

DATE: March 5, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-11212

## **DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

William S. Fields, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant's intention to maintain his dual citizenship and to keep his foreign passport raises doubts about his preferences, which must be resolved in favor of national security. Clearance is denied.

### **STATEMENT OF THE CASE**

On June 25, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, 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 clearance should be denied or revoked.

Applicant responded to the SOR in writing on July 10, 2002, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's written case (FORM) on or about July 31, 2002. Applicant did not submit a response to the FORM. The case was assigned to me on October 21, 2002.

### **FINDINGS OF FACT**

Applicant is 21 years of age. He was born and raised in the United States. By virtue of his mother's German citizenship, applicant is automatically a German citizen. He exercised his German citizenship in 1997 by applying for and receiving a German passport. <sup>(1)</sup> In a signed, sworn statement that he gave to the Defense Security Service (DSS) in February 2002, applicant stated that he intends to maintain his German citizenship and keep his German passport for the following reasons:

First and foremost, my current employer has already indicated to me that they will probably not have a job for me when I graduate college . . . Secondly, I am not sure right now if I want to work in the military/defense sector of the computer

industry. Giving up my German citizenship would make it much more difficult to obtain work in Germany if such an opportunity arises.

In the same statement he added the following:

Being a US citizen, I realize that I have a responsibility to the US with regard to security matters. I have no intention whatsoever of sharing any information with Germany or with anyone for that matter. I have obtained dual citizenship only by being born to a German mother and if at any time in the future, if presented with an opportunity to work for a defense contractor requiring me to give up my dual citizenship status, I would do it.

## **POLICIES**

Enclosure 2 of the Directive sets forth Guidelines (divided into conditions that could raise a security concern and conditions that could mitigate security concerns) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Disqualifying Factors and Mitigating Factors are applicable:

### **Foreign Preference**

**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:**

1. E2.A3.1.2.1: The exercise of dual citizenship.
2. E2.A3.1.2.2: Possession and/or use of a foreign passport.

#### **Conditions that could mitigate security concerns:**

1. E2.A3.1.3.1: Dual citizenship is based solely on parents' citizenship or birth in a foreign country.

## **CONCLUSIONS**

Applicant was born and raised in the United States. By virtue of his mother's German citizenship, applicant is a citizen of Germany. He exercised his German citizenship in 1997 by applying for and receiving a German passport. Applicant intends to keep his German citizenship and an active German passport in order to keep open the option of working in Germany after he graduates from college.

Individuals granted access to classified information must have a clear, unequivocal preference for the United States. In this case, applicant's intention to keep his German citizenship and an active German passport in order to leave open the possibility of moving to Germany and working for a German employer, raises doubts about applicant's preferences. Under the "clearly consistent with the national interest" standard set forth in DoD Directive 5220.6, these doubts must be resolved against applicant.

## **FORMAL FINDINGS**

### **PARAGRAPH 1: AGAINST 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.

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Joseph Testan

Administrative Judge

1. Applicant's passport was set to expire in March 2002. He stated, however, that he intended to renew it.