

DATE: November 29, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-21685

## **DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Marc E. Curry, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

A native citizen of Portugal, Applicant renewed her Portuguese passport in June 2000 so that she could travel to Portugal to see family members in July 2000. In June 2001, Applicant became a United States naturalized citizen and acquired a United States passport. She has since surrendered her Portuguese passport to the Portuguese consular authority, and has no intent to renew it. While her parents and most of her siblings (brother and four sisters) remain resident citizens of Portugal, and another sister resides in the British Isles, there is little risk of foreign influence presented by the foreign citizenship and residency of these family members. Clearance is granted.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR) on June 24, 2002, to the 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 the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on foreign preference concerns (guideline C) related to the possession of a valid Portuguese passport and foreign influence concerns (guideline B) related to the Portuguese citizenship and/or residency of her parents and siblings (one brother and five sisters).

On July 17, 2002, Applicant executed an Answer to the SOR in which she explained her possession of a Portuguese passport, and indicated she would be willing to relinquish the foreign passport to resolve any concerns. She also admitted the Portuguese citizenship and residency of close family members, and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on August 21, 2002, and pursuant to formal notice dated August 23, 2002, the hearing was scheduled for September 20, 2002. At the hearing held as scheduled, the Government's case consisted of two documents (security clearance application and passport interrogatory from the Applicant). Applicant

and her supervisor testified on her behalf, and she submitted a document from the Portuguese consulate reflecting surrender of her foreign passport on September 13, 2002. With the receipt on October 1, 2002, of the transcript of the hearing, this case is ripe for a decision.

### **FINDINGS OF FACT**

After a thorough review of the evidence, and on due consideration of the same, I render the following findings of fact:

Applicant is a 43-year-old senior logistics assistant employed by a defense contractor. Applicant seeks a secret security clearance for her duties, which include preparing packages for shipment through carriers.

A native of Portugal, Applicant emigrated to the United States with her spouse and young daughter in 1979. They were sponsored by her husband's brother, a resident citizen of the United States, as he wanted them to have a better life. Two other children were subsequently born to Applicant and her spouse in the United States.

Shortly after their emigration, Applicant's spouse got a job as a stone cutter for a granite company. In May 1983, Applicant went to work in assembly for a then major computer company in her geographic locale. After a couple of years, she moved to the warehouse where she did packing work. Circa 1992, the division employing Applicant was sold, and she transferred to the distribution department within the company. The company was subsequently acquired by a foreign corporation. In about the late 1990s, the facility employing Applicant was incorporated into a new entity, which focused on Government, rather than on commercial business. Applicant was advised by her employer that she had to acquire United States citizenship. Within a week, she filed her application for naturalization. Applicant had thought about becoming a United States citizen over the years, but had not pursued naturalization because of her lack of complete facility in English and the process ("so many questions").

Applicant maintained a Portuguese passport, which she used to travel to Portugal to see family members, including her parents, in June 1998. In conjunction with a planned trip to Portugal in July 2000, Applicant verified in 2000 that her Portuguese passport was about to expire. Wanting to have a valid passport just in case something happened to her parents and not knowing whether she would acquire her United States citizenship before her trip, Applicant applied for renewal of her foreign passport. In late June 2000, she was issued her Portuguese passport, valid until June 2010.

In June 2001, Applicant became a naturalized United States citizen, taking an oath to renounce all foreign allegiances, to support and defend the United States Constitution and its laws, and to bear arms or noncombatant service or civilian service on behalf of the United States if required. That same day, she applied for a United States passport. With no guidance as to what she should do with her foreign passport, Applicant retained it in her possession.

The day after she acquired her United States citizenship, Applicant executed a security clearance application (SF 86), EPSQ version. Applicant listed thereon her very recent United States naturalization, denying dual citizenship with the United States and another country. She disclosed the Portuguese citizenship and residency of her parents, and the Portuguese citizenship of her spouse. Applicant admitted thereon she was in possession of an active passport issued to her by Portugal in June 2000, but added she had applied for a United States passport.

On the date she signed her SF 86, Applicant was issued her United States passport, which is scheduled to expire in June 2011. Applicant picked up her United States passport on June 25, 2001, and she used this United States passport to travel to Portugal to see family members in late June 2001.

At the request of DOHA, Applicant responded to a "Passport Interrogatory" on May 20, 2002. At that time, she provided documentation confirming her possession of a United States passport issued in June 2001 and a Portuguese passport issued in June 2000. With the issuance of the SOR, Applicant was apprised that her possession of a valid passport issued by the Portuguese Republic could indicate a preference for that country over the United States. In response to the SOR, Applicant expressed a willingness to relinquish her foreign passport. On September 13, 2002, Applicant surrendered her foreign passport to the Consulate General of Portugal.

