

DATE: April 18, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-26139

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq., Department Counsel

FOR APPLICANT

Anthony F. Vergnetti, Esq.

SYNOPSIS

Applicant, a 31-year-old native-born U.S. citizen, applied for and became a Spanish citizen, exercised dual citizenship by using a Spanish passport, and indicated his intent to renew his Spanish passport and maintain his citizenship to facilitate inheriting Spanish real estate owned by his parents. Applicant sufficiently mitigated these security concerns by renouncing his Spanish citizenship, having the Spanish passport canceled, and demonstrating that his foreign connections would not make him vulnerable to coercion, exploitation, pressure, or influence. Clearance is granted.

STATEMENT OF THE CASE

Applicant, an employee of a defense contractor, applied for a security clearance. The Defense Office of Hearings and Appeals (DOHA), the federal agency tasked with determining an applicant's eligibility for access to classified information, declined to grant Applicant a clearance. In accordance with the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR) on 29 October 2002 detailing why a clearance was not granted and recommending Applicant's case be referred to an administrative judge to determine whether the clearance should be denied/revoked. In the SOR, DOHA alleged Applicant failed to meet the foreign preference (Guideline C) and foreign influence (Guideline B) personnel security guidelines.

Applicant answered the SOR in writing on 17 December 2002. The case was assigned to me on 7 January 2003. A hearing was originally scheduled for 18 February 2003, but had to be delayed due to severe weather. On 20 March 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government's case consisted of two exhibits. Applicant testified on his own behalf, called one witness, and submitted six exhibits. A transcript (Tr.) of the proceeding was received on 29 March 2003.

FINDINGS OF FACT

Applicant was born in the U.S. in 1971 of Spanish parents who had moved to this country the previous year. Ex. 1 at 1;

Tr. 21-23. As a result, he was entitled to citizenship in both the U.S. and Spain. Tr. 63, 65. Applicant's father became a naturalized U.S. citizen in 1977. Applicant's mother is still a Spanish citizen and has not seen the necessity of becoming a U.S. citizen. Tr. 23. Applicant's parents travel to Spain once or twice a year, but have lived in the U.S. since they arrived in 1970. Tr. 23. They own approximately an acre of land with a house on it in Spain. Tr. 23-24, 68. His mother has mentioned possibly retiring to Spain. Tr. 41. Neither of Applicant's parents are associated with the Spanish Government in any way. *Id.*

Applicant grew up in the U.S. and attended schools here. Ex. 1 at 1-2. He registered with the selective service and has voted in all national elections since he turned 18. Tr. 24-25. In 1990, when Applicant was 18 years old, a friend told him that he was entitled to Spanish citizenship and could obtain a Spanish passport. Applicant applied for Spanish citizenship and a Spanish passport. Tr. 31-32. He received the Spanish passport in 1990 and renewed it in 1995. His passport expired in 2000. Tr. 90; Ex. 2 at 4. Although he carried the Spanish passport on some of the many trips he made abroad, he used it only once, in Panama, to avoid paying a visa tax. Tr. 34. He never exercised any rights associated with being a Spanish citizen, such as voting, except for the one-time use of the Spanish passport. *Id.* He has made many other trips out of the country for both business and pleasure, but always used his U.S. passport. Ex. 2 at 3-4. Applicant listed only Columbia as a destination for foreign travel on his security clearance application. Ex. 1 at 7. But, much of his foreign travel occurred between the date he completed his security clearance application and the date he was interviewed by the special agent of the Defense Investigative Service. *See* Ex. 2 at 4.

Applicant has no financial obligations or interests in any foreign country or to any foreign organization. Ex. 2 at 3. He does not provide any financial assistance to any persons living abroad. When interviewed about his dual citizenship, Applicant stated that he intended to renew his Spanish passport. Ex. 1 at 5. He wanted to maintain his Spanish citizenship to facilitate the paperwork necessary to inherit the property in Spain from his parents. *Id.* at 3.

After receiving his SOR, Applicant notified the Consulate General of Spain in New York of his desire to renounce his Spanish citizenship. Ex. A. Applicant filed the formal paperwork the Consulate General required to enact a renunciation of citizenship. Ex. C. His passport has been canceled. Ex. D.

