

DATE: April 25, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-04945

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 48-year-old engineer/scientist is a U.S. citizen by birth to American parents in Brazil. He has resided in the U.S. for 25 years, graduated from college, and raised his family here. He has relatives in Brazil, but they are not in a position to persuade Applicant into acting against U.S. interests. He has renounced his Brazilian citizenship and surrendered his Brazilian passport. He has shown an unequivocal preference for the United States. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On December 18, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons

why DOHA could not make the preliminary affirmative finding required under the Directive that it

is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

On January 11, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made after a hearing before a DOHA Administrative Judge. The case was assigned to me on February 11, 2003. A Notice of Hearing was issued on February 26, 2003, and th hearing was conducted on March 11, 2003. The transcript was received at DOHA on March 26, 2003.

FINDINGS OF FACT

Applicant is a 48-year-old engineer/scientist employed by a defense contractor.

After considering the totality of the evidence derived from Applicant's testimony and the exhibits submitted by both parties, I make the following FINDINGS OF FACT as to each SOR allegation:

Guideline C (Foreign Preference)

1.a. - Applicant is a dual citizen of the United States and Brazil. He is a U.S. citizen by birth,

as a child born in Brazil to U.S. citizens in 1954. His parents recorded his birth with U.S. authorities and he later received a formal Certificate of Citizenship in 1978, shortly after moving to the U.S. (GX 1). He and his family first came to the U.S. in 1959, but when his father passed away in 1961, his mother moved the family back to Brazil. Applicant was seven at the time (Tr at 32). His mother, who is a dual citizen of Brazil, subsequently remarried, this time to a Brazilian.

Applicant obtained a Brazilian passport while living in Brazil. He renewed it in 1994, when he was living in the U.S., because he believed it would allow him to travel to Brazil more quickly if his mother or stepfather became ill and needed his help (Response to SOR). Applicant has been living in the U.S. for 25 years and, during that time, has visited Brazil only twice, in 1980 and in 1996. The purpose of the 1996 visit was to introduce his children, born in the U.S., to their grandparents and other relatives in that country.

After receiving the SOR and learning about the Government's concerns about the foreign passport, Appellant went to a Brazilian consulate on February 14, 2003, renounced his Brazilian citizenship before an official of the Brazilian consulate and offered to surrender his Brazilian passport. He was informed that his formal request to renounce his Brazilian citizenship would be sent to the Brazilian Justice Minister (AX A).

Applicant has no financial ties whatsoever with Brazil. All of his substantial financial ties are with the U.S. (Tr at 28). Before moving to the U.S. he was required to register for the draft in Brazil, but was never asked to serve (*Id.*).

1.b. - Applicant no longer has a Brazilian passport. When he renounced his Brazilian citizenship, as described above, he offered his Brazilian passport to the Brazilian consulate official. The official declined to accept the passport until he received formal approval from the Brazilian government (Tr at 36). As of the hearing, the passport was in the custody of the Security Office of Applicant's employer, which is aware of the situation and will send the passport to the Brazilian authorities when notified of the acceptance of Applicant's renunciation of his Brazilian citizenship. (AX A). Applicant no longer has any access to the passport (Tr at 30).

Applicant has worked in Aerospace and Defense in the U.S. for 25 years and was granted a DoD security clearance for a short time in 1987, when he was working on a classified program. Before applying for the security clearance now at issue, he worked on the non-classified side of extremely important programs related to defense matters, and had access there to significant proprietary information.

Guideline B (Foreign Influence)

Applicant's mother and stepfather in Brazil are in their late 60s or early 70s, and are retired. They have never worked for the Brazilian government or been in the military. His sister, who was born in the U.S., now lives in Brazil with her husband and teaches English. She has no connection with the Brazilian government. His stepbrother became a U.S. citizen in March 2001, and is now a dual citizen of the U.S. and Brazil, residing in the U.S. Applicant's wife is a dual citizen of the U.S. and Brazil and resides with him in the United States. He has an extensive network of relatives and friends in the U.S., "a lot more [here] than there" (Tr at 31).

