

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant is a 27-year-old engineer working for a defense contractor. Although he was born in Germany, his birth certificate reflects that he is a United States citizen born abroad. Because his father is a United States citizen and his mother is a Danish citizen, he has dual citizenship with Denmark. Applicant lives in Germany with his mother. Applicant used his Danish passport over the years when visiting Denmark, but surrendered it in 2006. Applicant has mitigated the security concerns under Guidelines B and C. Clearance is granted.

CASENO: 01-07620.h1

DATE: 08/06/2007

DATE: August 6, 2007

In re:	)	
	)	
	)	
-----	)	ISCR Case No. 01-07620
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
NOREEN A. LYNCH**

**APPEARANCES**

**FOR GOVERNMENT**

Eric Borgstrom, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

## SYNOPSIS

Applicant is a 27-year-old engineer working for a defense contractor. Although he was born in Germany, his birth certificate reflects that he is a United States citizen born abroad. Because his father is a United States citizen and his mother is a Danish citizen, he has dual citizenship with Denmark. Applicant lives in Germany with his mother. Applicant used his Danish passport over the years when visiting Denmark, but surrendered it in 2006. Applicant has mitigated the security concerns under Guidelines B and C. Clearance is granted.

## STATEMENT OF THE CASE

On May 6, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Review Program* dated January 2, 1992, as amended and modified (Directive), issued a Statement of Reasons (SOR) to Applicant. The SOR alleges security concerns under Guidelines C (Foreign Preference) and B (Foreign Influence). The SOR 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 a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated May 22, 2006, Applicant responded to the SOR and requested a hearing. By letter dated August 23, 2006, he elected to have his case decided on the written record, in lieu of a hearing. Department Counsel submitted the government's File of Relevant Material (FORM) dated March 1, 2007.<sup>1</sup> Applicant received the FORM on March 22, 2007, and was given an opportunity to file objections and submit materials in refutation, extenuation, or mitigation. Applicant submitted a written response on March 29, 2007. The case was assigned to me on July 25, 2007.

## FINDINGS OF FACT

Applicant admitted all the factual allegations of the SOR, but denied the underlying security concerns under the guidelines.<sup>2</sup> Those admissions are incorporated as findings of fact. After a complete and thorough review of the evidence in the record, I make the following findings of fact:

Applicant is 27 years old and is single with no children. He was born and raised in Germany.<sup>3</sup> He attended university in Denmark, receiving a degree in 2000. He now resides in Germany. His

---

<sup>1</sup>The government submitted ten items in support of its contentions.

<sup>2</sup>Item 2 (Applicant's Answer, dated May 22, 2006).

<sup>3</sup>Item 3 (Security Clearance Application (SF 86), dated July 26, 1998).

mother is Danish and resides in Germany. She has pro-U.S. views and stays in Germany while Applicant's younger brother attends school. His father is a U.S. citizen who held a top secret clearance for many years and worked closely with the U.S. military. Applicant submitted a security clearance application on July 26, 1998.<sup>4</sup>

Applicant lived with his family in Germany since his birth because his father worked for U.S. contractors in support of the DoD and NATO. Since 1972, his father has held a top secret clearance. His family maintains close contact with the local U.S. military community, and participates in various U.S. forces organized leisure activities. Applicant has a Status of Forces certification. He has been trained and reports contact to U.S. military and civilian agencies, and keeps his security manager up to date on all foreign contacts and travels.

When Applicant completed his security application in 1998, he reported his status as a military dependent. He also registered for Selective Service in the U.S. military. He listed his travels to Denmark and within Europe. He reported his university friends.

Applicant is a U.S. citizen who possesses dual citizenship with Denmark. He received a Danish passport shortly after his birth in 1979. He renewed his Danish passport on October 17, 2001, just before his 21<sup>st</sup> birthday despite possessing a valid U.S. passport. Applicant sometimes used his Danish passport over the years to travel within Europe. His Danish passport was valid until October 17, 2011. In 2005, Applicant sought permission from the Office of the Undersecretary of Defense to maintain his Danish passport. However, he surrendered it to the Danish Consulate on September 26, 2006.<sup>5</sup>

In 2002, the Defense Security Service investigated and interviewed Applicant during his security clearance process. He stated he would be willing to renounce his Danish citizenship in order to obtain a security clearance.<sup>6</sup>

In 2003-2004, Applicant attended a university in California and received a Master's degree in electrical engineering. In 2004, he also completed a course in the U.S., and received a technical certification.<sup>7</sup>

Applicant works for an international business and therefore, has contact with foreign persons. He has university friends and a girlfriend. He listed them on his application and later supporting notarized statements in response to the SOR and the FORM.

