

DATE: July 20, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-06460

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

William S. Fields, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Fifty-three year old native-born American applicant, who, in about 1998, applied for and received Irish citizenship based on her mother's Irish birth, and obtained an Irish passport which she has never used; despite a declared willingness to renounce the Irish citizenship and to invalidate the Irish passport; her failure to surrender the Irish passport; and her failure to obtain official approval for the foreign passport's use from the appropriate agency of the United States Government; in light of the August 2000 ASD/C³I memorandum implementing a passport policy clarification, raises questions and doubts as to her allegiance to the United States and as to her security eligibility and suitability. Clearance is denied.

STATEMENT OF THE CASE

On April 16, 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 affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated April 26, 2001, Applicant responded to the allegations set forth in the SOR, and elected to have her case decided on the written record, in lieu of a hearing. Department Counsel submitted the Government's written case on May 22, 2001. A complete copy of the file of relevant material (FORM)⁽¹⁾ was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. On June 22, 2001, she submitted a written response to the FORM, to which Department Counsel offered no objection. The case was initially assigned to Administrative Judge Claude R. Heiny II on July 12, 2001 but, due to caseload considerations, was subsequently reassigned to, and received by, this Administrative Judge on July 18, 2001.

FINDINGS OF FACT

Applicant has admitted most of the factual allegations pertaining to foreign preference under Guideline C (subparagraphs 1.a. through 1.c., and a portion of 1.d.). Those admissions are incorporated herein as findings of fact. Her response related to subparagraph 1.e. remains unclear and is treated as a denial. She has denied the conclusory allegations.

After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 53 year old female employed by a defense contractor, and she is seeking to obtain a security clearance, the level of which has not been divulged.

Applicant was born in the United States in 1947.⁽²⁾ She was raised, educated, and married here, and raised her two children here. Her father was a native-born citizen and resident of the United States,⁽³⁾ and her mother is a naturalized citizen (since December 1943) and resident of the United States, who was born in Ireland--a nation whose interests are not inimical to the United States.

In about 1998, based on her mother's birth in Ireland, Applicant applied for and received Irish citizenship.⁽⁴⁾ Her motivation for doing so was, in large part, to please her mother:⁽⁵⁾

[T]he only reason I had Irish citizenship was because my mother had been born there over eighty years ago. She was also an American citizen, but as she grew older and illness overtook her, she expressed nostalgia for the old country. In her last years, sick and spending a lot of time under a doctor's care, she asked me why I had never taken advantage of the Irish program to get citizenship based on her birthplace. She began to believe I was somehow ashamed of her. I initiated the process based on her request. I never considered it a full-blown declaration of allegiance because all I had to do was submit information about my mother, her birth certificate with maiden name, my birth certificate and my marriage certificate. There was no swearing allegiance or no oaths to serve and protect Ireland. I submitted the papers and, presto, I became what I consider to be an honorary citizen. My mother was thrilled.

An additional motivation for her action was to ease the way for her daughter if she chose to work overseas for a year or two.⁽⁶⁾

When Applicant received her Irish citizenship she also obtained an Irish passport. Applicant contended the passport served merely as proof to her mother that Applicant cared about her mother and her legacy.⁽⁷⁾ The Irish passport has never been used by Applicant, and, in fact, has never been out of the safe deposit box. Applicant declared she has no intention of ever using it.⁽⁸⁾ Moreover, Applicant has, on numerous occasions, offered to invalidate her unused Irish passport, but has never been offered any guidance on resolving the issue.⁽⁹⁾ It is unclear when the Irish passport expires.

Despite being a dual citizen of the United States and Ireland, Applicant contends her loyalties and allegiance lie with the United States. In this regard, she stated:⁽¹⁰⁾

At no time was it my intention to lessen my commitment as a U.S. citizen. I never intended this citizenship to be anything more than [sic] a recreational purpose and I never had any intention of fulfilling any Irish residency [sic] requirements.

In her May 1999 Security Clearance Application, Applicant noted she had "applied and received a 'secondary' Irish Citizenship [sic] and passport for 'social' purposes."⁽¹¹⁾

As noted above, Applicant has two children. Her son, born in 1976, is a United States citizen residing in the United States, and he has not applied for Irish citizenship.⁽¹²⁾ Her daughter, born in 1972, is a United States citizen who, following graduation from college, obtained Irish citizenship as a result of her own efforts to do so.⁽¹³⁾ Her motivation

was, likewise, to please her grandmother, as well as to ease her possible efforts to obtain future employment in the European market.

On August 16, 2000, the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD/C³I) issued a passport policy clarification pertaining to Adjudicative Guideline C--foreign preference. A photocopy of the memorandum was furnished to Applicant along with the SOR on April 16, 2001. ⁽¹⁴⁾ The memorandum states, in pertinent 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 mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the 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 States Government.*** Modification of the Guideline is not required. (Emphasis supplied)

While Applicant had expressed a willingness to relinquish her Irish passport on August 10, 2000, before the memorandum was issued, as well as in April and June 2001, she offered no evidence subsequent to receipt of the ASD/C³I memorandum to indicate she had either actually received official approval to use it or that she had surrendered it to the Irish Embassy. As of the date of the closing of the record herein, it appears Applicant still possesses the Irish passport, and its use has not been officially approved by the appropriate agency of the United States Government.

