

DATE: December 18, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-24102

## **DECISION OF ADMINISTRATIVE JUDGE**

**JOHN R. ERCK**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Erin C. Hogan, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant was born in Kenya 53 years ago to parents who were British citizens. He obtained his professional education in England and worked there for a time before emigrating to the United States permanently in 1986 and becoming a U.S. citizen in September 1997. The security concern raised by his exercise of dual citizenship and by the renewal of his British passport after becoming a U.S. citizen is mitigated by surrendering his British passport and by his stated willingness to renounce his British citizenship. The security concern raised by the members of Applicant's family who are citizens and residents of foreign countries is mitigated by there being no evidence they live under circumstances where they may be subject to duress. They reside in and are citizens of countries that share democratic traditions with the United States. Clearance is granted.

### **STATEMENT OF THE CASE**

On July 9, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant Executive Order 10865, "*Safeguarding Classified Information Within Industry*," dated February 20, 1960, as amended, and modified, and Department of Defense Directive 5220.6, "*Defense Industrial Personnel Security Clearance Review Program*" (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary finding under the Directive that it is clearly consistent with the national interest to grant a security clearance for Applicant and recommended referral to an Administrative Judge to determine whether a security clearance should be granted.

Applicant answered the SOR in writing on July 25, 2002, and requested a hearing before a DOHA Administrative Judge. The case was assigned to this Administrative Judge on August 21, 2002. On September 13, 2002, a hearing was convened for the purpose of considering whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government's case consisted of two exhibits. Applicant relied on his own testimony and the testimony of one other witness and on one exhibit. A transcript (Tr. ) of the proceeding was received on September 18, 2002.

## **FINDINGS OF FACT**

The SOR alleges a security concern is raised by Applicant's exercise of dual citizenship (the United Kingdom and the United States) and by his having a sister, brother, and two half-brothers who are citizens and residents of the United Kingdom, a sister who resides in Australia and is a dual citizen of Australia and the United Kingdom, and a half-brother who is a citizen and resident of India. In his answer to the SOR, Applicant admitted all allegations and included an explanatory note that he had not been required to give up his United Kingdom passport when he became a U.S. citizen, and having now been made aware of that requirement, he is willing to give up his United Kingdom passport "for a favorable resolution" on his security clearance application.

After a complete and thorough review of Applicant's admissions and the evidence of record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant was born in Kenya 53 years ago to parents who had previously emigrated to that country from the Indian sub-continent. His parents were British citizens--as is Applicant--because of their/his residence in a country of the former British Commonwealth. (1) Applicant lived in Kenya until 1965 when he moved to England to attend college where he received both his bachelors (1974) and masters (1977) degrees in mechanical engineering. He worked for a British company and remained in England until 1980. In February 1980, Applicant was hired by a U.S. company and moved to the United States where he remained until he was laid off in February 1983. He moved back to Europe and in the years between 1983 and 1986, Applicant worked for brief periods of time in Italy, Israel, and the United Kingdom. In July 1986, Applicant was rehired by the company for whom he had worked from 1980 to 1983; he remains an employee of that company to this day. He became a U.S. citizen in September 1997. He is currently applying for a secret security clearance (Tr. 40), having not previously applied for or held a security clearance.

As indicated above, Applicant is a dual citizen (the United Kingdom and the United States) as are his wife and two sons. Other members of Applicant's family live in Australia, England and India, and are citizens of the countries in which they reside, except for his sister who resides in Australia and is a dual citizen of Australia and the United Kingdom. He maintains regular contact with the members of his family through telephone and written communications. None of his family members are currently employed by the governments of their respective countries (Tr. 30-34), and they all reside in countries which have democratic traditions similar to those of the United States. Because of the years he worked in England, Applicant will be eligible for a pension at age 65. The amount of this pension is estimated to be about \$50.00 monthly (Tr. 25). Applicant has no additional financial interests in England, nor does he have financial interests in any other foreign country (Tr. 28).