Applicant's spouse is a legal permanent resident of the United States. He has not applied for United States naturalization due to his limited knowledge of the English language. The daughter born in Portugal acquired United States citizenship

through naturalization in 1997 or 1998.

Applicant and her spouse own an unfinished home in Portugal, which they had started to build in about 1987, thinking they might return to Portugal to live. They did not finish the house, as they purchased a residence in the United States in 1996. As of September 2002, the unfinished home in Portugal was for sale, as it was unlikely Applicant or her spouse would return to Portugal to live. Applicant and her spouse have \$5,000.00 to \$6,000.00 US in a bank account in Portugal. The money was given to them by an aunt whom they had helped. Applicant and her spouse use that money when they go to Portugal on vacation. They have about \$30,000.00 in United States financial institutions.

Applicant's supervisor, who has known Applicant since she transferred into his department about ten years ago, has found her to be an excellent employee. He considers her one of the most honest people he has come across. She spends a significant amount of time trying to find the least expensive method of shipment to minimize cost to the Government.

Applicant's parents, her brother, and four of her five sisters are resident citizens of Portugal. Her parents, now in their seventies, are retired from jobs cleaning rooms in a hotel in the British Isles. One of Applicant's sisters still lives on the island, which is located off the coast of England. This sister's husband works for the local transit system, selling bus tickets. They have an adult son who works in a hotel on the island. Applicant's sisters in Portugal do not work outside the home. Those siblings who have minor children are occupied with their care as well as with working their farms. Three of Applicant's sisters in Portugal are presently married. Their husbands are employed as a baker, as a bus driver for the elderly, and as a packer in a banana plant, respectively. Applicant's brother works as a carpenter in Portugal. In the past three years, Applicant has telephoned her parents on a weekly basis. Her father has been ill for about a year, so she is concerned about his health. Applicant contacts her siblings monthly.

Applicant's spouse has a brother who is a United States resident citizen. He also has four sisters, all more than 65 years of age, and a brother, who are resident citizens of Portugal. Applicant has contact with them "once in a while" by telephone.

## **POLICIES**

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

### **Foreign Preference**

E2.A3.1.1. 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.A3.1.2. Conditions that could raise a security concern and may be disqualifying also include:

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

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

E2.A3.1.3.1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country

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

### **Foreign Influence**

E2.A2.1.1. 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.A2.1.2. 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.A2.1.3. 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), 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.A2.1.3.5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

### **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 its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue her 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 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 that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

## CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to guidelines C and B:

Guideline C is based on actions taken by an individual which indicate a preference for a foreign country over the United States. <sup>(1)</sup> A citizen of Portugal from birth, Applicant was a citizen solely of Portugal until her recent United States naturalization in June 2001. Sponsored by her brother-in-law, Applicant emigrated to the United States in 1979 with her spouse and daughter. Lacking proficiency in the English language, Applicant made no effort to acquire United States citizenship, even after she and her spouse purchased their home here in 1996. However, when acquisition of United States citizenship became a condition of her continued employment, Applicant applied for naturalization within a week. Prior to approval of her citizenship application, Applicant renewed her Portuguese passport in 2000 so that she could travel to Portugal to visit family members. The acceptance of a privilege/benefit of Portuguese citizenship prior to her United States naturalization in June 2001 does not fall within E2.A3.1.2.1. (exercise of dual citizenship), and does not raise foreign preference concerns (*see* E2.A3.1.3.2.). Consistent with her United States citizenship, Applicant applied for a United States passport on the day of her United States naturalization.

However, she continued to possess her Portuguese passport until September 13, 2002. Possession of a foreign passport after acquisition of United States citizenship is potentially disqualifying under guideline C (*see* E2.A3.1.2.2.). As set forth by the ASDC<sup>3</sup>I in his August 2000 memorandum clarifying the foreign preference guideline with respect to the possession and/or use of a foreign passport, possession of a foreign passport could facilitate foreign travel unverifiable by the United States and it raises questions of primary allegiance. <sup>(2)</sup>

Travel on her Portuguese passport was a viable option for her until the recent surrender of that travel document. In her favor, as confirmed by her use of her United States passport to travel to Portugal in June 2001, Applicant had no intent to travel on her Portuguese passport once she acquired her United States passport. Her retention of her foreign passport was not intended as an act of foreign preference.

