

DATE: March 31, 2003

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In Re:  
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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-26447

**DECISION OF ADMINISTRATIVE JUDGE**

**WILFORD H. ROSS**

**APPEARANCES**

**FOR GOVERNMENT**

Erin C. Hogan, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant has taken concrete steps to revoke her Irish citizenship, and has had her Irish passport cancelled. Her mother is a naturalized American citizen who has lived in the United States since 2001. Adverse inference is overcome. Clearance is granted.

**STATEMENT OF THE CASE**

On August 8, 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 August 25, 2002, and requested that the case be decided without a hearing. The Government submitted its File of Relevant Material (FORM) to the Applicant on October 22, 2002. The Applicant was given 30 days from receipt of the FORM to submit any documents in rebuttal, extenuation or mitigation. The Applicant received the FORM on November 12, 2002, and submitted a Reply with attachments on December 26, 2002. The Department Counsel did not object to my considering the Applicant's Reply. The case was received by the undersigned on January 3, 2003.

**FINDINGS OF FACT**

The Applicant is 47, married, and has a high school diploma. She is employed by a defense contractor as a Senior Staff Representative for Corporate Security, and she seeks to obtain a DoD security clearance in connection with her 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 guideline in the SOR. They are based on the Applicant's Answer to the SOR and the exhibits.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has acted in such a way as to indicate a preference for another country over the United States.

The Applicant is a native born American citizen. Her parents were dual citizens, of Ireland and the United States meaning that the Applicant could apply for Irish citizenship and a passport. The Applicant applied for and received both in 1997, at a time before she needed a security clearance.

The Applicant received the SOR in August 2002. With the SOR the Applicant also received a copy of the August 16, 2000, Memorandum from the Assistant Secretary of Defense for Command, Control, Communication and Intelligence entitled, "Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline" (Money Memorandum.)

The Applicant received the FORM on November 12, 2002. She received a communication from the Irish Consulate informing her how to renounce her Irish citizenship on November 18, 2002. On December 2, 2002, the Applicant submitted a properly executed Declaration of Alienage with the Irish Consulate. That form is used to renounce Irish citizenship. (Reply at 2-4.)

The Applicant also submitted her Irish passport to the Irish Consulate for cancellation. It was cancelled at her request, and is no longer valid. (Reply at 5-9.)

Paragraph 2 (Guideline B - Foreign Connections). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has close family members who are not citizens of the United States or may be subject to duress.

The Applicant's mother is a dual citizen of the United States and Ireland. She was naturalized in 1960. (Government Exhibit 7 at 3.) At the time the Applicant filled out her Questionnaire for National Security Positions, November 24, 1998, her mother lived in Ireland. (Government Exhibit 6 at 5.) By the time the Applicant had a sworn statement taken on August 3, 2001, her mother had moved to the United States. (Government Exhibit 7 at 3.) In her Reply, the Applicant also included a property tax bill for her mother's house from 2002, with the same address as that found in Government Exhibit 7. (Reply at 12.)

## 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 guideline. 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 C (Foreign preference)

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

- (1) The exercise of dual citizenship;
- (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.

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;

Condition 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;

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 guidelines 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 and/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 had acquired Irish citizenship and an Irish passport; as well as the fact that her mother is a dual citizen of the United States and Ireland.

The Applicant, on the other hand, has successfully mitigated the Government's case. The Applicant acquired Irish citizenship through her parents' Irish birth, and acquired the Irish passport in 1997, before she had a job which required a security clearance. Once the Applicant received the FORM, and had knowledge of the Money Memorandum, she took concrete steps to alleviate the Government's concern. She has filed the documents with the Irish government which are necessary for her citizenship to be revoked and she has had her Irish passport cancelled by the Irish consulate. Guideline C is found for the Applicant.

The Applicant's 76 year old mother is a naturalized American citizen who has lived in the United States since 2001. These facts vitiate whatever security concerns may have existed when her mother lived in Ireland. 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.

### **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