

DATE: February 25, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-21985

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's dual citizenship, including possession and use of a valid foreign passport, has been mitigated. Clearance is granted.

STATEMENT OF THE CASE

On September 17, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on October 22, 2002, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on November 27, 2002. A notice of hearing was issued on December 10, 2002, scheduling the hearing for January 31, 2003. At the hearing the Government presented four exhibits. The Applicant presented one exhibit and he testified on his own behalf. The exhibit was returned to the Applicant upon his request. The record was left open for five days to provide the Applicant an opportunity to submit additional documentation. The Applicant submitted two Post-Hearing Exhibits. The official transcript (Tr.) was received on February 18, 2003.

On August 16, 2000, a memorandum was issued by Mr. Arthur Money, Assistant Secretary of Defense for Command, Control, Communications and Intelligence, clarifying "the application of Guideline C to cases involving an Applicant's possession or use of a foreign passport." The Applicant received a copy of this memorandum. (*See*, Government Exhibit 4).

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 32 years of age and holds a Bachelors of Science Degree in Computer Science. He is employed as a Computer Systems Administrator for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

At the time of the hearing, the Applicant was a dual citizen of the United Kingdom and the United States. He was born and raised in the United Kingdom to United States citizens who were teachers employed by the United States Department of Defense overseas. The only reason the Applicant is a dual citizen is because he was born in the England. The Applicant's birth was reported to the United States State Department and the Applicant was given a social security number. While growing up, he lived on a United States Air Force Base in England. He attended British schools from kindergarten to the sixth grade, and American schools of the Department of Defense from seventh grade until the twelfth grade. During his childhood, the Applicant frequently visited the United States, as his parent's employment contract allowed them to take ten weeks of vacation every two years.

In 1990, at the age of nineteen, the Applicant permanently moved to the United States to attend college, and he has since made it his home. Since he was a child, the Applicant has possessed a United States passport. When he was eighteen, he obtained a British passport for no other reason than to have one. He used his British passport only when he traveled to the European Economic Community countries while still living in England. Since moving to the United States he has not used his British passport for any reason. The Applicant's current British passport expires in April 2008.

The Applicant is presently a Captain in the Army National Guard, for which he has served for thirteen years. The Applicant expresses a sincere loyalty to the United States, and a willingness to relinquish his United Kingdom citizenship and passport. He has no knowledge as to what he should do to accomplish this. He contacted the Defense Security Service, and his company security office, but no one has provided him with any helpful information.

The record was left open for five days to allow the Applicant an opportunity to properly surrender his passport and renounce his British citizenship. The Applicant submitted a copy of his Declaration of Renunciation of British Citizenship dated February 4, 2003, and a receipt from the British Consulate General's Office, dated February 4, 2003, indicating that he surrendered his British passport and renounced his British citizenship. (See, Applicant's Post Hearing Exhibits 1 and 2). The Applicant's intends to use his United States passport when he travels to the United Kingdom in the future. (Tr. p. 25).

The Applicant explained that the only time he would ever conceal that he was a United States citizen would be under extreme circumstances, where if terrorists took over the plane and separated the Americans from everyone else, he would be English for a while. (See, Applicant's Answer to the SOR).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Preference

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. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport;

Conditions that could mitigate security concerns:

1. Dual citizenship is based solely on parent's citizenship or birth in a foreign country;
4. Individual has expressed a willingness to renounce dual citizenship.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline C (foreign preference) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or

extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign preference have a direct and negative impact on his suitability for access to classified information.

The Applicant was born and raised in the United Kingdom to parents who were United States citizens employed by the Department of Defense assigned overseas. As a young adult, the Applicant moved to the United States with the intent of making it his permanent home. He has lived and worked in the United States, and served in the Army National Guard since then. The Applicant had possessed a British passport for purposes of traveling throughout the European Economic Community countries. Since learning that possession of a foreign passport is not permitted when holding a security clearance, under the provisions of the Money Memorandum, the Applicant surrendered his British passport to the British Consulate General's Office and has completed a Declaration to renounce his British citizenship. The Applicant has complied with the requirements of the Money Memorandum. Accordingly, he has clearly demonstrated an unequivocal preference for the United States. Under the circumstances of this case, I find for the Applicant under Guideline C.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline C of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline C.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subparas. 1.a.: For the Applicant

1.b.: For the Applicant

1.c.: For the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge