



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



In the matter of: )  
)  
) ISCR Case No. 17-02625  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

07/16/2018  
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**Decision**  
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COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the security concerns under Guidelines C and B, foreign preference and foreign influence. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On August 30, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline C, foreign preference and Guideline B, foreign influence. DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), effective within the Department of Defense on June 8, 2017.

Applicant answered (Ans.) the SOR on October 11, 2017. He requested a hearing before an administrative judge. The case was assigned to me on January 19, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 5, 2018, with a hearing date of March 21, 2018. The hearing was convened as scheduled. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. The Government's request to take administrative notice of certain facts about Iran, and attachments, was marked as hearing exhibit (HE) II and its exhibit list was marked as a HE I. Applicant testified and called one witness, but offered no documents. DOHA received the hearing transcript (Tr.) on March 28, 2018.

### **Procedural Ruling**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Iran. Applicant did not object and the request was granted. The request was not admitted into evidence but were included in the record as HE II. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

Under Guideline C, the SOR alleged in ¶¶ 1.a and 1.b, Applicant received his U.S. citizenship in March 1993 and later that month he left for Iran where he resided and sought employment. The SOR alleged from 1993 to March 2007, Applicant resided outside the United States (in Iran for over five years) and only spent approximately five months in the United States. Under Guideline B, the SOR further alleged in ¶¶ 2.a through 2.i, Applicant's mother-in-law is a citizen of Iran; two brothers are citizens and residents of Iran (one brother works for the ministry of energy and the other for the ministry of communication); one brother is a dual U.S.-Iranian citizen residing in Iran; three sisters are residents and citizens of Iran; a brother-in-law and two sisters-in-law are citizens and residents of Iran; two friends are citizens of Iran and one is a resident of Iran. The SOR also alleged Applicant sent approximately \$5,000 to his sister in Iran between 2010 and 2014.

In Applicant's answer to the SOR, he admitted the SOR allegations, except for SOR ¶¶ 2.b, 2.f, and 2.h, which he denied. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 60 years old. He was born in Iran in 1957. He relocated to the United States in 1986. He became a naturalized U.S. citizen in 1993. He received his master's degree in 1989 from a U.S. university. His wife is a dual U.S.-Iranian citizen. His two children, ages 21 and 24, are also dual U.S.-Iranian citizen. Their dual citizenship is based upon their heritage. According to Applicant, they have not exercised their Iranian citizenship rights. He owns a home in the United States, which is valued at

approximately \$600,000 with his equity amounting to approximately \$250,000. He estimated his net worth at \$300,000. He has never held a security clearance.<sup>1</sup>

From 2012 to 2017, Applicant possessed an Iranian passport, in addition to his U.S. passport, which he obtained in 2013. From 1991 to 2014, Applicant used his Iranian passport to enter Iran on 11 occasions. Between 1993 and 2008, Applicant spent approximately five months in the United States. The rest of the time he was residing in either Iran or Kuwait. He explained that he was in these locations so that he could be near his ill mother (living in Iran) and he was able to secure employment in both locations. He claims he was last in Iran in either 2014 or 2015. He has no future plans to visit Iran.<sup>2</sup>

Applicant has the following relatives and friends who are citizens and residents of Iran:

1. Applicant's three brothers (B1, B2, B3). B1 passed away. B2 is retired from the ministry of communication. Applicant communicates with B2 every few months and on holidays. B3 is a dual U.S.-Iranian citizen residing in Iran. B3 works in the information technology field. He last lived in the United States "a few years ago." Applicant does not provide financial support to his brothers. He has quarterly contact with B3.<sup>3</sup>

2. Applicant's mother-in-law (ML). Applicant's ML visits and stays with him on a regular basis. After her visits to Applicant's home, she returns to Iran. She does not work outside the home.<sup>4</sup>

3. Applicant's three sisters (S1, S2, S3). None of Applicant's three sisters work outside the home. Applicant provided \$5,000 of financial assistance to S3 because her husband passed away and she was left to support six children. He has not provided any other financial support to his sisters. He has quarterly contact with his sisters.<sup>5</sup>

4. Applicant's two sisters-in-law (SL1, SL2) and one brother-in-law (BL). SL1 is a university instructor, currently residing in China. SL2 is a homemaker. BL is an accountant. Applicant does not provide any financial support for these in-laws. He has monthly contact with his sister-in-laws and yearly contact with BL.<sup>6</sup>

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<sup>1</sup> Tr. at 6, 17-18, 23-25, 28; GE 1-3.

<sup>2</sup> Tr. at 17, 28, 47-50; GE 1-2.

<sup>3</sup> Tr. at 19-20, 37, 45-47; GE 2.

<sup>4</sup> Tr. at 21-22; GE 2.

<sup>5</sup> Tr. at 20-21, 39, 42; GE 2.

<sup>6</sup> Tr. at 32-33, 40, 42; GE 2.

5. Applicant's two friends (F1, F2). Both friends are from Applicant's college days. F1 is a contractor. Applicant has not had contact with him in at least six months. F2 is not an Iranian citizen or resident. He is a Swedish citizen and resident. He has yearly contact with F2.<sup>7</sup>

### **Islamic Republic of Iran (Iran)**

Iran has been designated by the U.S. State Department as a State Sponsor of Terrorism since 1984. It remains the most prominent state sponsor of terrorism, providing financial aid, advanced weapons and tactics, and direction to militant and terrorist groups across the Middle East. It cultivates operatives across the globe as a contingency to enable potential terrorist attacks.

