

DATE: September 11, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-22243

**DECISION OF ADMINISTRATIVE JUDGE**

**WILFORD H. ROSS**

**APPEARANCES**

**FOR GOVERNMENT**

Martin H. Mogul, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has surrendered his passport and indicated a willingness to revoke his citizenship. His family connections are not of a type that would make him vulnerable to coercion or pressure. His financial interest overseas is very slight. Adverse inference is overcome. Clearance is granted.

**STATEMENT OF THE CASE**

On January 7, 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 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 January 28, 2002, and requested a hearing. The case was received by the undersigned on March 11, 2002, and a Notice of Hearing was issued on March 21, 2002.

A hearing was held on April 19, 2002, at which the Government presented three documentary exhibits, and called one witness. Testimony was taken from the Applicant, who called one additional witness, and also submitted one hearing exhibit and two post-hearing exhibits. Applicant's Exhibit B is a letter from the British Consulate-General, Los Angeles dated April 29, 2002; Applicant's Exhibit C consists of three notarized statements from family members. The transcript was received on April 29, 2002.

**FINDINGS OF FACT**

The Applicant is 56 and married. He is employed by a defense contractor as a Computer Operations Lead, and he seeks to obtain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and criterion in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

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.

The Applicant was born in the United Kingdom in 1946. He moved to the United States in 1987. The Applicant became a naturalized American citizen in September 1996. (Government Exhibit 1 at 1.)

In his Security Clearance Application dated January 12, 1999 (Government Exhibit 1), the Applicant stated "Yes" to question 15 where it asks "In the last seven years, have you had an active passport that was issued by a foreign government?" The Applicant had renewed his British passport for ten years in August 1996, a month before he became a naturalized American citizen. The Applicant possessed this British passport at the time of the issuance of the SOR. The Applicant has never traveled on this British passport. (Transcript at 26.)

The Applicant stated at the hearing that he would be willing to surrender his British passport and procedures were discussed concerning how he could do that. (Transcript at 28, 46-47 and 60-61.) Applicant's Exhibit B is a letter from the British Vice-Consul in Los Angeles stating that the Applicant surrendered his British passport to her on April 29, 2002.

The Applicant testified that he does not believe himself to be a dual citizen of the United Kingdom and the United States. He has no hesitation in letting the British Embassy know that he no longer views himself as a British citizen. (Transcript at 24-25 and 59-60.)

Paragraph 2 (Guideline B - Foreign influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has immediate family members or people to whom he may be bound by affection or obligation who are not citizens of the United States, or may be subject to duress.

The Applicant's wife is a naturalized American citizen, like the Applicant. The Applicant's mother and his two sons are British citizens. However, all three of them are permanent residents of the United States. The three of them filed notarized statements stating that they are currently living in the United States and have no intention of returning to the United Kingdom. (Applicant's Exhibit C.)

At the age of retirement, the Applicant may be eligible for a small pension similar to our Social Security. The Applicant has no other monetary interests overseas.

## POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors 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 factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. 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:

### Guideline B (Foreign influence)

#### Condition that could raise a security concern:

(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:

(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;

(5) Foreign financial interests are minimal and not sufficient to effect the individual's security responsibilities.

Guideline C (Foreign preference)

Condition that could raise a security concern:

(2) Possession and/or use of a foreign passport;

Conditions that could mitigate security concerns include:

(1) Dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(4) Individual has expressed a willingness to renounce dual citizenship.

Additional policy guidance regarding the possession of a foreign passport is also found in the August 16, 2000, Memorandum from the Assistant Secretary of Defense for Command, Control, Communications and Intelligence entitled "Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline." (Money Memorandum.) In pertinent part the Memorandum states, "[C]onsistent application of the [Foreign Preference] 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."

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 factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- 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 of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted

upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be a dual citizen or have foreign connections that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a 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."

### **CONCLUSIONS**

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has foreign connections, that he was a dual citizen of the United Kingdom and the United States, and that he possessed a British passport after he became an American citizen.

The Applicant, on the other hand, has introduced persuasive evidence in rebuttal, explanation and mitigation, which is sufficient to overcome the Government's case against him.

The evidence shows that the Applicant is willing to revoke his British citizenship, even though he believes himself only to be an American citizen. In addition, his British passport has been returned to the British Consulate, and is in their possession. Accordingly, he has more than fulfilled the requirements of the Money memorandum. In addition, other than his possession of a passport, there is no evidence that the Applicant ever exercised dual citizenship with the United Kingdom after he became an American citizen. Guideline C is found for the Applicant.

Turning to Guideline B, one finds that all the members of the Applicant's immediate family live in the United States. His mother and two sons state in writing that they have no intention of returning to England. His wife, like the Applicant, is already a naturalized American citizen. His British government pension is small, and is something he may collect sometime in the future. A common sense evaluation of the overall facts and circumstances of the Applicant's family ties persuasively shows that the Applicant is not in a position to be vulnerable to foreign influence. Guideline B is found for the Applicant.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

### **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.

Subparagraph 1.a.: For the Applicant.

Subparagraph 1.b.: For the Applicant.

Paragraph 2: 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 or continue a security clearance for the Applicant.

Wilford H. Ross

Administrative Judge