

DATE: August 27, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-12961

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's dual citizenship has been mitigated by his renunciation of his foreign citizenship and his act of surrendering his foreign passport to the appropriate foreign consulate. Clearance is granted.

STATEMENT OF THE CASE

On February 6, 2002, 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 February 13, 2002, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on May 28, 2002. A notice of hearing was issued on June 20, 2002. The hearing was held on July 17, 2002, at which the Government presented four exhibits. The Applicant presented seven exhibits. The Applicant testified on his own behalf. The Applicant also submitted a Post-Hearing exhibit identified as Post-Hearing Exhibit A. The official transcript (Tr.) was received on July 25, 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." (Hereafter referred to as the oney Memorandum). Attached to the Applicant's SOR was a copy of the Money Memorandum. (*See*, Government Exhibit 2).

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, his response to the SOR, his testimony at

the hearing, his documents, and the Government's documents. The Applicant is 29 years of age, married, and is employed as an Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Guideline C - Foreign Preference

The Applicant was born in Australia in 1973 to parents that were United States citizens, who were at that time, living in Australia for employment opportunities. By virtue of the fact that the Applicant was born in Australia, he considered himself a dual citizen. For the first fifteen months of his life, the Applicant lived in Australia. In late 1974, his family moved to the United States where he has lived ever since. The Applicant is married and has two children. They are all native born United States citizens. He owns a home in the United States, and has no immediate family that resides in Australia.

In 1997, two years before applying for employment with the defense department, the Applicant applied for an Australian passport simply for sentimental reasons, because he could. He never intended to use the Australian passport. (Tr. p. 30).

Upon receiving the SOR and its attachments, the Applicant was appraised of the Money Memorandum, and the fact that maintaining his Australian passport could have adverse security consequences. He immediately surrendered it to the Australian consulate. (*See*, Tr. p. 23 and Applicant's Exhibits A, B and C). The Applicant also expressed a willingness to renounce his Australian citizenship. On July 17, 2002, the Applicant voluntarily and willingly renounced his Australian citizenship. To renounce his Australian citizenship, he was required to file a form entitled "Declaration of Renunciation of Australian Citizenship" with the Australian Consulate. A copy of this form is in the record. (*See*, Applicant's Post-Hearing Exhibit A).

The Applicant has no financial or property interest in Australia, and has never voted in an Australian election. He has never received any benefit, economic or otherwise from Australia.

Letters of recommendation from his section manager and other professional colleagues collectively indicate that the Applicant is a dedicated employee, a hard worker and a good father. He is considered extremely reliable and dependable, and an asset to their company. (*See*, Applicant's Exhibit E).

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.

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) 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 may be prone to provide information or make decisions that are harmful to the interests of the United States. 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 of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility, this Administrative Judge concludes that, although the Government established its case as to all allegations in the SOR, the Applicant no longer holds dual citizenship and thus that fact no longer has a direct and negative impact on his suitability for access to classified information.

The mere possession of a foreign passport, and dual citizenship status, raises legitimate questions as to whether an Applicant can be counted upon to place the interests of the United States paramount to that of another nation.

My interpretation of the Money memorandum is that, in all cases involving an Applicant who has possessed or used a foreign passport, Guideline C requires a denial of the security clearance request unless the Applicant offers credible evidence that he (1) has obtained official approval for its use from the appropriate United States Government agency, or (2) has surrendered the passport.

Upon notification of the Money memorandum, and its ramifications, the Applicant has chosen to voluntarily and willingly relinquish his Australian passport, and to renounce his Australian citizenship. He is no longer a dual citizen. He is a United States citizen by birth who has made the United States his permanent home. He has lived in the United States since he was fifteen months old, and has never returned to Australia. He obtained his education in the United States and has always been employed in the United States. He intends to reside in the United States for the duration of his life. I am convinced that the Applicant clearly prefers the United States over Australia. He has demonstrated his commitment by surrendering his foreign passport, and renouncing his foreign citizenship. Accordingly, under the circumstances of this case, Applicant's request for a security clearance should be granted under Guideline C.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his foreign preference. The Applicant has met the mitigating conditions of Guideline C and of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline C.

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

DECISION

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

Darlene Lokey Anderson

Administrative Judge