

Charge 6 alleged that on October 30, 1997, the Respondents violated § 764.2(e) of the EAR by transferring and forwarding the oil field equipment from Canada to Iran knowing that those goods had been exported from the United States in violation of the EAR.

By Order dated September 6, 2002, summary decision was granted against Respondent Mahdi Solely on the conspiracy to export oil field equipment to Iran through Canada in violation of 15 CFR 746.7 and 764.2(d) alleged in Charge 1. Summary decision with respect to the remaining charges was denied. The hearing in this matter was continued numerous times over 18 months to accommodate Mr. Mahdi who represented himself and his company OTS. See Order dated May 9, 2002; Order dated October 9, 2002; Transcript of Pre-Hearing Conference dated January 8, 2003; Order dated January 13, 2003; Order Dismissing, Without Prejudice, Charges Against Tech-Link Development Corporation and Scheduling Order dated March 3, 2003; see also (Transcript 24–25, 27–28, 35–47, 56–60, 73–77; Gov't Ex. 1A). The evidentiary hearing was held before this Judge in Baltimore, Maryland on May 13, 2003 at 9:30 a.m., EST. Because of the failure to secure approval of a parole application for reentry into the United States in accordance with the Immigration and Nationalization Services Regulations codified at 8 CFR part 212 (2002), Mr. Mahdi was not able to be physically present at the hearing to represent himself and OTS. See Transcript at 7–8, 35–47. However, arrangements were made for Mr. Mahdi to call into a telephone pool conference number and participate via telephone in the hearing. *Id.* at 5–7.⁵

Although Mr. Mahdi was advised in writing of the exact time and date of the hearing, he did not call into the telephone pool conference number until nearly 45 minutes into the proceeding. *Id.* at 3–8, 47–62; see also Order Dismissing, Without Prejudice, Charges Against Tech-Link Development Corporation and Scheduling Order dated March 3, 2003, at 3; Order dated April 14, 2003; Order Denying Request for Continuance dated April 15, 2003. At that time, Mr. Mahdi declared that he

was mentally incompetent and did not want to participate in the hearing; then he hung up the telephone. (Transcript at 51–62). Mr. Mahdi only participated in these proceedings for a total of 15–20 minutes. Following a brief recess, connection to the telephone pool conference number was reestablished so that Mr. Mahdi could participate in the hearing if he changed his mind. *Id.* at 63. The telephone pool conference number remained open until approximately 12:30 p.m. *Id.* at 163–65. Mr. Mahdi did not change his mind and did not participate any further in the hearing or these administrative proceedings.⁶

At the hearing, one witness, Special Agent Roy Gilfix of the Office of Export Enforcement, U.S. Department of Commerce (“OEE”) testified for the Agency and thirty-three exhibits were admitted into evidence. The exhibit list is provided in Attachment A. Following receipt of the transcript, Mr. Golrick also filed a Post-Hearing Submission, including proposed findings of fact and conclusion. Ruling on the proposed findings of fact and conclusions of law are contained in Attachment B. The record is now closed.

As a general rule, administrative proceedings conducted under the EAA are generally excluded from the operation of the Administrative Procedure Act (“APA”), as amended and codified in 5 U.S.C. 551–559. See 50 U.S.C. App. sec. 2412(a); 15 CFR 766.1. However, in administrative enforcement actions seeking impositions of civil penalties and/or sanctions, there is an exception to the general exclusion if the case involves a violation of sections 2407 or 2410. See 50 U.S.C. App. sec. 2412(c). Since this case involves violations of sec. 2410, the administrative proceeding was conducted in accordance with the APA.

⁶ On April 14, 2003, Ms. Lucinda Shinault, Paralegal to this Judge, served an Order memorializing a telephonic Pre-Hearing Conference by Federal Express to Respondent at the address provided by Mr. Mahdi. Respondent Mahdi received the Order, which was signed for by J. Khan. On April 15, 2003, Ms. Shinault sent an Order Denying Respondent's Request for Continuation of the May 13, 2003 hearing based on physical and mental incompetence by Federal Express. Federal Express attempted to deliver the April 15th Order on two occasions. The attempts proved unsuccessful. Federal Express also left telephone messages on an answering machine for Respondent Mahdi, who failed to return the telephone calls. On April 21, 2003, Ms. Shinault directed Federal Express to make a third attempt to deliver the April 15th Order. The Order was refused and an unidentified person sent a return to sender letter together with the Order. Thereafter, Ms. Shinault sent Mr. Mahdi the April 15th Order by regular first class mail. (Judge's Ex. 1, 2; Tr. 67–72). In view of Mr. Mahdi's brief participation in the hearing there is no doubt that he had actual notice of the hearing.

This administrative proceeding was also conducted in accordance with 50 U.S.C. App. secs. 2410(c)(2)(B) and 2412(c), 5 U.S.C. 3344, 15 CFR part 766, 5 CFR 930.213. The conduct of this proceeding also complies with the provisions of a letter from the United States Office of Personnel Management (“OPM”) and an interagency reimbursable agreement between the Coast Guard and BIS dated December 30, 2002. The OPM letter and the reimbursable agreement authorize Coast Guard Administrative Law Judges (“ALJ”) to adjudicate cases involving violations of U.S. export laws and regulations.

After careful review of the facts and applicable laws in this case, I find that BIS has proved the allegations in the charging letter by substantial evidence of a reliable and probative nature.⁷

IV. Applicable Statutes and Regulations

The acts constituting violations of the export control laws and regulations occurred between October 1997 and March 1999. Thus, the export control laws and regulations in effect on October 1997 through March 1999 govern resolution of this matter. Those laws and regulations are substantially similar to the current export control laws and regulations.

A. Statutes

The relevant statutes read in pertinent part as follows:

50 U.S.C. App. 2404. National Security Controls

(a) Authority.

(1) In order to carry out the policy set forth in section 3(2)(A) of this Act [50 USCS App. 2402(2)(A)], the President may, in accordance with the provisions of this section, prohibit or curtail the export of any goods or technology subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. The authority contained in this subsection includes the authority to prohibit or curtail the transfer of goods or technology within the United States to embassies and affiliates of controlled countries. For purposes of the preceding sentence, the term “affiliates” includes both governmental entities and commercial entities that are controlled in fact by controlled countries. The authority contained in this subsection shall be exercised by the Secretary, in consultation with the Secretary of Defense, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export

⁷ While this case was pending, the United States Coast Guard transferred from the Department of Transportation to the Department of Homeland Security. Pursuant to the Savings Provision of HR 5005 § 1512 (Pub. L. 107–296), pending proceedings are continued notwithstanding the transfer of the Agency.

⁵ On November 28, 2002, Mr. Mahdi was released into the custody of U.S. Immigration Officials and was subsequently deported after serving a 51-month sentence following a plea of guilty to one count of conspiracy to export oil field equipment from the United States to Iran and Iraq via Canada between March 1997 and March 1999 without authorization. Mr. Mahdi did not submit a copy of the parole application to the undersigned Judge or to BIS even though directed to do so. See Transcript of Pre-Hearing Conference dated January 8, 2003, at 19–20.