

DATE: April 15, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-00849

DECISION OF ADMINISTRATIVE JUDGE

JOHN R. ERCK

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a dual citizen by virtue of her birth in Canada 28 years ago to an American mother and Canadian father. She was issued a U.S. passport in 1991. Before moving to the United States with her Canadian husband in early 1994, she had voted in two Canadian elections and been issued a Canadian passport. Since moving to the United States, her son was born in August 1995, she has voted in two presidential elections, and she began working for a DoD contractor (December 1998). Although five half-brothers live and work in Canada, Applicant's mother and father have resided in the United States for the past ten years. The three half-brothers with whom Applicant has contact do not work for the Canadian government and the two other half-brothers are not known to have connections with the Canadian government. The security concern raised by Applicant's half-brothers residing in Canada and her expressed interest in maintaining citizenship in the country (Canada) where she was born and grew up, is mitigated by her professed and demonstrated allegiance to the United States, and by her more significant connections (her son, livelihood and parents) with this country. Clearance is granted.

STATEMENT OF THE CASE

On September 24, 2001, 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 Personnel Security Clearance Review Program*" (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary finding under the Directive that it is clearly consistent with the national interest to continue Applicant's security clearance and recommended referral to an Administrative Judge to determine whether she should be granted a security clearance.

Applicant answered the SOR in writing on October 4, 2001. [\(1\)](#) The case was assigned to this Administrative Judge on January 14, 2002. On February 1, 2002, a hearing was convened for the purpose of considering whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government's case consisted of two

exhibits; Applicant testified on her own behalf and submitted two exhibits. A transcript (Tr.) of the proceeding was received on March 1, 2002.

FINDINGS OF FACT

The Statement of Reasons (SOR) alleged foreign preference (Guideline C) based on Applicant's dual citizenship, possession of a Canadian passport, and voting in two Canadian elections and foreign influence (Guideline B) based on the citizenship of Applicant's spouse, parents and siblings. In her answer, Applicant admitted, with explanation, all allegations set forth in the SOR. After a complete and thorough review of Applicant's admissions, explanations, and the evidence of record, and upon due consideration of the same, I make the following additional findings of facts:

Applicant was born in Canada 28 years ago to an American mother and a Canadian father.

She attended elementary and secondary schools in Canada and continued to reside there until 1994. She married her Canadian husband in January 1994, and they moved to the United States later that year. Earlier, Applicant had applied for and obtained a U.S. passport. (Tr. 39) Applicant and her husband became parents in August 1995. Sometime later the marital relationship fractured and they began living separately. Although they have lived separately for the past five years, they have not divorced, they do not have a legal separation agreement, and there is no written agreement formalizing Applicant's custody of their son (Tr. 36-38). Applicant's Canadian passport expired in 1999, and her United States passport expired in 2001.

Applicant's husband has a green card (Tr. 23) and has been employed in the United States since his arrival (Tr. 35). Before she began working for her current employer in December 1998, Applicant had worked for several different employers as reported on her SF 86 (Govt. Exh. 1). She testified she had been granted an interim security clearance ⁽²⁾ (secret) in January 1999 (Tr. 6).

In addition to having been born in Canada, Applicant has other connections with that country. She voted in two Canadian elections before moving to the United States. She held a Canadian passport from 1994 until it expired in 1999. Her father and five half-brothers are Canadian citizens, although her father has lived with Applicant's mother in the same state that Applicant moved to in June 1994. Applicant knows that three of her half-brothers are employed by entities other than the Canadian government; she does not believe her two other half-brothers are employed by the Canadian government, although she has not communicated with, nor does she know their whereabouts.

Applicant also has family and civic connections with and in the United States. Her mother was born in the United States and has retained her citizenship, although like Applicant, she is also a dual citizen. Her grandfather served in the U.S. Coast Guard during World War II and an uncle served in the U.S. Navy. Applicant held a U.S. passport from 1991 to 2001; she has voted in two U.S. presidential elections; and her son was born in the United States. She has worked for the same employer since December 1998; she is active in a local scouting organization; and she has joined a church in her community. Applicant has not "applied" for her son's dual citizenship (Tr. 22-23).

When Applicant was questioned about her dual citizenship by a special agent of the Defense Security Service (DSS) in November 1999, she stated she was willing to give up her Canadian passport, but not her Canadian citizenship (Govt. Exh. 2). Later in response to SOR allegations of foreign preference, Applicant elaborated on her sentimental ties to Canada, having grown up in a small town in one of the provinces. She expressed a desire to pass this heritage on to her son. At her administrative hearing, she expressed her preference for maintaining dual citizenship, but admitted there were circumstances when she would be willing to give up her Canadian citizenship. She testified one of the reasons she wanted to retain her Canadian citizenship was to improve her legal standing in the event of a custody battle over her son such as the one that would arise if her husband took their son to Canada and refused to bring him back. Still, she admitted she would be willing to give up her Canadian citizenship if dual citizenship interfered with her ability to earn a livelihood for herself and her son (Tr. 33), or if the safety and well being of her son were jeopardized by her dual citizenship (Tr. 33). When asked which country she would feel an allegiance toward in the event Canada and United States became involved in a dispute, Applicant stated it would be the United States. She explained:

I've spent the last seven some years here. I work here. I live here. My son is here. His life is here. I fly the United States

flag out in front of my home.