Iran uses terrorist groups to implement foreign policy goals, provide cover for intelligence operations, and create instability in the Middle East. It remains an enduring threat to U.S. national interests. Iran and its primary terrorism partners pose a persistent threat to the United States and its partners worldwide. The U.S. Government does not have diplomatic ties or consular relations with Iran. The Department of State warns U.S. citizens not to travel to Iran due to the risk of arbitrary arrest and detention.

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. The U.S. Director of National Intelligence (DNI) has identified several countries, including Iran as posing a significant cyber threat against the United States. The DNI specifically noted that Iran will continue to penetrate U.S. and allied networks for espionage and to position itself for potential cyber-attacks. There is also concern that Iran will expand its influence in the region and will develop military capabilities that threaten U.S. forces.

In 2015, the Visa Waiver Program was amended. Under the amendment, citizens of Iran, Iraq, Sudan, and Syria are ineligible to travel or be admitted to the United States. The exclusion of these countries from waiver eligibility reflects that the presence of an individual in that country increases the likelihood that the individual is a credible threat to the national security of the United States, that a foreign terrorist organization has a significant presence in the country, or that the country is a safe haven for terrorists.

Iran has a poor human rights record. There are severe restrictions on civil liberties, including freedom of assembly, association, speech, religion, and the press. Other problems include abuse of due process combined with the use of capital punishment for crimes that do not meet requirements for due process, as well as cruel, inhuman, or degrading treatment and punishment; and disregard for the physical

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<sup>7</sup> Tr. at 43-44; GE 2.

integrity of persons, whom authorities arbitrarily and unlawfully detained, tortured, or killed. There are numerous other human rights problems in Iran.<sup>8</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a careful weighing 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion to obtain a favorable security decision."

A person who seeks access to classified 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 classified information. Decisions include, by necessity, consideration of the possible risk that an 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.

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<sup>8</sup> HE II.

Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline C, Foreign Preference**

AG ¶ 9 explains the security concern about “foreign preference” as follows:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. By itself, the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

AG ¶ 10 indicates conditions that could raise a security concern and may be disqualifying in this case:

(d) participation in foreign activities, including but not limited to:

(1) assuming or attempting to assume any type of employment, position, or political office in a foreign government or military organization; and

(2) otherwise acting to serve the interests of a foreign person, group, organization, or government in any way that conflicts with U.S. national security interests.

Applicant's extensive time living and working in Iran and Kuwait after gaining U.S. citizenship constitutes participating in foreign activities. AG ¶ 10(d) applies.

AG ¶ 11 lists conditions that could mitigate foreign influence security concerns, including:

(a) the foreign citizenship is not in conflict with U.S. national security interests; and

(f) the foreign preference, if detected, involves a foreign country, entity, or association that poses a low national security risk.

Applicant's close relationship with Iran over the years presents a concern that is in conflict with U.S. security interests. Applicant was a U.S. citizen during the 15-year period he spent in either Iran or Kuwait. Iran poses a high national security risk. Neither of the mitigating conditions apply.

## **Guideline B, Foreign Influence**

The security concern relating to the guideline for foreign influence is set out in AG ¶ 7:

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.

ML, B2, B3, S1-S3, BL, SL1-SL2, and F1 are citizens of Iran. All except for SL1 are also residents of Iran. Iran is a state sponsor of terrorism and a country with a poor human rights record. It is one of the world's most aggressive nations in conducting cyber-attacks against U.S. interests. Because of Iran's posture in these areas, and Applicant's relatives' connection to Iran, there exists a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. The same situation also creates a potential conflict of interest for Applicant. AG ¶¶ 7(a) and 7(b) have been

raised by the evidence. Applicant's connection to F2, who is a resident and citizen of Sweden, has little security significance, thus alleviating any heightened risk or potential conflict of interest. SOR ¶ 1.h is resolved in Applicant's favor.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8:

(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; and

(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.

Based upon Iran's status as a state sponsor of terrorism, its poor human rights record, and its cyber-attacks on U.S. interests, the evidence does not support that it is unlikely that Applicant could be placed in a position to choose between the interests of his family in Iran and those of the United States. Additionally, his relatives' presence in Iran places Applicant in a susceptible position. Although Applicant has ties to the United States, he spent approximately 15 years outside the United States after becoming a U.S. citizen. Many of those years he spent working and living in Iran. It is difficult to determine based upon the evidence that he has a deep and longstanding relationship with the United States such that he would resolve all conflicts in favor of the United States. As stated above, the protection of the national security is the paramount consideration and any doubt must be resolved in favor of national security. I am unable to find either of the mitigating conditions to be fully applicable. Despite the presence of some mitigation, it is insufficient to overcome the significant security concerns that exist.

### **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(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to



which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

Iran is a state sponsor of terrorism, has a bad human rights record, and conducts cyber-attacks aimed at the United States. The nature of a nation's government, its 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. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. Applicant has not overcome the vulnerability to pressure, coercion, exploitation, and duress created by his relatives living in Iran and his 15-year residency and employment in Iran.

Applicant has done nothing to question his loyalty and devotion to this country. However, he has simply been unable to overcome the heavy burden of showing that he is not subject to influence by Iran. His vulnerability to foreign pressure, coercion, exploitation, or duress remains a concern.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the foreign preference or the foreign influence security concerns.

### **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 C:	AGAINST APPLICANT
Subparagraphs 1.a – 1.b:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a – 2.g:	Against Applicant
Subparagraph 2.h:	For Applicant
Subparagraph 2.i:	Against Applicant

### **Conclusion**

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

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Robert E. Coacher  
Administrative Judge