



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-01320

Appearances

For Government: John Bayard Glendon, Esq., Department Counsel

For Applicant: Donna Price, Esq.

01/12/2018

Decision

HARVEY, Mark, Administrative Judge:

Applicant married a citizen and former resident of Iran who is a permanent U.S. resident. She frequently communicates with some of her relatives who are citizens and residents of Iran. Some of her relatives in Iran have actively protested against the policies of the Iranian Government. Foreign influence security concerns are not mitigated. Personal conduct and financial considerations security concerns are mitigated. Access to classified information is denied.

Statement of the Case

On September 22, 2014, Applicant completed and signed a Questionnaire for National Security Positions (e-QIP) (SF 86) (SCA). Government Exhibit (GE) 1. On September 3, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective on September 1, 2006 (Sept. 1, 2006 AGs). On October 18, 2016, the Defense Office of Hearings and Appeals (DOHA) issued an amended SOR.

The SOR and amended SOR detailed reasons under the Directive that it is not clearly consistent with the interests of national security to grant or continue a security

clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Hearing Exhibit (HE) 2, 3. Specifically, the SOR set forth security concerns arising under Guideline B (foreign influence) and F (financial considerations). HE 2. The amended SOR deleted the allegations in ¶¶ 1.b through 1.f, and added an allegation under Guideline E (personal conduct). HE 3.

On September 20, 2016, Applicant responded to the SOR. HE 4. On November 29, 2016, Department Counsel was ready to proceed. On December 1, 2016, Applicant responded to the amended SOR. HE 5. On August 15, 2017, the case was assigned to me. On September 22, 2017, DOHA issued a notice of hearing, setting the hearing for October 26, 2017. HE 1. Applicant's hearing was held as scheduled.

Department Counsel offered 7 exhibits; Applicant offered 10 exhibits; there were no objections; and all proffered exhibits were admitted into evidence. Tr. 19-24; GE 1-7; Applicant Exhibit (AE) A-AE J. On November 3, 2017, DOHA received a copy of the hearing transcript. On November 29, 2017, one exhibit was received from Applicant, and it was admitted without objection. AE K. On November 30, 2017, the record closed. Tr. 131. On January 8, 2018, Applicant provided some corrections to the transcript, and the corrections were admitted without objection. AE L.

The Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position on or after June 8, 2017. The new AGs supersede the previous AGs, and I have evaluated Applicant's security clearance eligibility under the new AGs.¹

Procedural Issues

At the commencement of the hearing, Department Counsel moved to amend the amended SOR to include allegations that Applicant has in-laws who are citizens and residents of Iran. Tr. 10, 130. Applicant objected to the second amendment of the SOR to include information about Applicant's in-laws living in Iran because the Government had ample opportunity to amend the SOR before the hearing. Tr. 10-11, 131. I advised the parties that the objection would be considered at the conclusion of the evidence, and if a delay was warranted an additional hearing would be scheduled. Tr. 10-11. The SOR is further amended to add ¶ 1.b under the foreign influence guideline, which states, "Applicant and/or his spouse have close and continuing relationships with his spouse's parents, sister, and brother-in-law, who are citizens and residents of Iran." Applicant indicated an additional hearing would be an unreasonable burden. Tr. 12. Applicant subsequently advised a written submission would be made in lieu of another hearing session. Tr. 131. Applicant submitted a post-hearing statement. AE K.

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at http://ogc.osd.mil/doha/SEAD4_20170608.pdf.

Department Counsel requested administrative notice of facts concerning Iran. Tr. 11; Administrative Notice Request; HE 6. There were no objections to the administrative notice documents. Tr. 11. I have block quoted from these documents without footnotes and made some minor punctuation corrections.

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 in 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). See the Islamic Republic of Iran (Iran) section of the Findings of Fact of this decision, *infra*, for the administratively noticed facts concerning Iran.

Findings of Fact²

Applicant admitted parts of the SOR and amended SOR allegations, and he denied other parts. He also provided extenuating and mitigating information. His admissions are accepted 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 46-year-old budget integration analytics manager and defense contractor. Tr. 25, 122; GE 1. Applicant was born in Russia in 1971. Tr. 25. His grandfather died shortly after Applicant was born; his father left Russia three weeks after Applicant was born, and Applicant and his mother lost track of him. Tr. 25-30. Applicant does not have any siblings. Tr. 25-30. Applicant did not serve in the military of the Soviet Union or Russia. Tr. 73-74. In 1995, he entered the United States at the age of 24 on a student visa. Tr. 71-73. In 1997, he received a U.S. bachelor's degree. Tr. 72. In 2000, he earned a U.S. master's degree. Tr. 35, 78; GE 1.

