



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-07987

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: Angela Manson, Esquire

February 19, 2009

Decision

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings, exhibits and testimony, Applicant's request for continued eligibility for a security clearance is denied.

On January 12, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew a security clearance required for his defense-related research work through his professorship at a private university. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant three sets of interrogatories to obtain clarification of and/or additional information about adverse information in his background.¹ After reviewing his responses to the interrogatories, DOHA adjudicators were unable to make a preliminary affirmative finding² that it is

¹ Authorized by DoD Directive 5220.6 (Directive), Section E3.1.2.2.

² Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

clearly consistent with the national interest to allow Applicant access to classified information. On August 15, 2008, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raised security concerns addressed in the Revised Adjudicative Guidelines (AG)³ under Guideline B (foreign influence), Guideline C (foreign preference) and Guideline E (personal conduct).

Applicant timely responded to the SOR and requested a hearing. The case was assigned to me on December 2, 2008, and I convened a hearing on December 17, 2008. The parties appeared as scheduled. The government presented five exhibits (Gx. 1 - 5).⁴ Applicant testified, but did not submit any documents. DOHA received the transcript of hearing (Tr.) on December 29, 2008.

Findings of Fact

The government has alleged as one basis for its decision to deny his clearance renewal request that Applicant's conduct and circumstances indicate he may give preference to the interests of a foreign government over those of the United States. (Guideline C - *Foreign Preference*) Specifically, it is alleged that Applicant exercises dual citizenship with the United States and Iran through his possession of an Iranian passport, obtained in August 2007 and valid through August 2011 (SOR ¶ 1.a); that he exercised dual citizenship through his use of an Iranian passport in lieu of a U.S. passport he received in June 2001 to travel to Iran between 2001 and 2003 (SOR ¶ 1.b); that Applicant exercised dual citizenship by obtaining an Iranian passport in August 2001 after he had become a U.S. citizen in 1991 (SOR ¶ 1.c); that he inherited a house in Iran worth about \$100,000 (SOR ¶ 1.d); and that he served in the Iranian army between 1972 and 1974 (SOR ¶ 1.e).

The government also has alleged that Applicant has interests and contacts in a foreign country that may impair or conflict with his obligation to protect the interests of the United States. (Guideline B - *Foreign Influence*) Specifically, it is alleged that Applicant's mother is a citizen of and resides in Iran (SOR ¶ 2.a); that his brother is a citizen of and resides in Iran (SOR ¶ 2.b); that, as alleged in SOR ¶ 1.d, above, he inherited a house in Iran worth about \$100,000 (SOR ¶ 2.c); and that he traveled to Iran in December 2005, February 2003 and August 2001 (SOR ¶ 2.d).

Finally, the government alleged it could not grant Applicant's request because of concerns he had not been candid or truthful about information material to the government's assessment of his suitability for access to classified information.

³ Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, the Revised Adjudicative Guidelines supercede the guidelines listed in Enclosure 2 to the Directive.

⁴ Department Counsel also asked that I take notice of additional documents included collectively in the record as Judicial Exhibit (Jx.) 1. This exhibit contains 17 attached documents (Attachments I - XVII) I sustained Applicant's objection to consideration of Attachments XII, XIV - XVII and I have not considered that information for reasons discussed in the transcript at pages 19 - 24. However, those documents are included in the record for possible appellate review.

(Guideline E - *Personal Conduct*) Specifically, it is alleged that, by answering “no” to e-QIP question 17.a (*Your Foreign Activities - Do you have any foreign property, business connections, or financial interests?*) he deliberately and knowingly failed to disclose his interest in foreign property; that is, the house in Iran he allegedly inherited. (SOR ¶ 3.a)

In response to the SOR, Applicant admitted with explanation the allegations in SOR ¶¶ 1.a - 1.c, 1.e and 3.a. He admitted without explanation the remaining allegations. In addition to the facts entered through his admissions, I make the following findings of relevant fact.

