

DATE: June 2, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-13971

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Department Counsel

FOR APPLICANT

Francis J. Flanagan, Esq.

SYNOPSIS

Applicant, a United States citizen from birth, acquired post-nuptial Irish citizenship and an Irish passport in 1995, for added security when traveling abroad. On being advised of the foreign preference concerns raised by the acquisition of foreign citizenship and use of a foreign passport, Applicant surrendered his Irish passport and commenced the process to relinquish his Irish citizenship. There is little risk of foreign influence raised by the dual citizenship (Ireland and United States) of his spouse, who has also applied to renounce her foreign citizenship, or by his mother-in-law's status as a citizen of the United Kingdom prior to her United States naturalization. Applicant's relationships with spousal relatives residing in Ireland are sufficiently casual to raise little security concern. Clearance is granted.

STATEMENT OF THE CASE

On November 15, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR) to the 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 continue his security clearance. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on foreign preference concerns (guideline C) related to the Applicant's dual citizenship with the United States and the Republic of Ireland (hereafter Ireland), his possession and use of an Irish passport, and his possible retirement to Ireland, and on foreign influence concerns (guideline B) related to the alleged dual citizenship of his spouse and mother-in-law, and the Irish citizenship and residency of his spouse's relatives.

On November 25, 2002, Applicant executed an Answer to the SOR and requested a hearing before a DOHA Administrative Judge, and the case was assigned to me on January 13, 2003. Pursuant to formal notice dated February 4, 2003, a hearing was scheduled for February 27, 2003. On February 21, 2003, Applicant was granted a continuance of the hearing. Pursuant to amended notice dated March 4, 2003, the hearing was rescheduled for March 26, 2003.

At the hearing held on March 26, 2003, eight Government exhibits were entered into evidence without objection. Applicant testified on his behalf and submitted four exhibits, all admitted without objection. The record was held open for ten days following the hearing for the Government to submit a copy of Applicant's response to a letter of intent to deny him access to sensitive compartmented information (SCI). The document, received by facsimile on April 4, 2003, was marked and admitted as exhibit 9, Applicant having filed no objection to its admission. Also on April 4, 2003, DOHA received the transcript of the hearing held on March 26, 2003.

At the Government's request, official notice has been taken of information provided by the Embassy of Ireland regarding Irish citizenship, including the process for acquiring Irish citizenship through post-nuptial declaration.

FINDINGS OF FACT

After a thorough review of the evidence, and on due consideration of the same, I render the following findings of fact:

Applicant is a 58-year-old senior principal systems engineer who has worked for the same defense contractor since 1966, with the exception of 1975 to November 1977 when he was employed as a nuclear construction engineer for another defense firm. Originally granted a security clearance for active duty service in the United States (hereafter US) military from 1962 to 1966, Applicant has held a security clearance for about forty years.

Applicant's ancestors came to the US from the UK in about 1690. Born and raised in the US, Applicant in 1978 married a US citizen whose parents emigrated to the US from Ireland in 1928. Applicant's in-laws entered the US as citizens of the UK. ⁽¹⁾

Circa 1993, Applicant's spouse learned she was entitled to Irish citizenship because of her parents' birth in what is now the Republic of Ireland. She applied for and was granted Irish citizenship and an Irish passport. ⁽²⁾ She subsequently used that Irish passport to ease her entry into European Union nations, especially the UK en route to Ireland.

After a couple of unsettling encounters while traveling abroad--Turkey for business in October 1990 and Germany for pleasure with his spouse in 1994--Applicant became concerned for his safety when traveling as a United States citizen, especially should he be required to travel to the Middle East for work. With frequent trips to Europe for business and temporary duty in the Middle East a possibility, Applicant in early 1995 inquired of security officials at work whether acquisition of an Irish passport would present any security issues. A security administrator checked with DSS and was advised dual citizenship with Ireland would not have an adverse impact on Applicant's security clearance. Based on that advice, Applicant applied for, and in June 1995 obtained, Irish citizenship by post-nuptial declaration and an Irish passport. Applicant thereafter took both his United States and Irish passports with him on his international travels. He presented his Irish passport only when entering the UK in order to avoid waiting in the long lines common at the airport for citizens of non-EU nations. He presented his US passport when entering and exiting other European nations and countries in the Far East and the Pacific.

Applicant's secret security clearance was renewed in November 1995. In conjunction with a request for an upgrade to top secret, Applicant completed a security clearance application (SF 86) in September 1996. Applicant disclosed his dual citizenship with Ireland and the US, his possession of an active Irish passport, valid to June 2005, "for security purposes when traveling on business for [his employer]." With respect to his spouse's citizenship, Applicant indicated her citizenship as US.

Circa June 1998, Applicant began work on SCI programs for his employer at a company facility located in another state. On December 9, 1999, the military adjudicative facility made a preliminary decision to deny Applicant eligibility to SCI (hereafter LOI) based on foreign influence and foreign preference, citing Applicant's dual citizenship with the US (from birth) and Ireland from June 1995; his spouse's dual citizenship (US and Ireland); his admission to a DSS agent in February 1997 that he and his spouse were considering purchasing land in Ireland where he might reside after retirement; his acquisition of an Irish passport because a US passport is not "as acceptable" in some of the foreign countries he visits, and he is less likely to be detained using his Irish passport in some foreign countries; and his extensive foreign travels, including vacations to Ireland in September 1993, July 1995 and July 1996.

Applicant's employer received the LOI in late February 2000, and it was sent by facsimile to Applicant's worksite in mid-March 2000. The following day, Applicant submitted a response to the LOI in which he explained his and his spouse's citizenship with Ireland was derived from her mother, who was a resident of Ireland until her emigration to the US at sixteen years of age. He attributed his acquisition of Irish citizenship to his desire to have a second passport "to minimize terrorist threats against [him] in a foreign country," as he is required to travel internationally for his employer to conduct military sales and "having a third world passport from Ireland increases [his] survivability in terrorist situations." He denied any intent to retire to Ireland, and addressed specifically the disqualifying factors related to foreign influence.

Circa May 2000, Applicant left the special access program and started a new assignment where he did not require SCI access. On May 26, 2000, Applicant was denied SCI access for reasons related to foreign preference:

Obtaining dual citizenship, and use of a foreign passport are indicators that an individual expresses a preference for a foreign country over the United States. Your theory of using a third-world passport in an effort to minimize the possibility of being targeted while visiting foreign countries was considered, however, you failed to provide information and formal documentation indicating you are willing to renounce your dual citizenship, and cease use of your foreign passport. (Ex. 3).

Neither Applicant nor his employer was aware of the final denial of access until Applicant was provided a copy of the document in preparation for the hearing on his collateral clearance. Applicant assumed the issue had been resolved in his favor, and he made no effort to check on whether or not this was the case since he no longer required SCI access for his duties.

On August 16, 2000, the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASDC3I) clarified the foreign preference adjudication guideline pertinent to possession/use of foreign passports, making it clear that possession/use of a foreign passport raises doubts as to whether the person's allegiance to the United States is paramount and it could facilitate foreign travel unverifiable by the United States. Possession/use of a foreign passport could not be justified on the basis of factors such as personal convenience, safety, the requirements of foreign law, or the identity of the foreign country. Applicant was not apprised of this policy by his employer, who was aware of his dual citizenship and possession of an Irish passport.

On April 11, 2002, Applicant was interviewed by a Defense Security Service (DSS) special agent about his foreign citizenship and connections. Applicant acknowledged his dual citizenship with the US and Ireland, for which he was eligible as the spouse of an Irish citizen and acquired for safety in international travel. Applicant admitted possessing an Irish passport, which he used to avoid going through lines when entering European countries. He described his habit of traveling with both his Irish and US passports on him, and related that in the event of a terrorist situation he could display his Irish passport as he would be less likely to be harmed. Citing some hotels' practice of retaining passports for guests until checkout, Applicant indicated he also did not want to turn over his US passport. Applicant denied any obligations or responsibilities associated with his Irish passport, and related he would be willing to renounce his foreign citizenship and surrender his passport if necessary for access and continued employment, but would prefer not to do so for reasons of personal safety and someone in a decision-making capacity would have to explain to him the rationale for the requirement. With regard to his spouse's relatives in Ireland, Applicant described their relationship as "not terribly close."

On receipt of the SOR in November 2002, Applicant became aware of the specific guidelines regarding foreign preference and foreign influence and the ASD3I policy clarification. Applicant turned in his and his spouse's Irish passports to his employer's facility security officer, awaiting further instruction from DOHA as to the disposition of the passports. Applicant also contacted the Irish Consulate regarding the procedures for surrender of the passport and formal renunciation of Irish citizenship. On or before January 30, 2003, Applicant and her spouse turned in their Irish passports to the Irish Consulate along with all the necessary documentation to renounce their foreign citizenship. Included in this documentation was Applicant's post-nuptial certificate of Irish citizenship. Applicant has no intent to reacquire Irish citizenship.

