

DATE: June 19, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-00341

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has applied to revoke his British citizenship and has surrendered his passport. His family connections are not of a type that would make him vulnerable to coercion or pressure. Adverse inference is overcome. Clearance is granted.

STATEMENT OF THE CASE

On September 21, 2001, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the 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 the Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on October 15, 2001, and requested that the case be decided without a hearing. The Government submitted its File of Relevant Material (FORM) to the Applicant on December 19, 2001. The Applicant was given 30 days from receipt of the FORM to submit any documents in rebuttal, extenuation or mitigation. The Applicant received the FORM on January 7, 2002, and submitted responses on January 25 and February 15, 2002. The Department Counsel did not object to the admissibility of the additional material. The case was received by the undersigned on February 22, 2002.

FINDINGS OF FACT

The Applicant is 47, married and has a doctoral degree. He is employed by a defense contractor as a Principal Engineer/Scientist, and he seeks to obtain or retain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the

Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and criterion in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline C - Foreign preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant was born in Hong Kong in 1954. At that time Hong Kong was a British colony and the Applicant was a British citizen. He moved to the United States in 1973. The Applicant became a naturalized American citizen in September 1994. (Government Exhibit 5 at 2.)

In his Security Clearance Application (Government Exhibit 4), the Applicant stated "Yes" to question 15 where it asks "In the last seven years, have you had an active passport that was issued by a foreign government?" The Applicant had renewed his British passport for ten years in 1993, a year before he became a naturalized American citizen. The Applicant possessed this British passport at the time of the issuance of the SOR. The Applicant has never traveled on this British passport. (See, Applicant's Supplemental Exhibit.)

The Applicant stated in his Answer to the SOR that he was taking steps to renounce his British citizenship. His Supplemental Exhibit includes a cover letter to the British Embassy dated January 24, 2002; a photocopy of his complete British passport, which shows no visa stamps; a copy of a "Declaration of renunciation of British National (Overseas) status," signed by the Applicant on January 25, 2002; and a copy of a letter from the Consular Section of the British Embassy, dated February 8, 2002. In this letter the consular person states, "Receipt is acknowledged of your application for renunciation of your British citizenship. I confirm that your British passport has now been retained by the British Embassy."

Paragraph 2 (Guideline B - Foreign influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has immediate family members or people to whom he may be bound by affection or obligation who are not citizens of the United States, or may be subject to duress.

The Applicant's father-in-law and mother-in-law are Chinese citizens and reside in the People's Republic of China. The father-in-law is a retired engineer. The mother-in-law is a retired factory worker. When the Applicant filled out his sworn statement, Government Exhibit 5, in 1999, they had visited the Applicant twice. That was in 1994 and 1996. His wife talks to her parents on a monthly basis. There is no allegation that either of these people work for the government of the People's Republic of China.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Guideline B (Foreign influence)

Condition that could raise a security concern:

(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;

Condition that could mitigate security concerns include:

(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;

Guideline C (Foreign preference)

Condition that could raise a security concern:

(2) Possession and/or use of a foreign passport;

Conditions that could mitigate security concerns include:

(1) Dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(4) Individual has expressed a willingness to renounce dual citizenship.

Additional policy guidance regarding the possession of a foreign passport is also found in the August 16, 2000, Memorandum from the Assistant Secretary of Defense for Command, Control, Communications and Intelligence entitled "Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline." (Money Memorandum.) (Government Exhibit 7.) In pertinent part the Memorandum states, "[C]onsistent application of the [Foreign Preference] guideline 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 Government."

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be a dual citizen or have foreign connections, thereby raising concerns of untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration

and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting or continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has foreign connections, that he was a dual citizen of the United Kingdom and the United States, and that he possessed a British passport after he became an American citizen.

The Applicant, on the other hand, has introduced persuasive evidence in rebuttal, explanation and mitigation, which is sufficient to overcome the Government's case against him.

The evidence shows that the Applicant is taking the steps to revoke his British citizenship. In addition, his British passport has been returned to the British Embassy, and is in their possession. Accordingly, he has more than fulfilled the requirements of the Money Memorandum. In addition, other than his possession of a passport, there is no evidence that the Applicant ever exercised dual citizenship with the United Kingdom after he became an American citizen. Guideline C is found for the Applicant.

Turning to Guideline B, one finds that the Applicant's elderly in-laws live in the People's Republic of China. There is no evidence that they are agents of a foreign government or in a position to be influenced by that government. The Applicant has no other ties to China. All the members of his immediate family live in the United States and are American citizens. A common sense evaluation of the overall facts and circumstances of the Applicant's family ties persuasively shows that the Applicant is not in a position to be vulnerable to foreign influence. Guideline B is found for the Applicant.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: For the Applicant.

Subparagraphs 1.a. and 1.b.: For the Applicant.

Paragraph 2: For the Applicant.

Subparagraph 2.b.: For the 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 the Applicant.

Wilford H. Ross

Administrative Judge