Applicant married an immigrant from Portugal in August 1998. Ex. F at 12. They have a son who was born in the U.S. in May 2000. Ex. 1 at 5. Applicant's wife applied for permanent residence status and intends to apply for citizenship as soon as she is eligible. Tr. 44-45; Ex. F at 13. Her brother and sister are citizens and residents of Portugal. Her sister owns a coffee shop and has never worked for any government. She is married to a truck driver who, except for his compulsory military service approximately 22 years ago, has not been employed by any government. Ex. 2 at 2. The brother is a print press operator and has never worked for any government. *Id.*

Applicant maintains regular contact with a cousin who is a Spanish citizen residing in the U.S. with his wife, a citizen of South Africa. Ex. 1 at 1-2. He works as a for a telephone company and she is an office manager. Neither of them is associated in any way with a foreign government. Tr. 52.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of

participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2. *See* Exec. Or. 12968 § 3.1(b).

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. May 9, 2001). "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the Government establishes a prima facie case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

CONCLUSIONS

Guideline C-Foreign Preference

In the SOR, DOHA alleged under Guideline C that Applicant applied for and became a citizen of Spain, received a Spanish passport, exercised dual citizenship, used the passport in preference to his U.S. passport, and stated he intended to renew his Spanish passport.

Under Guideline C, an individual who acts in such a way as to indicate a preference for a foreign country over the United States, may be prone to provide information or make decisions that are harmful to the interests of the United States. Directive ¶ E2.A3 .1.1.

Applicable conditions that raised a security concern in this case are as follows:

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

The following mitigating conditions may be applicable to Applicant's case:

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

Applicant's Spanish citizenship was based solely on his parents' Spanish citizenship at the time of his birth. However, he apparently had to take some affirmative steps to establish his Spanish citizenship, which he did in 1990. And he clearly exercised dual nationality by using that passport in Panama. Nevertheless, once faced with the SOR, Applicant readily renounced his citizenship and had his passport canceled. After observing Applicant's demeanor and hearing his testimony, I am firmly convinced that his preference is for the U.S. He has mitigated the security concerns under Guideline C. Finding is for Applicant.

Guideline B-Foreign Influence

Under Guideline B, a security risk may exist when an individual's immediate family, and other persons to whom he 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. Directive ¶ E2.A2.1.1.

The following applicable conditions raise security concerns:

(1) Applicant has immediate family members, and persons to whom he has close ties of affection, who are citizens of, or resident or present in, foreign countries. Directive ¶ E2.A2.1.2.1.

(2) Applicant has a substantial financial interest in a country that could make him vulnerable to foreign influence.

The following mitigating conditions are applicable:

(1) The immediate family members and close associates are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to the persons involved and the U.S. Directive ¶ E2.A2.1.3.1.

(2) Applicant's foreign financial interests are minimal and not sufficient to affect his security responsibilities. Directive ¶ E2.A2.1.3.5.

Applicant is a U.S. citizen by birth and has lived here his whole life. He has traveled extensively, but most of it was related to his job. Although not as yet a U.S. citizen, Applicant's wife is pursuing that goal. Their son is a U.S. citizen by birth. The members of his immediate family and associates who are citizens of other countries or live overseas are not agents of foreign governments and obviously have some affection for the U.S. Although he has a potential interest in his parent's real estate in Spain, that is a rather remote interest and the evidence does not support a conclusion that the value of the property is anything but minimal. *See* ISCR Case No. 97-0403 at 3 (App. Bd. May 13, 1998) (claiming an applicant "does not have a financial stake in country A merely because he may (or may not) inherit unknown real or personal property at some time in the future from his parents"). Applicant recognizes his responsibility to report his foreign contacts and travel to appropriate security officials. I find that Applicant has sufficiently mitigated the Government's security concerns. He is not subject to foreign influence, coercion, exploitation, or pressure. Finding is for Applicant.

FORMAL FINDINGS

Conclusions as to each of the allegations in the SOR as required by Executive Order No. 10865 § 3, ¶ 7 and the Directive ¶ E3.1.25, are as follows:

Paragraph 1. Guideline C: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

DECISION

In light of all of 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.

James A. Young

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.