Applicant has never voted in an Irish election. Neither he nor his spouse has a financial interest in Ireland. They are not

likely to retire to Ireland because of the climate and his spouse's health issues.

Applicant has no relatives who are resident citizens of Ireland. His spouse has an elderly aunt as well as a cousin--a retired schoolteacher married to a retired car dealer--in Ireland with whom she keeps in contact. Applicant's spouse telephones her cousin twice per year. Twice in the past twenty years, this cousin visited Applicant and his spouse in the US. On trips to Ireland with his spouse in 1993 and 1995, Applicant visited his spouse's aunt and cousin. While on a business trip to the UK in 1996, he went to see his spouse's aunt in Ireland at the request of his mother-in-law. In 2002, Applicant's work took him to the UK about once per month. On four to six of his trips to the UK, he went to Ireland for personal reasons (shopping, sightseeing). Twice that year, he visited his spouse's relatives in Ireland. Applicant's spouse has three cousins who are resident citizens of the UK. Her contact with them is limited to holiday cards once per year.

Applicant's mother-in-law has been a US citizen since her naturalization in September 1937.⁽³⁾ As of March 2003, she was in hospice care in the US.

In 1999, Applicant was cited for an inadvertent security violation pertaining to an electronic mail message which contained information deemed inappropriate for disclosure by the customer. No action was taken against him beyond scrubbing his laptop computer. Applicant's request for continued access to classified information is supported by a rear admiral (ret.), a coworker for the past eight years. In his experience, Applicant has demonstrated technical ability, "unimpeachable honesty and integrity," and diligence in all matters of security.

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Foreign Preference

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 also 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.A3.1.3. Conditions that could mitigate security concerns include:

E2.A3.1.3.4. Individual has expressed a willingness to renounce dual citizenship

Foreign Influence

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 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.

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 or present in, a foreign country

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

E2.A2.1.3.1. 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.

E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the 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 is nonetheless security worthy. As noted by the United States Supreme Court in *Department of 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." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of the Applicant, I conclude the following with respect to guidelines C and B:

The Government established its case under guideline C, which is based on actions taken by an individual which indicate

a preference for a foreign country over the United States.⁽⁴⁾ A citizen of the US from birth, Applicant acquired in June 1995 Irish citizenship through post-nuptial declaration so that he would have a passport from another country to present in the event of a terrorist incident or other threat when traveling abroad. In demonstrated preference, Applicant used his Irish passport for convenience when entering the UK. As set forth by the ASDC3I in an August 16, 2000 policy clarifying guideline C as it applies to foreign passports, possession and/or use of a foreign passport raises doubt as to whether the person's allegiance to the United States is paramount, and it could also facilitate travel not verifiable by the United States. Although Applicant had received assurances from DSS that this indicator of foreign preference would not jeopardize his clearance (apparently because Ireland is considered a friendly nation),⁽⁵⁾ surrender of the foreign passport or official approval for its use is now a prerequisite for access to classified information. Disqualifying conditions E2.A3.1.2.1. (the exercise of dual citizenship) and E2.A3.1.2.2. (possession and/or use of a foreign passport) are clearly pertinent.

In mitigation of the foreign preference concerns related to dual citizenship and possession of a foreign passport, Applicant has not only expressed a willingness to relinquish his Irish citizenship and passport should it be required (*see* E2.A3.1.3.4.), he took concrete actions in that regard once he became aware of the security concerns. Applicant testified credibly he was not apprised of the ASDC3I's uncompromising mandate on foreign passports when he was interviewed by the DSS agent in April 2002. Immediately on receipt of the SOR, Applicant gave his foreign passport (and within days his spouse's Irish passport) to security officials at his company. Over the next couple of months, he pursued renunciation of his Irish citizenship. In late January 2003, Applicant submitted to the foreign consulate his application for citizenship renunciation, his certificate of Irish citizenship of post-nuptial declaration, and his Irish passport. In addition, his spouse surrendered her Irish passport and applied for citizenship renunciation. Given his compliance with Department of Defense requirements as well as the absence of any other potential indicators of foreign preference--no voting in Irish elections, no financial interest in Ireland, no acceptance of an economic benefit from Ireland, no residence in Ireland, no intent to retire to Ireland-- favorable findings as warranted as to subparagraphs 1.a., 1.b., 1.c., 1.d., and 1.e. of the SOR.⁽⁶⁾

Under guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation are not citizens of the United States or may be subject to duress. Whether an applicant's family ties in a foreign country pose a security risk depends on a common sense evaluation of the overall facts and circumstances of those family ties. Those individuals with whom Applicant shares a close relationship or is bound by obligation (spouse and mother-in-law) are US resident citizens. Since his spouse is also a citizen of Ireland, consideration is warranted of disqualifying condition E2.1.2.1. (an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country). Although Applicant's spouse has an aunt and cousins who are resident citizens of Ireland and cousins who are resident citizens of the UK, the record does not establish that Applicant has a sufficient personal bond, either by affection or obligation, with these individuals to raise foreign influence concerns because of their foreign status. Although Applicant has visited his spouse's relatives in Ireland, it was either when he was with his spouse or at the request of his mother-in-law, and not because of a close personal tie he shares with these foreign nationals.

The security concerns engendered by the foreign citizenship and/or residency of close family members may be mitigated where it can be determined 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 (MC E2.A2.1.3.1.). Applicant's spouse is not an agent of a foreign power. As a US native-born citizen and lifelong US resident with limited ties to Ireland herself, Applicant's spouse is not in a position to be exploited by a foreign power. While her recent application for renunciation of her Irish citizenship is pending Irish Government action, there is nothing to suggest it will not be approved. The Consulate General of Ireland indicated written confirmation of renunciation of her and Applicant's Irish citizenship will be forthcoming shortly. Evidently, he saw no impediment to the renunciation. Once her Irish citizenship is formally revoked, she will no longer have any duty or obligation to the foreign country.

With respect to Applicant's mother-in-law, she was a UK citizen prior to her naturalization in the US in 1937. Although she has some feelings of affection for her Irish relations, as evidenced by her requests for Applicant to visit her sibling,

there is little risk Applicant will be vulnerable to foreign influence through his mother-in-law, who was elderly and in hospice care in the US as of March 2003. Applicant and his spouse's contact with her Irish and UK resident citizen relatives is sufficiently casual and infrequent (*see* E2.A2.1.3.3.) to raise little foreign influence concern. Applicant has been candid with the Government about his foreign connections. In the unlikely event his spouse's family members residing abroad were to fall subject to undue influence or pressure, I am persuaded Applicant would report to proper authorities in the United States any contacts, requests, or threats by foreign authorities or individuals. Subparagraphs 2.a., 2.b., and 2.c. are likewise resolved in Applicant's favor.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline C: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Paragraph 2. Guideline B: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: For the 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 Applicant.

Elizabeth M. Matchinski

Administrative Judge

1. Ireland was an integral part of the UK at the time of his mother-in-law's birth. With the Anglo-Irish treaty of 1921, the Irish Free State was established within the British Commonwealth and Ireland was partitioned into Northern Ireland and Southern Ireland. The Republic of Ireland was not formally declared until 1948, long after Applicant's mother-in-law had emigrated to the US. *See* www.state.gov.

2. The only Irish passport of record for Applicant's spouse was issued in August 2002, valid for ten years. Given Applicant testified his spouse obtained her passport before he did (transcript p. 103), this passport must have been issued on renewal.

3. It is not clear whether his mother-in-law has dual citizenship with the UK and the US. There is no evidence she has ever applied for Irish citizenship.

4. Dual citizenship is recognized, but not encouraged, by the United States, and a decision to deny or revoke security clearance based solely on one's status as a dual citizen would raise constitutional issues. As the DOHA Appeal Board articulated (ISCR Case No. 99-0454, October 17, 2000), dual citizenship in and of itself is not sufficient to warrant an

adverse security clearance decision. Under guideline C, the issue is whether an applicant has shown a preference through his actions for the foreign country of which he is also a citizen. Among the specific behaviors which raise significant guideline C issues is possession/use of a foreign passport.

5. As reflected in exhibit A, Applicant in 1995 contacted his employer's security office and asked whether there would be any security issues related to his acquisition of an Irish passport. The senior security administrator responded there would be no problem, but "knowing [Applicant's] concern for security," she contacted the DSS to verify that his request to obtain dual citizenship with Ireland would not have an adverse impact on his clearance. DSS responded there was no issue.

6. Although Applicant told the DSS agent in April 2002 that he and his spouse might retire to Ireland, Applicant testified he had no clear intent to do so and that it was a speculative remark on his part.