

DATE: May 15, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-04237

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Jonathan A. Beyer, Department Counsel

Catherine Engstrom, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has failed to fulfill the requirements of the Memorandum from the Assistant Secretary of Defense for Command, Control, Communications and Intelligence, dated August 16, 2000, entitled "Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline." (Money Memorandum.) by refusing to return his current Greek passport to the Greek Government. Additionally, he has stated that he has no intention of renouncing his Greek citizenship. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated October 10, 2002, 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on foreign preference (guideline C) related to his exercise of dual citizenship with the United States and Greece, and his intention to renew a foreign passport and continue to use it for travel; and on foreign influence (guideline B) concerns because of the foreign residency and/or citizenship of close family members (mother, father and sister.)

Applicant, acting *pro se*, filed a notarized response dated October 28, 2002, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge. On February 5, 2003, the case was assigned to me to conduct a hearing, and pursuant to formal notice dated February 6, 2003, a hearing was held on March 3, 2003. At the hearing, three documentary exhibits (two Government and one Applicant) were admitted into the record. Testimony was taken

from Applicant. With the receipt on March 13, 2003, of the transcript of the proceedings, this case is ripe for a decision.

FINDINGS OF FACT

After a thorough review of the evidence, and on due consideration of the same, I render the following findings of fact:

Applicant is 41 years old, single and is employed as a technologist by a United States defense contractor. Applicant was born in Greece. His father was and still is a United States citizen. As a result, Applicant was born and has remained a dual Greek and United States citizen.

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

Applicant first received an active Greek passport sometime in the late 1960s or early 1970s. (Transcript at 36-37.) He continues to retain his current Greek passport. Applicant testified that he was not willing to relinquish his Greek passport as a matter of principle. (Transcript at 46.) He was then presented with the oney Memorandum. When he was told that, in accordance with the requirements of the Money Memorandum, he could not obtain or retain a security clearance, unless he relinquished his passport, he once again reiterated that he would not relinquish his Greek passport as a matter of principle. (Transcript at 32-34.) Applicant also testified that he would not renounce his Greek citizenship. (Transcript at 26-27.)

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has immediate family members or people to whom he may be bound by affection or obligation who are not citizens of the United States, or may be subject to duress.

Applicant's mother, is a Greek citizen who resides in Greece. His father and sister are dual citizens of Greece and the United States and reside in Greece. Applicant's mother and father are both retired. His sister is self employed. None of them has ever worked for the Greek government.

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Foreign Preference

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 also include:

E2.A3.1.2.1 The exercise of dual citizenship.

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

Foreign Influence

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 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.

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 or present in, a foreign country

E2.A2.1.3. Conditions that could mitigate 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.

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the 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 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 that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to guidelines C and B:

Guideline C is based on actions taken by an individual which indicate a preference for a foreign country over the United States. Applicant's renewal of his Greek passport and his refusal to relinquish this current passport raises serious foreign preference (guideline C) concerns. They are a clear violation of the oney Memorandum, and therefore Applicant is absolutely barred from retaining a security clearance. Applicant's stated unwillingness to renounce his Greek citizenship must also be considered adversely to Applicant.

Under Guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation, are not citizens of the United States or may be subject to duress. Disqualifying condition 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, must be considered in assessing Applicant's current suitability for access to classified information.

The security concerns engendered by the foreign citizenship and/or residency of such close family members may be mitigated where it can be determined that the immediate family member(s), 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 an individual to choose between loyalty to the person(s) involved and the United States (E2.A2.1.3.1.). Regarding Applicant's relations who reside abroad, there is no evidence of any undue influence ever being exerted by any foreign authority. None of his family members have been engaged in professional or business pursuits which would cause attention to their activities. Neither Applicant's mother, father or sister are, or have been, employees of the Greek government, nor would they be subject to coercion

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline B: AGAINST THE APPLICANT

Subparagraph 1. a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Paragraph 2. Guideline C: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For 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.

Martin H. Mogul

Administrative Judge