

DATE: July 2, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-02254

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Juan Rivera, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, born in Great Britain, exercised dual citizenship when he possessed and twice used his British passport after obtaining U.S. citizenship. However, he has relinquished his foreign passport and has expressed a willingness to renounce his British citizenship. He has also built a life in the U.S. and has only minimal contacts or interests abroad. He has mitigated the security concerns under Guideline C. Applicant's daughter lives in Indonesia, however, she left with Applicant's ex-wife over 20 years ago and he has not seen her since 1986. Applicant has, at best, sporadic or infrequent contact with her, and their last direct communication was nearly two years ago. Applicant has mitigated the security concerns under Guideline B. Clearance is granted.

STATEMENT OF THE CASE

On December 17, 2002 the Defense Office of Hearings and Appeals (SOR) issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns under Guideline B (Foreign Influence) and Guideline C (Foreign Preference). The SOR informed Applicant that, based on information available to the government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to continue Applicant's security clearance. [\(1\)](#)

On January 11, 2003, Applicant answered the SOR (Answer) and requested a hearing. The case was assigned to me on March 11, 2003. DOHA subsequently issued a Notice of Hearing setting this case to be heard on April 7, 2003. All parties appeared as scheduled and the government presented five exhibits (GE 1 through 5), of which GE 1 and GE 2 were admitted as evidence without objection. I granted Department Counsel's request that I take administrative notice of the information contained in GE 3 through GE 5 for identification only. [\(2\)](#) Applicant presented one exhibit (AE A) as an attachment to his Answer, which was admitted without objection. Applicant also testified in his own behalf. DOHA received the transcript (Tr) on April 14, 2003.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is a citizen of the United Kingdom of Great Britain (UK) by virtue of his birth there in 1949. He has lived in the United States since 1986. (3) He became a naturalized citizen of the United States in August 1999, and is currently employed as a senior technical staff member for a defense contractor. (4)

Applicant has been married twice. His first marriage, to an American he met in the UK, produced a son and a daughter, but ended in divorce in 1983. Applicant and his first wife separated in 1980, when his daughter was about three years old. His ex-wife moved with their children to Indonesia to live with her mother, who worked there as a free-lance writer. After their divorce in 1983, Applicant's ex-wife married an Indonesian citizen. That marriage ended in divorce in 1993, but Applicant's ex-wife has continued to reside in Indonesia. (5)

Applicant has been married to another American since 1987. They have two children, both born in the United States in the early 1990's. Applicant's children from his first marriage are both in their 20's and live on their own. Applicant's son from his first marriage is living in the U.S. with permanent resident alien status. His daughter from his first marriage still lives in Indonesia. Applicant and his second wife and their children have lived in the same area of the US for 16 years. (6)

Applicant last visited his daughter in Indonesia in 1986. In the 1980's, his daughter moved to the United States when her mother found work with a national television network. During this time, Applicant was able to speak frequently with his daughter by phone. However, in the mid-1990's, his ex-wife and his daughter returned to Indonesia when the former was transferred there. Since then, Applicant has had infrequent contact with his daughter through e-mail. The last such contact occurred in the fall of 2001. Most of what Applicant knows about his daughter's life he gets second hand from his son.

Before his naturalization in 1999, Applicant had a British passport valid through 2006. In 2001, Applicant used his British passport when he twice traveled to the UK. He did so because he thought it would be a more convenient way to enter that country, and because he was unsure what was required of him as he had never traveled back to the UK as a foreign citizen. He presented both his U.S. and UK passports on each trip, and was able to enter Britain with ease, but it is unclear whether his ease of entry resulted from use of his UK passport or his U.S. passport. (7)

Applicant returned his foreign passport to the British government in December 2002. He was interviewed by an investigator from the Defense Security Service (DSS) in November 2001, at which time he was advised of the security significance of possessing a foreign passport. Applicant was advised to relinquish the passport, and he fully intended to do so. However, he did not actually relinquish the passport until after he received the SOR over a year later. Part of the delay can be attributed to Applicant's work schedule in the weeks and months following September 11, 2001, in that his schedule demanded extraordinarily long hours that did not permit him much time to tend to anything other than the most pressing personal affairs. (8)

POLICIES

The Directive sets forth adjudicative guidelines (9) to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, specifically, that Applicant has close ties of affection who are foreign citizens, I conclude the relevant adjudicative guideline to be applied here are Guideline B (Foreign Influence) and Guideline C (Foreign Preference).

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest (10) for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion. (11) A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government. (12)

CONCLUSIONS

Guideline B (Foreign Influence). 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.⁽¹³⁾

The government has established that Applicant's daughter from his first marriage, a citizen of the UK by virtue of her birth there, whom Applicant has not seen in 17 years and with whom he has had no close relationship in over 20 years lives in Indonesia. Therefore, the government has proved its case under Guideline B by showing that Applicant has an immediate family member who is a citizen of a foreign country and resident in another foreign country. Thus, it is within the realm of possibility that the Indonesian government may coerce his daughter to leverage Applicant's access to classified information to its benefit. Guideline B Disqualifying Condition (DC) 1⁽¹⁴⁾ applies.