Department Counsel did not provide any information on Denmark for the record. I take administrative notice of the following facts.

---

<sup>4</sup>*Id.*

<sup>5</sup>Applicant's response to FORM with attachments, dated March 29, 2007; Item 4 (Letter from Danish Consulate, dated September 27, 2006).

<sup>6</sup>Item 8 (Statement of Applicant, dated December 19, 2002).

<sup>7</sup>Item 7 (Statement of Applicant, with attachments, dated October 4, 2004).

Denmark and the United States have been close allies and friends for many years. Although Denmark is a constitutional monarchy, under its parliamentary form of government, its citizens enjoy the same freedoms as citizens of the United States. Denmark does not illegally detain individuals, nor deny them a right to a fair trial. No human rights violations are known to exist. Denmark maintains good relationships with the United States in many areas of similar concerns.<sup>8</sup> Relations between the U.S. and Denmark are active and cordial. Denmark and the United States share common values and have parallel policies on most political, economic, and security issues.<sup>9</sup>

## POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines For Determining Eligibility For Access To Classified Information*, sets forth the criteria which must be applied when determining security clearance eligibility. The adjudicative guidelines specifically distinguish between those factors that are considered in denying or revoking an employee's request for access to classified information (Disqualifying Conditions), and those factors that are considered in granting an employee's request for access to classified information (Mitigating Conditions). By acknowledging that individual circumstances of each case are always different, the guidelines provide substantive standards to assist an administrative judge in reaching fair and impartial common sense decisions.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at meritorious decisions. Section E2.2 of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the conduct of the applicant and the circumstances in any case, the factors an administrative judge should consider pursuant to the concept are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of the participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interest of national security. Granting an applicant's clearance for access to classified information is predicated on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not just the *actual* risk of disclosure of such information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information in any aspect of his or her life. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information.<sup>10</sup> The decision to deny a security clearance request to an individual is not necessarily

---

<sup>8</sup>Consular Information Sheet (Denmark), February 15, 2007.

<sup>9</sup>Department of State: Note, Denmark (2007).

<sup>10</sup>*Department of Navy v. Egan*, 484 U.S. 518, 517 (1988).

a determination of the loyalty of the applicant.<sup>11</sup> It is merely an indication the applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

In accordance with the Directive, the government bears the initial burden of proof in the adjudicative process to establish conditions which indicate it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information.<sup>12</sup> When the government meets this burden, a heavy burden of persuasion then falls on the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the position of the government, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.<sup>13</sup>

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal standards, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

### **Foreign Influence**

In a foreign influence case (Guideline B), a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) may be subject to duress. Because of an applicant's ties of affection to these individuals, a potential for foreign influence arises that could result in the compromise of classified information if an applicant is unwilling or lacks the ability to protect classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations, if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1. (*An immediate family member or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country*), applies because Applicant's mother is a Danish citizen and resides in Germany. Such ties raise a *prima facie* security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. However, the mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. Whether an applicant's family ties in a foreign country pose a susceptibility to foreign influence depends on a common sense evaluation of the overall facts and circumstances of those family ties.<sup>14</sup>

---

<sup>11</sup>Executive Order 10865, § 7.

<sup>12</sup>ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).

<sup>13</sup>ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

<sup>14</sup>ISCR Case No. 98-0419 at 5 (App. Bd. Apr. 30, 1995).

Applicant's immediate family live and reside in Germany. Applicant lives with his mother (Danish) in Germany. The record is devoid of information concerning his mother's work or any other evidence as to his mother's contacts with the government of Denmark or Germany. Although, his mother has pro-U.S. views and stays in Germany while Applicant's younger brother attends school. I conclude this potentially disqualifying condition applies. FI DC E2.A2.1.2.2. (*Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists*) applies.

However, Applicant lived abroad with his family as a dependent due to his father's work with contractors supporting the U.S. military. His father, who is married to Applicant's mother, has held a top secret clearance since 1972. His family maintains close contact with the local U.S. community. He has a Status of Forces certification. Applicant has been trained and reports contact to U.S. military and civilian agencies, and keeps his security manager up to date on all foreign contacts and travels.

When completing his security application in 1998, Applicant reported his status as a military dependent. He also registered for Selective Service in the United States military. He listed his travels to Denmark and within Europe. He reported his university friends.

Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1. (*a determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(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*) does not apply. Applicant presented no information about his mother and any contacts with the Danish government.

## **Foreign Preference**

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Foreign Preference Disqualifying Condition (FP DC) E2.A3.1.2.1. (*The exercise of dual citizenship*) applies in this case. Applicant renewed and used a Danish passport while a U.S. citizen. This is an exercise of dual citizenship.

Foreign Preference Disqualifying Condition (FP DC) E2.A3.1.2.2. (*Possession and/or use of a foreign passport*) applies in this case. Applicant's Danish passport was issued shortly after his birth. He was a U.S. citizen at that time. He sometimes traveled in Europe using his Danish passport. He renewed the passport in 2001.

Foreign Preference Mitigating Condition (FP MC) E2.A3.1.3.1. (*Dual citizenship is based solely on parents' citizenship or birth in a foreign country*) partially applies. Applicant was born in Germany and his mother is Danish. His father is a U.S. citizen. Applicant is a U.S. citizen, but also Danish citizenship through his mother. This mitigating condition does not totally apply because Applicant actively exercised his dual citizenship as an adult by renewing and using his Danish passport.

FP MC E2.A3.1.3.4. (*Individual has expressed a willingness to renounce dual citizenship*) applies. Applicant was clear in his answers to the SOR and additional statement that he considers himself loyal to the U.S. and does not maintain a preference for a foreign country. He is willing to renounce his dual citizenship.

On August 2000, the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (“Money Memorandum”) issued a memorandum to clarify the application of Guideline C, Foreign Preference, to cases involving possession and or use of a foreign passport. In pertinent part, the Money Memorandum “requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States. Applicant has surrendered his complied with the requirements of the Money Memorandum and surrendered his passport.

### **Whole Person**

I considered the “whole person” concept in evaluating Applicant’s risk and vulnerability in protecting our national interests. Applicant has been a dual citizen of Denmark and the United States since his birth. He resided in Germany with his family. His father had a top secret clearance since 1972. His mother has pro-U.S. views. His family is under the status of forces agreement. He was educated in Germany and attended a university in Denmark. He also attended a university in the United States. In his original security clearance application in 1998, Applicant stated that he would consider giving up his Danish citizenship if required.

Applicant works for an international business and therefore, has professional contacts with foreign persons. He listed his university friends and his girlfriend on his application and later supporting notarized statements in response to the SOR.

Applicant surrendered his Danish passport in 2006. When he was younger, he did use his Danish passport to travel within Europe. However, he acknowledged that he also used his U.S. passport. He has reported all his on his applications. He has financial interests in the U.S. through investments and his bank accounts.

The United States Supreme Court recognizes a right under the United States Constitution for United States citizens to maintain dual citizenship with another country.<sup>15</sup> The eligibility of a United States citizen for dual citizenship with another country, by itself, is not a security concern. The United States Supreme Court also supports the idea that mere passive retention of dual citizenship indicated by a lack of desire to renounce the foreign citizenship for reasons not apparently connected to a person’s loyalty to the United States provides no inference of non-allegiance or disloyalty to the United States. “Living abroad by a naturalized citizen is no badge of lack of allegiance.”<sup>16</sup>

Applicant reported that he has no foreign preference for Denmark or Germany and has chosen to register for Selective Service to support the U.S. He acknowledges that he would fully support and be loyal to the U.S. in any conflict.

---

<sup>15</sup>*Afroyim v. Rusk*, 387 U.S. 253 (1967).

<sup>16</sup>*Schneider v. Rusk*, 377 U.S. 163 (1964).

His regular contacts with his mother, a Danish citizen and resident of Germany, do not present a concern. Denmark and the United States have been close allies and friends for many years. Although Denmark is a constitutional monarchy, under its parliamentary form of government, its citizens enjoy the same freedoms as citizens of the United States. Denmark does not illegally detain individuals, nor deny individuals a right to a fair trial. No human rights violations are known to exist. Denmark maintains good relationships with the United States in many areas of similar concerns.

I am persuaded by the totality of the evidence in this case that Applicant does not prefer Denmark to his U.S. citizenship. Applicant is proud of his U.S. citizenship. Applicant has mitigated the security concerns under Foreign Influence and Foreign Preference in this case.

### **FORMAL FINDINGS**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2. Guideline B	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	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. Clearance is granted.

Noreen A. Lynch  
Administrative Judge