Tr. 33-34

Applicant acknowledged her connection with Canada is primarily sentimental (Tr. 34). She has not renewed her Canadian passport, (Tr. 23-24) and she does not have any plans to return to Canada to live. If a situation arose where she had to choose between loyalty to her family members residing in Canada and her duties to protect classified information, she would protect the classified information. She would seek guidance by bringing the matter to the attention her second level supervisor (Tr. 29-30).

POLICIES

The Adjudicative Guidelines of 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 decisions with reasonable consistency which are clearly consistent with the interest of national security. In making these overall common sense determinations. Administrative Judge must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but also in the context of factors set forth in Section E2.2. of the Directive. 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 Applicant's lack of security worthiness.

The following Adjudicative Guidelines are deemed applicable to the instant matter:

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.

Conditions that could raise a security concern and may be disqualifying include:

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

E2.A3.1.2.2. Possession and/or use of a foreign passport;

E2.A3.1.2.8. Voting in foreign elections;

Conditions that could mitigate security concerns include:

E2.A3.1.3.4. Individual has expressed a willingness to renounce dual citizenship.

FOREIGN INFLUENCE

(Guideline B)

The Concern: A security risk may exist when an individual's immediate family, including cohabitants, and other person 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. Contracts 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.

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 of present in a foreign country.

Conditions that could mitigate security concerns include:

E2.A2.1.3.1. A determination that the immediate family members, spouse, father, mother, half-brothers 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.

Burden of Proof

The Government has the burden of proving any controverted facts alleged in the Statement of Reasons. If the Government established its case, the burden of persuasion shifts to Applicant to establish her security suitability through evidence which refutes, mitigates, or extenuates the disqualifying conduct and demonstrates it is clearly consistent with the national interest to grant or continue her security clearance.

A person who seeks access to classified information enters a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about Applicant's judgment, reliability and trustworthiness, Applicant has a heavy burden of persuasion to demonstrate she 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 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 an Applicant.

CONCLUSION

Having considered the record evidence in accordance with appropriate legal precepts and factors, this Administrative Judge concludes the Government has established its case with regard to Guidelines B and C. In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section E2.2., as well as those referred to in the section dealing with the Adjudication Process, both in the Directive.

A security concern is raised by evidence Applicant has engaged in activities indicating she may prefer Canada over the United States. 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.

The security concern raised by Applicant's exercise of dual citizenship through her use of a foreign passport and voting in a foreign election has been mitigated by evidence these activities occurred several years ago, before she moved to the United States and established herself in this country. Since moving to the United States in June 1994, Applicant has traveled to Canada only once. She has not used her Canadian passport and she has not voted in a Canadian election. She testified that her life, livelihood and loyalty are in and with the United States, and her actions in the past eight years have been consistent with her testimony. Except for expressing her interest in maintaining her Canadian connection for sentimental reasons, Applicant has done nothing overt to exercise the Canadian component of her dual citizenship since moving to the United States in June 1994. Her expressed desire to retain this connection with a country whose customs, traditions and democratic government are similar to those of the United States is a demonstration of honesty, rather than a manifestation of preference for Canada over the United States. Guideline C is concluded for Applicant.

An additional security concern is raised by evidence Applicant's mother is also a dual citizen (Canada and the United States) and by evidence her father and five half-brothers are all Canadian citizens. A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom 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 of financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation or duress.

The security concern raised by Applicant's mother, father and half-brothers being Canadian citizens has been quieted by information Applicant has provided. Her mother and father have resided in the same state (of the U.S.) for the past ten years. None of the three half-brothers with whom she is in contact are employed by the Canadian government or by the

Canadian defense industry. While she does not know the whereabouts or current occupation of two half-brother, she does not believe they work for the Canadian government. Applicant does not have a bank account or any other financial interests in Canada. She testified she would protect classified information in the event she was required to choose between loyalty to her family and loyalty to the United States. Guideline B is concluded for Applicant.

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) FOR THE APPLICANT

Paragraph 2 (Guideline B) FOR THE APPLICANT

DECISION

In light of all the circumstances presented by this case, it is clearly consistent with the national interest to continue Applicant's security clearance.

John R. Erck

Administrative Judge

1. Applicant did not request a hearing before a DOHA Judge in her answer to the SOR. Her preference for a hearing was expressed in a letter dated November 12, 2001.
2. This information is verified by Applicant's Exhibit A .