

DATE: September 3, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-03757

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Marc A. Curry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's possession and use of a foreign passport after becoming a U.S. citizen demonstrated a foreign preference and was not mitigated where Applicant had neither surrendered the passport nor obtained formal approval for its use. Applicant was potentially subject to foreign influence where his parents and sister are residents of Sweden and his mother and sister are Swedish citizens. Clearance denied.

STATEMENT OF THE CASE

On 22 October 2002, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 13 November 2002, Applicant answered the SOR and requested an administrative decision on the record. Applicant did not respond to the File of Relevant Material, issued 13 May 2003. The record closed on 22 June 2003, the date the response was due at DOHA. The case was assigned to me on 17 July 2003.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR; accordingly I incorporate those admissions as findings of fact.

Applicant--a 27-year-old employee of a defense contractor--seeks access to classified information. He has not previously held a clearance.

Applicant was born in Lund, Sweden in 1976, to a native-born U.S. citizen father and a Swedish mother. Under U.S. law,⁽²⁾ he derived U.S. citizenship from his father. According to Applicant, he later⁽³⁾ became a Swedish citizen when Sweden enacted legislation giving him citizenship by virtue of his birth in Sweden. He lived in Sweden and was educated in Sweden from 1976 to August 1995, when he came to the U.S. to attend college. He graduated in June 1999,

obtained employment with a government contractor in the U.S., and intends to remain here. He considers himself a U.S. citizen, pledges allegiance to the U.S., and will bear arms for the U.S. (4)

As a child, Applicant traveled to the U.S. every two years or so with his parents to visit his father's parents. Applicant states, without corroboration, that he traveled to the U.S. on a U.S. passport. He also states that he has always used his U.S. passport to come to the U.S. As a child, and when traveling with his parents in Europe, he used his Swedish passport. He currently has a U.S. passport, valid from February 1996 to February 2006. He also has a Swedish passport, valid from July 1997 to July 2007, kept in Sweden with his parents. He renewed it in 1997 because his old passport had expired. He keeps it for souvenir reasons (Item 5) and for travel convenience (Item 4). (5) Since coming to the U.S. in 1995, however, he has used his U.S. passport for all travel, including travel to Europe.

In 1994, after he turned 18 and was still living in Sweden, he voted in a Swedish election. He also went through the mandatory military draft, but asked not to serve and was placed in the "educational reserve," an option available to him under Swedish law. While in college, he returned to Sweden during summer and winter breaks. (6) The summer after college, he traveled extensively throughout Western Europe and parts of Eastern Europe. He reported last being in Sweden in July of that summer. (7) He has voted in all U.S. elections since coming to the U.S. in 1995.

Applicant's father is a U.S. citizen, residing in Sweden since at least 1976. He is employed as a professor of aeronautical engineering at the Royal Institute of Technology. He also works on joint projects with the U.S. Air Force and NASA. (8) Applicant's mother is a Swedish citizen who works as the chief librarian for the Royal Academy of Letters, History, and Antiquities. Applicant's younger sister--a dual citizen of the U.S. and Sweden under the same circumstances as Applicant--came to the U.S. for college between 1996 and 2000, but then returned to Sweden to live with her parents. Applicant does not report how (or if) she is employed. Sweden is a constitutional monarchy with close diplomatic ties to the U.S.

The record contains no character references or information on Applicant's work performance. Applicant has not surrendered his Swedish passport or indicated a willingness to do so; he has not obtained U.S. Government approval for continued possession and/or use. He has not indicated a willingness to renounce his Swedish citizenship.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

FOREIGN PREFERENCE (GUIDELINE C)

E2.A3.1.1 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.

E2.A3.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A3.1.2.1. The exercise of dual citizenship:

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

E2.A3.1.2.4. Accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign

country;

E2.A.1.3. Conditions that could mitigate security concerns include:

E2.A3.1.3.2. Indicators of possible foreign preference (e.g. foreign military service) occurred before obtaining United States citizenship.