In 2001, Applicant married a U.S. citizen, and in 2007, he divorced her. Tr. 37, 79-81. In 2005, Applicant was naturalized as a U.S. citizen. Tr. 81. In 2009, he joined the U.S. Navy Reserve. Tr. 44. During eight years of Navy service, he accumulated four years of active duty points. Tr. 45. He attempted to renounce his Russian citizenship. Tr. 62-63, 82-83. The Russian Government did not provide confirmation that Applicant's citizenship was renounced. Tr. 86-88. In 2011, his Russian passport was destroyed in the presence of his security officer. Tr. 63; AE H at 5. Applicant has not returned to Russia since 1996. Tr. 64. In 2013, his mother passed away in the United States. Tr. 47. The SOR does not allege and the record does not establish that Applicant's connections to Russia raise a security concern.

²The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

Foreign Influence

In May 2016, Applicant married Ms. I in the United States. (This was his third marriage.) SOR response; SOR ¶ 1.a. She was born in Iran, is a citizen of Iran, and resides in the United States. Tr. 56. Ms. I received a master's degree in Iran. Tr. 107. Ms. I and her husband entered the United States from Iran in July 2014. Tr. 108-110. In 2015, Applicant met Ms. I through an Internet social group. Tr. 56. Ms. I is 34 years old. Tr. 124. She was employed in a store when she met Applicant. Tr. 107. In April 2015, Ms. I and her husband were divorced. Tr. 108-110. Ms. I is currently a permanent U.S. resident, and she intends to apply for U.S. citizenship in May 2018. Tr. 114. When Ms. I moved in with Applicant, he disclosed his relationship with her to his security officer, and he disclosed his marital plans to his security officer shortly before he married her. Tr. 57; SOR response. Ms. I most recently traveled to Iran in September or October 2015, and she retains an Iranian passport. Tr. 125. Ms. I does not intend to visit Iran. Tr. 60-61.

Ms. I's parents, brother, uncle, and sister-in-law are citizens and residents of Iran. Tr. 58, 111. Ms. I frequently communicates with her parents, brother, and sister-in-law. Tr. 112. Ms. I, her sister, and her uncle are or were politically active in Iran. Tr. 113. Ms. I's uncle was imprisoned in Iran for about two years because of his political statements. Tr. 57-58, 113. Ms. I's mother works in a store, and her father is retired and receiving a pension from the Iranian Government. Tr. 59, 127. In 2011, Ms. I's parents demonstrated against the regime. Tr. 59. Iran did not permit Ms. I's parents to visit the United States at the same time apparently because Iranian officials were concerned if they were permitted to leave simultaneously, they would not return to Iran. Tr. 60.

In October 2017, Ms. I's mother visited Applicant and Ms. I in the United States. Tr. 60. Ms. I's mother came to the United States for the birth of Applicant and Ms. I's child, and Ms. I is very close to her mother. Tr. 116. Ms. I's family knows Applicant is a U.S. Navy officer. Tr. 61. Ms. I's family in Iran has actively opposed the Iranian Government. Tr. 65, 116. Her uncle has been jailed for his political beliefs. Tr. 65. Applicant said if the Iranians attempted to use Ms. I's family to coerce him for classified information, he would report the attempt to security officials. Tr. 65. Applicant believes it is unlikely that the Iranians would make such attempt. Tr. 65.

Financial Considerations

SOR ¶ 2.a alleges Applicant has a charged-off debt for \$16,425. Applicant financed a vehicle for his first spouse. Tr. 41. His first spouse was awarded the vehicle in the divorce in 2007. Tr. 41. Applicant was unaware that his first spouse did not pay the debt for several years. AE B2; SOR response. On February 7, 2016, Applicant wrote the creditor seeking validation of the debt. AE B2. Applicant paid the creditor \$2,000 to settle the debt. SOR response. On March 23, 2016, the creditor wrote that the "account has been settled in full." Tr. 41-42; AE B3; SOR response. Applicant is credited with resolving this debt.

