

DATE: December 28, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-23741

## **ECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Edward W. Loughran, Department Counsel

#### **FOR APPLICANT**

Jack H. Robbins Esq.

### **SYNOPSIS**

Applicant no longer has relatives living in Iran. He renounced his Iranian citizenship and surrendered his Iranian passport. 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 1, 2004. The case was assigned to the undersigned on July 29, 2004. A Notice of Hearing was issued on October 4, 2004. Applicant requested a continuance, which was granted, and an Amended Notice of Hearing was issued on October 20, 2004. The hearing was held on December 1, 2004. The transcript was received on December 16, 2004.

### **FINDINGS OF FACT**

Applicant is 60 years of age. He has been employed with the same defense contractor, and has held a security clearance, for over 20 years.

Applicant was born in Iran. In 1967, he moved to the United States. He has lived here since then. One of the reasons he left Iran was to avoid religious persecution. <sup>(1)</sup> In 1974, he became a United States citizen. In 1982, he married his present wife, a United States citizen, and they have two children, both of whom were born in the United States.

Applicant's parents are residents and citizens of the United States. Applicant has four siblings. His three brothers are citizens and residents of the United States. Applicant's sister is a citizen of Iran, but lives in the United States. She is in the process of becoming a United States citizen. Applicant's father-in-law is currently a permanent resident of the United States. Applicant's mother-in-law is deceased. Applicant's uncle is also a permanent resident of the United States. He plans to apply for United States citizenship since his wife and children are all United States citizens. As far as applicant knows, he has no relatives still living in Iran (TR at 47).

Since he moved to the United States, applicant visited Iran three times. His first trip back to Iran was in 1991. Before this trip he contacted the Iranian government for a visa. He was informed that since he was born in Iran, he could only travel to Iran on an Iranian passport. Since he was unaware at the time that obtaining an Iranian passport could jeopardize his security clearance, he had his expired Iranian passport renewed, and he traveled to Iran on it. His first two trips were for the purpose of visiting his parents and trying to persuade them to move to the United States. On his third trip in 1997, he brought his parents back with him. Applicant has not been to Iran since 1997, and he has no intention of ever going back there.

After receiving the SOR, applicant sent the Iranian authorities a letter renouncing his Iranian citizenship. He surrendered his Iranian passport at the same time.

Two of applicant's coworkers appeared at the hearing and testified that applicant is reliable and trustworthy, and a loyal American.

### CONCLUSIONS

With respect to Guideline B, the evidence establishes that applicant's sister is a citizen 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 applicant's sister is not an agent of Iran. I further conclude that applicant's sister, a resident of the United States who most likely will take her oath of citizenship in January 2005, is not in a position to be exploited by Iran in a way that could force applicant to choose between loyalty to his sister and loyalty to the United States. Based on the foregoing, Mitigating Condition 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*) is 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 United States in 1967, applicant's conduct has indicated a clear preference for the United States. 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 formally renounced 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

1. Applicant was a member of a religious minority in Iran.