

DATE: December 10, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-18419

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Kenneth M. Roberts, Esq.

SYNOPSIS

Applicant's relatives in the United Kingdom (UK) do not pose an unacceptable security risk. Since moving to the United States in 1992, applicant's conduct, including renouncing his UK citizenship, has indicated a clear preference for the United States. Clearance is granted.

STATEMENT OF THE CASE

On April 17, 2003, 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 administratively reissued on April 20, 1999), 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 clearance should be denied or revoked.

Applicant responded to the SOR in writing on June 1, 2003. The case was assigned to the undersigned on June 19, 2003. A Notice of Hearing was issued on July 2, 2003. Applicant requested a continuance, which was granted, and an Amended Notice of Hearing was issued on August 7, 2003. The hearing was held on August 27, 2003. The transcript was received on September 19, 2003.

FINDINGS OF FACT

Applicant is a 52 year old employee of a defense contractor.

Applicant was born and raised in the UK. He served 23 years in the Royal Air Force. He moved to the United States in 1992. He became a naturalized United States citizen in 1999. When he completed his Security Clearance Application (SCA) in 2000, he was unaware that he was still considered a UK citizen. He became aware of this fact when he received the SOR. Since then he has taken active steps to renounce his UK citizenship. In June 2003, he filed a

declaration renouncing his UK citizenship with UK authorities. Exhibit A establishes that the UK authorities received his declaration, as well as his UK passport. To date, applicant has taken all of the necessary steps to renounce his UK citizenship, a process that takes four to six months.

Applicant receives a monthly pension of about \$600.00 from the UK as a result of his service in the Royal Air Force. This money is deposited directly in an account applicant maintains in the UK for the purpose of providing financial assistance to his 82 year old mother. ⁽¹⁾ As of August 2003, applicant had approximately \$9,900.00 in the account.

Applicant and his wife have about \$40,000.00 in savings in the United States, and approximately \$180,000.00 in equity in their United States residence (TR at 56-57).

Applicant's mother, brother, daughter, and son-in-law are citizens and residents of the UK. Applicant talks with his mother about every week. He rarely talks with his brother and daughter. Applicant's sister and son live in the United States but are citizens of the UK. To applicant's knowledge, none of these family members has a connection to the UK government.

Applicant has two friends from his days in the Royal Air Force with whom he maintains contact by e-mail. The frequency of their e-mail exchanges has declined over time. The last one took place "maybe a year ago" (TR at 31, 61-62).

Applicant's wife, who is a United States citizen, has two sisters and a brother who are citizens and residents of Singapore. A third sister is a citizen of Singapore who currently resides in England. Applicant does not personally communicate with his wife's siblings. The siblings residing in Singapore are in the process of seeking to immigrate to the United States. At the time the SOR was issued, applicant's wife maintained a bank account in Singapore for the benefit of her family. She has since given up control of that bank account.

Applicant is proud to be an American. He and his wife plan on remaining in the United States after they retire.

Five individuals well acquainted with applicant, including three of his supervisors, appeared at the hearing and testified on his behalf. In general, these individuals are of the opinion that applicant is a man of integrity who is loyal to the United States.

POLICIES

Enclosure 2 of the Directive sets forth Guidelines (divided into Conditions that could raise a security concern and Conditions that could mitigate security concerns) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Disqualifying Factors and Mitigating Factors are applicable:

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 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.

Conditions that could raise a security concern:

E2.A2.1.2.1: An immediate family member is a citizen or resident of a foreign country.

Conditions that could mitigate security concerns:

E2.A2.1.3.1: The immediate family member in question is not an agent of the foreign power or in a position to be exploited by the foreign power in a way that could force applicant to choose between loyalty to the immediate family member and the United States.

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

E2.A2.1.3.5: Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

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 provide information or make decisions that are harmful to the interests of the United States.

Conditions that could raise a security concern:

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

E2.A3.1.2.2: Possession and/or use of a foreign passport.

E2.A3.1.2.3: Military service for a foreign country.

E2.A3.1.2.4: Accepting retirement benefits from a foreign country.

Conditions that could mitigate security concerns:

E2.A3.1.3.1: Dual citizenship is based solely on birth in a foreign country.

E2.A3.1.3.2: Indicators of possible foreign preference occurred before obtaining United States citizenship.

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

CONCLUSIONS

With respect to Guideline B, the evidence establishes that applicant's mother, brother and daughter are citizens and residents of the UK, and that his sister and son are citizens of the UK residing in the United States. Based on the evidence presented, I conclude that these immediate family members are not agents of the UK, or in a position to be exploited by the UK in a way that could force applicant to choose between loyalty to these immediate family members and loyalty to the United States.⁽²⁾ I reach this conclusion for at least two reasons: First, there is no credible evidence that any of these immediate family members are connected with the UK government. Second, it is highly unlikely that the UK, a democracy that is a strong ally of the United States, would risk threatening its relationship with the United States by exploiting its private citizens for the purpose of forcing a United States citizen to betray the United States.

The fact that applicant's wife's siblings are citizens of Singapore residing in either Singapore or England does not raise a significant security concern. Applicant does not maintain personal contact with them, and there is no credible evidence that any of them work for the Singapore government. Applicant's friendship with two UK citizens with whom he served in the Royal Air Force does not raise a significant security concern, particularly since his contacts with them are now "casual and infrequent."

Considering the evidence as a whole, I conclude that it is highly unlikely applicant would be pressured to compromise classified information as a result of his relationships/friendships with the foregoing individuals. I further conclude that, in the unlikely event pressure was exerted upon him to compromise classified information, he would resist it, and would report the incident to the proper authorities. This conclusion is based on the overwhelming evidence that since coming

to the United States in 1992, applicant has been a reliable and trustworthy individual who is loyal to the United States. Based on the foregoing, Guideline B is found for applicant.

With respect to Guideline C, the evidence establishes that applicant's UK citizenship is based on his birth in UK and that he is in the process of renouncing it. These are mitigating factors, as is the fact that his service in the Royal Air Force occurred prior to becoming a United States citizen. His receipt of a monthly \$600.00 pension from the UK government is not insignificant. However, based on the evidence as a whole, I do not believe that, in the highly unlikely event applicant was threatened with the loss of the pension, he would take action contrary to the interests of the United States. The fact is that since moving to the United States in 1992, applicant's conduct has indicated a clear preference for the United States. He has, through his actions and deeds, made it clear that he is grateful to have been given the opportunity to become a United States citizen, and that the United States is his home. Given these facts, and the fact applicant satisfied the security concern raised by his possession of the UK passport by surrendering it to UK authorities, Guideline C is found for applicant.

FORMAL FINDINGS

GUIDELINE B: FOR THE APPLICANT

GUIDELINE 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.

Joseph Testan

Administrative Judge

1. At the time the SOR was issued, applicant also had a savings account in the UK. This account has since been closed.
2. Accordingly, Mitigating Condition 1 is applicable to this case.