

KEYWORD: Foreign Influence; Foreign Preference; Personal Conduct

DIGEST: Security concerns raised by Applicant's birth in Yugoslavia 28 years ago, by his possessing a foreign passport, by his exercise of dual citizenship, and by the Yugoslavian citizenship of his parents and members of his extended family, are mitigated by evidence Applicant used his Yugoslavian passport before becoming a U.S. citizen, his Yugoslavian passport expired in July 2001 and he does not intend to renew it, his parents now have permanent residence status, and his father is now employed by a U.S. company. Clearance is granted.

CASENO: 02-00317.h1

DATE: 07/24/2002

DATE: July 24, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-00317

DECISION OF ADMINISTRATIVE JUDGE

JOHN R. ERCK

APPEARANCES

FOR GOVERNMENT

Rita O'Brien, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Security concerns raised by Applicant's birth in Yugoslavia 28 years ago, by his possessing a foreign passport, by his exercise of dual citizenship, and by the Yugoslavian citizenship of his parents and members of his extended family are mitigated by evidence Applicant used his Yugoslavian passport before becoming a U.S. citizen, his Yugoslavian passport has expired and he does not intend to renew it, his parents now have permanent resident status, and his father is now employed by a U.S. company. Clearance is granted.

STATEMENT OF THE CASE

On February 19, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to 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 Applicant's security clearance and recommended referral to an Administrative Judge to determine whether he should be granted a security clearance.

Applicant answered the SOR in writing on March 12, 2002, and stated he wanted his case decided without a hearing. Applicant received his File of Relevant Material (FORM) consisting of seven items on April 29, 2002. He filed his response on May 20, 2002. The case was assigned to this Administrative Judge on June 4, 2002.

AMENDMENT OF STATEMENT OF REASONS

After receiving Applicant's answer to the SOR, Department Counsel moved to amend the SOR by changing the date when Applicant became a naturalized U.S. citizen from "1988" to "1998" and by changing the residence of Applicant's parents from Yugoslavia to the United States. Because the amendments Department Counsel has proposed incorporate information from Applicant's answer and bring existing allegations into conformance with the evidence, the motion to amend is granted. Under the circumstances, no purpose would be served by granting either party additional time for further preparation or for other good cause (See Paragraph E3.1.17., DoD Directive 5220.6).

FINDINGS OF FACT

The Statement of Reasons (SOR) alleges a security concern is raised by Applicant's dual citizenship (United States and Yugoslavia), by his holding, and intending to renew his Yugoslavian passport, by the Yugoslavian citizenship and residence of his parents, by his close relatives who reside in and are citizens of Yugoslavia or Germany, and by his failure to acknowledge that he was/is a dual citizen on the SF 86 (Questionnaire for National Security Positions) he completed on September 23, 1999.

In his answer to the SOR, Applicant admitted using his Yugoslavian passport before becoming a U.S. citizen (in 1999) and holding that passport until it expired in July 2001, and he admitted having relatives who reside in and are citizens of Germany and Yugoslavia. Applicant denied being a dual citizen; he denied his parents were Yugoslavian citizens who reside in Yugoslavia (they are Yugoslavian citizens but have resided in the United States since 1984), and he denied falsifying any information on his SF 86.

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

Applicant was born in Yugoslavia 28 years ago. In 1984, when Applicant was ten years old, his parents moved to the United States (on a G4 Visa) as a consequence of his father's employment.⁽¹⁾ Applicant and his parents have lived in the United States continuously since that time. Members of Applicant's extended family have continued to reside in Yugoslavia and in Germany; none are identified as being employed by their respective governments. Applicant graduated from high school, graduated from college in 1996, and received his Master's degree in 1997--all from American educational institutions. Applicant began working for his current employer, a DoD contractor, in January 1997. He applied for and was issued a Yugoslavian passport on July 30, 1997. He became a U.S. citizen in November 1998. He has not previously applied for a security clearance.