Applicant is a 59-year-old full professor of electrical and computer engineering at a private U.S. university, where he has worked since September 1993. Among his responsibilities is the supervision of post-graduate degree candidates doing research funded, inter alia, by civilian and military Department of Defense agencies. He has also done classified research and development work for other government agencies and private corporations. Applicant is highly regarded in his field of expertise and has been published at least 20 times in the past 16 years. His efforts also have led to significant improvements in his university’s physical assets as well as its academic reputation. (Tr. 25 - 36)

Applicant was born and raised in Iran before coming to the United States in 1976 to pursue multiple post-graduate degrees. He received all of his undergraduate education in Iran, and he served in the Iranian army from 1972 until 1974, fulfilling the mandatory military service required of all Iranian males at the time. He also worked as an engineer for at least four different state-run agencies in Iran before emigrating to the U.S. (Gx. 1; Gx. 4; Answer to SOR) He became a naturalized U.S. citizen in 1991 and received a U.S. passport in June 2001. (Gx. 1) His mother, brother, and one of his four sisters are citizens of and live in Iran. His mother also has her green card after spending long periods of time in the U.S. visiting Applicant. (Tr. 54) She last visited in 2004, but due to her age (82 years old) she can no longer travel overseas. (Tr. 67)

Applicant’s father, who died in 1973, was a teacher. Applicant’s mother lives on the remainder of his retirement pension. Applicant’s brother used to be a teacher, but since about 1981 has been barred by the government from doing so in Iran’s state-supported schools. He lives with their mother and supports himself through private tutoring and by on-line stock trading. Applicant occasionally sends his mother money totaling about \$500 each year. (Tr. 49 - 51) He speaks with his mother and brother by phone about once each month. (Tr. 57) Applicant also has four sisters. All have Iranian citizenship, but only one still lives in Iran. Two sisters live in Germany and one lives in Canada. (Tr. 58) None of Applicant’s relatives are employed by or have any official connection to the Iranian government.

In 2001, Applicant was invited to attend an international conference of electrical engineers to be held in Tehran, Iran. He had not been back to Iran since before the 1979 Islamic Revolution there. To travel back to Iran, he obtained an Iranian passport as required by Iranian law. Iran considers U.S. citizens who were born in Iran as Iranian citizens and requires the use of an Iranian passport for entering and leaving the country. (Tr. 38 - 41; Jx. 1, Attachment II) Since obtaining an Iranian passport, Applicant has

returned to Iran to visit his family in 2003, 2005, and 2007. (Tr. 64) He renewed his Iranian passport in August 2007 and does not want to relinquish it, because without it he cannot see his mother or his other family members. Aside from his mother, Applicant has other family and cultural ties to Iran that constitute other reasons for him to return to Iran even were his mother not there. (Tr. 41 - 42)

When his father died in 1973, Applicant inherited an interest in his father's house, where his brother and mother still live. Applicant estimates the house (more properly characterized as a condominium) is worth about \$100,000. Applicant's understanding is that, under Islamic law, the house passed to Applicant and his siblings in shares weighted in favor of the male children. Of course, Applicant and his siblings never contemplated that his mother would leave the house. To the best of his understanding, if his mother pre-deceases Applicant, the house will be disposed of through a process similar to the United States' probate system. It is also his understanding that he is not on any deed for the property and that he is not registered as having any partial interest in the property. (Tr. 42 - 44, 60 - 62) Applicant does not receive any income from the property and there is no indication his interest in the property is contingent on his exercise of Iranian citizenship.

Applicant first applied for a security clearance in 1991. In the security clearance application (SF 86) he submitted at the time, he disclosed he had previously held an Iranian passport before he was naturalized. He also answered "yes" to question 17.a (*Do you have any foreign property, business connections, or financial interests?*). (Gx. 5) When he submitted his e-QIP in January 2007 to renew his clearance, he answered "no" to the same question, but disclosed again that he held a foreign passport. (Gx 1) Applicant explained that when he considered the question on his 2007 e-QIP, he decided to answer "no" because he was not listed on a deed or otherwise registered as having an interest in his father's house. (Tr. 45 - 46)

Applicant owns property in the United States worth about \$220,000. He also has retirement savings through his current employer and at another university where he worked from 1985 through 1993. He insists that if he was approached by Iran or any other foreign country that wished to pressure him into compromising U.S. national interests, he would seek out the proper authorities and report the matter. (Tr. 49) Applicant had not given any consideration to whether he would be willing to renounce his Iranian citizenship because he does not consider himself to be a dual citizen. However, he is not willing to relinquish his Iranian passport because without it he cannot visit his relatives there. Further, he has used his Iranian passport only when entering or leaving Iran. At all other times, he has used his U.S. passport. (Tr. 41 - 42)

In 1979, the Shah of Iran was overthrown in favor of a theocratic government based on Islamic law. Despite occasional gains by more moderate Muslim clerics in the government, the Islamic Republic of Iran remains under the control of fundamentalists dedicated to a repressive form of government in furtherance of strict adherence to the Koran. Iran's regime has amassed a dismal human rights record. Government entities have been involved in an increased number of abductions, summary executions, disappearance, torture, and other unacceptable practices designed to preserve the government's hold over its citizens. The U.S. State Department has also advised U.S.

