

DATE: December 14, 2001

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-05211

## **DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Erin Hogan, Esquire, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **OVERVIEW**

While security concerns arose over Applicant's foreign preference because he reapplied to be a citizen of Italy in 1993 and became a dual citizen after he had become a naturalized United States (US) citizen in 1982, he voluntarily chose to comply with the Department of Defense (DoD) policy requirements when he learned of them: he renounced his foreign citizenship in October 2001. He never obtained or used a foreign passport after he became a naturalized US citizen. Also, although his wife and he have relatives who are citizens of a foreign country, they do not have ties to the government and are not agents of a foreign power. Nor could they be exploited by a foreign power in a way that would force him to choose between his ties to them and to the US. So, he has mitigated the allegations of foreign influence. Clearance is granted.

### **STATEMENT OF THE CASE**

The Government could not reach the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant, [\(1\)](#) so the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on August 8, 2001. The SOR detailed security concerns in paragraph 1 over foreign preference (Guideline C) and in paragraph 2 over foreign influence (Guideline B). Applicant received the SOR and replied to these SOR allegations in an Answer of August 28, 2001, where he admitted 1.a. and 2.a. and denied the other allegations and requested a hearing. The case was assigned to Department Counsel who on September 5, 2001, attested it was Ready to Proceed.

On September 6, 2001, the case was assigned to me. Subsequently, a mutually convenient date for hearing was agreed to and a Notice of Hearing was issued on September 18, 2001, which set the matter for October 9, 2001, at a location near where Applicant works and lives. At the hearing the Government introduced five exhibits which were admitted into evidence (Exhibits 1-5). Applicant testified himself, called one witness, and offered one exhibit (Exhibits A) which was admitted into evidence. The transcript (TR) was received on October 17, 2001.

## **FINDINGS OF FACT**

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, 42 years old, has been working for Company #1 in State #1 since July 1988. Because Company #1 does classified business with federal agencies, in August 1989 he was granted a Secret clearance. In August 1999 he completed an updated Office of Personnel Management (OPM) Security Clearance Application (Standard Form 86) (SF 86). (Exhibits 1 & 2) In 1993 he received a degree from a technology institute in State #1. (Exhibits 1)

### **Foreign Preference**

Applicant was born in Italy and used his Italian passport to enter the US in June 1976 when he was seventeen to make a better life for himself. He used his Italian passport again in April 1978 and in April 1980 prior to becoming a US citizen. He applied for US citizenship and became a naturalized US citizen in September 1982 in State #2 where he lives. He has held a US passport and used it exclusively since becoming a US citizen. Upon becoming a US citizen, his Italian citizenship expired under Italian law. In 1993 he learned that the Italian government had a program to allow former Italian citizens residing in the US to regain their Italian citizenship and he applied to regain his Italian citizenship. He took advantage of this program as his elderly parents were residing in Italy and he wanted to better assist them with health related matters. He did not realize that to do so would create a security concern with his defense contractor until he was interviewed by the Defense Security Service (DSS) in ay 2000. He never applied for or was issued another Italian passport. All his travel was done with his US passport, the most recent one issued in February 1998. . Once he learned of the security issues implied by his being a dual citizen of the US and Italy, he went to the Consulate General of Italy in State #2 and voluntarily renounced his Italian citizenship in October 2001. He is proud to be an American and his preference is for the US. He has no financial interests in Italy, never voted there, and never served in their armed forces. (Exhibits 1, 2, 3, 5; Exhibit A; TR 22-23, 26-28, 32-33)

### **Foreign Influence**

In July 1997 Applicant married his wife who was a citizen of Italy. He filed a petition for alien relative, and she was granted a green card in March 2001. They have a child born in May 1998 who was a citizen of Italy. He filed for a certificate of citizenship for her in September 1998, and she became a US citizen in May 2001. (Answer; Exhibits 1, 4)

Applicant's mother, now 77, and father, now 79, are citizens of Italy and live in Italy; they are retired. His brother, 54, is also retired; his wife's parents are also citizens of Italy and live in Italy but do not have government-related jobs. While visiting his relatives in Italy, he has never been approached by anyone seeking information about his work. None of his family or extended family hold any political office in Italy and have never been pressed by anyone for any reason. He feels close to his family, but only visits his relatives in Italy infrequently. If he were ever pressured to chose between his family or his wife's family and his loyalty to the US, he would report the matter to his security officer and to the FBI. (Exhibit 1; TR 24, 28-31)

