

DATE: December 31, 2002

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 01-18647

## **DECISION OF ADMINISTRATIVE JUDGE**

**JOHN R. ERCK**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Kathryn D. MacKinnon, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant was born in the Dominican Republic in 1977 and emigrated to the United States when she was nine years old. Before becoming a U.S. citizen in 1998, she had used her Dominican Republic passport for several visits to her native country. Now that she is a U.S. citizen and has a U.S. passport, she intends to use her U.S. passport for all future, foreign travel, and she does not intend to renew her expired Dominican Republic passport. While she was initially reluctant to renounce her Dominican Republic citizenship, she expressed a willingness to renounce her Dominican Republic citizenship in her most recent DOHA submission. The security concern raised by members of her family who are not U.S. citizens is mitigated by the fact most of these family members are long-term residents of the United States. Members of her extended family who reside in the Dominican Republic do not live under circumstances where they are likely to be victims of duress. Clearance is granted.

### **STATEMENT OF THE CASE**

On August 20, 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 finding under the Directive that it is clearly consistent with the national interest to grant Applicant's security clearance and recommended referral to an Administrative Judge to determine whether she should be granted a security clearance.

Applicant answered the SOR in writing on September 6, 2002, and requested a decision without a hearing. She received the File of Relevant Material (FORM) consisting of six items on October 7, 2002. She submitted a one page response on November 21, 2002. The case was assigned to this Administrative Judge on November 26, 2002.

### **REQUEST FOR**

## **ADDITIONAL INFORMATION**

On December 23, 2002, a conference call was conducted between Applicant, Department Counsel and the undersigned to resolve an ambiguity in the FORM. The SOR alleged in subparagraph 2.b. that Applicant had maintained an active Dominican Republic passport, that she had renewed it regularly until 1998 so she could use it on her travels to the Dominican Republic to visit her family, that the passport had now expired, and Applicant was uncertain whether she would renew it on her next visit to the Dominican Republic. Although Applicant admitted this allegation in its entirety, it was not clear from the information Applicant had provided that her Dominican Republic passport had expired. Nor had Applicant clearly stated that her Dominican Republic passport had expired in her May 2002 signed, sworn statement to the Defense Security Service (DSS) (Item 5).

During the December 23, 2002 telephone conference, Applicant affirmed that her Dominican Republic passport had expired and that she would make copies of the pertinent pages of this passport and forward them through Department Counsel. A copy of the requested document was transmitted by facsimile and received by the undersigned on December 30, 2002; it is entered in the record as Item 7. [\(1\)](#)

## **FINDINGS OF FACT**

The SOR alleges a security concern is raised by Applicant's exercise of dual citizenship (the Dominican Republic and the United States), by her having parents and siblings who reside in the United States but who remain citizens of the Dominican Republic, and by her grandfather, aunts, uncles and cousins who are residents and citizens of the Dominican Republic. In her answer to the SOR, Applicant admitted all allegations, except that part of the allegation in subparagraph 1.a. which alleged she was afraid to renounce her citizenship in the Dominican Republic. After a complete and thorough review of Applicant's admissions and the evidence of record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant was born in the Dominican Republic 25 years ago. When she was nine years old (in 1986) she emigrated to the United States with her mother, father, brother, sister and "some uncles and aunts" (Item 5). Three other siblings emigrated to the United States in approximately 1990. Applicant graduated from high school in 1992, received her bachelor's degree in May 1998, became a naturalized U.S. citizen in October 1998, and obtained her U.S. passport in August 1999. No other member of her immediate or extended family had become a U.S. citizen as of the date the SOR was issued. The members of Applicant's extended family who reside in the Dominican Republic support the general policy goals of the United States. Applicant assures she is not vulnerable to duress because of her relatives in the Dominican Republic.

Applicant has been employed as an accounting specialist by a DoD contractor since April 2001. She has not previously applied for a security clearance. She married a native born United States citizen in May 2002 (Item 5).

Applicant disclosed her dual citizenship in the SF 86 she completed in April 2001. Later, in her May 2002 signed, sworn statement to the DSS, Applicant explained she had received her Dominican Republic passport in 1986 when she left that country for the United States. She used her Dominican Republic passport for her annual trips to visit family in her native country from 1986 through 1996. Her Dominican Republic passport expired December 2000. Now that she has a U.S. passport, she plans to use it for future travel and is uncertain about whether she will renew her Dominican Republic passport. Although her Dominican Republic citizenship does not entitle her to any specific benefits, she indicated she was reluctant to renounce her Dominican Republic citizenship because she thinks she "might someday like to retire to the DR." She stated she was "afraid" to renounce her Dominican Republic citizenship, because doing so "could affect (her) retirement plans" (Item 5).

