

DATE: August 19, 2002

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-19838

DECISION OF ADMINISTRATIVE JUDGE

JOHN R. ERCK

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant applied for and became a Canadian citizen for reasons of convenience after he had been employed continuously (by an American corporation) in that country for more than six years. The security concern raised by his dual citizenship is mitigated by the circumstances under which he became a citizen, and by his documented efforts to renounce his Canadian citizenship after learning it could jeopardize his security clearance. Clearance is granted.

STATEMENT OF THE CASE

On February 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 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 he should be granted a security clearance.

Applicant answered the SOR in writing on March 19, 2002, and requested a hearing before a DOHA Administrative Judge. The case was assigned to this Administrative Judge on June 5, 2002. On July 10, 2002, a hearing was convened for the purpose of considering whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government's case consisted of three exhibits. Applicant relied on his own testimony and three exhibits. A transcript (Tr.) of the proceeding was received on July 18, 2002.

FINDINGS OF FACT

The SOR alleged Applicant had indicated a preference for Canada over the United States because he, his ex-wife and daughter applied for and were granted Canadian citizenship in 1993, he has received medical benefits from the Canadian Medical System, he has received unemployment benefits from Canada, and he may be entitled to retirement

benefits from the Canadian Government. Applicant admitted he, his ex-wife and daughter had applied for and been granted Canadian citizenship, and he admitted receiving or being eligible to receive the cited benefits. He denied these actions established his preference for Canada over the United States.

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:

Applicant is 52-years-old and has been employed by the DoD contractor (Corporation A) that is his current employer for most of the past 25 years. The events that have raised a security concern about his possible foreign preference have unfolded over the past 19 years as a consequence of that employment. Previously, Applicant had served in the U.S. military from 1968 to 1972 and in the National Guard of State X from 1972 to 1974. He has held a secret personal security clearance during most of the past 25 years (Tr. 50).

In 1983, Corporation A assigned Applicant and his family to a remote region of Canada to serve as site manager of its facility at that location. He anticipated it would be a three year assignment, the same as his previous assignment for this employer (Tr. 48). However, he was not reassigned after three years, and he was not reassigned after six years. By 1989, Applicant was receiving assurances from Corporation A that he would be in Canada "a very long time" (Tr. 30-31). He was well-liked, and he enjoyed the work. In that environment and believing he would remain in Canada indefinitely, he initiated the paperwork to become a Canadian citizen. There is no evidence Applicant decided he and his family would become Canadian citizens because his years of living in Canada had caused him to change his allegiance. He has explained the decision was motivated by practical, economic considerations. As non-citizens, neither his wife nor his two children could work. His children were approaching college age and would not be eligible to attend college in Canada at the greatly reduced rates available to Canadian citizens. Becoming a Canadian citizen would relieve Applicant of the annual requirement of reapplying for his work visa, and becoming Canadian citizens would relieve his children of having to annually apply for visas to attend school.

Before initiating the process to become a Canadian citizen, Applicant checked with the U.S. Consulate to determine if there were consequences to him in becoming a dual citizen. He was advised there were none as long as he did not renounce his U.S. citizenship. He also asked his employer if his security clearance would be affected by dual citizenship (Tr. 38).⁽¹⁾ Corporation A, Applicant's U.S. employer, sponsored him in the process of becoming a Canadian citizen. The first step in becoming a Canadian citizen was to apply for and be granted "landed immigrant status;" an individual can apply for citizenship three years after being granted "landed immigrant status" Applicant applied for "landed immigrant status" in 1989. At about the same time, Applicant and his wife opened a bed and breakfast in their home.

In 1992, Corporation A lost the contract to provide services at the facility where Applicant had been employed. Applicant continued to work at the same facility at the same job for a different employer until October 1994. Although he and his wife had separated in the meanwhile, Applicant, his wife, and daughter became Canadian citizens in December 1993. Applicant and his wife would divorce in December 1994. Because additional management changes at the facility where Applicant was employed caused him to be doing work he did not like, he quit his job and moved back to the United States in October 1994. He moved in with his brother and was unemployed for a approximately 11 months.

Applicant received medical benefits from the Canadian health care system during the time he and his family lived in Canada. These benefits were not dependent or contingent on his being a Canadian citizen, and his eligibility for these benefits did not change when he became a Canadian citizen (Tr.32, 41). When Applicant attempted to collect unemployment after he returned to the U.S. he was told he was ineligible because he had not been employed in the U.S. He was eligible for unemployment benefits from the Canadian government and officials at the unemployment office (in the U.S.) assisted him in applying for these benefits which he later received (Tr. 32). Applicant is eligible to receive retirement benefits from the Canadian government because of the years he was employed in Canada. His entitlement to these benefits is not dependent on his being a Canadian citizen.

