

DATE: August 6, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-17114

ECISION 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 March 17, 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 April 28, 2004. The case was assigned to me on June 17, 2004. A Notice of Hearing was issued on June 22, 2004, and the hearing was held on July 15, 2004. The transcript was received on August 5, 2004.

FINDINGS OF FACT

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

Applicant was born and raised in Iran. He left Iran in 1982, and moved to the United States in 1983. He has lived in the United States since 1983. He became a United States citizen in 1990. In 1996, he married an Iranian born woman who is currently a citizen of Iran and the United States. They have one child who was born in the United States.

In 1997, applicant applied for and received an Iranian passport. He used the Iranian passport instead of his United States passport to travel to Iran in 1998 and 2002. Applicant testified that he is willing to surrender his Iranian passport to United States authorities, but is afraid that if he surrenders it to Iranian authorities, it may draw attention to him, which

may result in the persecution of his immediate family members residing in Iran (TR at 18-20).

Applicant's mother and three siblings are Iranian citizens residing in Iran. His mother is in her 70s, and lives off of applicant's father's pension, which is issued by the Iranian government. Applicant speaks with his mother once or twice every two or three months. He has little contact with his siblings. Applicant testified, in essence, 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 38).

Applicant's mother-in-law is a citizen of both Iran and the United States. She moves back and forth between the United States and Iran. When she is living in the United States, she sometimes resides with applicant.

Applicant testified that he loves the United States, loves "this system," is loyal, and would never put any country before the United States (TR at 18). This testimony was sincere.

CONCLUSIONS

With respect to Guideline B, the evidence establishes that applicant's mother and three siblings are citizens and residents of Iran. This fact, standing alone, 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*). 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, particularly his mother. Iran is a supporter of, if not an active participant in, international terrorism, and 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 possession of the Iranian passport. ⁽¹⁾ The Money memorandum (Exhibit 8) 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 valid foreign passport cannot be granted access to classified information unless he does one of two things: (1) surrenders the passport, ⁽²⁾ 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 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. ⁽³⁾

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. Applicant testified that he would be willing to surrender the Iranian passport to United States authorities. Surrendering the passport to United States authorities would not constitute surrender within the meaning of the Money memorandum. The DOHA Appeal Board has held that to constitute surrender within the meaning of the Money memorandum, the foreign passport must be returned to the issuing authority, which in this case would be the Iranian government. *See*, ISCR Case No. 99-0480 (November 28, 2000).
3. Applicant qualifies for Mitigating Condition E2.A3.1.3.1 (*dual citizenship is based solely on birth in a foreign country*).