



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 06-26561
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government:
 Ray T. Blank, Jr., Esquire, Department Counsel
 For Applicant: Robert W. Rogalski, Personal Representative

June 3, 2008

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 2 August 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines C and E.¹ Applicant answered the SOR 28 September 2007, and requested a hearing. DOHA assigned the case to me 3 December 2007, and I convened a hearing 8 January 2008. DOHA received the transcript (Tr.) 11 January 2008.

¹DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Findings of Fact

Applicant admitted the Guideline C allegations, but denied the Guideline E allegations. He is a 35-year-old senior policy analyst employed by a defense contractor since October 2002. He seeks to retain the security clearance he has held since about March 1992.

Applicant is a dual citizen of the United States (U.S.) and the United Kingdom (U.K.), having acquired U.S. citizenship by birth and U.K. citizenship by naturalization in January 2006 (G.E. 1). In January 2006, he obtained a U.K. passport that is valid until January 2016. He used the U.K. passport to travel to China in 2006 with a U.K. tour group. He also uses his U.K. passport to obtain access to U.K. military installations to work on company contracts with the U.K. He holds a security clearance from the U.K.

Applicant described three reasons for obtaining U.K. citizenship (Tr. 45). First, the U.S. government allows dual citizenship. Second, he was eligible for U.K. citizenship through his marriage to a U.K. citizen and his residence in the U.K. Third, he thought U.K. citizenship would be helpful for performing contract work for the U.K. and other European governments.

Applicant was born, raised, and educated in the U.S. He attended college at a U.S. military academy, serving as the brigade commander his senior year, and graduating at the top of his class in June 1995 (G.E. 2). One perquisite of graduating first in his class was being sent to graduate school immediately, which he attended from October 1995 to August 1997 in the U.K. While in graduate school, he met his future wife, a U.K. citizen. They married in the U.K. in January 2000.

Applicant completed his U.S. military obligation in September 2002, having served two overseas deployments, and having been awarded the meritorious service medal, the [service] commendation medal (twice), and paratrooper qualifications. He and his wife settled in the U.K., and he obtained employment with the U.K. subsidiary (wholly owned) of a major U.S. defense contractor. The company has stringent requirements for the work it will undertake for foreign governments (A.E. A), requirements that apply both organizationally and individually.

Applicant and his wife own a home in the U.K.—with about \$600,000 equity—and have the necessary financial accounts to pay their mortgage and other living expenses. Applicant has about \$110,000 in retirement accounts in the U.S. He continues to vote in U.S. elections, but has not voted in U.K. elections. He pays taxes as appropriate to the U.K., the U.S., and his state of legal residence in the U.S.

Before applying for U.K. citizenship, Applicant took reasonable steps to ensure that he would not be risking his U.S. citizenship by acquiring U.K. citizenship. He checked both the U.S. Department of State website and with the consular division of the U.S. Embassy in London. His research satisfied him that his U.S. citizenship was not at risk. However, he did not contemplate whether acquiring U.K. citizenship would put his

clearance at risk, and so did not inquire about that issue, either with the state department or company colleagues.

In becoming a naturalized U.K. citizen, Applicant took an oath of loyalty to “crown and queen.” After acquiring U.K. citizenship, he reported that fact to his immediate supervisor, and to the company’s human resources division. He assumed that the information would be through normal company channels anywhere the information was needed. He did not report the information to the company security officer until it became an issue during his subject interview in November 2006.

At this stage in his life, Applicant is unwilling to renounce his U.K. citizenship. He is similarly unwilling to surrender his U.K. passport, as it certifies his citizenship for access to U.K. military bases required for him to perform contract work for the U.K. government. He has not obtained U.S. government approval for possession and use of his U.K. passport.

Policies

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an Applicant’s suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline C (Foreign Preference) and Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant’s security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government’s case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interests as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an Applicant’s suitability for access in favor of the government.²

²See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

Analysis

The government established a case for disqualification under Guideline C by showing that Applicant acquired U.K. citizenship in January 2006, and obtained, used, and continues to use for business purposes, a U.K. passport that will not expire until January 2016.³ Applicant has not mitigated the Guideline C security concerns. Although U.S. law recognizes dual citizenship, it does not encourage it—for a variety of practical reasons. Furthermore, there are significant differences between cases where dual citizenship arises by operation of law, as is the case when an individual is born a dual citizen or becomes a naturalized U.S. citizen from a birth country that does not automatically terminate the foreign citizenship, and cases where a U.S. born citizen actively seeks foreign citizenship. Those differences are highlighted by the adjudication guidelines for foreign preference, perhaps more accurately described as divided preference. For Applicant's conduct to fall within the security concerns of Guideline C, he must have acted in a way to indicate a preference for a foreign nation over the United States. However, inimical intent or detrimental impact on the interests of the United States is not required before the government can seek to deny access under Guideline C.

The government has a compelling interest in ensuring those given public trust positions will make decisions free of concerns for the foreign country of which they may also be a citizen. Applicant acquired U.K. citizenship by pledging allegiance to the British crown and the reigning monarch. That oath is more recent in time than any Applicant took as a commissioned officer in the U.S. military. He used the fact of his U.K. citizenship to acquire a U.K. clearance, which he uses for base access, and presumably would use to have access to U.K. information in performance of duties for the U.K. government. Yet, he assures that he could and would protect U.S. information. He fails to see how his divided preference puts him in an untenable. The U.S. and the U.K. share a wide variety of common interests. They do not share a unity of interests.

Applicant meets none of the mitigating conditions (MC) for foreign preference. His dual citizenship is based on his actively seeking U.K. citizenship.⁴ He has not expressed a willingness to renounce his foreign citizenship.⁵ All exercise of dual

³Revised Adjudicative Guidelines, ¶ 10(a) exercise of any right, privilege, or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This included but is not limited to: (1) possession of a current foreign passport; accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country; residence in a foreign country to meet citizenship requirements; using foreign citizenship to protect financial or business interests in another country; (b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

⁴Revised Adjudicative Guidelines, ¶ 11(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

⁵¶ 11(b) the individual has expressed a willingness to renounce dual citizenship;

citizenship occurred while he was an adult.⁶ Applicant's use of his U.K. passport has not been sanctioned by the U.S.⁷ He stated no willingness to invalidate his passport.⁸ While Applicant has a legal right to maintain his dual citizenship with its attendant benefits and responsibilities, those benefits and responsibilities create an irreconcilable conflict with his responsibilities to the United States. I resolve Guideline C against Applicant.

The government failed to establish a case for disqualification under Guideline E. The government's evidence does not establish that Applicant was aware of any specific requirement to report his U.K. citizenship through his company's security channels.⁹ Furthermore, Applicant reported his U.K citizenship to his immediate supervisor and the company human resources division, and not unreasonably assumed that the information would be disseminated through regular company channels to any division with a need for that information. I resolve Guideline E for Applicant.

Formal Findings

Paragraph 1. Guideline C: AGAINST APPLICANT

Subparagraph a: Against Applicant
Subparagraph b: Against Applicant
Subparagraph c: Against Applicant
Subparagraph d: Against Applicant
Subparagraph e: Against Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph a: For Applicant

⁶¶ 11(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

⁷¶ 11(d) use of a foreign passport is approved by the cognizant security authority;

⁸¶ 11(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated;

⁹¶ 16(a) deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

Conclusion

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. Clearance denied.

JOHN GRATTAN METZ, JR
Administrative Judge