Applicant had a substantial arrearage from his divorce because he was unable to afford the alimony payments. Tr. 84-85; AE H at 13-14. He had several periods of

unemployment and underemployment after his divorce. AE H. When his income improved, he paid the arrearage. Tr. 86. The financial records he provided establish a track record of paying his debts.

Personal Conduct

Applicant served in Afghanistan from July 2013 to February 2014. Tr. 88-89. When Applicant was 43 years old, he engaged in a romantic relationship with Ms. A, a 20-year-old citizen of Afghanistan, while he was deployed in Afghanistan as a U.S. Navy Reserve Officer holding a security clearance. Tr. 49-51, 89-91. Applicant was aware that Afghan law prohibited his marriage to Ms. A. Tr. 91-93. Ms. A could be charged in Afghanistan with apostasy for marrying a non-Muslim, and he was placing Ms. A “at risk.” Tr. 91-93. Around March 2014, Applicant asked and Ms. A agreed to meet him in F, a former Soviet Union republic located near Afghanistan.³ Tr. 96; SOR response. Ms. A’s father initially approved of Applicant’s marriage to Ms. A, and later he objected to the marriage when he learned of Applicant’s first marriage. Tr. 93-95; AE H at 35.

In April 2014, Applicant married Ms. A in F. Tr. 96. Ms. A told Applicant she needed to return to Afghanistan to protect her younger sister from a forced marriage. Tr. 52, 97. After two weeks in F, Ms. A returned to Afghanistan for a week, and Applicant went to the United States. Tr. 97-98, 106. Ms. A informed Applicant that she and her father were placed under house arrest because Ms. A married a non-Muslim. Tr. 53, 97-98. She said she needed money for a lawyer. Tr. 53. Applicant transferred approximately \$7,000 to Ms. A. Tr. 53-54, 100; SOR response; AE H at 51.

Applicant returned to F from the United States. Tr. 103-106. Applicant learned that Ms. A was married before Applicant married her, and she had an 18-month-old child with her husband in Afghanistan. Tr. 54. In May 2014, Applicant divorced Ms. A in F. Tr. 55, 103-106; SOR response; AE H at 14, 43.

After he left F, Ms. A contacted him several times seeking additional funds. Tr. 56. He did not continue his relationship with Ms. A. Tr. 56. At some point in Applicant’s relationship with Ms. A, they exchanged nude pictures; however, Applicant’s pictures did not include his face. SOR response. In April 2014 after Applicant returned to the United States from F, Ms. A or possibly her husband posted nude pictures of Applicant on the Internet, and the person posting the pictures sought funds from Applicant. Tr. 66, 101-102; AE H at 39-40. Applicant reported the possible attempted extortion to DOD law enforcement and his command. Tr. 66. The total expenses for Applicant’s relationship, marriage, and divorce involving Ms. A, including travel and hotel costs, was about \$10,000 to \$15,000. SOR response; AE H at 27, 41.

³ Applicant said he disclosed his relationship with Ms. A to his supervisor, chaplain, chain of command, and a Judge Advocate officer. Tr. 50-51, 92. Their response was that Ms. A was likely seeking a green card from the relationship. Tr. 51. They advised him that the relationship was not a good idea; however, it was not prohibited. Tr. 129. Applicant said his relationship with Ms. A did not violate his unit’s fraternization policy. Tr. 123.

Character Evidence

Applicant received excellent Navy Fitness Report and Counseling records.⁴ He completed several Navy qualification courses, and he is an excellent shot. Letters lauding his duty performance and potential for contributions to the Navy included letters from a colonel, two commanders, two lieutenant commanders, several commanding officers, several colleagues with impressive credentials, and a rear admiral. The rear admiral recommended his promotion and assignment to “the Navy’s most demanding duties.” Applicant received several decorations, medals, or ribbons: Joint Service Commendation Medal; Afghanistan Campaign Medal with Campaign Star; Overseas Service Ribbon; National Defense Service Medal; Global War on Terrorism Service Medal; and NATO Medal. His character evidence supports approval of his security clearance.

