

KEYWORD: Foreign Preference

DIGEST: Forty-eight year old British-born Applicant's application for, and subsequent use of, a British passport, in August 1992, 23 years after he became a naturalized United States citizen, while relevant, in this instance, is no longer of security concern. His periodic use of the British passport, solely for convenience and security, until he surrendered it to the authorities in November 2001, cannot be considered merely in isolation, but has been analyzed in light of all the facts and circumstances to determine if he is demonstrating a foreign preference within the meaning of Guideline C. The Government's security concerns have been mitigated by Applicant's strong preference for, and demonstrated loyalty and allegiance to, the United States, over the United Kingdom; and his expressed willingness to renounce his British citizenship. Clearance is granted.

CASENO: 01-10189.h1

DATE: 12/31/2001

DATE: December 31, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-10189

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Forty-eight year old British-born Applicant's application for, and subsequent use of, a British passport, in August 1992, 23 years after he became a naturalized United States citizen, while relevant, in this instance, is no longer of security concern. His periodic use of the British passport, solely for convenience and security, until he surrendered it to the authorities in November 2001, cannot be considered merely in isolation, but has been analyzed in light of all the facts and circumstances to determine if he is demonstrating a foreign preference within the meaning of Guideline C. The Government's security concerns have been mitigated by Applicant's strong preference for, and demonstrated loyalty and allegiance to, the United States, over the United Kingdom; and his expressed willingness to renounce his British citizenship. Clearance is granted.

STATEMENT OF THE CASE

On July 5, 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 August 23, 2001, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was initially assigned to Administrative Judge John R. Erck, on October 4, 2001, but, due to caseload considerations, was subsequently reassigned to, and received by, this Administrative Judge on November 7, 2001. A notice of hearing was issued on November 27, 2001, and the hearing was held before me on December 6, 2001. During the course of the hearing, three Government exhibits and two Applicant exhibits, and the testimony of two Applicant witnesses (including the Applicant), were received. The transcript (Tr.) was received on December 13, 2001.

RULINGS ON PROCEDURE

During the proceeding, Department Counsel moved to amend the SOR to conform to the evidence presented. Specifically, he sought to amend subparagraph 1.b. thereof by adding the words "As of November 15, 2001," to the beginning of the sentence. There being no objection by Applicant, the motion was granted, and the SOR was amended to read as follows: "As of November 15, 2001, you possess a British passport that was issued on August 27, 1992 and expires on August 27, 2002."

FINDINGS OF FACT

Applicant has admitted all of the factual allegations pertaining to foreign preference under Guideline C (subparagraphs 1.a. through 1.e.). Those admissions are incorporated herein as findings of fact.

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 48 year old male employed by a defense contractor, and he is seeking to obtain a security clearance. He had previously held a TOP SECRET security clearance while on active military duty with the U.S. Navy.

Applicant was born in 1953 in Scotland, a political division of the United Kingdom--a nation whose interests are not inimical to the United States. He accompanied his parents when they immigrated to the United States in 1958, when he was four years old, and the family has resided here ever since. In February 1969, Applicant, then a teenager, and his parents became naturalized United States citizens and attained dual citizenship status. Applicant was educated in the United States and, since he arrived on its shores, has never resided outside the United States other than when he was deployed with the U.S. Navy. He served on active duty from June 1975 until June 1983, and in the Naval Reserve from July 1983 until April 1987. While on active duty he held a prestigious position as a fighter aircraft flight instructor for a high profile military facility, and by the time of his separation, had attained the rank of lieutenant commander.

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 July 5, 2001. ⁽¹⁾ 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)

In August 1992, while serving as a "long-haul" pilot for a large domestic shipping corporation, and starting up his own company, it was determined his value to his employer could be enhanced if he would obtain a British passport to facilitate travel throughout those countries which

required visas when traveling under a United States passport. Those long-haul pilots needing visas experienced "downtime" during which their passports would be held by the countries issuing those visas, thus making it impossible to travel since their passports were tied up. ⁽²⁾ As a result, on August 27th of that year, Applicant exercised his British citizenship and obtained a British passport with an expiration date of August 27, 2002. ⁽³⁾

Since obtaining his British passport, Applicant has used it instead of his United States passport, on a number of occasions, when traveling to various European, Asian, Middle-Eastern, and Caribbean countries. He was unaware of the significance of possessing the foreign passport, or its potential impact on his obtaining or maintaining a security clearance, until he was furnished, in July 2001, with a copy of the ASD/C³I memorandum containing the passport policy clarification, described above.

