

DATE: February 17, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-23236

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On December 3, 2004, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision--security concerns under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992 as amended)(Directive). Applicant requested a hearing. On June 20, 2005, after the hearing, Administrative Judge Martin H. Mogul denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Administrative Judge's findings and conclusions as to Guideline C (Foreign Preference), are arbitrary, capricious, or contrary to law, since, in Applicant's opinion, he has not exercised dual citizenship, has not used his Iranian passport, and has not traveled to Iran since 1978. ⁽¹⁾ Applicant also points out that he submitted his passport to his employer, and he has provided a letter from his employer to that effect. ⁽²⁾ In his response to the SOR, Applicant admitted that he held dual citizenship, that he had obtained an Iranian passport thirteen years after he became an American citizen and obtained an American passport, and that he had been reluctant to relinquish the Iranian passport in case he should need to travel to Iran. At the hearing, Applicant stated that he would be willing to renounce his Iranian citizenship and relinquish his Iranian passport, but had not tried to do so because he had been told he would be required to travel to Iran and take those actions in an Iranian court. The Judge was not required to accept Applicant's unsupported testimony. ⁽³⁾

See Directive ¶ E3.1.15. Although Applicant demonstrated that he had submitted his passport to his employer, the Judge concluded that action did not constitute an effective surrender. Indeed, the Judge found Applicant previously retrieved the passport from the security office of his employer and later placed it back in their custody. Applicant's failure to provide evidence of any action taken to renounce his Iranian citizenship and relinquish his Iranian passport to proper authorities provides adequate support for the Administrative Judge's adverse security clearance decision. Thus, the Administrative Judge did not err in denying Applicant a clearance.

Order

The decision of the Administrative Judge denying Applicant a clearance is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Member, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin

Administrative Judge

Member, Appeal Board

1. The Administrative Judge made a formal finding for Applicant as to Guideline B (Foreign Influence). That Guideline is not in issue in this appeal.

2. The record contains a letter from Applicant's employer, dated May 31, 2005, indicating that Applicant's passport was in the possession of the company's security office. When he filed his appeal brief, Applicant attached a letter from his employer dated September 14, 2005. This second letter is not part of the record below and therefore constitutes new evidence, which the Board cannot consider.

3. The Judge left the record left the record open to allow Applicant time to take some action (*e.g.*, writing a letter to appropriate authorities) to demonstrate his willingness to renounce his dual citizenship and relinquish his foreign passport. Applicant did not submit evidence of any attempt to do so.