

DATE: February 12, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-18189

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Henry Lazzaro, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's conduct has always indicated a clear preference for the United States over Panama. The evidence does not establish that he is vulnerable to foreign influence. Clearance is granted.

STATEMENT OF THE CASE

On July 10, 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 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 July 31, 2002. The case was assigned to the undersigned on October 24, 2002, and a Notice of Hearing was issued on October 31, 2002. The hearing was held on November 19, 2002. The transcript was received on November 27, 2002.

FINDINGS OF FACT

Applicant is forty-three years of age. He served honorably in the United States Marine Corps from 1982 to 1990.

Applicant was born in the United States to an American father and a Panamanian mother. By virtue of his mother's Panamanian citizenship, applicant was considered a citizen of Panama. Applicant exercised his Panamanian citizenship by acquiring a Panamanian passport in 1992. He used the Panamanian passport to enter and exit Panama; he used his United States passport for all other foreign travel. The Panamanian passport expired in 1997. After applicant became aware of the Money Memorandum, he surrendered his Panamanian passport to a Panamanian consulate. At the time he surrendered the passport in August 2002, he also renounced his Panamanian citizenship (Exhibit A; TR at 53).

Applicant's wife, to whom he has been married since 1992, is a citizen of Panama. She is currently a permanent U.S. resident alien. Applicant's daughter is a dual citizen of the United States and Panama. Applicant's mother (a Panamanian citizen), his father (a United States citizen), and one of his brothers (a dual citizen of the United States and Panama), currently reside in Panama. (U) Applicant's other brother and sister, both of whom are dual citizens of the United States and Panama, reside in the United States.

Applicant has lived in both Panama and the United States. From 1990 to May 1999, he lived in Panama. While residing in Panama during this time, he was a civilian employee of the United States. Since May 1999, he has lived in the United States and has been employed by a United States defense contractor. His wife and daughter joined him in the United States a few months after he moved here in May 1999. She had remained in Panama in order to "wrap up affairs there" (TR at 55-56). It is the intention of applicant and his wife to have her apply for United States citizenship (TR at 45-47).

Applicant has never worked for the Panamanian government (TR at 63), and there is no evidence that any of his family members have ever worked for the Panamanian Government.

Letters from six individuals who have interacted with applicant on a social and/or professional basis were admitted into evidence (Exhibit J). These individuals speak highly of applicant's work ethic and loyalty 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:

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

Conditions that could mitigate security concerns:

1. E2.A2.1.3.1: A determination that the immediate family members 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.

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:

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

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

Conditions that could mitigate security concerns:

1. E2.A3.1.3.1: Dual citizenship is based solely on parents'

citizenship or birth in a foreign country.

2. E2.A3.1.3.4: Individual has expressed a willingness to

renounce dual citizenship.

The Money Memorandum

On August 16, 2000, Mr. Arthur L. Money, Assistant Secretary of Defense for Command, Control, Communications and Intelligence, issued a memorandum clarifying "the application of Guideline C to cases involving an applicant's possession or use of a foreign passport." In essence, the Money memorandum requires a denial of the security clearance request under Guideline C unless the applicant offers credible evidence that he or she (1) has obtained official approval for the use of the foreign passport from the appropriate United States Government agency, or (2) has surrendered the passport.

CONCLUSIONS

Based on the evidence presented, I conclude that applicant's ties to Panama (1) do not leave him potentially vulnerable to coercion, exploitation or pressure that could result in the compromise of classified information, and (2) do not indicate a preference for Panama over the United States.

With respect to Guideline B, the evidence does not establish that applicant is vulnerable to foreign influence, notwithstanding the facts that (1) his retired parents and one sibling currently reside in Panama, (2) his wife is a citizen of Panama, and (3) his siblings and daughter are dual citizens of the United States and Panama. There is simply no credible evidence that these family members are in a position to be exploited by Panama in a way that could force applicant to choose between loyalty to these family members and loyalty to the United States. Based on these facts, Guideline B is found for applicant.

With respect to Guideline C, the evidence establishes that applicant had dual citizenship solely because his mother is a Panamanian citizen. In 1992, he exercised his Panamanian citizenship by applying for and receiving a Panamanian passport. After applicant became aware of the Money Memorandum in 2002, he surrendered the then-expired passport to a Panamanian consulate, and at the same time, renounced his Panamanian citizenship. Applicant's conduct, including his honorable service in the United States military, has always indicated a clear preference for the United States over Panama. Based on these facts, 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. Applicant's father served in the United States Marine Corps for twenty years and then served twenty years in the United States civil service. He retired in 1991 (Exhibits M, N and O).