In January 2001, Applicant had expressed reservations about relinquishing either his British citizenship or his passport, citing convenience and personal safety reasons. ⁽⁴⁾ Nevertheless, on November 16, 2001, Applicant surrendered his British passport to the British Embassy Consular Section, Paris, France. ⁽⁵⁾ He attempted to obtain a receipt of his action, but it is against British policy to provide same, and instead, the Embassy returned the passport with a stamped cancellation and "clipped" pages, both signifying the passport had been surrendered. ⁽⁶⁾ The entire process took him about 45 minutes to one hour. As of the date of the hearing, Applicant no longer possessed a valid British passport. He has announced a willingness to renounce his British citizenship if that action is deemed necessary. ⁽⁷⁾

Applicant has demonstrated a preference for, and loyalty and allegiance to, the United States, and has indicated a willingness to bear arms in its defense, and, in fact, has already done so. He is not willing to bear arms for the United Kingdom.⁽⁸⁾ Since his initial arrival in the United States he has received no educational, medical, social welfare, retirement, or any other benefits from the United Kingdom.⁽⁹⁾ He has no financial or business interests there.⁽¹⁰⁾ He has never voted nor sought political office in the United Kingdom.⁽¹¹⁾ Furthermore, Applicant's spouse and both his children--all native-born United States citizens--reside in the United States.

Applicant has been employed in his current position by a Government contractor since 1988. The quality of his performance with that company has not been characterized. However, Applicant's former commanding officer--a retired U.S. Navy Captain who had been awarded the Silver Star for valor, and who now serves as Managing Director for Applicant's own company--fully supports Applicant's application and vouches for his reliability and loyalty.

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 found 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," [\(12\)](#) or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded that 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 that are 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, that 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 that 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 the witness testimony, demeanor, and credibility, and after application of all appropriate legal precepts and factors, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

With respect to Guideline C (Foreign Preference), the Government has established its case. It is quite true Applicant exercised one of the rights and privileges of a citizen of the United Kingdom by applying for and using a British passport 23 years after he became a naturalized citizen of the United States. That conduct is relevant under the whole person concept. Applicant's allegiance to the United States has been questioned because of that exercise of British citizenship, and an allegation was made that he thus prefers the United Kingdom over the United States. A review of the evidence reveals his allegiance and loyalty to the United States are resolute, and supported by significant indicia of same. Applicant has: indicated a willingness to bear arms in the defense of the United States; received his primary, secondary, and college education here; married a native-born citizen of the United States; fathered two children who are native-born citizens of the United States; maintained a residence in the United States with his family--initially with his parents and subsequently with his wife and children--since 1958; been employed in the United States; served honorably with the U.S. Navy; and declared allegiance to the United States.

Applicant's actions in procuring the British passport August 1992 and his subsequent use of that passport are of substantial significance. It is clear that possession of a foreign passport cannot be considered merely in isolation, but should be analyzed in light of all the facts and circumstances, "with the adjudicator needing to consider whether the facts and circumstances of possession reasonably indicate the applicant is demonstrating a foreign preference within the meaning of [Guideline] C."⁽¹³⁾ Thus, the issue is: whether Applicant's actions in using his British passport from August 1992 until he surrendered it, constituted the exercise of dual citizenship and were indicative of a preference for the

United Kingdom over the United States. Applicant's actions in applying for the British passport was an exercise by him of his British citizenship and falls within foreign preference disqualifying condition (DC) E2.A3.1.2.1. It is also clear his possession and use of the British passport after February 1969, when he became a naturalized United States citizen, falls within DC E2.A3.1.2.2.

Applicant's dual citizenship is based solely on his parents' citizenship and his birth in the United Kingdom. Thus, Applicant benefits from foreign preference mitigating condition (MC) E2.A3.1.3.1. His willingness to renounce his British citizenship comes within MC E2.A3.1.3.4. The ASD/C³ I 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 to the use of a foreign passport. Furthermore, the memo states "consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport. . . ." Applicant has already surrendered his British passport.

I had the opportunity to evaluate the demeanor of Applicant, observe his manner and deportment, appraise the way in which he responded to questions, assess his candor or evasiveness, read his statements, listen to his testimony, and watch the interplay between himself and those around him. It is my impression Applicant's explanations are both consistent and sincere, and have the solid resonance of truth. Thus, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the Government's case with respect to the issue of foreign preference. Accordingly, allegations 1.a. through 1.e. of the SOR are concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is 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 Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline C: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For 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 clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Robert Robinson Gales

Chief Administrative Judge

1. *See* Government Exhibit 3 (Attachment 3 to Letter of Transmittal from DOHA, dated July 5, 2001). Applicant acknowledged receipt of the materials on September 14, 2001. *See* Letter of Receipt, dated August 15, 2001).
2. *See* Government Exhibit 2 (Statement of Subject, dated January 3, 2001), at 2. *See also* Tr., at 53.
3. *See* Applicant Exhibit A (European Community - United Kingdom of Great Britain and Northern Ireland - Passport).
4. *See* Government Exhibit 2, *supra* note 2, at 2.
5. *See* Tr. at 32.
6. *Id.*, at 35-36.
7. *Id.*, at 64.
8. *Id.*, at 61.
9. *Ibid.*.

10. *Id.*, at 61-62, and 64.

11. *Id.*, at 63

12. *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).

13. *See* ISCR Case No. 97-0356, *supra* note 37, at 5-6.