

DATE: August 27, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0516

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

William S. Fields, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant is a dual US-Canadian citizen born, raised, and educated in Canada. He has lived in the US since July 1998. The Applicant's father and ten siblings are Canadian citizens living in Canada. His wife is a Canadian citizen living in the US. His mother is a US citizen living in Canada. The Applicant is conditionally willing to renounce is Canadian citizenship for employment opportunities. Clearance is denied due to unacceptable risk of foreign preference.

STATEMENT OF THE CASE

On September 27, 2000, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding [\(1\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On October 24, 2000, the Applicant answered the SOR and elected to have his case decided on the written record, in lieu of a hearing.

The Applicant received a complete copy of the file of relevant material (FORM) dated November 28, 2000, and was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. The Department Counsel presented six exhibits (Items). The Applicant's response to the FORM was due on January 8, 2001. No response has been received. I was assigned the case on July 10, 2001. The record in this case closed on July 10, 2001.

FINDINGS OF FACT

The SOR alleges foreign preference (Guideline C) and foreign influence (Guideline B). The Applicant admits the allegations.

The Applicant is 27-years-old and has worked for a defense contractor since July 1998. He is seeking to obtain a security clearance.

The Applicant is a dual United States-Canadian citizen. He was born in Canada and attended school and university in

Canada. His father is a Canadian citizen residing in Canada. His mother is a US citizen residing in Canada. He has lived in the US since July 1998. The Applicant came to the US because of his present employment. His spouse is a Canadian citizen. The Applicant has filed forms for his wife to obtain permanent US residency. His nine siblings hold dual US-Canadian citizenship and currently reside in Canada. The Applicant's sister hold tri US-UK-Canadian citizenship and resides in Canada. None of his parents or siblings are employed by a foreign government. His sister's husband is employed by the Canadian Department of Agriculture as an advisor. The Applicant has rights to vote in both Canadian and US elections but has never voted in any election and intends to never vote in an election. He has a US passport which was obtained in 1991. He used his US passport to travel to the UK in 1995 and 1996. The Applicant has never been issued a Canadian passport.

The Applicant's parents have a net worth of approximately \$100,000.00. Upon their death the estate would be divided between the Applicant and his ten siblings. The Applicant owes approximately \$9,000.00 for student loans to a Canadian bank on which he makes monthly payments. He has a credit card from a Canadian bank, which he has not used since 1999. He maintains a credit card, saving account, and checking account with a US bank.

In a sworn statement (Item 5) to the Defense Security Service (DSS) dated October 21, 1998, the Applicant stated, "I would renounce my Canadian citizenship for employment opportunities which would benefit my family." In a sworn statement (Item 6) to the Defense Security Service (DSS) dated October 28, 1998, the Applicant stated, " Under certain circumstances I would be willing to renounce my Canadian citizenship, for example: employment and/or future family considerations."

The Applicant has not served in the Canadian military. He does not intend to exercise or accept any rights, privileges, or benefits offered by the Canadian government to its citizens to include voting rights, retirement, education, medical, or social welfare benefits. He has not held any political or elective office in any foreign nation. He states he is totally loyal to the US.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, access, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Foreign Preference (Guideline C) The Concern: 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. E2.A3.1.1.

Conditions that could raise a security concern and may be disqualifying include: E2.A3.1.2.

1. The exercise of dual citizenship. E2.A3.1.2.1.

Conditions that could mitigate security concerns include: E2.A3.1.3.

None Apply.

Foreign Influence (Guideline B) The Concern: 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 not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of 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. E2.A2.1.1.

Conditions that could raise a security concern and may be disqualifying include E2.A2.1.2.:

1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country; E2.A2.1.2.1.

Conditions that could mitigate security concerns include: 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. E2.A2.1.3.1.

5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities. E2.A2.1.3.5.

BURDEN OF PROOF

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the Applicant who must remove that doubt and establish his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline C, Foreign Preference. Under Guideline C, the security eligibility of an applicant is placed into question when the person acts in such a way as to indicate a preference for a foreign country over the US. Security concerns over the Applicant's possible foreign preference arise from his exercise of dual citizenship.

Essentially, the Applicant has been a Canadian citizen all his life and has but recently come to the US for economic reasons. The Applicant has roots and family in Canada and has lived in the US for a relatively short period of time, only since July 1998. Although the Applicant has expressed a willingness to renounce his Canadian citizenship, [See Mitigating Condition (MC) 4, ⁽²⁾] this willingness is "conditional." The Applicant has indicated a willingness to renounce foreign citizenship conditioned on employment opportunities which would benefit his family. This willingness has not been transformed into action, for the Applicant has taken no steps to renounced his Canadian citizenship. Looking at the totality of his conduct and circumstances, he has not clearly demonstrated his principal preference is to the US. When pressed to make a choice, the Applicant may choose his birthplace over the US, which he has chosen solely for current economic opportunities. SOR subparagraphs 1.a. and 1.b. are resolved against the Applicant due to his

failure to overcome the security concerns due to his dual citizenship.

The fact the Applicant may, at some date in the future, receive a share of his parents' assets is a factor to be considered in assessing whether he is using his foreign citizenship to protect a foreign financial interest. This potential inheritance is both speculative and not likely to be of significant value. A 1/11th share of a \$100,000.00 estate is unlikely to cause the Applicant to make decisions harmful to the interest of the US. SOR subparagraph 1.c. is resolved in favor of the Applicant.

The Government has satisfied its initial burden of proof under Guideline B, (Foreign Influence). Under Guideline B, the security eligibility of an applicant is placed into question when the person has immediate family members who are citizens of and/or residing in a foreign country. The Applicant's father and spouse are Canadian citizens. His father lives in Canada and his wife lives in the US. Nine of his siblings are dual US-Canadian citizens living in Canada. He also has a sister living in Canada who is a US-UK-Canadian citizen. The Applicant's mother is a US citizen living in Canada. These family members are not agents of a foreign power and there is no evidence they have been subject to any undue attention by foreign authorities. MC 1⁽³⁾ applies. The record is insufficient to establish his contacts with his relatives are casual and infrequent. Therefore, MC 3⁽⁴⁾ does not apply. Any property which might be inherited at some later date is of minor value. MC 5⁽⁵⁾ applies.

While acts of foreign influence warrant careful scrutiny, after considering the Adjudicative Guidelines, I conclude these family ties do not raise such concerns. I find for the Applicant as to the allegation of foreign influence listed in SOR subparagraphs 2.a., 2.b., 2.c., 2.d., and 2.e.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline C (Foreign Preference): AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: For the Applicant

Paragraph 2 Guideline B (Foreign Influence): FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: For the Applicant

Subparagraph 2.d.: For the Applicant

Subparagraph 2.e.: For 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 the Applicant.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 as amended.
2. MC 4. Individual has expressed a willingness to renounce dual citizenship. E2.A3.1.3.4.
3. MC 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. E2.A2.1.3.1.
4. MC 3. Contact and correspondence with foreign citizens are casual and infrequent. E2.A2.1.3.3.
5. MC 5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities. E2.A2.1.3.5.