

DATE: March 12, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-16526

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 27-year-old engineer was born in the United States to Japanese parents who came here to work and never left. He was a dual citizen of Japan because of his parents, who obtained a Japanese passport for him when he was a child. He renewed the passport after becoming an adult to please his parents. When he learned that holding a foreign passport disqualified him from holding a security clearance, he promptly renounced his Japanese citizenship and surrendered his Japanese passport. His relationship with his relatives in Japan is not close and he credibly expressed his intention to reject and report any attempt to influence him to divulge classified information. Mitigation has been demonstrated. Clearance is granted.

STATEMENT OF THE CASE

On August 22, 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, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On September 6, 2002, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made after a hearing before a DOHA Administrative Judge. The case was assigned to me on November 14, 2002, on which date a Notice of Hearing was issued. The hearing was conducted on December 3, 2002. At the hearing, Department Counsel offered four exhibits, which were marked as Government Exhibits (GX) 1 - 4. Applicant testified on his own behalf and offered one exhibit, which was marked for identification as Applicant's Exhibit (AX) A. Without objection by either party, all exhibits were admitted into evidence as marked. The transcript (Tr) was received at DOHA on December 19, 2002.

FINDINGS OF FACT

Applicant is a 27-year-old electrical engineer for a major defense contractor. His company is seeking a Secret security clearance for Applicant in connection with his employment.

Based on the contents of the case file, including Applicant's testimony and all exhibits, I make the following findings of facts as to each SOR allegation:

GUIDELINE C (Foreign Preference)

1.a. - As of the date of issuance of the SOR, August 22, 2002, Applicant was a citizen of the U.S. and Japan. He was born in the United States in 1976 to Japanese parents. Applicant renounced his Japanese citizenship on November 26, 2002.

1.b. - As of the date of issuance of the SOR, August 2, 2002, Applicant had a Japanese passport that he last renewed in July 1999, and that was due to expire in July 2009 (GX 4). His original Japanese passport was issued when he was an infant and has been periodically renewed (Tr at 24). Applicant surrendered his Japanese passport to a Japanese consulate officer on November 26, 2002, at the time he renounced his Japanese citizenship.

GUIDELINE B (Foreign Influence)

2.a. - Applicant's mother and father are citizens of Japan and reside in the United States.

2.b. - Applicant's sister is a dual citizen of the United States and Japan, on the same basis as Appellant, i.e., having been born in the United States (GX 3 and Tr at 19, 20).

2.c. - Applicant's uncles, aunts, and cousins are citizens and residents of Japan.

POLICIES

Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent to this case:

GUIDELINE C (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 act in such a way as to provide information or make decisions that are harmful to the interests of the United States.

Conditions that could raise security concerns and may be disqualifying include:

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

Conditions that could mitigate security concerns include:

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

GUIDELINE B (FOREIGN INFLUENCE)

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: (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 vulnerable to coercion, exploitation, or pressure.

Conditions that could raise security concerns and may be disqualifying include:

1. An immediate family member, or a person to whom the Applicant has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;

8. Existence of a substantial financial interest in Japan.

Conditions that could mitigate security concerns include:

1. A determination that the immediate family member(s), cohabitant(s), or associate(s) 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;

3. Contact and correspondence with foreign citizens are casual and infrequent.

I have evaluated the totality of the evidence under both the specific additional guidance found in Enclosure 3 to the Directive and the general guidelines found in Section E2.2.1 of Enclosure 2 to the Directive.

CONCLUSIONS

Applicant is an American citizen by virtue of his birth in this country, and a citizen of Japan by virtue of his parents being citizens of that country, although then residing in the United States.

He has a United States passport (GX 3). He considers himself to be "American more than Japanese" (Tr at 17). His parents obtained a Japanese passport for him in February 1976, when he was a child, and he periodically renewed it. When traveling to Japan prior to 1999, Applicant carried both passports and chose which passport to use based on which line was shorter (Tr at 25, 26). Applicant "renewed"/obtained a new Japanese passport on July 27, 1999, by applying to a Japanese consulate in the United States (GX 4 and Tr at 24 - 26). He "basically renewed [his] passport because [his] parents wanted [him] to do so" (Tr at 35). He used the new Japanese passport on only one occasion, in February 2000, to attend the funeral of his grandfather in Japan (Tr at 35, 45, and GX 4).

His parents have lived in the United States for more than 27 years, but have not become United States citizens, for reasons of which Applicant is not certain. Most of Applicant's relatives in Japan live in the same general area (GX 1 and GX 3). Three of his paternal uncles are school teachers, but none of his relatives work for or are otherwise connected with any level of government or the military in Japan (GX 3, at page 2). He does not keep in contact with his relatives in Japan as much as his parents do (*Id.*). As far as he knows, his parents do not provide any financial support to the Japanese relatives and he is unaware of any financial interests he may have in Japan because of his relatives there (*Id.*). Applicant has visited Japan four times in the seven years prior to his completing his December 1999 security clearance application, specifically 1993, 1994, 1996, and 1999 (GX 1 at Item 16). He travels there primarily to visit with his relatives, but otherwise has little personal contact (Tr at 33).