Iran

Iran has been designated as a State Sponsor of Terrorism since 1984, and “remained the foremost state sponsor of terrorism in 2016.” In 2016, Iran continued its support of “Hizballah, Palestinian terrorist groups in Gaza, and various groups in Syria, Iraq, and throughout the Middle East. Iran used the Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF) to implement foreign policy goals, provide cover for intelligence operations, and create instability in the Middle East.”

Iran “remains an enduring threat to U.S. national interests because of Iranian support to anti-US terrorist groups and militants, the Asad regime [in Syria], Ruthi rebels in Yemen, and because of Iran’s development of advanced military capabilities.” The U.S. Government has imposed sanctions on Iran due to its “nuclear program, sponsorship of terrorism, and human rights record.” Although some sanctions were lifted under the terms of the Joint Comprehensive Plan of Action (JCPOA), which was implemented in January 2016, other sanctions remain, including sanctions that broadly prohibit U.S. persons from engaging in transactions or dealings directly or indirectly with Iran or its government.

On July 18, 2017, The U.S. State Department announced that, “[i]n response to[] continued Iranian threats,” eighteen additional entities and individuals that support (1) Iran’s ballistic missile program, (2) Iran’s military procurement, or (3) Iran’s Islamic Revolutionary Guard Corps (IRGC) have been added to the sanctions list.

“Despite Supreme Leader [Sayyid Ali Hosseini] Khamenei’s conditional support for the JCPOA nuclear deal . . . he is highly distrustful of U.S. intentions. Iran’s leaders remain focused on thwarting U.S. and Israeli influence and countering what they perceive as a Saudi led effort to fuel Sunni extremism and terrorism against Iran and Shia communities throughout the region.”

“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,

⁴ The supporting documentation for this paragraph includes various character letters, certificates, recommendations, Navy Fitness Report and Counseling records, endorsements, and orders. AE D; AE F.

and Palestinian Islamic Jihad, and continues to play a disruptive role in sustaining violence in the region, particularly Syria.”

In 2016, Iran continued to “leverage cyber espionage, propaganda, and attacks to support its security priorities, influence events and foreign perceptions, and counter threats-including against U.S. allies in the region. Iran has also used its cyber capabilities directly against the United States. For example, in 2013, an Iranian hacker conducted an intrusion into the industrial control system of a U.S. dam, and in 2014, Iranian actors conducted a data deletion attack against the network of a US-based casino.”

The State Department warns U.S. citizens of the risks of travel to Iran. Among other issues, “the Iranian government does not recognize dual nationality and will treat U.S.-Iranian dual nationals solely as Iranian citizens,” subject to Iran’s laws and requirements. Additionally, “Iranian authorities continue to unjustly detain and imprison U.S. citizens, particularly Iranian-Americans, including students, journalists, business travelers, and academics, on charges including espionage and posing a threat to national security.”

In December 2015, President Obama signed into law the “Visa Waiver Program and Terrorist Travel Protection Act of 2015.” As implemented, the Act restricted citizens of (and foreign visitors to) Iraq, Syria, Iran, Sudan, Libya, Somalia, and Yemen from the benefits of an existing Visa Waiver Program in what it called an effort to address “the growing threat from foreign terrorist fighters.” The seven countries were excluded from the Visa Waiver Program because they were determined to have repeatedly provided support for acts of international terrorism, and/or because the Secretary of Homeland Security deemed that visitation to or habitation in the specified countries by a foreign national increased the likelihood that the foreign national will represent a credible threat to the national security of the United States.

* * *

In 2016, the “most significant human rights (HR) problems were severe restrictions on civil liberties, including the freedoms of assembly, association, speech, religion, and press. Other HR problems included abuse of due process combined with use of capital punishment for crimes that do not meet the requirements of due process, as well as cruel, inhuman, or degrading treatment or punishment; and disregard for the physical integrity of persons, whom authorities arbitrarily and unlawfully detained, tortured, or killed.”