The government urges that Applicant is at risk of compromising classified information because his daughter's presence in Indonesia may be used to coerce Applicant into acting contrary to U.S. national interests. All of the information on which the government relies shows only that Indonesia has experienced terrorist activities and violence attributable to poverty, high crime and ethnic conflict.⁽¹⁵⁾ It may be that Indonesia is, in part, a dangerous place to live, but that fact does not equate to action by the Indonesian government or other foreign entities or organizations to extract intelligence from Applicant through pressure on his daughter. It means simply that there are places in the world where terrorism creates dangerous circumstances for citizens of many countries, regardless of any ties they may have to persons in the U.S. who hold a clearance. While Indonesia may be a dangerous, at times unstable region, it does not necessarily follow that Applicant's daughter would be targeted for purposes of extracting classified information from Applicant. More to the point, the Government's information shows that most of the violence encountered in Indonesia is solely a result of internal strife.

Further, the record shows that Applicant's contacts with his daughter have been sporadic at best. His ex-wife left with their children more than 20 years ago. Applicant has not seen his daughter since 1986, and the last direct contact he had with her was in late 2001. By all accounts, she grew up independent of any influence by or relationship with her father. While there is no denying the fact that they are father and daughter, their relationship is not such a close tie of affection that it might be leveraged by a foreign entity as contemplated by Guideline B. Nor is his daughter an agent of the Indonesian government as she is employed by a private company. In light of the available information regarding Applicant's daughter and their relationship (or lack thereof), Guideline B itigating Condition (MC) MC 1⁽¹⁶⁾ and MC 3⁽¹⁷⁾ apply. On balance, I resolve Guideline B for Applicant.

Guideline C (Foreign Preference). A security concern arises 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.⁽¹⁸⁾ The Government has established its case as alleged in SOR subparagraphs 1.a, 1.b and 1.c that Applicant exercised his British citizenship when he continued to possess his British passport after he was naturalized and when he used it on two occasions after he became a U.S. citizen. This is disqualifying conduct under Guideline C DC 1⁽¹⁹⁾ and DC 2⁽²⁰⁾ insofar as it indicates a preference by Applicant for his status as a UK citizen over his status as an American. The possession of a foreign passport would allow Applicant to travel without accountability and outside the ambit of U.S. immigration controls, an unacceptable circumstance when such conduct is undertaken by someone with access to U.S. classified information.

Balanced against Applicant's disqualifying conduct is the fact that he has expressed a willingness to renounce his foreign citizenship, and he has turned in his foreign passport to the issuing authority. Guideline C MC 4⁽²¹⁾ applies to his willingness to renounce, and the fact he turned in his passport addresses a possible cure contemplated by the OASDC3I memorandum of August 16, 2000.⁽²²⁾ While Applicant's surrender of his passport is not dispositive of his whether he should be disqualified under Guideline C, it lends credence to his position that he does not prefer interests of another country over those of the U.S.

I have also weighed the record evidence as a whole under the factors outlined in Directive Sections 6.3 and E2.2.1. I conclude Applicant's disqualifying conduct was not undertaken with any knowledge of the consequences involved. He was unsure how to proceed as he had not previously traveled to Britain as a citizen of a foreign country, so he presented both passports. At the time, he had not begun the clearance application process⁽²³⁾ and had not been informed of the potential security concerns. Additionally, considering the totality of the evidence, I conclude that there is little, if any, probability Applicant will someday reacquire his British passport and use it instead of his U.S. passport. Finally, Applicant has lived and worked in this country continuously since 1986. He has been married to an American for 16 years and has two children by

his current wife. All of his financial assets are here. In short, the great majority of his contacts and interests are in the U.S., a strong indicator of preference for the U.S. over any other foreign nation. I conclude Guideline C for Applicant.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Foreign Preference (Guideline C): FOR THE APPLICANT

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

Paragraph 2, Foreign Influence (Guideline B): 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.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Tr., p. 25 - 28.
3. Tr., p. 54.
4. GE 1.
5. GE 1; Tr., p. 28 - 29.
6. GE 1; Tr., p. 54 - 55.
7. Tr., p. 47 - 48.
8. Answer; Tr, p. 28, 40 - 41,
9. Directive, Enclosure 2.
10. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
11. *See Egan*, 484 U.S. at 528, 531.
12. *See Egan*; Directive E2.2.2.
13. Directive, E2.A2.1.1.
14. 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;
15. GE 3, GE 4.

16. 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;

17. E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent;

18. Directive, E2.A3.1.1.

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

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

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

22. GE 5; On August 16, 2000, the then-Assistant Secretary of Defense for Command, Control, Communications and Intelligence, Mr. Arthur L. Money, issued clarifying guidance in what has come to be known as the "Money Memo." That guidance stated that a person who possesses a foreign passport should be disqualified from holding a clearance "unless the applicant surrenders the foreign passport...".

23. The SF-86 (GE 1) was executed on October 31, 2001.