

DATE: May 9, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-18014

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a naturalized U.S. citizen, raised security concerns by continuing to possess a

valid United Kingdom and Northern Ireland (UK) passport and not disclosing it on his security clearance application. While he surrendered his UK passport to an official of the British Embassy, he is unwilling to renounce his UK citizenship and intends eventually to renew his UK passport and live in retirement in the UK. Furthermore, Applicant is strongly influenced by his guru, an Indian citizen, who resides in the UK. Applicant consults often with his guru and carries out financial and charitable activities with him. Clearance is denied.

STATEMENT OF THE CASE

On May 14, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, "*Safeguarding Classified Information Within Industry*," dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, "*Defense Industrial Personnel Security Clearance Review Program*," (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to 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 grant or continue a security clearance for Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn statement, dated December 19, 2002, Applicant answered the allegations set forth in the SOR, and requested a hearing. The case was initially assigned to Judge Roger Willmeth but, due to caseload considerations, was subsequently reassigned to me on January 28, 2003. A notice of hearing was issued on February 12, 2003, and I held a hearing in this matter on March 10, 2003. During the course of the hearing, the Government presented two documentary exhibits and the Applicant presented two documentary exhibits. Testimony was received from two Applicant witnesses—the Applicant and his direct supervisor. The transcript (Tr.) was received March 13, 2003.

FINDINGS OF FACT

Applicant admitted most of the factual allegations of the SOR pertaining to foreign influence under Guideline B (subparagraphs 1.b through 1.d); and all of the factual allegations pertaining to foreign preference under Guideline C (subparagraphs 2.a through 2.c). Applicant did not admit or deny the allegation under subparagraph 1.a of the SOR that his wife and son are citizens of the UK, but added that his wife and son are now U.S. citizens. Applicant denied the factual allegation of the SOR pertaining to personal conduct under Guideline E (subparagraph 3.a). Applicant's admissions are incorporated as findings of fact.

After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

The 52-year-old Applicant, who was born in Kenya, is a UK citizen and a naturalized citizen of the U.S. His wife, who was born in Uganda, is also a UK citizen and a naturalized citizen of the U.S. Applicant's 23-year-old son is a UK citizen and a naturalized citizen of the U.S. Applicant's two sisters and several nieces and nephews reside in the UK and are citizens of the UK, and Applicant visited them in the UK in 1994 and 1998. Applicant's guru, or religious leader, is a citizen of India who resides in the UK. Applicant speaks with the guru by telephone when he needs spiritual guidance, usually every month. (Tr. 44-45.) During his visits to the UK in 1994 and 1998, Applicant stayed with his guru and others in his religious congregation for 5 to 6 weeks. (Tr. 33) Applicant provides between \$1,000 and \$3,000 to his religious congregation each year. (Tr.35) Applicant also participates in financial and charitable activities in India. (Tr. 16.) Applicant has two uncles who reside in India. In 1996 when Applicant traveled to India, he met the uncles for the first time; in 2001 Applicant visited his uncles briefly in India. Applicant has stated that he tries to visit the UK and India "at least every two/three years." (Answer, at 2.)

Applicant possessed a UK passport issued February 23, 1994, with an expiration date of February 23, 2004. He became a U.S. citizen on October 3, 1996 and received a U. S. passport on March 24, 1998. Applicant completed a Security Clearance Application on March 21, 2000, and answered "NO" to Question 15 which reads as follows: "In the last 7 years, have you had an active passport that was issued by a foreign government?" (Govt. Ex.1.)

Applicant is unwilling to renounce his UK citizenship because he would like to retire in the UK. (Answer; Tr.36) On February 8, 2003, Applicant surrendered his UK passport to the Registrar in the Consular Section of the British Embassy in Washington, D.C. In a letter dated February 8, 2003, the Registrar stated that Applicant's passport would be held in the Registrar's Office of the Consular Section of the British Embassy and that his return of the passport did not constitute renunciation of Applicant's UK citizenship. (Applicant's Exhibit B)

In his sworn statement, Applicant stated: "I hold allegiance to the United States as the country I am presently living in." (Applicant's Sworn Statement, dated ay 9, 2001, at 3.) Applicant affirmed this statement in his testimony. (Tr 37.) Applicant also stated: "If I was living in the United Kingdom and. . . living under a British passport, then [my primary allegiance] would be [to the United Kingdom]." (Tr. 37.)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . .control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position ...that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Order No. 12,968, *Access to Classified Information*, § 3.1(b) (Aug. 4,1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. *See* Directive, Enclosure 2.

