

DATE: July 13, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-00951

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE HEINY

APPEARANCES

FOR GOVERNMENT

William S. Fields, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

A United Kingdom (UK) citizen by birth, and of the United States since her naturalization in 2000, the Applicant exercised rights of foreign citizenship, including possessing a foreign passport before becoming a US citizen and she retained the UK passport after becoming naturalized. Her lifestyle has been consistent with US citizenship. She has been a resident of the United States for 35 years. On learning of the security concerns regarding possession of a foreign passport, the Applicant surrendered it in June, 2001. This act confirms her preference is with the United States. Clearance is granted.

STATEMENT OF THE CASE

On April 2, 2001, 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. In an May 8, 2001 response the Applicant answered the SOR and elected to have her 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 May 22, 2001, and was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. On June 26, 2001, the Applicant's responded to the FORM. I was assigned the case on June 29, 2001. The Department Counsel presented four exhibits (Items). The Applicant provided three exhibits. The record in this case closed on June 29, 2001.

FINDINGS OF FACT

The SOR alleges foreign preference (Guideline C). The Applicant admits she was issued a United Kingdom (UK) passport.

The Applicant is 56-years-old and has worked for a defense contractor since 1997. She is seeking to obtain a security

clearance. The Applicant had a clearance between 1980 and 1991.

The Applicant was born in the United Kingdom (UK) in 1945. In September 1993, the Applicant received permanent residence--a green card-- in the United States. The Applicant has lived in the US more than 35 years, has been married to an American citizen for 30 years, and has two children, a step child, and eight grand children who are all American citizens.

In 1987, the Applicant traveled to England to visit her terminally ill mother. In March 1998, the Applicant's father died and she traveled to England for the funeral. At the time she was a British subject and entitled to hold and travel on a British passport which she did. In 1999, she traveled to Australia, on her British passport, to visit her brother, who is a citizen of the UK. The Applicant has two sisters and a brother who are citizens of and currently living in the UK.

In March 2000, the Applicant became a naturalized citizen. She has applied for an American passport. She voted in US local and national elections in November 2000. The Applicant was advised by the British Embassy and Counsel she could not surrender her passport. "C. After I received your original notice of *Denial of Request for Clearance*, I contacted the British Embassy and Counsel, regarding surrender/cancellation of my British passport. I was advised that I could not surrender my passport." (Applicant's letter of June 26, 2001)

On June 26, 2001, the Applicant mailed her British passport to the British Embassy in Washington, D.C. Her letter to the Embassy states, "At this time, I am applying for a clearance with the U.S. Government. I am enclosing the referenced passport because I am no longer able to use it."

On August 16, 2000, the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASDC3I) issued guidance clarifying the application of the Foreign Preference adjudicative guideline (hereinafter referred to as "ASDC3I memo"). The ASDC3I memo states any clearance must be denied or revoked unless the applicant surrenders a foreign passport or obtains approval for its use from the appropriate agency of the United States government.

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, but 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 also include:

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

Conditions that could mitigate security concerns include:

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

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 her 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 her 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 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 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 holds a foreign passport after becoming a US citizen, which the Applicant did until June 2001.

In 1945, the Applicant was born in the UK. She immigrated to the United States. In 1963 she became a permanent citizen and in March 2000 she became a naturalized US citizen. She has lived in the US for 35 years, has been married to a US citizen for 30 years, her children, stepchild, and grandchildren are all US citizens, and she has voted in US national and local elections.

In June 2001, the Applicant surrendered her foreign passport to the foreign embassy. Although mailed to the foreign embassy there is no indication the passport has been canceled or destroyed. Even without this indication, I believe the Applicant surrendered her UK passport to the UK embassy and the surrender of her UK passport was an expression of her willingness to renounce dual citizenship. Mitigating Condition # 4, ⁽²⁾ therefore applies. By surrendering the passport the Applicant has complied with the clarifying guidance set forth in the ASDC3I memo. The Applicant has mitigated the foreign preference concerns. Accordingly, I find for the Applicant as to Guideline C.

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): FOR THE APPLICANT

Subparagraph 1.a.: 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.

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.)