When Applicant completed the SF 86 (Questionnaire for National Security Positions) in September 1999, he certified:

My statements on this form, and any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both.

after answering "no" to the question: "Are you now or were you a dual citizen of the U.S. and another country⁽²⁾?" On the same questionnaire, Applicant provided accurate and complete information about his birthplace, his holding a Yugoslavian passport⁽³⁾, his parent's birthplace and their current citizenship, and the date of his naturalization to become a U.S. citizen.

In his first signed, sworn statement to the Defense Security Service (DSS) on April 11, 2001, Applicant disclosed:

I currently have an active Yugoslavian and US passports. I keep the Yugoslavian passport for when I to travel to Yugoslavia to visit my family. Using a Yugoslavian passport simplifies the travel arrangements - i.e. no visa requirements. I plan to renew by passport when it expires to use for this purpose again. Since I was born in Yugoslavia, the country will consider me as a citizen for life. I use my US passport for all other travels.

When he was questioned by DSS a second time (Item #5) about his citizenship status and his answer to question 3 (above), Applicant explained:

On the initial Security Clearance Form, I have answered "NO" when asked if I have dual citizenship. At that time, I considered myself a US citizen only. Only after several conversations with my parents I was made aware that since I was born in Yugoslavia, Yugoslavia technically considers me a citizen for life. Even though I have obtained a US citizenship, Yugoslavia will still consider me a Yugoslavian citizen.

Later in answering the specific allegations on the SOR, Applicant denied dual citizenship and explained:

I am not sure about what the international law states regarding dual citizenship. However, I have been living in the U.S. since August 1984. Foremost, I consider myself a citizen of the U.S. only, and I have no intention of living anywhere else but in the U.S.

He also denied using his Yugoslavian passport after he became a U.S. citizen:

The last time I used my Yugoslavian passport was between 08/14 - 98/23, 1997 to travel on vacation to St. Christopher and Nevis. Since I was not a U.S. Citizen at that time, I had no choice but to use my Yugoslavian passport. I became a U.S. citizen on November 24, 1998 and I have not used my Yugoslavian passport since the above mentioned trip to St. Christopher and Nevis. I have received my U.S. passport on 07/20.1999 (Passport ID: -----) For all my travels since the naturalization date, I used my U.S. passport only.....

My Yugoslavian passport expired 07/30/2001. I no longer plan to renew my Yugoslavian passport. I plan to use my U.S. passport solely from now on for all travels.

Applicant provided yet more explanatory information in his May 20, 2002 response to the FORM. To corroborate his assertion--in answer to the SOR--that he had not used his Yugoslavian passport after becoming a U.S. citizen, he provided a copy of his expired Yugoslavian passport, showing no travel since the August 1997 trip noted above. His parents are now permanent residents of the U.S. and are eligible to apply for U.S. citizenship in May 2003. The status of his father's employer has changed; it is now a U.S. corporation. Applicant also stated that before completing his answer to question 3 (Item #4), he discussed the matter with his employer's security officer after providing him with all of the information about his background. Applicant purchased his own home in April 2001; and stated he planned to live in the U.S. "for the rest of my life."

No evidence has been provided on the quality of Applicant's duty performance.

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 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 factors set forth in Section E2.2. 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 apply to this case:

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 of obligation, is a citizen of or resident or present, in a foreign country.

Conditions that could mitigate a 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.

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:

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.A3.1.3.1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country.

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

PERSONAL CONDUCT

(Guideline E)

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

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

E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Conditions that could mitigate security concerns include:

E2.A5.1.3.1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability.

Burden of Proof

The Government has the burden of proving any controverted facts alleged in the Statement of Reasons. If the Government has established 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. When 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 with regard to Guidelines C and E. In reaching my decision, I have considered the evidence as whole, including each of the factors enumerated in Section 6.3, as well as those referred to in Section E2.2. dealing with adjudicative process, both in the Directive.

Applicant's dual citizenship, his use of a Yugoslavian passport, and his stated intention--in an April 2001 signed, sworn statement--to renew his Yugoslavian passport raise a security concern under Guideline C. 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.