In the defense industry, the security of classified information is entrusted to civilian workers who must be counted on to safeguard classified information and material twenty-four hours a day. The Government is therefore properly concerned where available information indicates that an applicant for a security clearance may be involved in conduct that

demonstrates poor judgment, untrustworthiness, or unreliability on the part of an applicant. These concerns include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

An evaluation of whether the applicant meets the security guidelines includes consideration of a number of variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Exec. Or. 10864 § 2. *See* Exec. Or. 12968 § 3.1(b).

Adjudication Guidelines B, Foreign Influence (Attachment 2 to Enclosure 2), C, Foreign Preference (Attachment 3 to Enclosure 2), and E, Personal Conduct (Attachment 5 to Enclosure 2) are most pertinent to this case. The relevant provisions of Guideline B which apply to the facts of this case are:

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.

The following conditions under Adjudication Guideline B could raise a security concern and may be disqualifying:

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.A2.1.2.6 Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government.

The following conditions that could mitigate security concerns regarding foreign influence in the instant case 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.

The relevant provisions of Guideline C which apply to the facts of this case are:

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.

The following conditions under Adjudication Guideline C could raise security concerns and may be disqualifying:

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

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

The following conditions that could mitigate security concerns regarding foreign preference in the instant case include:

E2.A3.1.3.1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country

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

The relevant provisions of Guideline E which apply to the facts of this case are:

E2.A.5.1.1. The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personal security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

The following conditions could mitigate security concerns regarding personal conduct in the instant case:

E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;

E2.A5.1.3.3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts;

E2.A5.1.3.4. Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided.

By Memorandum dated August 16, 2000, Assistant Secretary of Defense for Command, Control, Communications, and Intelligence Arthur L. Money clarified the application of Guideline C as follows: [C]onsistent application of the guideline 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." Under the provisions of the Directive, a decision to grant or to 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. *See* Directive, 5. and 6.

Burden of Proof

An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by an applicant's admissions or by other evidence) and establishes conduct that creates security concerns 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 conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. Where the facts proven by the Government or admitted by the applicant raise doubts about the applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. In *Egan*, 484 U.S. at 531, the Supreme Court concludes that "[t]he clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Accordingly, doubts against an applicant's security worthiness are to be resolved against the applicant.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

With respect to the allegation set forth in subparagraph 1.a of the SOR of Guideline B, Foreign Influence, Applicant demonstrates that his wife and son are now U.S. citizens, with dual British citizenship, who reside in the United States and thus the security concern identified in subparagraph E2.A2.1.2.1 applies to Applicant's wife and son, although the concern is not significant since they are living in the U.S. as U.S. citizens. Applicant has two widowed sisters and several nieces and nephews who reside in the UK, and his contacts with these relatives have been infrequent, occurring only in 1994 and 1998 when he visited them in Great Britain, and in 1997, when the sisters came to his mother's funeral. Nothing in the record suggests that Applicant's sisters are agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the Applicant to choose between his loyalty to his sisters and the United States, and thus mitigating factor E2.A2.1.3.1 applies. Applicant has two uncles in India, whom he met for the first time in 1996 and with whom he visited briefly in 2001. Applicant's uncles are not classified as his immediate family members under the Directive and his contacts with them are infrequent and casual. Thus, mitigating factors E2.A2.1.3.1 and E2.A2.1.3.3 apply to the allegations set forth in subparagraphs 1.a, 1.b, and 1.d. of the SOR, and doubts about the nature of Applicant's contacts with his immediate family and his uncles must be resolved in favor of the Applicant.

In response to the allegation set forth in subparagraph 1.c of the SOR, Applicant admits close ties of affection with and obligation to a spiritual leader or guru who resides in the UK and who is a citizen of India. He relies on the counsel of the guru in directing his life and setting his personal goals and, thus, he consults regularly with the guru by telephone, usually once a month. When Applicant goes to the UK, he spends five or six weeks living with the guru in a spiritual community, and he supports the charitable work of the community with monetary contributions of \$1,000 to \$3,000 per year. While Applicant's actions can be seen as praiseworthy in a personal sense, his foreign contacts could have a direct and negative impact on his suitability for access to classified information for they bind him by affection, influence and obligation to individuals who are not citizens of the United States or Great Britain who might be subject to duress. The stronger the ties of affection or obligation, the more vulnerable the person is to being manipulated if the close associate is brought under control or used as a hostage by a foreign intelligence or security service. Applicant's close obligatory relationships with citizens and residents of India could create the potential for foreign influence that could result in the compromise of classified information and make Applicant vulnerable to coercion, exploitation, or pressure. (*See* Disqualifying Conditions E2.A2.1.1, E2.A2.1.2.1, and E2.A2.1.2.6).

