

DATE: April 24, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-22255

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Department Counsel

FOR APPLICANT

Edward H. Passman, Esquire

SYNOPSIS

The Applicant was born in Wales and is a dual citizen of the US and the UK. The Applicant's stepmother and her three siblings are citizens of and living in the UK. They are not agents of a foreign power or in a position to be exploited by a foreign power. Clearance is granted.

STATEMENT OF THE CASE

On November 9, 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 [\(1\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On December 1, 2001, the Applicant answered the SOR and requested a hearing. The case was assigned to me on February 21, 2002. A Notice of Hearing was issued on February 25, 2002, scheduling the hearing which was held on March 21, 2002. The Government's case consisted of two exhibits (Gov Ex). The Applicant relied on her own testimony and four exhibits (App Ex). A transcript (tr.) of the hearing was received on March 29, 2002.

FINDINGS OF FACT

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

The Applicant is 55 years old, has worked for aid organization since 1985, both as a volunteer and a paid employee, and is seeking a security clearance. Her job has always been in support of the US military. Her job has required foreign travel accompanying US troops, including five months in a war zone. (tr. 29, 69) She was also assigned to Oklahoma City following the bombing. (tr. 68) She is willing to voluntarily endure lengthy separations from her family to support the military. She has spent Christmas and other holidays at remote locations assisting the US military. She is a dedicated, loyal, gentle, untiring, caring, giving, hard-working individual who regularly works overtime and weekends

to support overseas deployments. The Applicant has a long list of awards, certificates, and medals for her duty performance. Her service to the organization is more of a calling than a job. She displays unwavering resolve to provide service to the community, military members, and their families. (App Ex C) It is something she loves doing and is a part of her life. (tr. 35)

The Applicant was born in UK. In August 1968, she married a German citizen. Her husband came to the US as a child and was raised in the US. When he went to Germany to study, he was drafted into the German army and assigned to Wales. There he met and married the Applicant. In 1973, he became a US citizen and currently works for the US DoD. His parent's and sister have become US citizens. The Applicant and her husband lived in Germany for a year awaiting the processing of the Applicant's immigration request. They moved to the US in 1969 (tr. 24, 40) and in August 1990, the Applicant became a naturalized US citizen. Her youngest daughter is a dual US and UK citizen. Her other daughter is solely a US citizen. (tr. 48)

In 1989, while living in Germany, she got a UK passport to visit her ill father in the UK. In September 1990, she obtained a US passport. She was told at the UK consulate that she would always be considered a UK subject, regardless of whether or not she became a US citizen. (tr. 41) At the consulate, she was also told after becoming a US citizen, they wanted to make it as easy as possible for her to visit UK, so she could keep her UK passport. (tr. 26) She was also advised that should she enter the UK on other than a UK passport she might be questioned at the entry point. (tr. 27) Therefore, the Applicant maintained her UK passport and renewed it in 1999 solely for the purpose of entering the UK. The US state department told the Applicant it was no problem for her to keep the UK passport. She would never have obtained the UK passport if she knew it could impact on her security clearance. (tr. 32)

When her father died, she and her three siblings inherited this house subject to a life estate held by her stepmother. The Applicant's mother died in 1973, when the Applicant was living in the US. Her father remarried in 1976. The Applicant assumes the house--valued at \$60,000.00 to \$70,000.00--will be sold following her stepmother's death. Her stepmother is an 80-year-old retired oil company secretary. Her father also left the Applicant a small bank account in both her name and her stepmother's. The account has the equivalent of approximately \$3,000.00. Although her name is also on the account, she considers it her stepmother's account. She believes the house and the account should have gone to her stepmother outright on her father's death.

Her primary loyalty is to the US. It took her a long time to make the decision to become a US citizen. It was not a decision she entered into lightly. As a new bride to a new country she was not 100% sure the US was the country for her and she wanted to keep her options open. (tr. 33) In 1990, her husband was reassigned to Europe with the DoD. When she returned with her husband to Europe, she missed the US and knew she would never return to the UK to live permanently. She made the decision to become a US citizen. She had to work hard with the Immigration and Naturalization Service to get her paperwork through the process for her naturalization. Her paperwork was lost three times. (tr. 34) She takes her citizenship seriously and stated (tr. 69, 70):

I consider myself a strong American. It's taken me a long time to come to the decision to become an American. The path wasn't an easy one, but I made the choice with a clear conscience. I knew that I wanted to become an American.

I knew that I was going to be spending the rest of my life in America and I just want everybody to understand that I do take my citizenship very, very seriously. I would never do anything to hurt any of the people that I serve with.

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. When the Applicant became aware of the memo she took immediate steps to surrender her UK passport to the British embassy. (App Ex A) The Applicant intends to never renew her UK passport. (tr. 28) Any further trips will be on her US passport. (tr. 45-46)

The Applicant assumed her UK citizenship had been renounced when she took her oath of allegiance to the US when she became a US citizen. (tr. 44) She is willing to again renounce her UK citizenship. (tr. 43)

The Applicant last lived permanently in the UK in 1968. She pays no UK tax, she has no retirement, social security, or

pension benefits in the UK. The Applicant and her husband's bank accounts are in the US. They own two homes in the US valued at a combined total of approximately \$240,000.00. She has approximately \$30,000.00 in savings in a US bank and approximately \$15,000.00 to \$20,000.00 in an individual retirement account (IRA) in the US. She is emphatic about voting in US elections. She has never voted in UK elections. She has been a Parent Teacher Association (PTA) president. She pays US taxes. She is vested in the aid organization to which she is employed. She owns a car in the US. She has a long history of residency and social service in the US.