Applicant's father is owner and President of an electronics company in the United States. Neither his father nor his mother has become United States citizens, despite living in this country since at least 1976, the year of Applicant's birth, but Applicant does not know why (GX 3).

Applicant registered with the Selective Service System (GX 1 at Item 18) and considers himself to be a loyal United States citizen. He has never been approached to do so, but he would report any such attempt to persuade him to reveal classified information. (Tr at 40, 41). If asked, he would refuse, because "they are just my relatives. I don't owe them anything. You know, I'd say no, I can't do it. Sorry" (Tr at 41). He would also report any contacts to his security office (Tr at 42 - 44).

In September 2000, Applicant stated he would "give up [his] Japanese passport if required by [DoD] as a condition of

obtaining a security clearance" (GX 3 at page 2). At the personal appearance, Applicant stated that he had not received the Money Memorandum when he received the SOR in August 2002, and that he learned of its restrictions only a few weeks before the hearing, on November 15, 2002 (Tr at 30 - 32). Before that, he wasn't aware there was a potential problem (Tr at 36). Appellant's response was to immediately take action. He "fill[ed] out a form and also submitted it to the Japanese Consulate, [saying that he] revoke[d] his Japanese Citizenship" (Tr at 32 - 34, 39 - 41 and AX A). He was told to expect official conformation within 60 days (Tr at 43).

Guideline C (Foreign Preference)

1.a - Until recently, this 27-year-old Appellant was a dual citizen of the United States (because of his birth here) and of Japan (because of his parents' Japanese citizenship). That is no longer the case. Once he learned of the security significance of his Japanese citizenship and passport, he took immediate steps to surrender his passport and renounce his Japanese citizenship.

1.b. - As noted above, he has now surrendered his Japanese passport

Disqualifying Conditions (DC) 1 (exercise of dual citizenship) and 2 (possession and/or use of a foreign passport) are applicable. No other disqualifying conditions are shown by the record. Mitigating Conditions (MC) 1 (dual citizenship based solely on parents' citizenship) is established by the record. Under C 4, Applicant has not only expressed a willingness to renounce his dual citizenship, he has actually done so, along with surrendering his Japanese passport. I have considered facts of his past dual citizenship and possession and use of the Japanese passport. These are certainly of security significance. However, based on the totality of the evidence as to his life over the past 27 years, and the circumstances surrounding both the dual citizenship and passport issues, I conclude that Applicant's conduct, as cited in the SOR, does not show a preference for Japan over the United States. Overall, I find for Applicant as to all Guideline C allegations.

Guideline B (Foreign Influence)

2.a., 2.b., and 2.c. - The existence of Applicant's relatives in Japan is substantially correct as cited in the SOR, the only difference being that some of his older relatives are now deceased.

An applicant for security clearance "has the burden of demonstrating that his family ties in a foreign country did not place him in a position of vulnerability through possible foreign influence."⁽¹⁾

Disqualifying Conditions 1 (immediate family members or persons to whom he feels ties of affection or obligation, are citizens of or reside in a foreign country) applies, but none of the other possible disqualifying conditions are shown by the record. Based on Appellant's description of his relatives in Japan, his relationship with them, and the totality of the record, I conclude the relatives are not agents of a foreign power nor in a position to be exploited by the foreign government.

Moreover, Applicant has spent his entire life in the United States and identifies himself as an American. I find his definitive statement as to how he would respond if asked to do anything improper to be credible. While Applicant feels affection for his relatives, the relationship has not been shown to be close, and Applicant does not appear to feel any "loyalty" toward them, particularly in the context of a choice between the United States and Japan.

I conclude that MC 1 has been established to the extent that it outweighs the parallel disqualifying condition. Under MC 5, I conclude that Applicant's financial interests in Japan are indefinite and distant in time, to the degree that they exist at all. Overall, I find for Applicant as to all Guideline B allegations.

On the basis of the entire record, and evaluating Applicant under the Directive's whole person concept, I conclude that Applicant has demonstrated that he possesses the judgment, reliability, and trustworthiness required of anyone seeking access to the Nation's secrets.

FORMAL FINDINGS

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

Guideline C (Foreign Preference) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Guideline B (Foreign Influence) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.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.

BARRY M. SAX

ADMINISTRATIVE JUDGE

1. Appeal Board Decision, ISCR Case No. 00-0489 (January 10, 2002), at p. 11).