“Other reported human rights problems included politically motivated violence and repression; disappearances; limitations on citizens’ ability to choose their government peacefully through free and fair elections. Of additional concern were harsh and life threatening conditions in detention facilities, including lengthy solitary confinement, with instances of deaths in custody. Also of concern were arbitrary arrest and lengthy pretrial detention, sometimes incommunicado; continued impunity of the security forces; denial of fair public trial; the lack of an independent judiciary; arbitrary interference with privacy, family, home, and correspondence. Additionally there were severe restrictions on academic freedom; restrictions on freedom of movement; official corruption and lack of

government transparency; constraints on investigations by international and nongovernmental organizations (NGOs) into alleged violations of human rights; legal and societal discrimination. There was also violence against women, ethnic and religious minorities, and lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons. Lastly, there were significant problems with trafficking in persons and severe restrictions on the exercise of labor rights. The government took few steps to investigate, prosecute, punish, or otherwise hold accountable officials, in the security services or elsewhere in government, who committed these abuses. Impunity remained pervasive throughout all levels of the government and security forces.”

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 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 applicant’s 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. 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.

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 “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, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI 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. 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 security clearance.” 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). “[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

Foreign Influence

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

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

AG ¶ 7 indicates three conditions that could raise a security concern and may be disqualifying in this case:

(a) contact, regardless of method, 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;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect classified or sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information or technology; and

(e) shared 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(a), 7(b), and 7(e) apply because of Applicant and his spouse's relationships with her family members, who are citizens and residents of Iran. There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. *See generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). Applicant has ties of affection and obligation to his spouse. "[A]s a matter of common sense and human experience, there 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. 07-17673 at 3 (App. Bd. Apr. 2, 2009) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). This concept is the basis of AG ¶ 7(e).

Indirect influence from Applicant's in-laws living in Iran could result in a security concern. Relationships with his wife's family living in Iran are sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." These relationships create a concern about Applicant's "obligation to protect sensitive information or technology" and his desire to help her relatives who are in Iran. For example, if entities in Iran wanted to expose Applicant to coercion, they could exert pressure on his wife's relatives in Iran. Applicant would then be subject to indirect coercion and classified information could potentially be compromised.

The mere possession of close family ties with relatives or in-laws living in Iran is not, as a matter of law, disqualifying under Guideline B. However, if an applicant or his spouse has such a relationship with even one person 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 Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

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).

A nation's government's relationship with the United States and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion or inducement. In ISCR Case No. 12-08412 at 3 (App. Bd. Sept. 11, 2015), the Appeal Board affirmed the denial of a security clearance for an applicant with connections to in-laws residing in Iran stating:

In Foreign Influence cases, the nature of the foreign government involved, the intelligence gathering history of that government, and the presence of terrorist activity are important considerations. See, e.g., ISCR Case 05-03250 at 4-5 (App. Bd. Apr. 6, 2007). There is a rational connection between an applicant's family ties in a hostile country and the risk that the applicant may fail to protect classified information. See, e.g., ISCR case No. 10-07436 at 3, n. 4 (App. Bd. Oct. 19, 2011).

See also ISCR Case No. 15-00647 (App. Bd. June 1, 2017) (affirming denial of security clearance because of connections to Iran); ADP Case No. 15-04852 (App. Bd. May 25, 2017) (holding same); ISCR Case No. 13-01297 (App. Bd. Mar. 9, 2015) (holding same); ISCR Case No. 12-09989 (App. Bd. Nov. 18, 2013) (holding same); ISCR Case No. 11-12659 (App. Bd. May 30, 2013) (holding same). 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 collection operations against the United States. See ISCR Case No. 03-24933 at 8 (App. Bd. Jul. 28, 2005) (There is no good reason to assume that a foreign country with an authoritarian government that has been identified as being involved with state-sponsored terrorism would have compunctions about exerting influence or pressure on its citizens just because they lack prominence or live modest, ordinary lives).

“An Applicant with foreign familial ties to a country that is hostile to the United States bears a **very heavy burden** to show that neither he nor his family members in that country are subject to influence by that country.” ISCR Case No. 11-01888 (App. Bd. June 1, 2012) (emphasis added; citing ISCR Case No. 07-00029 at 3 (App. Bd. Dec. 7, 2007) and reversing grant of security clearance because of connections to Iran). Iran’s hostility to the United States and its support for terrorists places a very heavy burden of persuasion on Applicant to demonstrate that his and his spouse’s relationships to his spouse’s relatives living in Iran do not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist her family living in Iran.