FOREIGN INFLUENCE (CRITERION B)

E2.A2.1.1. 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 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.

E2.A2.1.2. 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 or obligation, is a citizen of, or resident in, a foreign country;

E2.A2.1.3. Conditions that could mitigate security concerns include:

None.

On 16 August 2000, the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD, C³I) issued a memorandum⁽⁹⁾ to clarify the application of Guideline C., Foreign Preference, to cases involving possession and/or use of a foreign passport. In pertinent part, the ASD, C³I memorandum "**requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government.**"(Emphasis added).

Burden of Proof

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with

the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

Although Applicant has been a dual citizen of Sweden and the United States, for all practical purposes, since his birth in 1976, his foreign citizenship possesses little security significance if based solely on his birth in a foreign country. For Applicant's conduct to fall within the security concerns of Guideline C, Foreign Preference, he must have acted in a way to indicate a preference for a foreign nation over the United States. However, inimical intent or detrimental impact on the interests of the United States is not required before the Government can seek to deny access under Guideline C. The

Government has a compelling interest in ensuring those entrusted with this Nation's secrets will make decisions free of concerns for the foreign country of which they may also be a citizen. Under this assessment, I conclude the Government has established its case under Guideline C and Applicant has not mitigated the security concerns.

While Applicant claims to prefer his U.S. citizenship, his conduct suggests otherwise. He spent the first eighteen years of his life in Sweden. He was educated as a Swede, and appears to have fully participated in Swedish culture, to include voting in a Swedish election when he was old enough to do so. As required under Swedish law, he participated in the mandatory military draft, but then requested to be put in the "educational reserve." His visits to family members in the U.S. appear to have been brief.

When he came to the U.S. in 1995 to attend college, he cannot be said to have come with a clear intent to reside here permanently. Indeed, during most of his college years, he went "home" to Sweden during winter and summer breaks. While he states an intent to remain in the U.S. now that he has a job here, and has voted in U.S. elections since coming to the U.S., this does not establish the requisite preference for the U.S. At best, it establishes his willingness to exercise his citizenship rights in the U.S., a legal right that is not at issue in this case.

In sharp contrast to his exercise of foreign citizenship, Applicant is only nominally a U.S. citizen. There is no evidence Applicant had any significant personal experience with the U.S. during his formative years. Apart from obtaining his U.S. passport, ⁽¹⁰⁾ Applicant exercised no right or privilege of U.S. citizenship before moving to the U.S. to attend college. After accepting a benefit of U.S. citizenship--the passport--Applicant not only continued to maintain a valid passport from Sweden, but used that passport to travel in Europe--at times apparently in preference to his U.S. passport--for convenience. While he has not done so since coming to the U.S. in 1995, he renewed his Swedish passport after coming to the U.S. and remains in possession of it, albeit held by his parents in Sweden. He has not offered to surrender it, or expressed a willingness to renounce his Swedish citizenship. His assertion that he keeps it only as a "souvenir" is undercut by the fact that he keeps it current.

The ASD, C³I Memorandum controls the resolution of this case. The Memorandum states that Applicant's possession and use of his foreign passport can be mitigated only if Applicant surrenders the foreign passport or obtains U.S. Government approval for its use. Applicant has undertaken neither action. I would have to resolve Guideline C against Applicant based on the Money Memo alone.

Nevertheless, foreign preference issues remain without the Money Memo. Of the nine listed potentially disqualifying conditions (DC), Applicant conduct falls within DCs 1 (exercise of dual citizenship), 2 (possession and/or use of a foreign passport), 4 (accepting educational benefits from a foreign country), and 8 (voting in foreign elections).