When Applicant responded to the SOR in September 2002, she stated she was "not afraid" of losing her Dominican Republic citizenship. And later in her November 2002 response to the FORM, Applicant stated her possessions, investments, and education were acquired or are in the United States. She stated she was willing to "renounce (her Dominican Republic citizenship--passport in order to clear and pursue (her) security clearance."

In August 2000, the Assistant Secretary of Defense for Command, Control, Communications and Intelligence

(ASDC3I), issued a memorandum to clarify the application of Guideline C, Foreign Preference, to cases involving possession and/or use of a foreign passport, in pertinent part, the ASDC3I memorandum "requires that any clearance be denied or revoked unless the [person] surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government." This memorandum as become known as the "Money Memorandum" (Item 6).

The record does not include any information about Applicant's professional expertise, experience, or competence.

## POLICIES

The Adjudicative Guidelines of the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case by case basis with an eye toward making decisions with reasonable consistency which are clearly consistent with the national interest. In making these overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but also in the context of the factors set forth in Section 6.3 of the Directive. In that vein, the Government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to Applicant's lack of security worthiness.

The following Adjudicative Guidelines are deemed applicable to this case:

### FOREIGN PREFERENCE

#### (Guideline C)

**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 and may be disqualifying include:**

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

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

**Conditions that could mitigate security concerns include:**

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

### FOREIGN INFLUENCE

#### (Guideline B)

**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 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.

**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) cohabitants 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.

### **Burden of Proof**

The Government has the burden of proving any controverted facts alleged in the SOR. If the Government establishes its case, the burden of persuasion shifts to Applicant to establish her security suitability through evidence which refutes, mitigates, or extenuates the disqualifying conduct and demonstrates it is clearly consistent with the national interest to grant or continue her security clearance.

A person who seeks access to classified information enters a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubt about Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate she 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 security clearance determinations should err, if they must on the side of denials." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against an Applicant.

### **CONCLUSION**

Having considered the record evidence in accordance with appropriate legal precepts and factors, this Administrative Judge concludes the Government has established its case under Guidelines C and B. In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section E2.2. dealing with Adjudicative Process.

A security concern is raised by Applicant's possession of a foreign passport. 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 security concern raised by Applicant's possession and use of her Dominican Republic passport has been mitigated. Applicant possessed and used a foreign passport **before** she became a United States citizen, and before she became eligible to receive a U.S. passport. Her Dominican Republic passport has expired, and she intends to use her U.S. passport for all future, foreign travel.

Since her Dominican Republic passport has expired, it is an inoperative document which cannot be used either to exit the United States or to enter the Dominican Republic; it is not a valid document which satisfies the "foreign passport" term as it appears in the Money Memorandum. Thus, it is not a document that must be surrendered to satisfy the requirement of the Money Memorandum. Guideline C is concluded for Applicant.

An additional security concern is raised by the members of Applicant's family who reside in the United States, but remain citizens of the Dominican Republic, and by the members of her family who reside in and are citizens of the Dominican Republic. A security concern may exist when an individual's immediate family, including cohabitants, and other person 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.

Applicant's parents, siblings and several aunts and uncles reside in the United States. Although none of them have become U.S. citizens, they are long-term residents (more than 10 years) of the United States. As U.S. residents, they are much less likely to be in a position where they could be exploited by a foreign government in a way that could force Applicant to choose between loyalty to them or the United States. As for Applicant's relatives who remain in the Dominican Republic, there is no evidence suggesting any of them are connected with the government of that country, or that Applicant has a close relationship with them. The relative with whom Applicant had the closest relationship (her grandmother) died since Applicant's 1998 visit (Item 5). Applicant has indicated her relatives who reside in the Dominican Republic support the general policy goals of the United States. She would report "any contacts, requests, or

threats to the proper authorities." Guideline B is concluded for Applicant.

### **FORMAL FINDINGS**

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

#### **PARAGRAPH 1 (Guideline C) FOR THE APPLICANT**

Subparagraph 1.a. For the Applicant

Subparagraph 2.b. 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 Applicant's security clearance.

**John R. Erck**

**Administrative Judge**

1. Item 7 is a six page document.