citizens not to travel to Iran, and has noted instances whereby dual U.S.-Iranian citizens have been singled out for special monitoring and detention. (Jx. 1, Attachments I - IV)

Iran's global interests are directly antithetical to those of the U.S.. To further their regional and global goals, Iran has become an active collector of economic information and has an active espionage service which targets U.S. interests and information. Iran is also an active sponsor of terrorism, which targets the interests of the U.S. and its allies. Finally, the development and proliferation of nuclear weapons and other weapons of mass destruction by Iran is seen by the U.S. as a major threat to regional and possibly global stability. (Jx. 1, Attachments V - XI, XIII)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole person" concept, those factors are:

- (1) The nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under AG ¶ 6 (Guideline B - Foreign Influence), AG ¶ 9 (Guideline C - Foreign Preference) and AG ¶ 15 (Guideline E - Personal Conduct).

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁶ for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able

⁵ Directive. 6.3.

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.⁷

A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Thus, the government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.⁸

Analysis

Personal Conduct.

The security concern about Applicant's personal conduct, as addressed in AG ¶ 15, is that

[c]onduct 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant does not contest that he did not disclose his interest in a foreign property when he completed his most recent security clearance application. However, to be disqualifying, his omission must have been made with intent to falsify or mislead. (See AG ¶ 16(a): *deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*). Unintentional error or a misunderstanding of the question is not disqualifying. The totality of information bearing on this allegation shows that Applicant did not try to mislead the government here. He had previously disclosed ownership of foreign property and was forthcoming about his potential inheritance when he responded to DOHA interrogatories. His thought at the time he submitted his 2007 e-QIP was that he did not, in fact, own any foreign property. Further, it is less than clear what, if any future interest he has in the house where his mother lives and there is no apparent reason for him to have deliberately withheld that information. Because Applicant denied intentionally falsifying his e-QIP answer, the burden was on the

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

government to show he acted with the requisite intent.⁹ While the government presented sufficient information to show he omitted the information about his father's house, available information is not sufficient to show he deliberately lied about it as alleged in SOR ¶ 3.a. I resolve this security concern in favor of the Applicant.

Foreign Preference.

The government denied Applicant's request for clearance, in part because, after becoming a U.S. citizen in 1991 and obtaining a U.S. passport in 2001, he exercised his Iranian citizenship by obtaining, using, and continuing to possess a valid Iranian passport. (SOR ¶¶ 1.a, 1.b, and 1.c). Also, the government alleged as a basis for disqualification his alleged inheritance of a house in Iran worth about \$100,000 (SOR ¶ 1.d) and his two years of service in the Iranian army (SOR ¶ 1.e). As to SOR ¶ 1.e, I conclude that his service in Iran's military is not disqualifying because it occurred 17 years before he became a U.S. citizen. As to the inheritance of his father's house, it is unclear what his interest in that property might be. Further, the inheritance appears to be a future interest that would pass to Applicant and/or his siblings only as long as he/they survive his mother. Thus, the SOR ¶ 1.d allegation is not disqualifying.

However, available information is sufficient to support the allegations in SOR ¶¶ 1.a, 1.b, and 1.c. Those established facts, in turn, raise a security concern addressed by Guideline C of the Revised Adjudicative Guidelines. Specifically, the government is concerned that, "[w]hen an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States." (AG ¶ 9) More specifically, the record requires consideration of Guideline C disqualifying condition at AG ¶ 10(a)(1) (*possession of a current foreign passport*). After living in the United States for more than 30 years, and more than 10 years after becoming a U.S. citizen, Applicant obtained and still holds a valid Iranian passport. It allows him to travel as an Iranian citizen despite his U.S. citizenship, and his reluctance to surrender it reflects Applicant's divided preference between the U.S. and Iran.

