

DATE: November 10, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30209

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's possession of an Iranian passport disqualifies him from having access to classified information. Clearance is denied.

STATEMENT OF THE CASE

On April 27, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on May 14, 2004. The case was assigned to me on July 2, 2004. A Notice of Hearing was issued on October 4, 2004, and the hearing was held on October 20, 2004. The transcript was received on November 5, 2004.

FINDINGS OF FACT

Applicant is a 50 year old employee of a defense contractor.

Applicant was born and raised in Iran. He left Iran in 1976 and moved to the United States. He has lived in the United States since 1976. He became a United States citizen in 1987. In 1996, he married an Iranian born woman who became a United States citizen. They have two children who are native born United States citizens. Since applicant's wife and two children hold valid Iranian passports, it must be assumed that they are also citizens of Iran.

Applicant has traveled to Iran five or six times since 1976. On his last three trips, he used his Iranian passport, which he had applied for and received years after he became a United States citizen. Although the Iranian passport expired a few

months ago, applicant still has possession of it.

Applicant testified, in essence, that he is willing to tear up his Iranian passport, but is afraid that if he surrenders it to Iranian authorities, it may result in the persecution of his immediate family members residing in Iran (TR at 45).

Applicant's mother and four siblings are Iranian citizens residing in Iran. His mother is in her 70s. He has visited her during his five or six trips to Iran since 1976, and talks with her an average of once every two to three months. He has less contact with his siblings, none of whom are connected with the Iranian government. He speaks with two of them an average of once every three or four months, and speaks with the other two an average of once every seven or eight months.

Applicant testified that if the Iranian government threatened his family in Iran in an effort to get him to disclose classified information, he would not disclose the information (TR at 46-47).

Applicant's mother-in-law, father-in-law, and brother-in-law are citizens of Iran. The brother-in-law lives exclusively in Iran. The mother-in-law and father-in-law reside an equal amount of time in Iran and the United States. When they are living in the United States, they sometimes reside with applicant and his family. Applicant's wife speaks with her family an average of twice a month.

Applicant's sister-in-law is an Iranian citizen who has lived in the United States for ten years.

Applicant testified that he decided to remain in the United States because the United States is "the country of freedom" (TR at 19). This testimony was sincere.

Letters from four of applicant's coworkers were admitted into evidence (Exhibits A through D). These coworkers describe applicant as trustworthy and loyal.

CONCLUSIONS

With respect to Guideline B, the evidence establishes that applicant's mother and four siblings are citizens and residents of Iran. These facts, standing alone, require application of Disqualifying Condition E2.A2.1.2.1 (*an immediate family member . . . is a citizen of, or resident or present in, a foreign country*). Once the Government establishes the applicability of Disqualifying Condition E2.A2.1.2.1, the burden shifts to the applicant to establish that Mitigating Condition E2.A2.1.3.1 (*a determination that the immediate family member is not an agent of a foreign power, or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States*) is applicable. Applicant failed to meet his burden. Although there is no evidence that applicant's immediate family members are agents of Iran, the evidence does not establish that applicant's immediate family members are not in a position to be exploited by Iran in a way that could force applicant to choose between loyalty to the United States and loyalty to his immediate family members. Iran is a supporter of, if not an active participant in, international terrorism. In addition, it has a dreadful human rights record. Based on these facts, it is fair to conclude that this enemy of the United States would not hesitate to exploit its citizens if it felt it necessary to obtain classified information from the United States. Applicant's testimony that he wouldn't disclose classified information even if his family in Iran was threatened by the Iranian government was sincere; however, it cannot be given much weight. Based on the foregoing, Guideline B is found against applicant.

With respect to Guideline C, applicant's conduct since moving to the United States indicates, for the most part, a preference for the United States. The sole exception is his application for, receipt of, and use of, the Iranian passport.⁽¹⁾ The Money memorandum (Exhibit 6) sets forth the official DoD policy for cases involving possession and/or use of a foreign passport. Pursuant to this memorandum, an applicant possessing a foreign passport cannot be granted access to classified information unless he does one of two things: (1) surrenders the passport, or (2) offers credible evidence that he obtained official approval for its use from the appropriate United States Government agency. In this case, applicant has neither surrendered the foreign passport⁽²⁾ nor offered any credible evidence that he has received official approval for its use from the appropriate United

States Government agency. Accordingly, applicant's clearance request must be denied under Guideline C.

FORMAL FINDINGS

GUIDELINE B: AGAINST THE APPLICANT

All subparagraphs found against applicant

GUIDELINE C: AGAINST THE APPLICANT

All subparagraphs found against applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for applicant.

Joseph Testan

Administrative Judge

1. The fact that applicant applied for, received, and currently possesses an Iranian passport requires application of Disqualifying Conditions E2.A3.1.2.1 (*the exercise of dual citizenship*) and E2.A3.1.2.2 (*possession and/or use of a foreign passport*).
2. *See*, ISCR Case No. 01-24306 (September 30, 2003) at page 4 ("We disagree with applicant's assumption that the recent expiration of the [foreign] passport is equivalent to a surrender of it. Surrender contemplates returning it to the issuing authority, and merely keeping a foreign passport until it expires does not satisfy this requirement in the [Money] memo").
3. Applicant qualifies for Mitigating Condition E2.A3.1.3.1 (*dual citizenship is based solely on birth in a foreign country*).