### **References**

Mr. X, a retired Army intelligence officer who became the corporate security officer for Company #1 in 1987 and remained there until May 2000, testified on Applicant's behalf. Company #1 is a top secret facility. He has known Applicant for over ten years professionally on a weekly basis and also socially. He assesses Applicant as an honest, reliable, and trustworthy individual. Applicant has a history of embracing the industrial security program at the company. He finds Applicant fully supportive of US objectives. He noted that only in recent years has dual citizenship become a red flag; and he was not aware of the DoD policy in this area. He noted that Applicant was proactive in renouncing his Italian citizenship once he realized it raised security concerns. (TR 35-38; 38-41)

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility divided into conditions that could raise a security concern and may be disqualifying and conditions that could

mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. The mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed the following relevant Adjudication Guidelines:

### **Guideline C - Foreign Preference<sup>(2)</sup>**

**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:**

(1) the exercise of dual citizenship;

**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.

### **Guideline B - Foreign Influence**

**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: (1) not citizens of the United States or (2) 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.**

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

(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

**Conditions 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;

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order

to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

## **CONCLUSIONS**

### **Guideline C - Foreign Preference**

If an individual acts in such a way as to indicate a preference for a foreign country over the United States, this conduct raises a security concern under Guideline C, Foreign Preference, as the individual 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: (1) the exercise of dual citizenship. Security concerns over Applicant's possible foreign preference arose from his active exercise of dual citizenship as he has reapplied in 1993 for Italian citizenship after he became a naturalized US citizen in 1982. While dual citizenship is not prohibited *per se* (and in that sense is sanctioned by policies of the United States), any conduct indicating possible foreign preference does raise a security concern where such action would increase the risk of an individual being influenced by the needs, desires, or aims of a foreign nation. Applicant chose to regain his Italian citizenship only for compassionate reasons out of concern for his elderly parents and because he did not know that to do so would raise security concerns. Significantly, he never applied for or used an Italian passport after becoming a naturalized US citizen.

Applicant meets one prong of the mitigation guidelines as under MC (1), his dual citizenship was based solely on parents' citizenship or birth in a foreign country. Further, Applicant voluntarily complied with DoD guidance and renounced his foreign citizenship in October 2001. Not only did he maintain that his principal preference is for the US, but also he backed up his statements with his actions: thus, he falls within MC 4 as he not only expressed willingness to renounce his dual citizenship, he did so.

Further, the former corporate security officer, who has known Applicant for ten years, was not fully aware himself of the government's dual citizenship policy concerns; he noted Applicant's voluntary compliance with guidelines after he became aware of them. He assesses Applicant as an honest, reliable, and trustworthy individual who has a history of embracing the industrial security program at the company. He finds Applicant fully supportive of US objectives. His credentials and knowledge of Applicant make the former security officer's testimony persuasive.

In this case, after reviewing all of the evidence in the record and considering all of the security policies, including the August 16, 2000, policy clarification memorandum, I conclude he has met the DoD mitigation sufficiently to indicate his clear preference for the United States. Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Acts indicative of foreign preference warrant careful scrutiny. Hence, I decide SOR paragraph 1 and subparagraphs 1.a. through 1.b. for Applicant.

### **Guideline B - Foreign Influence**

The Government also expressed security concerns over Applicant's possible foreign influence raised by his close ties of affection to citizens of a foreign country: he has parents and a sibling in Italy who are citizens there. His wife's parents are also citizens of Italy. His wife now has her green card, and his daughter is now a US citizen. The security concern under Guideline B, Foreign Influence, is that a security risk may exist when an individual's immediate family. . . 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. 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. Conditions that could raise a security concern and may be disqualifying include: (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. Applicant has relatively frequent contacts with his family with respect to visits there.

These security concerns are mitigated by the fact that Applicant's wife was granted a green card in March 2001 and their child, born in May 1998, who was a citizen of Italy, became a US citizen in May 2001. Applicant's relatives have no ties to their foreign government; nor is there any substantial likelihood that they would exercise foreign influence over Applicant. Merely because of these family ties Applicant is not vulnerable to duress. Given his history of responsible conduct, I think it improbable that his family would create a situation that could result in the compromise of classified information. Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's

past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). While acts indicative of foreign influence warrant careful scrutiny, after considering the Enclosure 2 Adjudicative Process factors and the Adjudicative Guidelines, here I conclude these ties do not raise such concerns. Thus, I resolve SOR paragraph 2 and subparagraphs 2.a. through 2.b. in Applicant's favor.

### **FORMAL FINDINGS**

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1.Guideline C: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: 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 the Applicant.

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Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. See also the DoD August 16, 2000, **Clarification of Department of Defense Policy on Foreign Preference** which clarified the policy on Foreign Preference, Guideline C and stated, in part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigation factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent application of the 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 State Government. Modification of the Guideline is not required.