

DATE: August 12, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-10982

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Matthew E. Malone, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's possession and use of a foreign passport after becoming a U.S. citizen demonstrated a foreign preference and was not mitigated where Applicant had neither surrendered the passport nor obtained formal approval for its use. Applicant was potentially subject to foreign influence where his parents, in-laws, and siblings were all citizens of a foreign country, residing in a second foreign country. Clearance denied.

STATEMENT OF THE CASE

On 21 November 2001, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding ⁽¹⁾ that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 17 December 2001, Applicant answered the SOR and requested a hearing. The case was assigned to me on 21 February 2002, and I received the case the next day. I issued a notice of hearing on 21 March 2002 for a hearing on 9 April 2002.

At the hearing, the Government presented two exhibits--admitted without objection--and no witnesses; Applicant presented no exhibits, and the testimony of one witness, himself. DOHA received the transcript on 24 April 2002.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR; accordingly I incorporate those admissions as findings of fact.

Applicant--a 40-year old employee of a defense contractor--seeks access to classified information. He has not previously held a clearance.

Applicant--an ethnic Chinese--was born in Hong Kong in 1962, making him a citizen of the United Kingdom. ⁽²⁾ He became a naturalized citizen of the United States in November 1995. Applicant was educated in Hong Kong, completed

secondary school there, received his undergraduate degree from a university in Taiwan, and received his master's degree from a university in the United States. He emigrated to the U.S. in 1984 and intends to remain in the U.S. (Tr. 23).

Applicant possesses a U.K. passport issued in March 1994 (when Applicant was still a citizen only of the foreign country). This passport does not expire until arch 2004. Applicant used his U.K. passport to travel to Singapore and Malaysia in November 1996 and to travel to Thailand in August 1998--all dates after his naturalization as a U.S. citizen.

On 19 June 2000, Applicant gave a sworn statement to a Special Agent of the Defense Security Service (DSS) (G.E. 2), in which he responded to questions about his dual citizenship, use of the foreign passport, and his future intentions:

I wish to provide the following information pertaining to my dual citizenship. I list dual citizenship on the PSQ only because I was born in Hong Kong and thought it was required. I do not consider myself as a citizen of Hong Kong/United Kingdom after I became a U.S. citizen in 1995. Hong Kong was a colony of United Kingdom when I was born and lived there. I do not receive any rights, privileges benefits and obligations to Hong/Kong/United Kingdom (China since it took over Hong Kong in 1997). I have no foreign interests and/or property in Hong Kong. I do travel to Hong Kong/China for commercial business purposes and not a residency requirement.

I have never sought or held political office in a foreign country nor voted in foreign elections. I have not serve in Hong Kong/UK military service, nor perform any service in lieu of the military.

I do have a passport issued by the United Kingdom before I became a U.S. citizen. The passport will expire in March 2004. Also, I have a Hong Kong permanent ID card which was issued to me at age seven (12-69) and renewed on May 1990 (prior to U.S. citizen).

I do have a U.S. passport which was issued in 1995. I only use the U.K. passport two times, i.e. November 1996 and August 1998. I was on a business trip to China with my wife. She stopped in Hong Kong and I went to China for business. I gave my wife the U.K. passport to make tourist travel arrangements in Hong Kong for trips to Malaysia, Thailand, and Singapore. We were going to sight see upon my return from China. I gave her my U.K. passport only because I did not want to have the U.S. passport out of my possession while in China. For other travels, I use the U.S. passport. Upon entry to China I do show my Hong Kong identification so I do not have to obtain a visa.

I will be willing to renounce my Hong Kong citizenship and surrender my U.K. passport/Hong Kong identification card as a condition of access to classified information. I would do this as I am a U.S. citizen and do not consider myself as a Hong Kong/U.K./China citizen.

Applicant's parents, in-laws, and four siblings are all ethnic Chinese, citizens of Hong Kong/United Kingdom, still residing in Hong Kong after its return to China. Applicant's spouse resides with Applicant in the U.S. but remains a citizen of Hong Kong/United Kingdom, although she has applied for U.S. citizenship. Applicant has applied for his siblings to emigrate to the U.S. (Answer).

Applicant's Answer and testimony (Tr. 22, 36) reiterated his earlier willingness to renounce his foreign citizenship and surrender his foreign passport. However, as of the date of the hearing, he had only just contacted his country's embassy to obtain information on how to accomplish those acts (Tr. 30).

The record contains no character references or information on Applicant's work performance.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

FOREIGN PREFERENCE (GUIDELINE C)

E2.A3.1.1 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.