The resulting security concerns in this case might be mitigated if the use of his passport were sanctioned by the U.S. government or if he had relinquished or destroyed the passport. (See AG ¶ 11(d): *use of a foreign passport is approved by the cognizant security authority*; and AG ¶ 11(e): *the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*) However, neither is the case here. In fact, Applicant wishes to retain his Iranian passport so he can continue to travel to Iran and visit relatives. Further, absent any post-naturalization exercise of his rights as an Iranian citizen, Applicant's foreign citizenship, based solely on his parents' citizenship (see AG ¶ 11(a)) would not be disqualifying. But an act in furtherance of a right or privilege of foreign citizenship after naturalization, such as Applicant's possession and use of his Iranian passport since 2001, makes such mitigation unavailable. Mitigation might also be available if Applicant expressed a willingness to renounce his Iranian citizenship. (see AG ¶ 11(b)) However, Applicant has not made such an expression and affirmatively stated his desire to continue

⁹ Directive, E3.1.14.

possession of his passport for ease of travel to Iran. Accordingly, none of the Guideline C mitigating conditions apply, and I resolve this guideline against Applicant.

Foreign Influence. The government also stated as reasons for denying Applicant's request for a clearance the fact his mother (SOR ¶ 2.a) and his brother (SOR ¶ 2.b) are citizens of and reside in Iran. Available information is sufficient to support these allegations. The established facts, in turn, raise a security concern addressed by Guideline B (AG ¶ 6) of the Revised Adjudicative Guidelines. Specifically, the government's position is that

[f]oreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Applicant has held a security clearance since about 1991. For ten years thereafter, the circumstances of his foreign citizenship and foreign ties, which were known to the government at the time his clearance was granted, did not change. However, beginning in 2001, as alleged in SOR ¶ 2.d, he began to travel to Iran to see his mother and siblings, in addition to regular telephonic contact. He has stated that he has ties to Iran independent of his mother's presence there, and all of the information here suggests he is likely to travel there in the future. Contact with his mother and brother, and to a lesser extent, his extended family who are citizens of and reside in Iran, may be disqualifying "if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." (see ¶ AG 7(a)) In assessing whether these facts present a heightened risk, I have considered the fact that Applicant has regular contact with his mother and brother. I have also considered the repressive nature of the Iranian government towards its own people, particularly where dual U.S.-Iranian citizens are concerned. I have also considered Iran's sponsorship of international terrorism, aggressive economic espionage and foreign intelligence activities, all of which are conducted in furtherance of its strategic, political, and economic interests hostile and opposed to those of the U.S. and its allies.

As to the allegation in SOR ¶ 2.c regarding the possible inheritance of property in Iran, for the same reasons stated above regarding SOR ¶ 1.d, I find for the Applicant. Also, as to the SOR ¶ 2.d allegation that Applicant traveled to Iran in 2001, 2003 and 2005, that information is uncontroverted but not, by itself, disqualifying. Rather, it is evidence of Applicant's ties to his family in Iran. Accordingly, I find for the Applicant as to SOR ¶¶ 2.c and 2.d. Nonetheless, available information does not support any of the mitigating conditions listed at AG ¶ 8. Applicant has not shown that his relationship with his family is anything but close or that their presence in Iran, which is governed by a repressive regime with interests hostile to the U.S., may not potentially be used to

pressure or coerce Applicant to act in a manner contrary to U.S. interests. On balance, I conclude Applicant has failed to overcome the adverse information presented by the government.

Whole Person Concept.

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines B, C and E. I have also reviewed the record before me in the context of the whole person factors listed in AG ¶ 2(a). Applicant is a mature, responsible, and accomplished professor whose work at a U.S. university requires he be allowed access to classified information. Until he obtained and used a foreign passport, he had held a security clearance without incident for nearly 20 years. His work at the university and with various military and civilian organizations has been highly-regarded. Applicant has family and financial contacts over the past 30 years in the United States that suggest he is fully engaged as a U.S. citizen and will remain here after retirement. However, his recent acquisition of a foreign passport and increased contacts with family members in Iran now indicates he has divided preferences between Iran and the United States. His conduct has been recent, undertaken voluntarily and is likely to continue. As such, it casts doubt on his willingness or ability to protect the government's interests free of foreign interests or influence. A fair and commonsense assessment¹⁰ of all available information shows Applicant has not overcome the doubts, raised by the government's information, about his continued suitability for access to classified information. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the government.¹¹

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline C:	AGAINST APPLICANT
Subparagraph 1.a - 1.c:	Against Applicant
Subparagraph 1.d - 1.e:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a - 2.b:	Against Applicant
Subparagraph 2.c - 2.d:	For Applicant

¹⁰ See footnote 5, *supra*.

¹¹ See footnote 6, *supra*.

Paragraph 3, Guideline E:

FOR APPLICANT

Subparagraph 3.a:

For Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest for Applicant to have access to classified information. His request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge