

DATE: June 18, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-04427

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has surrendered his British passport and indicated a willingness to revoke his citizenship. His family connections are not of a type that would make him vulnerable to coercion or pressure. His financial interest overseas is very slight. Adverse inference is overcome. Clearance is granted.

STATEMENT OF THE CASE

On December 12, 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 January 6, 2003, and requested that the case be decided without a hearing. The Government submitted its File of Relevant Material (FORM) to the Applicant on February 5, 2003. 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 February 19, 2003. The Applicant submitted additional documentation on March 14, 2003 (Applicant's Exhibit A), and March 20, 2003 (Applicant's Exhibit B). Department Counsel had no objection to this additional documentation. The case was received by the undersigned on March 25, 2003.

FINDINGS OF FACT

The Applicant is 63 and married. He is employed by a defense contractor as a Senior Design Engineer, and he seeks to retain a DoD security clearance previously granted in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a continued 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 he has acted in such a way as to show a preference for another country over the United States.

The Applicant was born in the United Kingdom (UK) in 1939. He moved to the United States in 1967. (Government Exhibit 3 at 1.) The Applicant became a naturalized American citizen in December 1980. (Government Exhibit 4 at Question 3.)

In his Security Clearance Application dated April 6, 2001 (Government Exhibit 4), the Applicant stated "Yes" to question 15 where it asks "In the last seven years, have you had an active passport that was issued by a foreign government?" The Applicant had renewed his British passport for ten years in March 1999. He further stated in the "Remarks" section of that question, "Renewed UK passport for old times sake. Only use US passport for travel." The Applicant possessed this British passport at the time of the issuance of the SOR. The Applicant's United States passport contains immigration stamps from trips to the United Kingdom in June and July 1994, 1997, 1999, 2000, 2001 and 2002. (Government Exhibit 3 at 4-8.)

The Applicant stated in his Answer to the SOR, "I am willing to surrender my British passport if required." Applicant's Exhibit B is a letter from the Registrar of the British Embassy stating that the Applicant surrendered his British passport on March 17, 2003.

The Applicant stated in Applicant's Exhibit A, "Having spent over half my life in [the] United States, I now identify very little with the UK. My primary loyalty is to the United States and in support of this, I am willing to renounce my British Citizenship if required to do so. My loyalty to the United States is demonstrated through my U.S. Citizenship and continuous employment with a defense contractor since 1986 working on important National Security Programs involving access to National Security Information."

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.

The Applicant's mother, brother and sister live in the UK. His brother is a doctor and his sister a retired nurse. Neither of them are involved with the British Government or an intelligence agency. (Government Exhibit 3 at 2.)

His mother is 93 and suffers from senile dementia. As the oldest child, the Applicant is trustee of a trust for her care and benefit. The amount in the trust is approximately \$70,000. In addition to funds for his mother's benefit, he has assets in the UK amounting to about \$15,000. (*Ibid.*) The Applicant states, "Over 95% of my financial worth is in U.S. assets - I pay U.S. taxes on my foreign assets." (Government Exhibit 3 at 1.)

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 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.

Conditions 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;

(5) Foreign financial interests are minimal and not sufficient to effect the individual's security responsibilities.

Guideline C (Foreign preference)

Condition that could raise a security concern:

(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.

Additional policy guidance regarding the possession of a foreign passport is also found in the August 16, 2000, Memorandum from the Assistant Secretary of Defense for Command, Control, Communications and Intelligence entitled "Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline." (Money Memorandum.) In pertinent part the Memorandum states, "[C]onsistent application of the [Foreign Preference] guideline 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." (Government Exhibit 6.)

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 have foreign connections or a foreign preference that may indicate 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 continued holding 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 has foreign connections, that he was a dual citizen of the United Kingdom and the United States, and that he possessed a British passport after he became an American citizen.

The Applicant, on the other hand, has introduced persuasive evidence in rebuttal, explanation and mitigation, which is sufficient to overcome the Government's case against him.

The evidence shows that the Applicant is willing to revoke his British citizenship. In addition, his British passport has been returned to the British Embassy, and is in their possession. Accordingly, he has more than fulfilled the requirements of the Money Memorandum. In addition, other than his possession of a passport, there is no evidence that the Applicant ever exercised dual citizenship with the United Kingdom after he became an American citizen. Guideline C is found for the Applicant.

Turning to Guideline B, the Applicant's mother and siblings still live in the UK. The Applicant's brother and sister have no connection to the British Government, and do not inquire about the Applicant's job. His mother is elderly and ill. The Applicant acts as the trustee for a trust for her benefit. The amount in the trust is not small, but is certainly not substantial. His other assets are minimal. It must also be added that the United Kingdom is one of America's oldest and strongest allies, with whom we just fought a war. A common sense evaluation of the overall facts and circumstances of the Applicant's family ties persuasively shows that the Applicant is not in a position to be vulnerable to foreign influence. 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.

Subparagraphs 2.a.: For the Applicant.

Subparagraphs 2.b.: For the Applicant.

Subparagraphs 2.c.: For the Applicant.

Subparagraphs 2.d.: 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