

DATE: January 30, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-20499

**DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

**APPEARANCES**

**FOR GOVERNMENT**

Michael H. Leonard, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant was born in the US and is a dual citizen of the US and Antigua-Barbuda. The Applicant's mother and step siblings are citizens of and living in foreign countries. The Applicant has a current Antigua-Barbuda passport. Because the Applicant possesses a foreign passport clearance is denied.

**STATEMENT OF THE CASE**

On December 3, 2001, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding<sup>(1)</sup> it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On December 18, 2001, the Applicant answered the SOR and elected to have his case decided on the written record, in lieu of a hearing.

The Applicant received<sup>(2)</sup> a complete copy of the "File of Relevant Material" (FORM) dated December 21, 2001, and was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. The Applicant responded to the FORM on January 8, 2002. I was assigned the case on January 17, 2002, on which date the record in this case closed. The Department Counsel presented six exhibits (Items).

**FINDINGS OF FACT**

The SOR alleges foreign preference (Guideline C) and foreign influence (Guideline B). The Applicant admits the allegations.

The Applicant is 22 years old, has worked for a federal contractor since July 1999, and is seeking a security clearance. He was born in the US but has currently lived in Antigua-Barbuda since at least June 1995 (Item 5, page 4). He is a dual citizen of the US and Antigua-Barbuda. In 1995, the Applicant's mother applied for Antiguan citizenship (Item 3) in order to obtain a divorce, purchase land, and avoid having to have a work permit. On her citizenship application she

included her then minor children. At the time, the Applicant was 16 or 17 years old. The Applicant states he received his foreign citizenship after fulfilling seven years in Antigua-Barbuda while living with his mother. (Item 3, page 3)

The Applicant's mother is a dual citizen of the US and Antigua-Barbuda, living in Antigua-Barbuda. His father is a US citizen whose residence is unknown. His stepfather and a step sister are citizens of Antigua-Barbuda residing there. His sister is a dual citizen of the US and Antigua-Barbuda residing in the US. Two of his step brothers and a step sister are dual citizens of Venezuela and Antigua-Barbuda; two of them reside in Antigua-Barbuda; and the address of the other step brother is unknown. The Applicant has a step sister who is a dual citizen of Venezuela and Jamaica, who resides in the US. He has a half-sister who is a citizen of and resides in the US. At one time he had a girlfriend who was a citizen of and a resident of the United Kingdom. He is no longer romantically involved with anyone from a foreign country.

In April 1995, the Applicant was issued a Antigua-Barbuda passport, which expires in 2005 (Item 6, page3). The passport was obtained after the Applicant already possessed a US passport. Possession of the Antigua-Barbuda passport allows the Applicant: to work in Antigua-Barbuda without having to get a work permit; to obtain land there; and to travel easier into or out of Antigua-Barbuda. Without a Antigua-Barbuda passport, the Applicant would need a visa to enter Antigua-Barbuda or would have to show a return ticket out of the country. The Applicant has traveled on his current Antigua-Barbuda passport 12 times. He registered to voted in Antigua-Barbuda, but never voted. He has voted in a US presidential election.

In a sworn statement given in May 2001, (Item 6) the Applicant states:

I am willing to relinquish my foreign passport because my nationality is U.S. over any country . . . I will give up my Antiguan citizenship and passport if the need be. My loyalty lies with the U.S. because that is my true nationality. I have no foreign preference and beliefs to influence my ability to be free from conflicting allegiances, or concerns and ability to safeguard classified information.

In his January 2002 response to the FORM, the Applicant indicated he had talked to the Antigua-Barbuda minister of foreign affairs with responsibility for citizenship and passports, with the intention of denouncing his citizenship. The minister promised to send the Applicant the proper forms and advise him of the procedure for denouncing his Antigua-Barbuda citizenship.

There is no evidence in the file as to how frequently the Applicant contacts his mother, sister and step siblings. Nor is there evidence as to their occupations or evidence as to the possibility they may be subject to duress.

### 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 factors set forth in section E 2.2.1. 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 adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent 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. E2.A3.1.1.