A careful review of Applicant's actions which have been cited as indicating a possible foreign preference and his subsequent statements explaining those actions, suggest there is less significance to these actions than is alleged in the SOR. He acted out of necessity when he used his Yugoslavian passport for foreign travel in 1997. At the time of this travel, he did not have a U.S. passport as he was not yet a U.S. citizen. If he wanted to travel outside the United States, he had to travel on a passport issued by his native country. Under the circumstances, his use of his Yugoslavian passport was a necessity, not an indication of preference for that country. When he stated his intention to renew his Yugoslavian passport, he obviously did not realize the implications of carrying a foreign passport; he did not realize applying for and carrying a foreign passport was an affirmation of his Yugoslavian citizenship. It is quite apparent from his statement (Item #4) that he looked upon his Yugoslavian passport as little more than a piece of paper that facilitated travel to the country of his birth; since he had been born in Yugoslavia and was eligible to receive and carry a passport from that country, he intended to exercise that privilege. As soon as Applicant learned carrying a foreign passport and exercising dual citizenship impacted his security clearance suitability and possibly his employment, he was not interested in renewing his Yugoslavian passport. He did not express any interest in renewing his passport for sentimental reasons, or because Yugoslavia is the country of his birth and the country of his parent's citizenship.

While Applicant has not specifically renounced his Yugoslavian citizenship, the intention to do so is implicit in his statements that he intends to live in the U.S. for the rest of his life. He has lived in the United States for 18 years; he has received all of his professional education and most of his primary education in this country. He has acquired a profession in the United States and is employed in that profession. He has purchased real estate. That he stands to inherit a small piece of real estate (from his parents) in Yugoslavia does not establish a preference. The value of this property is much less than the value of the property he owns in the United States. It cannot go unsaid the country of Applicant's birth, the country that was once Yugoslavia, has been torn apart by ethnic wars for much of the past ten years. Under these circumstances, it is understandable why Applicant does not harbor any deep seated attachment to the country of his birth. Guideline C is concluded for Applicant.

The Yugoslavian citizenship of Applicant's parents and the foreign citizenship of members of his extended family raise a security concern 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.

The security concern raised by the Yugoslavian citizenship of Applicant's parents is mitigated by their current, permanent resident status (in the U.S.), and by their residing in the United States continuously for 18 years. Moreover, the employer for whom Applicant's father has worked since arriving in the United States is now a U.S. company. It is unlikely either of his parents would be subject to duress because of their foreign citizenship. Although members of Applicant's extended family continue to reside in Yugoslavia and Germany, Applicant has minimal contact with them and none of these individuals are identified as being employed by their respective governments, or as being in a position where they are likely to experience duress. Guideline B is concluded for Applicant.

The Government has not established its case with respect to Guideline E. While Applicant answered "no" to the SF 86 question that asked if he had been, or was currently a dual citizen of the U.S. and another country, when the correct answer to that question, was clearly "yes", the evidence does not establish his "no" answer was made with the intention of deliberately falsifying material information. Applicant answered truthfully all other questions on the SF 86 designed to elicit information about his citizenship and background. In answer to other questions on the same form, Applicant disclosed he had been born in Yugoslavia and became a naturalized U.S. citizen in November 1998, that he had a current, valid Yugoslavian passport, that his parents had been born in Yugoslavia and remained citizens of that country. By admitting he had an active Yugoslavian passport in response to question 15, Applicant was informing the Government of his dual citizenship, thus negating any possible misleading effect of his "no" answer to question 3.

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 B) FOR THE APPLICANT

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Paragraph 2 (Guideline C) FOR THE APPLICANT

Subparagraph 2.a. For the Applicant

Subparagraph 2.b. For the Applicant

Paragraph 3 (Guideline E) FOR THE APPLICANT

Subparagraph 3.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 Applicant's security clearance.

John R. Erck

Administrative Judge

1. In his first signed, sworn statement dated April 11, 2001, Applicant stated his father "joined (Company x)" in August 1984 (See Item # 5).

2. See question 3 on Item #4.

3. In response to the question 15: "In the last 7 years, have you had an active passport that was issued by a foreign government?" Applicant answered "yes" and provided pertinent information on his Yugoslavian passport(see Item #4).