

DATE: June 24, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-09083

**DECISION OF ADMINISTRATIVE JUDGE**

**WILFORD H. ROSS**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn D. MacKinnon, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant used his expired British passport, along with his active American passport, once in 1996. The incident has not been repeated and the Applicant persuasively states that it will not happen again. He further indicates a willingness to renounce his British citizenship. 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 February 7, 2002, 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 February 15, 2002, and requested that the case be decided without a hearing. The Government submitted its File of Relevant Material (FORM) to the Applicant on February 4, 2003. 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 February 19, 2003. The Applicant submitted additional documentation on March 14, 2003 (Applicant's Exhibit A). Department Counsel had no objection to this additional documentation. The case was assigned to the undersigned on March 31, 2003.

**FINDINGS OF FACT**

The Applicant is 52 and married. He is employed by a defense contractor as a Contracts Administrator, and he seeks to retain a Secret-level DoD security clearance previously granted in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a continued 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 guideline in the SOR. They are based on the Applicant's Answer to the SOR and the exhibits.

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 the United Kingdom (UK) in 1950. He moved to the United States in 1972. (Government Exhibit 5 at 2.) The Applicant became a naturalized American citizen in June 1984. (Government Exhibit 4 at Question 3.)

In his Security Clearance Application dated November 4, 1999 (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 October 1983. He further stated in the "Remarks" section of that question, "Passport from old country - expired 10/30/93 not renewed." The Questionnaire also showed that the Applicant had an active American passport issued in 1999. (Government Exhibit 4 at Question 3.)

In his Answer to the SOR at page 2 the Applicant said:

With one exception, I have always used my U.S. passport while traveling abroad since I became a U.S. citizen. My U.K. passport expired in 1993 and I do not intend to ever renew this document.

In September 1996, my wife, my daughter and I traveled to England to attend the wedding of my Nephew. We took an overnight flight and arrived at Heathrow airport very early in the morning. When we entered the terminal, a very large crowd in the International Immigration/Customs was waiting to be processed. My wife and daughter were complaining of being tired and didn't look forward to waiting in line for such a long time. I noticed that the Domestic Passenger customs area had no-one waiting but had two security officers on duty. I approached the officers and offered for examination **both my U.S. passport and my expired U.K. passport.** They were very cordial and allowed my family and me to enter without examination of my wife or daughter's U.S. passports.

**I have not used the expired U.K. passport since that time and I do not intend to use it in the future.** My use of the expired U.K. passport in September 1996 was purely a matter of convenience and not indicative of any preference over the U.S. document I hold. (Emphasis in original.)

In the FORM, the Department Counsel stated at page 4, "Although the passport in question was expired, and may have been recognized by the foreign government officials simply as a courtesy, the Applicant has not provided copies of his United States and expired United Kingdom passport to clearly demonstrate that his entry was by a valid United States passport." In his Response to the FORM (Applicant Exhibit A), the Applicant submitted a copy of his British passport, showing that it had indeed expired in September 1993. He also submitted his United States passport which was valid from June 1989 to June 1999.

Concerning any possible dual citizenship issues the Applicant states, "In matters pertaining to my allegiance, I feel primary allegiance to the U.S. I do not feel I would ever act in a way preferring the interests of the U.K. over those of the U.S. I would willingly renounce my U.K. citizenship if that were a condition of obtaining a security clearance." (Government Exhibit 5 at 2-3.) (See Answer to SOR at 2.)

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 two brothers and two sisters live in the UK. One brother works as a theatrical stagehand and the other in a retail garden center. One sister is retired and the other manages a retail garden center. The Applicant states, "I have contact with them about twice yearly, exchanging correspondence." (Government Exhibit 5 at 3.)

In his Response to the FORM, the Applicant further states at page 3, "None of my siblings have ever run for political office, nor have they been employed by any foreign government or served in any foreign military service. None of them are in a position to be exploited by a foreign power in a way that could force me to choose loyalty between them or the United States."

### 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 guideline. 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.

##### 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;

#### Guideline C (Foreign preference)

##### Conditions that could raise a security concern:

- (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.

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 guidelines 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 have foreign connections or be subject to foreign influences that demonstrates 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 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 and used an expired 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 willing to renounce his British citizenship. The Applicant has shown that he had, and used, a valid American passport on his trip to England in 1996. The acceptance by the British customs officials of his expired British passport on this occasion can be mitigated. This was a one-time incident, it occurred seven years ago and the Applicant understands and accepts the requirement that he only use his American passport in the future. Guideline C is found for the Applicant.

Turning to Guideline B, the Applicant's siblings still live in the UK. The Applicant's brothers and sisters have no connection to the British Government, and do not inquire about the Applicant's job. It must also be added that the United Kingdom is one of America's oldest and strongest allies, with whom we just fought a war. 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.

Subparagraph 1.a.: For the Applicant.

Subparagraph 1.b.: For the Applicant.

Paragraph 2: For the Applicant.

Subparagraph 2.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.

Wilford H. Ross

Administrative Judge