

DATE: December 12, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-25006

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

In view of applicant's destruction of his foreign passport, his sincerely expressed willingness to renounce his foreign citizenship, and the clear preference he has shown for the United States during the past forty years, Guideline C is found for applicant. Clearance is granted.

STATEMENT OF THE CASE

On August 8, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, (as administratively reissued on April 20, 1999), issued a Statement of Reasons (SOR) to 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 applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on September 27, 2002. The case was assigned to the undersigned on October 28, 2002. A Notice of Hearing was issued on November 4, 2002, and the hearing was held on November 25, 2002. Following the hearing, applicant submitted three pages of documents for inclusion in the record. These documents, along with Department Counsel's one page memorandum indicating that she has no objection to applicant's submission, were marked as Exhibit B and admitted into evidence. The transcript was received on December 4, 2002.

FINDINGS OF FACT

Applicant was born in Hungary in 1953. After living in various countries, he and his family settled in the United States in approximately 1961. He has, for the most part, lived in the United States since then. He became a naturalized United States citizen in 1972.

By virtue of his birth in Hungary, applicant is considered a citizen of Hungary. Applicant, at his sister's suggestion,

exercised his Hungarian citizenship in 1998 by applying for and receiving a Hungarian passport. Applicant's sole motivation for obtaining the foreign passport was to be able to avoid identifying himself as an American if faced with a security threat overseas. He never used the Hungarian passport.

It is fair to say that at the time he applied for the Hungarian passport, he didn't realize it might affect his security clearance. When he later learned that it would, he attempted to surrender it to the Hungarian Embassy in Washington D.C. (Exhibit A). The embassy returned it to him with instructions to send it to the Hungarian Consulate in New York. Rather than follow that advice, applicant destroyed the passport in front of a Notary Public (Exhibit B).

Applicant has never made any statement of allegiance to Hungary. His loyalty and allegiance are to the United States (Exhibit 2). He testified credibly that he is willing to renounce his Hungarian citizenship (TR at 23). Applicant's wife is a naturalized citizen of the United States. They "have no intentions of ever returning to Hungary to reside or retire" (Exhibit 2).

POLICIES

Enclosure 2 of the Directive sets forth Guidelines (divided into conditions that could raise a security concern and conditions that could mitigate security concerns) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Disqualifying Factors and Mitigating Factors are applicable:

Foreign Preference

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:

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

Conditions that could mitigate security concerns:

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

CONCLUSIONS

Applicant was born in Hungary, but since age eight has lived in the United States. He became a naturalized United States citizen in 1972. Although he considers himself an American, by virtue of his birth in Hungary, he is still considered a Hungarian citizen by Hungary. Applicant did nothing to act on his dual citizenship status until the late 1990s when, at the suggestion of his sister, he applied for and received a Hungarian passport. His decision to apply for the Hungarian passport was based solely on security concerns; he was in no way expressing a preference for Hungary over the United States.

After learning that the possession of a Hungarian passport could adversely affect his access to classified information, applicant destroyed it. He has also expressed a sincere willingness to renounce his Hungarian citizenship. Given these two facts, as well as the clear preference applicant has shown for the United States since arriving in this country over forty years ago, I conclude that applicant clearly prefers the United States over Hungary, and would not use his status as a dual citizen to take any action contrary to the security interests of the United States. Based on these facts, Guideline C

is found for applicant.

FORMAL FINDINGS

PARAGRAPH 1: 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.

Joseph Testan

Administrative Judge