

DATE: December 14, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-10306

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Erin Hogan, Esquire, Department Counsel

FOR APPLICANT

William L. Bransford, Esquire

Anthony F. Vergnetti, Esquire

OVERVIEW

While security concerns arose over Applicant's foreign preference because of his dual citizenship and use of his foreign passport twice after he became a naturalized United States (US) citizen in May 1999, he voluntarily chose to comply with the Department of Defense (DoD) policy requirements when he learned of them: he relinquished his passport and also renounced his foreign citizenship in August 2001. Although his wife and he have relatives who are citizens of a foreign country, they do not have ties to the government, 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 July 5, 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 forwarded on July 31, 2001, by his counsel. He admitted all allegations and requested a hearing. The case was assigned to Department Counsel who on August 30, 2001, attested it was Ready to Proceed.

On August 30, 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 three exhibits which were admitted into evidence (Exhibits 1-3). Applicant testified himself and called two other witnesses; he offered six exhibits (Exhibits A through F) which were admitted into evidence. The transcript (TR) was received on October 17, 2001.

PROCEDURAL ISSUE

Clarification of Department of Defense Policy on Foreign Preference

The Department of Defense issued a policy memorandum on August 16, 2000. It 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.

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, 53 years old, has been the president and CEO of an international company (Company #1) for five years and has traveled frequently on international business. He has worked for Company #1 from 1969 to present. He has worked for the company in the Caribbean and South America. Because Company #1 does business with federal agencies, he has often worked with sensitive information. In July 2000 he was asked to obtain a security clearance and completed an Office of Personnel Management (OPM) Security Clearance Application (Standard Form 86) (SF 86) to seek a security clearance. Previously, he had not needed a security clearance. (Exhibit 1 & 2; Exhibit F; TR 20-26; TR 56-61)

Applicant married his wife (Ms. X) in May 1974, and she became a naturalized US citizen in 1999. His two daughters, born in 1977 and 1979, also became naturalized US citizens in 1999. In 1974 he received a BA in business administration from a university in Argentina. (Exhibit 1; Exhibits A & B; TR 20)

Foreign Preference

Applicant was born in Argentina and voted there in the 1970's. He left there in 1982 and first came to the US in 1989 and wanted to become a US citizen. However he had to travel internationally and in 1990 was assigned to a subsidiary company in another country on a temporary basis until 1993. In 1993 he was approved to come back to the US as a permanent resident. After living in the US for five years, he applied for citizenship and became a naturalized US citizen in May 1999. His entire family became US citizens at the same time. As a US citizen he has recently served on jury duty. (Answer; Exhibit 1; TR 26-32, 63)

Applicant maintained his Argentinian citizenship because the US permits it; and he also kept his foreign passport when he became a US citizen as he thought it was legal to do so. He had been advised by a US immigration official that it was legal to keep and use his former passport. Immediately after he became a US citizen, he used his Argentinian passport in May 1999 for a personal celebration. He was not then aware of any US prohibitions against doing so; and he thought use of his Argentinian passport to enter Greece would be safer because of unrest in that region. On three or four other subsequent trips he only used his US passport. He again thought it would be safer to use his Argentinian passport for a business trip to enter Columbia in April 2000; but he used his US passport to exit Columbia and to enter the US. (Exhibit 1; TR 31-40; 62, 66)

However, when he learned that were security issues with his maintaining dual citizenship, he immediate went to the Argentinian Consulate in August 2001 to renounce his citizenship voluntarily and at the same time to relinquish his passport. (Exhibits 1 & 2; Exhibits C & D; TR 31-37, 42)

Applicant has no intention of returning to Argentina to live. He had property in Argentina, but he sold it several years ago. (TR 31-37) He had an overseas bank account that he opened in the mid-1980's which he used as an investment tool; however, when he learned that there were security concerns over that account he closed it as he had only \$150 in the account. He has no intent of having a foreign bank account in the future. (Exhibit 2; Exhibit E; TR 43-46; 73)

Foreign Influence

Applicant's mother who is 84 and retired was born in Poland and immigrated first to Russia and then back to Poland, then to France and then to Argentina in 1948. She has no association with the government in Argentina. Applicant sends his mother \$500 a month to subsidize her living expenses. No one has ever tried to use his mother to influence him; and if anyone attempted to do so, he would report them to the appropriate governmental authorities. He has visited his mother over a year ago and used to visit once or twice a year. He talks to his mother weekly on the telephone. Applicant also has a sister and brother in Argentina who also immigrated there in 1948; she is a housewife and not associated with the Argentinian government. His brother is a certified public accountant (CPA) and is not associated with the Argentinian government. He talks to his sister on the telephone more frequently than to his brother. (Exhibit 2; TR 47-52, 63-64)