Applicant and his spouse’s communications with her family living in Iran are sufficiently frequent to demonstrate affection for family living in Iran. Concern for family is a positive character trait that increases trustworthiness; however, it also increases concern about potential foreign influence. Department Counsel produced substantial evidence of possible foreign pressure or attempted exploitation. Further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security 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 United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, 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 agency head or designee;

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

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. 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 security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified 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 and/or his spouse have frequent communications⁵ with her family living in Iran, and his spouse is presumed to

⁵ See ADP Case No. 05-17812 at 2, 3 n.2 (App. Bd. Jun. 11, 2007) (finding contacts with siblings in PRC "once every two or three months" not to be casual and infrequent); ISCR Case No. 04-12500 at 2, 4 (App. Bd. Oct. 26, 2006) (finding contacts with applicant's parents and sisters a total of about 20 times

have a close relationship with her parents, brother, and sister-in-law living in Iran. The amount of contacts between an applicant or the applicant's spouse and relatives living in a foreign country are not the only test for determining whether someone could be coerced or exploited through their relatives. Because of connections to his wife's family living in Iran, Applicant is not able to fully meet his burden of showing there is "little likelihood that [he and his spouse's relationships with relatives who are residents of Iran] could create a risk for foreign influence or exploitation." Visits to or from family provide additional evidence of concern for family and obligation to family welfare.

Applicant has "deep and longstanding relationships and loyalties in the U.S." He has strong family connections to the United States. Applicant and his child are citizens and residents of the United States. His spouse is a U.S. permanent resident, and she intends to become a U.S. citizen. He received his bachelor's and master's degrees in the United States, has lived in the United States more than 20 years, and he served a combat tour in Afghanistan. Applicant has never been an Iranian citizen or visited Iran.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by relationships with family living in Iran. There is no evidence that terrorists, criminals, the Iranian Government, or those conducting espionage have approached or threatened Applicant or his family in Iran for classified or sensitive information. There is evidence that Applicant's in-laws may have come to the attention of the Iranian Government during protests, and it is possible that the Iranian Government is monitoring them. While the Government does not have any burden to prove the presence of such evidence, if compelling evidence exists that Iran has targeted his in-laws in Iran, Applicant would have a heavier evidentiary burden to overcome to mitigate foreign influence security concerns. It is important to be mindful of the United States' negative relationship with Iran, Iran's human rights violations, and most importantly Iran's support for terrorism and the diplomatic conflicts between Iran and the United States.

In sum, the primary security concern is Applicant and his spouse's relationships with her family, who are residents and citizens of Iran. Those family members living in Iran are readily available for coercion. Iran has a history of hostility towards the United States and support for terrorism. Applicant should not be placed into a position where he might be forced to choose between his obligations as a security clearance holder and the welfare of his in-laws living in Iran. Foreign influence security concerns are not mitigated.

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise

per year not casual and infrequent); ISCR Case No. 04-09541 at 2-3 (App. Bd. Sep. 26, 2006) (finding contacts with applicant's siblings once every four or five months not casual and infrequent).

questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

AG ¶ 19 includes two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; and "(c) a history of not meeting financial obligations." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

AG ¶ 20 lists three mitigating conditions that are potentially applicable in this case:

(a) the behavior happened so long ago,⁶ was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶¶ 20(a), 20(b), and 20(d) apply. Applicant's finances were harmed by his first divorce, unemployment, and underemployment. These circumstances are partially or fully beyond his control. The SOR alleged one delinquent debt, which he settled. There was evidence that he fell behind on his alimony payments. When he became employed, he paid his alimony debt. The Appeal Board explained that a history of delinquent debts is not necessarily a bar to having access to classified information stating:

⁶ A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his [or her] circumstances and develop a reasonable plan for repayment, accompanied by “concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009). Applicant acted responsibly by paying his debts. Applicant took reasonable actions to resolve his debts, establishing some good faith.⁷ Based on Applicant’s credible promise to pay his debts and his track record of paying them, future new delinquent debt is unlikely to recur and does not cast doubt on Applicant’s current reliability, trustworthiness, or good judgment. There are clear indications that his financial problems are resolved and his finances are under control. Applicant assures he will conscientiously endeavor to maintain his financial responsibility. He has mitigated financial considerations security concerns.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes three conditions that could raise a security concern and may be disqualifying in this case:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person

⁷ The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the “good faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of: (1) untrustworthy or unreliable behavior . . . ; (3) a pattern of . . . rule violations; and