Applicant discussed his likely reaction to being asked to do something against the interests of the United States (Tr at 53 - 57). He emphasized that his "ultimate priority is to safeguard the information of this country" (Tr at 54). As to his feelings about Brazil, his response was, in essence, affection yes, but his loyalty is only to the United States (Tr at 55). Considering his background and the totality of evidence in this case, I find his testimony on this point to be highly credible.

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Because each security case presents its own facts and circumstances, it should not be assumed that the factors cited above 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.

Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent to this case:

GUIDELINE C (Foreign Preference)

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 security concerns and may be disqualifying include:

1. The exercise of dual citizenship,
2. Possession 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 [and has formally renounced his foreign citizenship and has surrendered his foreign passport].

GUIDELINE B (Foreign Influence)

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 vulnerable to coercion, exploitation, or pressure.

Condition that could raise security concerns and may be disqualifying include:

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.

Condition that could mitigate security concerns include:

1. A determination that the immediate family members(s), . . . cohabitant, or associates in a foreign country 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.

Eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. In reaching the fair and impartial overall common sense determination based on the Directive's "whole person" concept, I am not permitted to speculate, but can only draw those inferences and conclusions that 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.

If the Government meets its initial burden of proof and establishes conduct that creates security concerns 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 conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

CONCLUSIONS

I have considered all the evidence of record. I conclude that Applicant's ties to Brazil (1) do not leave him potentially vulnerable to coercion, exploitation, or pressure that could result in the compromise of classified information, and (2) do not indicate a preference for Brazil over the United States.

As to Guideline B, the evidence does not establish that Applicant is vulnerable to foreign influence, notwithstanding the existence of relatives in Brazil and the fact that his wife and stepbrother, who reside in the United States, are both dual citizens with of the United States and Brazil. There is no evidence that Brazil is likely to seek to use Applicant's relatives here or in Brazil for an improper purpose, and there is no evidence that the relatives are in a position to be exploited by Brazil in a way that could force Applicant to choose between his affection/love for his family and his loyalty to the United States. Viewed in the context of Applicant's 25 years of residency in the United States and his contributions to its defense effort, his testimony as to how he would respond to any attempt to pressure or coerce him into acting improperly was both credible and convincing. The totality of the evidence does not create a doubt about this issue. Based on these facts, Guideline B is found for Applicant.

As to Guideline C, the evidence establishes that Applicant's Brazilian citizenship was based on his being born in that country to American parents. Since moving to the United States 25 years ago, the creation of his American family, and his personal and work-related conduct indicate an unequivocal preference for the United States over Brazil. Applicant has satisfied the security concern raised by his possession of a Brazilian passport by surrendering that passport and renouncing his Brazilian citizenship as soon as he became aware of the DoD's concerns.

In fact, the evidence does not contain any evidence even suggesting a preference for Brazil, except for his possession and use of the Brazilian passport on two occasions over a 25-year period. Based on the entire record, this limited use of the Brazilian passport for convenience does not create a doubt about how Applicant would react to a request to act against this country's interests. Based on the above, Guideline C is found for Applicant.

Mitigation

Guideline B - Mitigating Condition 1 is applicable. Under Mitigating Condition 1, I conclude that (1) Applicant's relatives in Brazil are not agents of Brazil or in a position to be exploited by Brazil; and (2) Applicant has established that he would comply with any request made or pressure applied by his relatives in Brazil.

Guideline C - Applicant's Brazilian citizenship is based on his being born there to an American father (MC 1) and he has not only expressed a willingness to renounce his Brazilian citizenship (MC 4), he has actually done so.

FORMAL FINDINGS

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

Guideline B (Foreign Influence) For the Applicant

Guideline C (Foreign Preference) 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 Applicant.

BARRY M. SAX

ADMINISTRATIVE JUDGE