Applicant has been employed by the same employer since January 1986. She is the Treasurer of the company. The quality of her performance has not been characterized.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An Administrative Judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E.2.2., Enclosure 2, of the Directive, are intended to assist the Administrative Judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an Administrative Judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

[GUIDELINE C - FOREIGN PREFERENCE]: 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;
- (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.

Since the protection of the national security is the paramount determinant, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security," ⁽¹⁵⁾ or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded both standards are one and the same. In reaching this Decision, I have endeavored to draw only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have attempted to avoid drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the Government to establish a case which demonstrates, in accordance with the Directive, it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the Government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the Government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of credibility, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

With respect to Guideline C, the Government has established its case. Applicant has been portrayed as an American citizen who applied for and received Irish citizenship derived from her mother's birth in Ireland and who acted in such a way as to indicate a preference for a foreign country--in this instance, Ireland--over the United States, and in so doing, she may be prone to provide information or make decisions harmful to the interests of the United States. Under these facts, it is not entirely clear if Applicant's actions constituted a mere reaffirmation of an earlier established "dual citizenship" status based solely on the location of her mother's birth, or an affirmation of a new preference for Ireland over the United States.

In support of its contentions, the Government has cited Applicant's active exercise of "dual citizenship" with the United States and Ireland; her acceptance of an Irish passport; and her failure to surrender that passport. Applicant's actions clearly fall within foreign preference disqualifying condition (DC) E2.A3.1.2.1. and DC E2.A3.1.2.2.

Applicant's allegiance to the United States has been questioned, and an allegation made she prefers Ireland over the United States. A review of the evidence reveals her allegiance and loyalty to the United States are apparently resolute, but possibly impacted by her expressed desire to please and impress her mother over their common Irish ancestry. However, of substantial significance is Applicant's obtaining an Irish passport in about 1998. Even more significant is her failure to surrender that Irish passport.

To her credit, Applicant has expressed a willingness to renounce what she considers to be an "honorary" Irish citizenship derived from her mother's birth in Ireland, and that fact serves to bring into play foreign preference mitigating condition (MC) E2.A3.1.3.1. and MC E2.A3.1.3.4.

It has been alleged Applicant's two children had applied for and received Irish citizenship, but Applicant has denied her son ever did so, and there is no evidence to rebut her assertion. As to the actions of her adult daughter, while they may be relevant, they are only marginally material in light of the daughter's continued residence and employment in the United States.

As noted above, in August 2000, ASD/C³I issued a passport policy clarification. Under that policy clarification, it is clear the possession and/or use of the Irish passport falls within DC E2.A3.1.2.2. The ASD/C³I memo states there are no mitigating factors "related to an applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country," a phrase which I construe to relate solely to the use of a foreign passport, and not to mere possession of same. On the other hand, the memo requires a 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 this instance, it is clear Applicant has retained the Irish passport and kept it unused in a safe deposit box awaiting guidance as to possible disposition. Guidance, in the form of the ASD/C³I memo, was furnished Applicant on April 16, 2001, but, to date, she has still failed to take any positive action to protect her status. While there may be lingering skepticism as to this policy clarification; or the mandated disinterest in the identity of the foreign country--even one so closely aligned to the United States in democratic principles, ideals, and policies as Ireland; or the harshness of the remedy pertaining to the possession of a foreign passport for ostensibly for national heritage or emotional reasons, and not due to any allegiance or preference for another country over the United States; one fact is inescapable: the policy, as clarified by ASD/C³I and interpreted by the Appeal Board, must be complied with. Consequently, I conclude Applicant has failed to mitigate or overcome the Government's case. Accordingly, allegations 1.b. and 1.c. of the SOR are concluded against Applicant. For the reasons expressed above, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated certain other portions of the Government's case. Accordingly, allegations 1.a., 1.d., and 1.e. of the SOR are concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is not eligible for access to classified information.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline C: AGAINST THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.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 Applicant.

Robert Robinson Gales

Chief Administrative Judge

1. The Government submitted five items in support of its contentions.

2. *See* Item 4 (Security Clearance Application, dated May 14, 1999), at 1.

3. *Id.*, at 3.

4. *See* Item 3 (Response to SOR, dated April 26, 2001, at 1. *See also* Item 5 (Statement, dated August 10, 2000), at 1.

5. *Id.* Item 3, at 1-2.

6. *See* Item 5, *supra* note 4, at 1.

7. *See* Item 3, *supra* note 4, at 1.

8. *Ibid.*

9. *See* Response to FORM, dated June 22, 2001. *See also id.*, at 2.

10. *See* Item 5, *supra* note 4, at 1.

11. *See* Item 4, *supra* note 2, at 10.

12. *See* Response to FORM, *supra* note 9.

13. *Ibid.*

14. *See* Item 2 (Attachment 3 to Letter of Transmittal from DOHA, dated April 16, 2001).

15. *See* Executive Order 12968, "*Access to Classified Information*;" as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program*," dated January 1987, as amended by Change 3, dated November 8, 1995. However, the Directive uses both "clearly consistent with the national interest" (*see* Sec. B.3; Sec. C.2.; and Sec. D.2.; Enclosure 3, Sec. 1.; and Sec. 25), and "clearly consistent with the interests of national security" (*see* Enclosure 2 (Change 3), Adjudicative Guidelines, at 2-2).