Applicant renewed his British passport in April 1998 after becoming a U.S. citizen, and maintained his British passport primarily as a matter of convenience; it enabled him to get through the airport (presumably in the U.K.) without "going through the immigration line." (Tr. 27).

At his administrative hearing, Applicant submitted a copy of the letter he had written to the British Embassy on August 29, 2002. In his letter, he stated he was surrendering his British passport and included the passport. Applicant also submitted a copy of the return letter (2) he had received from the Embassy Registrar, accepting the surrender of his passport and explaining that surrender of his passport was not renunciation of his British citizenship. (3) Applicant testified he is willing to renounce his British citizenship and plans to do so (Tr. 26) "if that is required" (Tr. 35). Because the amount of his potential U.K. annuity is small, losing that pension would not dissuade him from taking that step (Tr. 28).

Applicant's immediate supervisor testified on his behalf. He described Applicant as a "very conscientious worker, an "independent, self starter," someone he relies on, and someone who has a good understanding of engineering structure.

## **POLICIES**

The Adjudicative Guidelines of 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 decisions with reasonable consistency which are clearly consistent with the interests of national security. In making these 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 also in the context of the factors set forth in Section 6.3 of the Directive. 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 Applicant's lack of security worthiness.

The following Adjudicative Guidelines are deemed applicable 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.

#### **Conditions that could raise a security concern and may be disqualifying include:**

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

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

#### **Conditions that could mitigate security concerns include:**

E2.A3.1.3.4. Individual has expressed a willingness to renounce dual citizenship.

### **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.

#### **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.A2.1.2.8. A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence.

#### **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.

### **Burden of Proof**

The Government has the burden of proving any controverted facts alleged in the SOR. If the Government establishes its case, the burden of persuasion shifts to Applicant to establish his security suitability through evidence which refutes, mitigates, or extenuates the disqualifying conduct and demonstrates it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubt about Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate 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 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 an Applicant.

### **CONCLUSION**

Having considered the record evidence in accordance with appropriate legal precepts and factors, this Administrative Judge concludes the Government has established its case under Guidelines B and C. In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section E2.2. dealing with Adjudicative Process.

A security concern is raised by Applicant's maintaining citizenship in the United Kingdom and the United States and by his using his British passport for travel to the United Kingdom. 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.

To demonstrate that his principal loyalty is to the United States, Applicant has surrendered his British passport and stated he is willing to renounce his British citizenship. In so doing, he has complied with the requirement imposed in the August 16, 2000 memorandum by the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (the Money Memorandum) and mitigated the security concern raised by his past exercise of dual citizenship, including his possession and use of a foreign passport. Guideline C is concluded for Applicant.

An additional security concern is raised by the members of Applicant's family who reside and are citizens of foreign countries: the United Kingdom, Australia and India. A security risk may exist when an individual's immediate family, 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.

Applicant's testimony describing his regular efforts to stay in touch with, and to communicate with members of his family establish his ties of affection to them. However, none of his family members are current employees of a foreign government, and all family members are citizens of and/or residents of countries with democratic traditions similar to those of the United States. There is little, if any likelihood, any member of Applicant's family could influence him to disclose classified information to unauthorized sources because there is no evidence any of them live under circumstances where they could be subject to duress. Guideline B is concluded for Applicant.

### **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) FOR THE APPLICANT

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

#### PARAGRAPH 2 (Guideline B) FOR THE APPLICANT

Subparagraph 2.a. For the Applicant

Subparagraph 2.b. For the Applicant

Subparagraph 2.c. For the Applicant

Subparagraph 2.d For the Applicant

Subparagraph 2.e. For the Applicant

Subparagraph 2.f. 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 Applicant's security clearance.

**John R. Erck**

**Administrative Judge**

1. It is not entirely clear whether their British citizenship derived from their birth in India, or their residence in Kenya (Tr. 35).
2. Dated 10 September 2002.
3. Both letters are included in Applicant's Exhibit 1.