Applicant kept the foreign passport because she was given no guidance by either Portuguese or United States authorities as to what she should do with the Portuguese passport once she became a naturalized United State citizen. Applicant's benign reason for possessing the foreign passport notwithstanding, denial of her security clearance is required unless she surrenders the foreign passport or obtains official approval from the United States Government for its use. After being informed that possession of a valid foreign passport could present an unacceptable security risk, Applicant expressed a willingness to relinquish her Portuguese passport. On September 13, 2002, she surrendered the Portuguese passport to the Consulate General of Portugal, indicating she did not need it as she has a valid United States passport. With the surrender of her Portuguese passport, and her credible intent not to reacquire one, the foreign preference concerns related to possession and/or use of a foreign passport have been mitigated.

As of September 2002, there is no indication Applicant had formally filed to renounce her Portuguese citizenship. <sup>(3)</sup> While an expressed willingness to renounce foreign citizenship is potentially mitigating of foreign preference concerns (*see* E2.A3.1.3.4.), the Department of Defense does not require the renunciation of foreign citizenship. A continuous resident of the United States since 1979, and a productive worker for her employer since 1983, Applicant intends to remain in the United States. In 1996, she and her spouse purchased their primary residence, and recently listed for sale the home they had started building in about 1987. Applicant's supervisor has high regard for her integrity and work ethic. Although she and her spouse have financial deposits totaling between \$5,000.00 and \$6,000.00 US in a bank in Portugal which they access when they are on vacation in Portugal, the majority of their assets are in the United States. There is no evidence Applicant maintains her Portuguese citizenship to protect any financial interests in Portugal. After considering all the facts and circumstances, there is little likelihood of Applicant acting in preference for Portugal over the United States in the future. Accordingly, subparagraph 1.a. is resolved in her favor.

Under guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation are not citizens of the United States or may be subject to duress. Applicant's spouse remains a citizen of Portugal, notwithstanding his United States residency and employment since 1979. While her adult daughter has acquired United States citizenship through naturalization, there is no evidence

this daughter has filed for formal renunciation of her Portuguese citizenship, which she acquired at birth. Applicant's parents and five of her six siblings are resident citizens of Portugal. Another sister resides in the British Isles with her family. Although Applicant does not travel with regularity to Portugal, she contacts her parents by telephone every week and her siblings monthly. 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, must be considered in assessing whether there is an unacceptable risk of foreign influence.

The security concerns engendered by the foreign citizenship of close family members may be mitigated where it can be determined 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 (MC E2.A2.1.3.1.). The United States citizenship and residency of her daughter, and the United States residency of her spouse greatly reduce the risk of them being susceptible to undue influence. Applicant's other two children are United States citizens from birth. Although Applicant's spouse speaks Portuguese primarily, he has been employed as a stone cutter for the same granite company in the United States since about 1979. As the years pass, the likelihood of him relocating to Portugal becomes even more remote. Of those family members residing abroad, her parents are retired from jobs cleaning rooms at a hotel on an island off the coast of England. Although Applicant's brothers-in-law are gainfully employed outside of the home, none appear to be in a prominent position of authority or influence which would cause attention to their activities. There is no evidence any of the relations residing abroad has ever come under any undue influence by foreign authorities. Nor is there anything unreasonable or untoward about Applicant's contacts with her family members in Portugal. In the unlikely event Applicant's relatives living in Portugal were to fall subject to undue duress or pressure, I am persuaded Applicant would report to proper authorities in the United States as well as her employer, any contacts, requests or threats by foreign authorities or individuals. Applicant has been candid with the United States about her foreign connections, and is of good character. Subparagraphs 2.a. and 2.b. are resolved in her favor.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline C: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Paragraph 2. Guideline B: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: 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.

**Elizabeth M. Matchinski**

**Administrative Judge**

1. Dual citizenship is recognized by the United States, and a decision to deny or revoke security clearance based solely on one's status as a dual citizen would raise constitutional issues. As the DOHA Appeal Board articulated (ISCR Case No. 99-0454, October 17, 2000), dual citizenship in and of itself is not sufficient to warrant an adverse security clearance decision. Under guideline C, the issue is whether an applicant has shown a preference through her actions for the foreign country of which she is also a citizen. Among the specific behaviors which raise significant guideline C issues is possession/use of a foreign passport.

2. In his memorandum of August 16, 2000, the ASDC<sup>3</sup>I stated, in pertinent part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government.

3. Applicant indicated on her SF 86 that she was not a dual citizen of a foreign country and the United States. Acquisition of United States citizenship does not automatically revoke Portuguese citizenship, as Portugal recognizes dual nationality.