Currently, Applicant's ex-wife lives in the U.S.; his daughter retains her dual citizenship and lives and works in Canada; his son has not become a Canadian citizen but remains in the status of a "landed immigrant." He continues to live and work in Canada. Applicant does not own any property in Canada; he had never voted in a Canadian election, and he

never applied for or held a Canadian passport. He has repeatedly asserted that his principal loyalty has always been to the United States (Tr. 17). At his administrative hearing, Applicant presented a copy of the letter he had written to the Canadian Consulate renouncing his citizenship in that country, as well as a copy of a letter from the Canadian Consulate acknowledging receipt of his letter (Applicant Exh. A).

Applicant was rehired by Corporation A in May 1997--at a location in the United States. Information about his duty performance and professional competence is not included in the record.

POLICIES

The Adjudicative Guidelines in 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 determinations that are clearly consistent with the interests of national security. In making 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 in the context of the factors set forth in Section 6.3 of the Directive as well. 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 an Applicant's lack of security worthiness.

The following Adjudicative Guidelines are deemed applicable to the instant matter:

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, the he or she may be prone to provide information or make decisions harmful 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..1.2.4. Accepting educational, medical, or other benefits, such retirement and social welfare, from a foreign country;

Conditions that could mitigate security concerns include:

E2.A3.1.3.3. Activity is sanctioned by the United States;

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

Burden of Proof

The Government has the burden of proving any controverted facts alleged in the Statement of Reasons. If the Government establishes its case, the burden of persuasion shifts to Applicant to establish his 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 his 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 doubts about an Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate he 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 the appropriate legal precepts and guidelines, this Administrative Judge concludes the Government has established its case with regard to Guideline C. In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section 6.3, as well as those referred to in the section dealing with Adjudicative Process, both in the Directive.

A security concern is raised by Applicant and members of his family applying for and being granted Canadian citizenship, by his accepting health benefits from the Canadian health care system, and by his accepting unemployment benefits from the Canadian government. 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.

At the outset it is noted that Canada is a country with democratic institutions and traditions very similar to those of the United States. Being a citizen of Canada does not inevitably incline an individual toward actions and deeds which are hostile to the interests of the United States. The issues on which the two countries agree, at any given time, far outnumber the issues on which they disagree.

Against this background of common national goals and interests, the security concern raised by Applicant's becoming a Canadian citizen is mitigated by the circumstances under which this decision was made and implemented. There is no evidence Applicant, his wife and family, became Canadian citizens because they were disenchanted with the United States and desired to express their allegiance to another country. The decision to become Canadian citizens was motivated by practical, economic considerations, not by any change in their national allegiance. Only after Applicant and his family had lived in Canada for six years, and only when he was under the impression (from his employer) he would be there much longer, did he apply for "landed immigrant status." Applicant took the steps necessary to become a Canadian citizen only after receiving assurances from the American Consulate and his U.S. employer that doing so would not jeopardize his security clearance or his U.S. citizenship. Becoming a Canadian citizen relieved Applicant of having to renew his work visa on an annual basis; it permitted Applicant's wife and children to could get jobs (they were not permitted to work as non-citizens); and it made his children eligible to attend public colleges in Canada at the reduced rate available to Canadian citizens.

Those benefits which Applicant received and which the SOR alleges as being evidence of his foreign preference, were benefits available to Canadian residents irrespective of their citizenship. Applicant did not enhance his entitlement to the medical benefits available under the Canadian health care system, and he did not establish his entitlement to retirement benefits, or to unemployment benefits administered by the Canadian government by becoming a citizen of that country.

Although he became a Canadian citizen for the practical, economic reasons identified above, Applicant did not participate in significant attributes of citizenship that would establish his identify as a Canadian citizen and formalize his loyalty to its government. He did not vote in any Canadian election and he never applied for or possessed a Canadian passport. He arguably never did anything to exercise dual citizenship. As noted above, the benefits he received from the Canadian government were benefits he was entitled to because he lived and worked in Canada. When he learned his Canadian citizenship was a security concern that could result in the revocation of his security clearance, he took the necessary steps to renounce that citizenship. Guideline C is concluded for Applicant.

FORMAL FINDINGS

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

Paragraph 1 (Guideline C) FOR THE APPLICANT

Paragraph 1.a. For the Applicant

Paragraph 1.b. For the Applicant

Paragraph 1.c. For the Applicant

Paragraph 1.d. For the Applicant

Paragraph 1.e. For the Applicant

Paragraph 1.f. 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. Although Applicant did not testify as to his employer's response, it is assumed Applicant would not have applied for Canadian citizenship if in doing so, he would have jeopardized his security clearance and his livelihood.