(e) personal conduct . . . that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

The amended SOR alleges Applicant's relationship with Ms. A (¶ 3.a) and cross-alleges his relationship with Ms. I in SOR ¶ 1.a. (¶ 3.b) Applicant engaged in romantic relationships with Ms. A and Ms. I. In April 2014, he married Ms. A, a citizen and resident of Afghanistan. She returned to Afghanistan where she said she was arrested. Applicant knew that his marriage to Ms. A risked her arrest in Afghanistan for apostasy. He sent her nude pictures of himself, and the pictures were returned to him in a possible extortion attempt. He lacked sufficient information about Ms. A and her family before he urged her to join him outside of Afghanistan and to marry him, and his decisions relating to Ms. A demonstrated poor and impulsive judgment. AG ¶ 16(c) does not apply because there is sufficient information as discussed in the foreign influence section for an adverse security clearance determination. The evidence establishes SOR ¶ 3.a and AG ¶¶ 16(d) and 16(e) apply to SOR ¶ 3.a. The personal conduct concern alleged in SOR ¶ 3.b is more appropriately addressed under the foreign influence guideline and will not be further discussed under the personal conduct guideline.

AG ¶ 17 lists two conditions that could mitigate personal conduct security concerns:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

AG ¶¶ 17(c) and 17(d) are established. Applicant's showed questionable judgment in his relationship with Ms. A. However, his relationship with Ms. A "happened under such unique circumstances that it is unlikely to recur and does not cast doubt on [his] reliability, trustworthiness, or good judgment." Applicant divorced Ms. A, and when the extortion was attempted, he reported the extortion attempt to DOD law enforcement. He acknowledged his conduct, and his disclosure of it has "alleviate[d] the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur." It is unlikely that Applicant will ever communicate with Ms. A or meet with her. Applicant married Ms. I, and he has learned from his mistakes. Personal conduct security concerns are mitigated.

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(d):

(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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration" of the guidelines and the whole-person concept. My comments under Guidelines B, F, and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 46-year-old budget integration analytics manager and defense contractor. In 1995, he entered the United States at the age of 24 on a student visa. He received bachelor's and master's degrees in the United States. In 2009, he joined the U.S. Navy Reserve. Applicant received excellent Navy performance evaluations. He completed Navy qualification courses, and he is an excellent marksman. He provided multiple letters lauding his duty performance and potential for contributions to the Navy. A rear admiral recommended his promotion and assignment to "the Navy's most demanding duties." His character evidence supports approval of his security clearance.

Applicant has strong connections to the United States, including his residence in the United States for more than 20 years, his Navy service, his U.S. citizenship, the U.S. citizenship of his child, and the U.S. permanent residence of his spouse.

Applicant's service in the conflict in Afghanistan increases the probability that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit him. See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008). His past honorable Navy service in Afghanistan weighs towards approval of his security clearance. See ISCR Case No. 07-00034 at 3 (App. Bd. Feb. 5, 2008) (affirming grant of security clearance and noting the importance to national security when an "Applicant put[s] his life in danger on at least one occasion to protect American lives and interests in Afghanistan.").

In May 2016, Applicant married Ms. I. She was born in Iran; she immigrated from Iran to the United States in 2014; and she now resides in the United States. Ms. I most recently traveled to Iran in September or October 2015, and she retains an Iranian passport. Ms. I's parents, brother, uncle, and sister-in-law are citizens and residents of Iran. She frequently communicates with her parents, brother, and sister-in-law. Her sister and her uncle are politically active. Ms. I's uncle was imprisoned in Iran for about two years because of his political statements. Her father is retired and receiving a pension from the Iranian Government. Her parents demonstrated against the Iranian regime.

A Guideline B decision concerning Iran must take into consideration the geopolitical situation and dangers there.⁸ Iran violates human rights, supports terrorism, and is hostile to the United States.

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. I conclude that financial considerations and personal conduct security concerns are mitigated; however, foreign influence security concerns are not mitigated. It is not clearly consistent with the interests of national security to grant Applicant security clearance eligibility.

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
Subparagraphs 1.a and 1.b:	Against Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraphs 3.a and 3.b:	For Applicant

⁸ See 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).

Conclusion

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARK HARVEY
Administrative Judge