

DATE: August 24, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-06174

## **ECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

#### **FOR APPLICANT**

Thomas M. Abbott, Esq.

### **SYNOPSIS**

Although applicant's company's security officer shredded his expired Iranian passport, this action does not constitute "surrender" of the passport within the meaning of the Money memorandum. Clearance is denied.

### **STATEMENT OF THE CASE**

On February 24, 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 March 4, 2004. The case was assigned to the undersigned on June 17, 2004. Notices of Hearing were issued on June 22 and July 8, 2004, and the hearing was held on August 3, 2004. The transcript was received on August 19, 2004.

### **FINDINGS OF FACT**

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

Applicant was born in Iran. In 1978, he moved to the United States. He became a naturalized United States citizen in 1987. His wife, to whom he has been married since 1981, is a native born United States citizen. His two adult children were born in the United States.

Applicant's mother and two brothers are naturalized United States citizens living in the United States. His two sisters are citizens and residents of Iran. He has not seen his sisters since he last visited Iran in 1983, but maintains regular contact with them by telephone. [\(1\)](#)

Applicant obtained a United States passport in 1998. He has used this passport to travel overseas. In about February 1999, applicant applied for and received an Iranian passport. He applied for the passport because he and his family had given serious thought to honoring his father's wish to be buried next to applicant's grandmother in Iran, and applicant discovered that he needed an Iranian passport to accompany his father's body to Iran. In the end the family decided to bury his father in the United States, and applicant never used the Iranian passport, which expired in January 2004. Applicant gave the expired Iranian passport to his company's security officer, and in July 2004, the security officer shredded it.

Letters from three individuals who work with applicant, including the President of the company, a Business Development manager, and a Director of Sales, were admitted into evidence. All three individuals are of the opinion that applicant is a reliable and trustworthy individual whose loyalty is with the United States.

Applicant has no assets in Iran. On the other hand, he has considerable assets in the United States. He has no intention of ever going back to Iran. He intends to stay in the United States "forever" (TR at 38).

Applicant no longer considers himself an Iranian citizen. He testified credibly that he is very loyal to the United States, and is proud to be an American citizen (TR at 14, 21).

### CONCLUSIONS

The evidence establishes that applicant's two sisters are citizens and residents of Iran, a country that is clearly hostile to the United States. This fact requires application of Disqualifying Condition E2.A2.1.2.1 (*an immediate family member is a citizen or resident of a foreign country*).

Once the Government established that Disqualifying Condition E2.A2.1.2.1 is applicable, the burden shifted to applicant to show that (1) his family ties with relatives living in Iran do not pose an unacceptable security risk and (2) Mitigating Condition E2.A2.1.3.1 (*a determination that the immediate family member(s) . . . 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*) applies to this case.

In this case I have considered applicant's credible evidence that he is a loyal American with no loyalty to, or interest in, Iran. Despite this evidence, I have no choice but to conclude that applicant failed to meet his burden. Based on applicant's close relationship with his sisters, and the brutal and unpredictable nature of the Iranian government, I cannot conclude that applicant's family members in Iran are not in a position to be exploited by Iran in a way that could force applicant to choose between loyalty to his sisters and loyalty to the United States. For this reason, 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, and possession of, an Iranian passport after he became a United States citizen. This conduct 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*).

With respect to the exercise of dual citizenship, applicant's testimony regarding why he applied for the Iranian passport in 1999 was credible and worthy of belief. It is clear that, except for this one act, applicant's conduct since arriving in the United States approximately 25 years ago supports his credible testimony that he no longer considers himself an Iranian citizen. 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*).

With respect to applicant's possession of a foreign passport, the Money memorandum sets forth the official DoD policy. 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 presented credible evidence that he gave his expired Iranian passport to his company's security

officer who then destroyed it. Although on its face this seems like a reasonable course of action, the DOHA Appeal Board has held that this action does not satisfy the requirements of the Money memorandum. According to the Board, allowing the passport to expire, giving it to a person or entity other than the issuing authority, or destroying it, does not constitute "surrendering" the passport within the meaning of the Money Memorandum.<sup>(2)</sup> Given the facts that applicant has not surrendered the passport, and has not offered credible evidence that he has received official approval for its use from the appropriate United States Government agency, applicant's clearance request must be denied under Guideline C.

### **FORMAL FINDINGS**

#### **GUIDELINE B: AGAINST THE APPLICANT**

Both subparagraphs found against the applicant.

#### **GUIDELINE C: AGAINST THE APPLICANT**

All subparagraphs found against the 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.

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Joseph Testan

Administrative Judge

1. Applicant's brother stated that applicant speaks to their sisters "once every couple weeks" (Exhibit D). Applicant testified that he talks with his sisters every month or two (TR at 18-19).

2. *See*, ISCR Case No. 01-24306 (September 30, 2003) at page 4 (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), and ISCR Case No. 99-0480 (November 28, 2000) at page 6 (the Board concludes that surrender of a passport would be achieved by returning the passport to the issuing authority (or whatever other person or entity is authorized by law), not by giving the passport to a third party or entity . . . Accordingly, applicant's offer to give the [foreign] passport to DOHA or another department of the United States Government, to place it in escrow with the security department of his defense contractor employer, or to destroy the [foreign] passport, does not satisfy the terms of the [Money] memo.)