Applicant has put forward no facts that would mitigate these security concerns and demonstrate that he would not be vulnerable to foreign influence that would result in the compromise of classified information. (*See* E2.A2.1.3.1; E2.A2.1.3.2; E2.A2.1.3.3) Accordingly, allegations in subparagraph 1.c of the SOR are concluded against the Applicant.

With respect to Guideline C, Foreign Preference, the Government has met its initial burden of showing that Applicant is a dual citizen of the United Kingdom and the United States. The security concern related to Applicant's dual citizenship is not mitigated by his parents' citizenship or birth in a foreign country. (Mitigating Condition E2.A3.1.3.1) Applicant refuses to renounce his UK citizenship because he plans to retire in the United Kingdom at some future as yet unspecified date.

While Applicant admitted he retained his UK passport after naturalization as an American citizen and after receiving an United States passport on March 24, 1998, he surrendered his UK passport on February 8, 2003, to the British Embassy, as required by the Money Memorandum *supra*. While Applicant's action demonstrates his superficial compliance with the requirements of the Money Memorandum, he fails to mitigate his intention to exercise his dual citizenship by accepting benefits from the United Kingdom when he retires in the United Kingdom. (*See* Disqualifying Conditions E2.A3.1.2.1 and E2.A.3.1.2.4.) Applicant's equivocation regarding his allegiance and loyalties is evident in his statements that he holds allegiance to the United States as long as he lives in this country, but if he were to live in the United Kingdom under his UK passport, he would give his primary allegiance to the United Kingdom. (Tr. 37-38)

While it is not disputed that the governments of the United States and the United Kingdom are democracies and have a long-standing relationship of friendship and mutual support, it does not follow that the national interests of both countries are interchangeable or that a person claiming dual citizenship with both countries could carry out those

interests faithfully and simultaneously. *See* ISCR Case No. 00-03417 (App. Bd. Mar. 29, 2002). Equivocal preferences with respect to the United States or a foreign country raise serious security concerns under the "clearly consistent with the national interest standard" and an applicant's ambivalence can raise doubts about whether the applicant can be expected to faithfully carry out the fiduciary obligations associated with being granted a security clearance. *See* ISCR Case No. 98-0419 (App. Brd. Apr. 30, 1999). These doubts must be resolved against Applicant in the adjudication of Guideline C. *Egan*.

With respect to Guideline E, Applicant failed to offer persuasive evidence in mitigation to the Government's allegation, pursuant to E2.A5.1.2.2, that he falsified his answer to Question 15 on the Security Clearance Application he executed on March 21, 2000. Applicant relies on Mitigating Condition E2.A5.1.3.4 and asserts that the official advising him failed to clarify Question 15 in response to his questions. I find that Applicant's explanation lacks credibility and that a common sense reading of the question makes clear that "foreign government" means any government other than the United States. The record shows, additionally, that Applicant was in possession of an active foreign passport until February 8, 2003, when he surrendered it to the British Embassy. Further, I conclude that the falsification was recent and not an isolated event and that Applicant was not forthcoming in providing the correct information voluntarily to the Defense Security Service. (Mitigating Condition E2.A5.1.3.2) Accordingly, allegation 3.a of the SOR is concluded against Applicant.

In my evaluation of the record, I have carefully considered each piece of evidence in the context of the totality of evidence and under all of the Directive guidelines that were generally applicable or might be applicable under the facts of the case. Under the whole person concept, I conclude that Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1, Foreign Influence (Guideline B): **AGAINST THE APPLICANT**

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: For the Applicant.

Paragraph 2, Foreign Preference (Guideline C): **AGAINST THE APPLICANT**

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

Paragraph 3, Personal Conduct (Guideline E): **AGAINST THE APPLICANT**

Subparagraph 3.a.: 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 the Applicant. Clearance is denied.

Joan Caton Anthony

Administrative Judge