On the other hand, Applicant meets none of the mitigating conditions (MC) for foreign preference. MC 1 does not apply because Applicant's dual citizenship is not based solely on his parent's citizenships or his birth in Sweden, but is based on his active exercise of dual citizenship for 27 years. While it is true that for many of those years his exercise of dual citizenship was due to his necessarily residing with his parents--one a foreign national, both residing in Sweden--the fact remains that Applicant has continued to exercise dual citizenship as he has moved into adulthood. MC 2 does not apply because all indicators of possible dual citizenship have occurred since Applicant obtained U.S. citizenship; this could not be otherwise given that Applicant was born a U.S. citizen. MC 3 does not apply because Applicant's conduct has not been sanctioned by the U.S. Finally, MC 4 does not apply because Applicant has not expressed a willingness to renounce dual citizenship.

Applicant's situation is somewhat unusual in Foreign Preference cases because it is his U.S.

citizenship that was based solely on birth to a U.S. citizen residing abroad. Before moving to the U.S. to obtain his education and employment, his conduct was consistent only with the exercise of Swedish citizenship, with the possible exception of visiting the U.S. on a U.S. passport as a child. Having derived economic and political benefits from his Swedish citizenship, Applicant has only recently sought to exercise the rights and privileges of U.S. citizenship; however, the only three rights he has exercised is the right to obtain or renew a U.S. passport, his right to employment, and his right to vote. His ties to the U.S. are of much shorter duration and strength than his ties to Sweden--at least as far as they appear on the record.

While Applicant has a legal right to maintain his dual citizenship with its attendant benefits and responsibilities--and indeed his maintenance of dual citizenship may be quite prudent given the realities of modern society that he refers to in his Answer--he has not demonstrated that he can be counted on to always act in preference to the United States. As a practical matter, he continues to owe allegiance to Sweden, and has family ties there. This presents an unacceptable risk that his future decisions will be influenced by concerns for Sweden. I resolve Guideline C against Applicant.

For similar reasons, Applicant appears to be vulnerable to foreign influence as alleged in the SOR. His father, mother, and sister live in Sweden, and his mother and sister are Swedish citizens (and his sister a dual citizen of the U.S.). His mother and father work for the royal government. Applicant's father consults on NATO and U.S. Air Force projects, but the record is silent whether he has a U.S. clearance or a NATO clearance to perform that work. Notwithstanding Applicant's representations that none of his family are agents of a foreign government, the record contains insufficient information about his family members to conclude that they do not constitute an unacceptable security risk as required by MC 1, particularly where I have concluded that Applicant has a preference for Sweden in the first place. I resolve Guideline B against Applicant.

Applicant's U.S. citizenship aside, he presents a portrait of an individual who in all important aspects is a citizen of Sweden. There remains an unacceptable risk that his future decisions will be influenced by concerns for Sweden, whose interests may or may not be completely consistent with those of the United States. Ultimately, a decision to grant access to classified information must be based on the assessment that, in the words of the Directive, "it is clearly consistent with the national interest" to do so. Unstated--but clearly meant--is the requirement that a grant of clearance be consistent with "U.S." national interest, a conclusion I am unable to reach on the record before me.

FORMAL FINDINGS

Paragraph 1. Guideline C: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Paragraph 2. Guideline B: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated 2 January 1992--amended by Change 3 dated 16 February 1996 and by Change 4 dated 20 April 1999 (Directive).
2. And, according to Applicant, under Swedish law at the time.

3. Date unspecified by Applicant.
4. He has registered with the Selective Service System as required by Federal law.
5. Explaining his foreign passport on his clearance application: "Since I lived in Sweden, I held the passport for travel convenience reasons" (Item 4).
6. Although his foreign travel disclosure on his clearance application reflects only winter '95-'96, winter '96-'97, winter '97-'98, summer '98, and winter '98-'99. He did, however, report living at his home address in Sweden during summer '96 and '97 on the residence section of his application.
7. As of Applicant's August 2000 sworn statement (Item 5).
8. He previously worked for NASA and had a U.S. security clearance. However, I infer from Applicant that this was before he moved to Sweden sometime before Applicant's birth in 1976.
9. The so-called "Money Memo" because it was signed by Arthur L. Money.
10. The date of which does not appear in the record, except for his most recent passport, issued after he arrived in the U.S. to attend college.