E2.A3.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A3.1.2.1. The exercise of dual citizenship:

E2.A3.1.2.2. Possession and/or use of a foreign passport;

E2.A3.1.2.4. Accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country;

E2.A.1.3. Conditions that could mitigate security concerns include:

E2.A3.1.3.2. Indicators of possible foreign preference (e.g. foreign military service) occurred before obtaining United States citizenship.

FOREIGN INFLUENCE (CRITERION B)

E2.A2.1.1. 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 not citizens of the United States or may be subject to duress. These situations 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.

E2.A2.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A2.1.2.1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident in, a foreign country;

E2.A2.1.3. Conditions that could mitigate security concerns include:

None.

On 16 August 2000, the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD, C³I) issued a memorandum to clarify the application of Guideline C., Foreign Preference, to cases involving possession and/or use of a foreign passport. In pertinent part, the ASD, C³I memorandum "**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.**"(Emphasis added).

Burden of Proof

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with

the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

Although Applicant has been a dual citizen of a foreign country and the United States since his naturalization in 1995, Applicant's foreign citizenship possesses little security significance if based solely on his birth in a foreign country. For Applicant's conduct to fall within the security concerns of Guideline C, Foreign Preference, he must have acted in a way to indicate a preference for a foreign nation over the United States. However, inimical intent or detrimental impact on the interests of the United States is not required before the Government can seek to deny access under Guideline C. The Government has a compelling interest in ensuring those entrusted with this Nation's secrets will make decisions free of concerns for the foreign country of which they may also be a citizen. Under this assessment, I conclude the Government has established its case under Guideline C.

Although Applicant claims to prefer his U.S. citizenship to his foreign citizenship, his conduct belies that assertion. Although Applicant is clearly proud of his U.S. citizenship, he has maintained significant aspects of his foreign citizenship. While his oath of allegiance to the U.S. and his rejection of allegiance to any foreign government in the citizenship oath is powerful evidence of a preference for U.S. citizenship, the citizenship oath does not automatically operate to terminate his citizenship rights in his birth country. The fact that his native country may still consider him a citizen would ordinarily not affect the analysis of Applicant's preference. However, in this case Applicant reasserted his foreign citizenship and his preference for that citizenship when he used his U.K. passport to arrange travel to other foreign countries while on business travel to China in 1996 and 1998, after his naturalization. He remains in possession of that passport, although he has offered to surrender it.

Regarding possession and use of his U.K. passport, Applicant meets none of the mitigating conditions (MC) for foreign preference.⁽³⁾ His dual citizenship is not based merely on his birth in a foreign country, but on his active assertion of his citizenship rights in that country. Applicant's voluntary assertion of his foreign citizenship rights occurred after he became a naturalized U.S. citizen. Although his conduct is lawful, there is no evidence that the conduct was formally sanctioned by the United States. Applicant has expressed a conditional willingness to renounce his foreign citizenship, which can be given little weight under the circumstances of this case, because Applicant first made that offer in June 2000, but has yet to take definitive action.

The ASD, C³I Memorandum only complicates matters for Applicant. The Memorandum states that Applicant's past possession and use of his foreign passport can be mitigated only if Applicant surrenders the foreign passport or obtains U.S. Government approval for its use. Applicant has undertaken neither action. Further, his demonstrated conduct in reasserting his foreign citizenship so soon after acquiring U.S. citizenship, and his inaction on his offer to renounce his citizenship and surrender his foreign passport cast serious doubt on his fitness for access to classified information, and presents an unacceptable level of risk that he has a foreign preference. I resolve Guideline C against Applicant.

In a similar fashion, Applicant appears vulnerable to foreign influence. Applicant's parents, in-laws, and siblings remain residents of Hong Kong (now under the political jurisdiction of China) and nominal citizens of the United Kingdom, and clearly present a potential pressure point for Applicant. Notwithstanding Applicant's representations that none of his family work for foreign governments, the record contains insufficient information about his family members to conclude that they do not constitute an unacceptable security risk as required by MC 1. I resolve criterion B. against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline C: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Paragraph 2. Criterion B: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: 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.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated 2 January 1992--amended by Change 3 dated 16 February 1996 and by Change 4 dated 20 April 1999 (Directive).
2. Applicant's clearance application (G.E. 1) contains a typographical error indicating he was born in the United States.
3. Although any acceptance of educational or other benefits and obligations of foreign citizenship before becoming a U.S. citizen are mitigated as occurring before his naturalization.