Conditions that could raise a security concern and may be disqualifying include: E2.A3.1.2.

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

Conditions that could mitigate security concerns include: E2.A3.1.3.

None Apply.

**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. E2.A2.1.1.

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; E2.A2.1.2.1.

Conditions that could mitigate security concerns include: E2.A2.1.3.

None apply.

### **BURDEN OF PROOF**

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the Applicant who must remove that doubt and establish his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into 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, the applicant has a heavy burden of persuasion to demonstrate that 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 that 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 the applicant.

### **CONCLUSIONS**

The Government has satisfied its initial burden of proof under Guideline C, Foreign Preference. Under Guideline C, the security eligibility of an applicant is placed into question when an individual acts in such a way as to indicate a preference for a foreign country over the United States; he may then be prone to provide information or make decisions that are harmful to the interests of the United States.

The Applicant holds dual citizenship with the US and Antigua-Barbuda. In 1995, when the Applicant was a minor, his mother applied for citizenship Antigua-Barbuda to obtain a divorce, purchase land, and avoid having to have a work permit. After having a US passport, the Applicant obtained a Antigua-Barbuda passport to make entry into Antigua-Barbuda easier, to avoid having to get a work permit, and to allow him to purchase land if he chose to do so in the future.

On August 16, 2000, the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence issued guidance clarifying the application of the Foreign Preference adjudicative guideline. The ASDC3I memo states

any clearance must be denied or revoked unless the applicant surrenders the foreign passport or obtains approval for its use from the appropriate agency of the United States government. The Applicant has used the Antigua-Barbuda passport 12 times. The Applicant has expressed a willing to relinquish his foreign passport and has even talked with the Antigua-Barbuda minister of foreign affairs who has responsibility for citizenship and passports with the intention of denouncing his citizenship. But willingness to relinquish the foreign passport is insufficient. The memo requires surrender of the foreign passport, which the Applicant has not done. Nor has he received approval by the U.S. government for its use. Application of the ASDC3I memo is dispositive on the issue of Applicant's possession of a foreign passport. I find against the Applicant as to Foreign Preference (Guideline C) SOR subparagraphs 1.a., 1.b., 1.c. and 1.d.

Although the Applicant registered to vote in Antigua-Barbuda, he never actually voted. I find for the Applicant as to SOR subparagraph 1.e.

The Government has satisfied its initial burden of proof under Guideline B, (Foreign Influence). Under Guideline B, the security eligibility of an applicant is placed into question when the person has immediate family members or a person to whom the individual has close ties of affection are citizens of and/or residing in a foreign country. A security risk may exist where the Applicant is bound by affection, influence, or obligation to individuals who are not citizens of the United States or may be subject to duress.

At one time the Applicant had a girlfriend who was a citizen and resident of the United Kingdom. This is no longer the case. I find for the Applicant as to SOR subparagraph 1.a.

The Applicant's mother and sister are dual citizens of the US and Antigua-Barbuda. His mother resides in Antigua-Barbuda, his sister resides in the US. The file contains no information concerning the frequency of contact between the Applicant and his mother and sister nor does it contain any evidence concerning their occupations or their susceptibility to duress. Due to this lack of evidence, I cannot find the Applicant's mother and sister 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 persons involved and the United States. Neither MC 1<sup>(3)</sup> or MC 3<sup>(4)</sup> applies. I find against the Applicant as to SOR subparagraph 2.b. and 2.c.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

### **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 (Foreign Preference): **AGAINST THE APPLICANT**

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: For the Applicant

Paragraph 2 Guideline B (Foreign Influence): **AGAINST THE APPLICANT**

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: 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.

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**Claude R. Heiny**

**Administrative Judge**

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 as amended.
2. The Applicant received a copy of the FORM sometime between December 21, 2001-- the date of the FORM and January 8, 2002--the date he responded to the FORM.
3. MC 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.A2.1.3.1.
4. MC 3. Contact and correspondence with foreign citizens are casual and infrequent. E2.A2.1.3.3.