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in [public trust position] decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant has frequent contacts with his mother and two sisters, who are citizens and residents of Iran. Over the last 10 years he traveled to Iran about 10 times. He frequently communicates with his mother and two sisters.

Applicant's loyalty and connections to family living in Iran are positive character traits. However, for purposes of trustworthiness concerns, those same connections negate the possibility of mitigation under AG ¶¶ 8(a) and 8(c), and Applicant failed to fully meet his burden of showing there is "little likelihood that [his relationships with family living in Iran] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) partially applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with family living in Iran.

There is no evidence that the Iranian government or those conducting espionage have approached or threatened Applicant or his family to coerce Applicant for classified or sensitive information.² As such, there is a reduced possibility that Applicant or his family living in Iran would be specifically selected as targets for improper coercion or exploitation.

While the U.S. Government does not have any burden to prove the presence of such evidence, if such record evidence were present, Applicant would have a heavier evidentiary burden to mitigate foreign influence trustworthiness concerns. It is important to be mindful of the United States' efforts to improve diplomatic relationships with Iran. Applicant's family living in Iran could become potential targets of intelligence agents because of Applicant's support for the United States, and Applicant's potential access to classified information could theoretically add some risk to Applicant's family living in Iran.

Applicant has significant connections to the United States and more limited connections to Iran. In 1976, he came to the United States at the age of 19 or 20. In 1995, he was naturalized as a U.S. citizen. He took an oath and swore allegiance to the United States. He supports the U.S. Government as an employee of a DOD contractor. He has no investments in Iran. Over the past 40 years, he has been a resident of the United States, and through his immigration oath he has manifested her patriotism, loyalty, and fidelity to the United States over all other countries. He has investments in the United States; his spouse is a naturalized U.S. citizen; and his son was born in the United States.

AG ¶ 6 requires consideration of "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." Applicant's connections to the United States taken together are important; however, there are extraordinary risks inherent in his family residing in Iran and in his visits to Iran.

In sum, Applicant's connections to family living in Iran are significant. Applicant frequently communicates with his mother and sisters living in Iran, and he visited them about 10 times in the last 10 years. Trustworthiness concerns are not analyzed in a piecemeal assessment. Instead, the overall situation must be considered. Applicant's 40 years of U.S. residence, U.S. citizenship, spouse and son are U.S. citizens, and property interests (including his employment), constitute stronger connections to the United States than to Iran. However, Applicant's close relationship to his mother and sisters, who are vulnerable to potential Iranian coercion, outweighs his connections to

²There would be little reason for U.S. enemies to seek classified or sensitive information from an applicant before that applicant has access to such information or before they learn of such access.

the United States in trustworthiness analysis. Moreover, Applicant is personally vulnerable to coercion when he visits Iran. Foreign influence trustworthiness concerns under Guideline B are not mitigated.

Foreign Preference

AG ¶ 9 describes the foreign preference trustworthiness concern stating, “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 ¶ 10(a) describes one condition that could raise a trustworthiness concern and may be disqualifying in Applicant’s case: “(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen This includes but is not limited to: (1) possession of a current foreign passport.” Applicant, who is a citizen of the United States, possessed a current Iranian passport. AG ¶ 10(a)(1) applies to his possession of a current Iranian passport after becoming a U.S. citizen.

AG ¶ 11(e) provides one condition that could mitigate trustworthiness concerns as follows: “(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.” AG ¶ 11(e) does apply to his possession of an Iranian passport. Applicant intends to retain and use his Iranian passport. Foreign preference trustworthiness concerns are not mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a public trust position 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.

The ultimate determination of whether to grant eligibility for a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a 59-year-old employee of a contractor, and he has been employed by the same contractor as a software engineer for 28 months. In 1985, he received a bachelor's degree in computer science, math, and management from a U.S. university. He has taken database and information technology courses at various colleges and universities. There is no evidence that he has not had any professional or ethical lapses or disclosures of sensitive information.

Applicant is a diligent and dedicated employee who contributes to his company. He enjoys his work and would prefer to continue in his present employment. He is a loyal and patriotic American. He and his family are secular, and they disagree with the actions of the Iranian Government. Applicant's supervisor favorably endorsed a very positive email about Applicant's professionalism, expertise, and diligence. He made important contributions to a project.

A Guideline B decision concerning a foreign country must take into consideration the geopolitical situation and dangers in that country including from intelligence agents.³ The danger of coercion from the Iranian government or intelligence agents is more likely than in many other countries. Iran has had a hostile relationship with the United States militarily, diplomatically, and through trade sanctions. Iran has a history of espionage targeting U.S. military and industrial secrets. Iran supports terrorist entities intent on damaging the interests of the United States and harming U.S. citizens.

The weight of the evidence supports denial of Applicant's access to classified information. Applicant's mother and two sisters are citizens and residents of Iran. Applicant is close to his mother and sisters; he visited them about 10 times over the last 10 years; and he frequently communicates with them. He has retained a current Iranian passport to enable him to visit his family in Iran. "It is not to question Applicant's patriotism to acknowledge that the record in [Applicant's] case raises the reasonable concern that he could be placed in a position of having to choose between his ties to the U.S. and his obligations to his[her] foreign family members." ISCR Case No. 07-02485 at 5 (App. Bd. May 9, 2008) (reversing grant of security clearance because of Chinese connections). See ISCR Case No. 08-02864 at 4-5 (App. Bd. Dec. 29, 2009) (reversing grant of security clearance citing applicant's minimal connection to Iran as an unmitigated security concern over connections to the United States and strong whole-person evidence). Applicant should not be placed into a position where Iranian government or intelligence officials could coerce his mother and two sisters, or Applicant, when he visits Iran, to attempt to obtain classified information.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Foreign influence and foreign preference trustworthiness concerns are not mitigated.

³See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole person discussion).

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 B:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b and 1.c:	Against Applicant
Paragraph 2, Guideline C:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Mark Harvey
Administrative Judge