Applicant's wife was born in Argentina. She has three half-brothers in Argentina. They send school support to one of them as her father died in 1984; they send \$300 per month or \$3,600 per year. Her brother has no connection with the government in Argentina. They will continue to provide support for two more years until he finishes school. No one has ever tried to use this bother-in-law to influence Applicant; and if anyone attempted to do so, Applicant would report them to the appropriate governmental authorities. His sister's husband is an executive with an exporting business. (Exhibit 2; TR 52-54, 62, 65-66, 67-77)

His wife's mother was a citizen and resident of Argentina, but since September 2001 she received a US residence card and has lived with Applicant and his wife in the US and intends to become a US citizen. (Exhibit 2; TR 54-55, 66-77)

Given Applicant's clear commitment to report any attempt to influence him, any risk of foreign duress or influence on Applicant and/or his immediate family would appear to be slight and clearly manageable as Argentina is a democratic government; and his family has no ties to the government.

References

Applicant's wife (Ms. X) was born in Argentina and moved with her husband to several other countries in South America. The family decided they preferred to live in the US in 1989 after transferred to the US for an assignment. While living overseas again, she got her US residency in 1992 which became effective in 1993 when they returned to the US. She became a US naturalized citizen in May 1999 along with her husband and daughters. They all voted in the last election. Ms. X works in a nursery school. (Exhibits A & B; TR 67-77)

Applicant's predecessor (Mr. Y) at Company #1 testified that he has known Applicant since the mid 1980's before he came to work for Company #1. In fact Mr. Y played a role in recruiting Applicant to the company for a key position in the US, and the company sponsored him for his US residency. Mr. Y worked closely with Applicant after he was hired and found him a very loyal subordinate and friend. Although Applicant was reassigned to a job in a foreign subsidiary for two years, Mr. Y recommended that Applicant be brought back to work for him at Company #1 in 1993. He worked with Applicant until July 1996 when Mr. Y joined another company and recommended Applicant to be his successor. They have remained close friends as their families live near each other. Mr. Y holds a security clearance in his current position. He was previously unfamiliar with security concerns over use of dual passports and had advised Applicant to use his foreign passport on a personal trip for security reasons. (TR 79-93; 93-95)

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⁽²⁾

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;
- (2) possession and/or use of a foreign passport⁽³⁾;

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; (2) possession and/or use of a foreign passport. Further, DoD policy clarification of August 16, 2000 explains that "possession and/or use of a foreign passport" may be a disqualifying⁽⁴⁾ condition and to mitigate an Applicant must surrender his foreign passport or obtain official approval for its use. Security concerns over Applicant's possible foreign preference arose from his active exercise of dual citizenship as he has maintained his citizenship in Argentina even after he became a naturalized US citizen in May 1999. 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. Also, Applicant possessed a foreign passport and used it twice after became a naturalized citizen of the US and after his US passport was issued to him. Applicant chose to do so for safety reasons and because he did not know that to do so would raise security concerns.

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. While there are no mitigating factors for an applicant's use of a foreign passport for safety reasons, to his credit Applicant voluntarily complied with DoD guidance soon after he became aware of proper avenue for individuals to take corrective avenue to mitigate this security concern: Applicant surrendered his foreign passport and voluntarily renounced his foreign citizenship in August 2001. Not only did he maintain that his principal preference is for the US, but also he backed up his statements with actions and now falls within MC 4 as he not only expressed willingness to renounce his dual citizenship, he did so and fully complied with DoD policy guidance on passports.

While Applicant had a foreign bank account with a minimal balance, he closed it as soon as he learned that do so raised a security concern. 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.d. 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 a mother and siblings in Argentina who are citizens there. His mother-in-law is now a US resident and wants to become a US citizen. Further his wife has three half brothers in Argentina. Applicant and his wife provide \$500 a month to his mother and \$300 a month to help one of the wife's brothers who is in school. 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 in Argentina with respect to visits there, but has frequent telephone visits.

Nevertheless, these security concerns are mitigated by the fact that 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 any of his family members would create a situation that could result in the compromise of classified

information simply because he sends subsidies to his elderly mother and a brother who is a student.

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. Given Applicant's clear commitment to report any attempt to influence him, any risk of foreign duress or influence on Applicant and/or his immediate family would appear to be slight and clearly manageable as Argentina is a democratic government; and his family has no ties to the government. 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 influence warrant careful scrutiny. After considering the Enclosure 2 Adjudicative Process factors and the Adjudicative Guidelines, here I conclude these ties are not of such a nature as to create any tangible risks of undue pressure, so do not invoke such foreign influence concerns. Thus, I resolve SOR paragraph 2 and subparagraphs 2.a. through 2.c. 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

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: 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.

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, Policy Clarification Memorandum, quoted above.
3. DoD policy clarification of Guideline C issued in August 2000 made clear that "any clearance [must] be denied or revoked unless the applicant surrenders the foreign passport"
4. The policy contains no mitigating factor related to the applicant's personal convenience, safety, requirements of

foreign law, or the identity of the foreign country.