

DATE: April 29, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-11007

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On July 12, 2001, 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 the 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 August 2, 2001, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on February 22, 2002. A notice of hearing was issued on March 1, 2002. The hearing was held on March 21, 2002, at which the Government presented three exhibits. The Applicant presented one exhibit. The Applicant testified on his own behalf. The Applicant submitted two Post Hearing Exhibits referred to as Post Hearing Exhibits B and C. The official transcript (Tr.) was received on March 29, 2002.

On August 16, 2000, a memorandum was issued by Mr. Arthur Money, Assistant Secretary of Defense for Command, Control, Communications and Intelligence, clarifying "the application of Guideline C to cases involving an Applicant's possession or use of a foreign passport." The Applicant received a copy of this memorandum. (*See* Government Exhibit 3).

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, and the Government's documents. The Applicant is 62 years of age and married. He is employed as an administrator for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

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 1939 in Jamaica and was raised there. He moved to England in 1958, at the age of 19. He attended college in England, and worked for the Postal Service for several years before he moved back to Jamaica. Discontented with the Government in Jamaica, in 1978, at the age of 39, he moved to the United States. Since then, he has lived continuously in the United States. He obtained his United States citizenship in 1995. He applied for, and was issued a Jamaican passport in June 1992, which does not expire until June 2002. The Applicant also possesses a valid United States passport issued in 1996, which is valid until 2006.

The Applicant testified that when he took the oath to become a United States citizen, he thought that he had renounced his Jamaican citizenship. (Tr. pp. 18-19). He has no desire to continue his Jamaican citizenship, and did know that by holding a Jamaican passport he was considered a dual citizen. To surrender his passport, the Applicant sent his passport to his brother in Jamaica and instructed him to deliver the passport to the embassy. An affidavit from Applicant's brother dated March 26, 2002, indicates that sometime during the first two weeks of July 2001, he delivered the Applicant's passport to the office of the inistry of National Security in Kingston, Jamaica. (*See Applicant's Post Hearing Exhibit B*). The Applicant believes that he is no longer a Jamaican citizen. (Tr. p. 26).

The Applicant states that before he became a United States citizen, he used his Jamaican passport when he traveled abroad, the last time being in July 1995. After he became a United States citizen in December 1995, he has used his United States passport exclusively. (Tr. p. 22).

The Applicant admits that he owns an acre of undeveloped land in Jamaica that was given to him by his step-father over thirty years ago. (Tr. pp. 27 and 30). The Applicant does not want the land and does not intend to use it. He has recently asked his step-father to give it to the Applicant's brother's children. (*See Applicant's Post Hearing Exhibit C*).

The Applicant states that he has never provided any financial support to any extended family members in Jamaica.

Since becoming a United States citizen, the Applicant has not voted, paid taxes or held office in Jamaica. The Applicant is not entitled to any benefits from Jamaica, nor has he ever exercised any rights or privileges of a citizen of Jamaica. (Tr. p. 31). He states that he does not consider himself a Jamaican citizen. He considers himself to be a United States citizen. (Tr. p. 26).

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant has a step-father and a brother who are citizens of Jamaica, and who currently reside there. He telephones his step-father and brother about once every two months. His step-father is a retired banker and his brother is a financial controller for a private company. His brother's wife is a medical doctor. The Applicant sends them cards and presents at Christmas time. (Tr. p. 35).

Since 1992, the Applicant has visited Jamaica on three occasions. Each visit has been for the exclusive purpose of visiting his step-father and brother. The Applicant maintains no regular contact with any old friends in Jamaica. Those that he has "run into" during his visits were working in the hotel business. (Tr. P. 38).

The Applicant's mother-in-law is a citizen of Nicaragua, and his father-in-law is a dual citizen of the United States and Nicaragua. They both currently live in Nicaragua. They visit the United States once every two years. The Applicant's father-in-law is a retired Agricultural Economist for the Government of Nicaragua. He no longer has any contact with anyone from the Nicaraguan Government as he has been retired for almost ten years, and those that held office when he did have also retired. The Applicant's wife has telephonic contact with her parents on birthdays and holidays. The Applicant visited Nicaragua one time for his in-laws 50th wedding anniversary.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the

1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. 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:

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:

1. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport;

Conditions that could mitigate security concerns:

1. Dual citizenship is based solely on parent's citizenship or birth in a foreign country;
4. Individual has expressed a willingness to renounce dual citizenship.

Foreign Influence

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.

Condition that could raise a security concern:

1. An immediate family member, or 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:

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 the loyalty of the person(s) involved and the United States.
5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

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 general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- 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 criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have 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."

The Government must make out a case under Guideline C (foreign preference) and Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts have a direct and negative impact on his suitability for access to classified information.

The Applicant was born and raised in Jamaica. In 1978, he moved to the United States and has resided here since then. In 1995, he became a United States citizen. The Applicant plans on remaining in the United States. The Applicant does not believe that he is a Jamaican citizen, as he believes he renounced it when he took the oath to become an American citizen. After becoming a United States citizen in 1995, the Applicant has not used his Jamaican passport for any purpose. The Applicant surrendered his Jamaican passport in July 2001, to the Jamaican Embassy, in compliance with the requirements of the Money emorandum. Accordingly, the Applicant has clearly demonstrated an unequivocal

preference for the United States. Under the circumstances of this case, I find for the Applicant under Guideline C.

With respect to Guideline B, the evidence does not establish that he is vulnerable to foreign influence. The only close relatives the Applicant has in Jamaica are his step-father and a brother. There is no evidence his step-father or brother, who have no connection with the Jamaican Government, are in a position to be exploited by Jamaica in a way that could force the Applicant to choose between loyalty to the family and loyalty to the United States. The acre of property the Applicant owns is in the process of being transferred to his brother's children, as the Applicant has no interest in it.

Although the Applicant's father-in-law from Nicaragua was at one time associated with the Nicaraguan Government, he is now almost ten years into retirement. The record indicates that his father-in-law no longer has any association with, or influence upon, anyone from the Nicaraguan Government, or the United States, and therefore this does not raise a security concern. Based on the foregoing, Guideline B is found for the Applicant.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline C and Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines C and B.

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.

Subparas. 1.a.: For the Applicant

1.b.: For the Applicant

1.c.: For the Applicant

Paragraph 2: For the Applicant.

Subparas. 2.a.: For the Applicant

2.b.: For the Applicant

2.c.: For the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge