

DATE: December 2, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-20153

ECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Thomas M. Abbott Esq.

SYNOPSIS

The fact that applicant's brother is a resident of Iran does not leave him vulnerable to coercion or pressure. In addition, applicant surrendered his Iranian passport to Iranian authorities. Clearance is granted.

STATEMENT OF THE CASE

On May 14, 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, (as administratively reissued on April 20, 1999), 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 June 2, 2004. The case was assigned to the undersigned on August 9, 2004. A Notice of Hearing was issued on October 6, 2004, and the hearing was held on November 10, 2004. The transcript was received on November 30, 2004.

FINDINGS OF FACT

Applicant is a 44 year old employee of a defense contractor.

Applicant was born in Iran. In 1974, he left Iran and moved to a third country to continue his education. In 1983, he moved to the U.S. He has lived here since then. In 1985, he married a native born U.S. citizen. Their one child, now a teenager, was born in the U.S. Although applicant and his wife divorced in 1994, applicant maintains a close relationship with his former wife and child. In 1988, applicant became a U.S. citizen.

Applicant has two brothers. One lives in the U.S. Applicant does not know his citizenship status. This brother is more

than ten years older than applicant and they do not have a close relationship. The other brother lived in the U.S. for a while, but moved back to Iran after the death of their parents in 1989. Applicant talks with this brother a few times a year, but describes their relationship as "not good at all," "not close at all," and "close to zero" (TR at 48).

Applicant has held three Iranian passports since moving to the U.S. The first Iranian passport expired in 1988. After the death of his parents in 1989, applicant was informed by his brother that he needed an Iranian passport if he wanted to inherit any property held by their parents in Iran. Based on this representation, applicant applied for and received an Iranian passport in 1990. This passport expired in 1993. Applicant applied for and received a third Iranian passport in 1997. This passport expired in 2002. Applicant had been receiving his share of his parents' estate up to a few years ago. He has been informed by his brother that he will be receiving nothing further. Applicant never used the Iranian passports that he applied for and received while living in the U.S. to travel. He surrendered all three passports to Iranian authorities in September 2004. In his letter to Iranian authorities he confirmed that he had renounced his Iranian citizenship (Exhibit A).

Applicant moved to the U.S. and decided to remain here because the opportunities here are great and he knew he had no future in Iran (TR at 20). He "loves" the U.S. and described it as his "present and future" (TR at 32). He has not been in Iran since the 1970s, and he has no plans to go there. He has no assets in Iran, but has considerable assets in the U.S. Applicant testified credibly that he would not be worried about his brother in Iran if he turned down a request to provide classified information. He further testified, credibly, that he has too much to lose if he disclosed classified information without authorization (TR at 31).

Letters from seven of applicant's current and/or past coworkers, including his immediate and second level supervisors, and former and present members of the U.S. military, were admitted into evidence (Exhibits C, D, E, F, M, N and O). All seven individuals speak highly of applicant's reliability and trustworthiness, and all seven expressly state that if applicant were approached by a foreign government to do something improper, they are confident he would follow DoD procedures and notify his employer's security department.

CONCLUSIONS

With respect to Guideline B, the evidence establishes that one of applicant's brothers is a citizen and resident of Iran. This fact requires 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*).

Based on the evidence presented, I conclude that this immediate family member is not an agent of Iran. I further conclude that applicant and this brother do not have a close relationship, and that this brother's presence in Iran could not be used in a way that could force applicant to choose between loyalty to this immediate family member and loyalty to the U.S. I reach this latter conclusion for the simple reason that while it is clear that applicant is loyal to the U.S. and his immediate family living here, there is no credible evidence that applicant has any loyalty to his brother in Iran. Therefore, there are no competing loyalties for applicant to deal with if his brother were threatened. I further conclude, based primarily on applicant's credible testimony and the letters he submitted into evidence, that applicant is a reliable and trustworthy individual who is loyal to the U.S., and that in the unlikely event pressure was exerted upon him to compromise classified information, he would resist it, and would report the incident to the proper authorities. Based on the foregoing, Mitigating Conditions E2.A2.1.3.1 (*a determination that the immediate family member(s) . . . in question are not agents 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*) and E2.A2.1.3.3 (*contact and correspondence with foreign citizens are casual and infrequent*) are applicable, and Guideline B is found for applicant.

With respect to Guideline C, the evidence establishes that until recently, applicant possessed an Iranian passport. This fact 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*).

Turning to the issue of mitigation, since moving to the U.S. in 1983, applicant's conduct has indicated a clear preference for the U.S. When he became aware that dual citizenship is considered a significant security concern, and that the possession of a foreign passport is an automatic bar to holding a security clearance, he initiated the process of formally renouncing his Iranian citizenship, and surrendered his Iranian passport to Iranian authorities. Applicant qualifies for

Mitigating Conditions E2.A3.1.3.1 (*dual citizenship is based solely on birth in a foreign country*), and E2.A3.1.3.4 (*individual has expressed a willingness to renounce dual citizenship*). Given these Mitigating Conditions, and the fact applicant satisfied the security concern raised by his possession of the Iranian passport by surrendering it to Iranian authorities, Guideline C is found for applicant.

FORMAL FINDINGS

GUIDELINE B: FOR THE APPLICANT

All subparagraphs found for applicant.

GUIDELINE C: FOR THE APPLICANT

All subparagraphs found for applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for applicant.

Joseph Testan

Administrative Judge