



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



In the matter of:

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) ISCR Case No. 17-01072  
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Applicant for Security Clearance

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel

For Applicant: Alan V. Edmunds, Esq.

07/06/2018

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**Decision**

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GOLDSTEIN, Jennifer I., Administrative Judge:

**Statement of the Case**

On May 30, 2017, in accordance with the Department of Defense (DoD) Directive 5220.6, as amended (Directive), the DoD issued Applicant a Statement of Reasons (SOR) alleging facts that raised security concerns under Guideline B.<sup>1</sup> The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on July 27, 2017, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on October 17, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 13, 2017, scheduling the hearing for January 10, 2018. The hearing was

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<sup>1</sup> I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines, effective September 1, 2006.

convened as scheduled. The Government offered Exhibits (GE) 1 through 3, which were admitted without objection (Tr. 16, 54.), and Hearing Exhibit (HE) I for Administrative Notice. Applicant testified on his own behalf and called three witnesses. Applicant presented Applicant Exhibits (AE) A through W, all of which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on January 19, 2018.

### **Procedural Rulings**

At the hearing, Department Counsel requested that I take administrative notice of certain facts relating to the Islamic Republic of Iran (Iran). Department Counsel provided a seven-page summary of the facts, supported by eight Government documents, identified as HE 1. The documents provide elaboration and context for the summary. Applicant did not object to the Government's request. Hence, I take administrative notice of the facts included in the Government administrative notice request. They are limited to matters of general knowledge, not subject to reasonable dispute and are set out in the Findings of Fact.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a., and 1.b. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 61-year-old employee of a defense contractor. He immigrated to the United States 44 years ago, at the age of 18, to pursue his education. He earned a bachelor's degree in 1979, a master's degree in 1983, and a second master's degree in 1988. He was naturalized as a U.S. citizen in 2000. He is married to a naturalized U.S. citizen. He has two U.S.-born adult children, who are both U.S. residents. He has worked for his employer for seven years as a software developer. He has held a security clearance since 2006.<sup>2</sup> (GE 1; GE 2; AE A; AE M; AE N; AE O; AE P; Tr. 36-41, 44, 47-51, 67.)

Applicant's father is a citizen and resident on Iran. He is an 89-year-old retired officer in the Iranian Army. He worked in "food management" for the Iranian Army and achieved the rank of Colonel. He retired in 1985. He is supported by a pension he receives from the Iranian government. Applicant's mother is deceased. Applicant resumed communications with his father in approximately 2015, after a long period of estrangement. He speaks to his father by phone on a monthly basis to discuss his health and news events. Applicant last saw his father in person in 2000, when he traveled to Iran for ten days. (Answer; GE 1; GE 2; Tr. 39, 41, 52-57.)

Applicant has two sisters who are citizens and residents in Iran. He speaks to them by phone once or twice per year, on holidays. One is a homemaker and one is retired from work in a laboratory. (GE 1; GE 2; Tr. 41, 57-59.)

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<sup>2</sup> Similar foreign influence security concerns regarding his parents and sisters were previously adjudicated and his clearance was granted in ISCR Case No. 04-12732 (April 24, 2007.)

Applicant did not return to Iran for his mother's funeral and does not intend to travel to Iran in the future. He inherited a share in his mother's estate, but Applicant signed it over to his father. He is not interested in inheriting any properties from his father and would transfer any potential inheritance to his siblings. (Tr. 60-62, 72-73.)

Applicant has no property or bank accounts in Iran. He does not send financial support to his relatives in Iran. (Tr. 42.)

Applicant's net worth is estimated at two million dollars. He owns his home, with no mortgage. He has multiple retirement and investment accounts. His wife is employed as a lab scientist and earns approximately \$130,000 per year. He has extended family in the U.S. including a grandchild. His younger brother also resides in the United States, as do his parents-in-law and brother-in-law. Applicant communicates with his brother on a weekly basis. (AE F; AE G; AE H; AE I; AE J; AE K; AE L; AE Q; AE R; AE S; AE T; AE U; AE V; AE W; Tr. 43-44, 63, 66, 69-70.)

Applicant presented multiple witnesses and reference letters that attest to his exemplary work product and trustworthiness. Applicant is known to handle classified materials in accordance with prescribed policy and is a rule-follower. His work performance evaluations reflect that he meets or exceeds expectations. (AE B; AE C; Tr. 21-35.)

### **Notice**

I take administrative notice of the following facts regarding the Iran. Iran has been designated as a state sponsor of terrorism since 1984. It supports various terrorist organizations operating throughout the Middle East and the world. The U.S. Government has imposed sanctions on Iran due to its nuclear program, sponsorship of terrorism, and poor human rights record. Iran engages in cyber espionage, propaganda, and attacks to support its security priorities against the United States and its allies. The U.S. Department of State warns U.S. citizens of the risks of traveling to Iran, which include the risk of arbitrary detention on charges including espionage and posing a threat to national security. Significant human rights abuses and restrictions on civil liberties include restrictions of freedoms of assemble, association, speech, religion, and press; and the use of capital punishment for crimes without due process. (HE I.)

### **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's

overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 says that an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

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

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See also Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Guideline B: Foreign Influence**

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable 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; 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 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.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, that 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).

Applicant has ongoing and commendable familial connections with his father, and sisters who are citizens and residents of Iran. There is a potential heightened risk associated with these family members relating to the human rights abuses pervasive in Iran. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

- (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.

Applicant expressed deep longstanding ties to his chosen country, the United States. All of Applicant's assets are located in the United States and he does not plan to return to Iran. While he has resumed communications with his elderly father and speaks infrequently to his sisters, he and his wife are entrenched in their local community and

are proud to be raising their children and grandchild as a U.S. citizen. All of his assets are here and he has relinquished any claim to inherit property in Iran. He has extended family in the United States and has close bonds of affection to them. Applicant has held a security clearance since 2006, without incident. He can be expected to resolve any conflict of interest in favor of the U.S. interests. The above condition fully applies.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility by considering the totality of the applicant's conduct and all relevant 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), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline. Applicant has the unqualified support of those who know him and have observed his work performance. Furthermore, he can be expected to resolve any conflict of interest in favor of the United States due to his longstanding emotional and financial ties here. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the foreign influence security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline B:

FOR APPLICANT

Subparagraph 1.a:

For Applicant

Subparagraph 1.b:

For Applicant

## **Conclusion**

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

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Jennifer I. Goldstein  
Administrative Judge