When stationed in Europe and before her father's death, she would visit the UK twice a year. Since being back in the US she has visited the UK once a year or every other year. (tr. 31) She tries to visit her stepmother yearly. (tr. 59) The Applicant's calls her stepmother every other week and sends letters. Her siblings are all citizens of and living in the UK. They have visited her in the US and she has visited them on her trips to the UK.

Her siblings and stepmother do not work for the UK government, have never worked for the UK government, served in the UK military, nor are they agents of a foreign power. Her younger sister is a school principal married to a teacher. Her other sister is a social worker, married to a social worker. Her brother works for a US oil company, travels all over the world, and is married to a house wife. She sends them cards, letters, and presents. She e-mails her brother three or four times a month and telephones him once or twice a year at Christmas time or when she is going on a new assignment. (tr. 66) She last saw him in June 2001, but her previous visit with him was a couple of years before that. She e-mails her younger sister two or three times a month and calls her at Christmas time and on her birthday. She e-mails her sister periodically, sends holiday cards, and called on her 50th birthday. She has not seen this sister since 1984. She has three nephews to whom she mails birthday cards.

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:

1. The exercise of dual citizenship. E2.A3.1.2.1.
2. Possession and/or use of a foreign passport. E2.A3.1.2.2.

Conditions that could mitigate security concerns include:

1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country. E2.A3.1.3.1.
4. Individual has expressed a willingness to renounce dual citizenship. E2.A3.1.3.4.

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:

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:

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.

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 her 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 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." 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 the person acts in such a way as to indicate a preference for a foreign country over the US. Security concerns over the Applicant's possible foreign preference arise from her exercise of dual citizenship. The Applicant believes the UK may consider her a British citizen because she was born there. Disqualifying Condition (DC) 1⁽²⁾ applies. Although foreign law may impose dual citizenship on the Applicant, the Applicant has no control over this. The Applicant considers herself to be a US citizen and believes her UK citizenship was renounced when she took the oath of allegiance to become a US citizen. Mitigating condition (MC) 1⁽³⁾ applies.

In 1989, she obtained a UK passport so she could visit her ill father. The sole reason she got and kept her UK passport was because she had been told at the UK consulate that the UK would always consider her a UK subject, and entering the UK on other than a UK passport could cause problems. She used her UK passport solely to enter the UK. She would never have obtained a UK passport if she knew it could impact on her security clearance. Because she possessed and used a foreign passport, DC 2⁽⁴⁾ applies.

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

UK passport to visit the UK after become a US citizen. However, when the Applicant became aware of the ASDC3I memo she immediately relinquished her UK passport to the British embassy. (App Ex A) Additionally, the Applicant expressed a willingness to renounce her UK citizenship. She thought by taking the citizenship oath this had already occurred, but is willing to do it again. MC 4-(5) applies.

The Applicant, together with her three siblings, inherited their father's home worth \$60,000.00 to \$70,000.00. Her portion of the home--\$15,000.00 to \$17,500.00--is minimal when compared to her US assets which include two homes worth more than \$240,000.00. Receiving an inheritance--even if it is located in a foreign country--does not show the individual has acted in a way to show a preference for the foreign country. The Applicant does not maintain her foreign citizenship to protect this foreign property or any foreign financial interest. Owning foreign property could raise a concern under Guideline B, Foreign Preference, DC 8, (6) but mere inheritance does not show a concern under Guideline C, Foreign Preference. Had her partial ownership of the house been alleged under Guideline B, mitigating condition (MC) 5-(7) would apply because her UK interest is minimal when compared to her US assets.

The Applicant has a long history of residency and service in the US. It took her a while to make the decision she would never return to the UK to live permanently and to become an American. Although the path was not an easy one, and she had to work hard to get her paperwork through the naturalization process, she made the choice with a clear conscience. She knew she wanted to become an American and was going to be spending the rest of her life in America. It is clear she takes her US citizenship very, very seriously.

I find for the Applicant as to Foreign Preference (Guideline C) SOR subparagraphs 1.a., 1.b., 1.c., 1.d., and 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 and other persons to whom she is bound by affection are not citizens of the United States, reside in a foreign country, or may be subject to duress. The Applicant's step-mother--age 80--and three siblings are UK citizens, residing in the UK. Thus, DC 1. (8) applies.

The burden is on the Applicant to demonstrate that her stepmother and siblings are not in a position to be exploited by a foreign power. Her relatives do not work for the British or any other foreign government, have never worked for the British or any other foreign government, have never served in the British or any other foreign military, nor are they agents of a foreign power. Her ties to her stepmother and siblings present an acceptable security risk. The security concerns engendered by the foreign citizenship of her relatives are mitigated and MC 1-(9) applies. Her stepmother and siblings are not 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. I find for the Applicant as to SOR subparagraph 2.a.

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): FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Paragraph 2 Guideline B (Foreign Influence): 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 the Applicant.

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. DC 1. The exercise of dual citizenship. E2.A3.1.2.1.
3. MC 1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country. E2.A3.1.3.1
4. DC 2. Possession and/or use of a foreign passport. E2.A3.1.2.2
5. MC 4. Individual has expressed a willingness to renounce dual citizenship. E2.A3.1.3.4.
6. DC8. A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence. E2.A2.1.2.8.
7. MC 5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities. E2.A2.1.3.5.
8. DC 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.
9. 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.