

DATE: June 25, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-05478

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's dual citizenship has been renounced and his foreign financial interests have been liquidated. Sufficient mitigation is shown. Clearance is granted.

**STATEMENT OF THE CASE**

On January 6, 2003, 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 the 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 February 3, 2003, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on April 8, 2003. A notice of hearing was issued on April 11, 2003, scheduling the hearing for May 9, 2003. At the hearing the Government presented four exhibits. The Applicant presented nineteen exhibits and he testified on his own behalf. The record was left open for ten days to provide the Applicant an opportunity to submit additional documentation. The Applicant submitted one Post-Hearing Exhibit consisting of six enclosures. The official transcript (Tr.) was received on May 23, 2003.

**FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 40 years of age and holds a Bachelor's of Science Degree in Computer Science. He is employed in the field of computer operations for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

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 and raised in the United States. In June 1993, he moved to Canada, seeking a change and better job opportunities. From July 1996 to November 1996, the Applicant was employed for the Canadian government as an air traffic controller. The Applicant explained that his job allowed him the opportunity to directly assist United States military personnel as they traveled through Canada en route to Alaska. The Applicant applied for Canadian Citizenship in March 2000, and he was granted his citizenship in November 2000. Out of curiosity, he also voted in a Canadian election in November 2000. He lived and worked in Canada until May 2001. In June 2001, because of a death in the family and the fact that his parents were getting older, he decided to move back to the United States. The Applicant never obtained a Canadian passport. He does possess a United States passport. (*See, Applicant's Exhibit D*).

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

During the period he lived in Canada, the Applicant purchased a condominium. He submitted a copy of a contract for the sale of his condominium, indicating that it will close escrow by June 24, 2003. (*See, Applicant's Post Hearing Exhibit*). The Applicant had also opened a checking account and a savings account with the Royal Bank of Canada that contained a balance of approximately \$6,000.00. The Applicant has submitted documentation indicating that his Canadian bank accounts have been closed, and the funds have been transferred to the United States. (*See, Applicant's Exhibit P and Post-Hearing Exhibit*). The Applicant also has a retirement fund in Canada with a balance of approximately \$25,000 to 30,000. (*See, Applicant's Exhibit Q*). (The United States and Canada have a bilateral Social Security agreement that allows eligible citizens of either country to received benefits based on their country of residence, not citizenship.)

The Applicant has also renounced his Canadian citizenship. (*See, Applicant's Exhibits A and B*).

Four letters of recommendation from the Applicant's supervisor, a co-worker and friends indicate that the Applicant has the highest level of integrity and honesty. He is an excellent engineer with great interpersonal skills. He is also conscientious, with a strong work ethic. (*See, Applicant's Exhibit G*).

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. 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:

### Foreign Preference

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 a security concern:

1. The exercise of dual citizenship;
5. Residence is a foreign country to meet citizenship requirements;

8. Voting in foreign elections.

Condition that could mitigate security concerns:

4. Individual has expressed a willingness to renounce dual citizenship.

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: (1) not citizens of the United States or (2) 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.

Condition that could raise a security concern:

8. A substantial financial interest in a country, or in any foreign owned or operated business that could make the individual vulnerable to foreign influence.

Conditions that could mitigate security concerns:

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

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 general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- 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 criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have 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."

The Government must make out a case under Guideline C (foreign preference) and Guideline B (Foreign Influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

### **CONCLUSIONS**

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign preference have a direct and negative impact on his suitability for access to classified information.

The Applicant was born and raised in the United States. At the age of thirty, he moved to Canada to obtain a better job. He lived and worked in Canada for about seven years. During that period, he worked for the Canadian government, opened bank accounts, voted, purchased a home and became a citizen. Following that, due to family concerns in the United States, he moved back to the United States to make it his permanent home. Since learning that dual citizenship is an adverse factor when holding a security clearance, the Applicant unconditionally renounced his Canadian citizenship. He also liquidated his assets in Canada and returned them to the United States, and sold his condominium in Canada. He has severed all ties with Canada. Accordingly, the Applicant has clearly demonstrated an unequivocal preference for the United States. Under the circumstances of this case, I find for the Applicant under Guideline C.

With respect to Guideline B, although he lived and worked in Canada for seven years, the Applicant has no relatives or any ties of affection or obligation to anyone in Canada. Thus, he has no foreign ties or contacts that could potentially influence him. His financial interests have been liquidated and no longer exist in Canada. Therefore, there is no situation that could create the potential for foreign influence that could result in his compromise of classified information. Accordingly, the Applicant's request for a security clearance must be granted under Guideline B.

Considering all the evidence, the Applicant has met the mitigating conditions of Guidelines C and B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines C and B.

### **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.

Subparas. 1.a.: For the Applicant

1.b.: For the Applicant

1.c.: For the Applicant

1.d.: For the Applicant

Paragraph 2 : For the Applicant.

Subparas. 2.a.: For the Applicant.

2.b.: For the Applicant

2.c.: For the Applicant.

2.d.: For the Applicant

2.e.: For the Applicant

### **DECISION**

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge