

DATE: February 19, 2004

In Re:

-----

SSN:-----

Applicant for Security Clearance

ISCR Case No. 02-07486

**DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

This 54-year-old computer engineer/consultant technician was born in Ireland in 1949 and moved to the U.S. in 1986. He became a U.S. citizen in 1999. Although he has lived in this country for about 17 years, he has expressed containing close feelings for Ireland, including a statement that he may move back to Ireland when he retires. He has not established an unequivocal preference for the U.S. Most of his immediate family are citizens of Ireland and reside in that country or other European countries. Mitigation has not been established. Clearance is denied

**STATEMENT OF THE CASE**

On February 25, 2003, 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.

In his response to the SOR, dated March 17, 2003, Applicant elected to have a decision made by a DOHA Administrative Judge after a hearing. The matter was first assigned to another Administrative Judge on August 18, 2003, but was reassigned to me on September 2, 2003, because of caseload considerations. On September 25, 2003, a Notice of Hearing was issued, setting the hearing for November 4, 2003, but was then reset for November 7, 2003. At the hearing, the Government did not present any witnesses but offered three exhibits, which were marked for identification as Government Exhibits (GX) 1 - 3. Applicant testified and offered two exhibits, which were marked as Applicant's Exhibits (AX) A and B. All exhibits were admitted into evidence without objection. The transcript (Tr) was

received at DOHA on November 14, 2003.

## **FINDINGS OF FACT**

The SOR contains five allegations, 1.a. - 1.f. under Guideline C (Foreign Preference) and seven allegations, 2.a. - 2.g. under Guideline B (Foreign Influence). In his response to the SOR, Applicant admitted, with explanations and comments, all of the SOR allegations under both guidelines. His admissions are incorporated herein as findings of fact.

After considering the totality of the evidence derived from the hearing testimony and all evidence of record, I make the following FINDINGS OF FACT as to each SOR allegation:

### ***Guideline C (Foreign Preference)***

1.a. - As of the date of his response to the SOR, March 7, 2003, Applicant exercised dual citizenship with Ireland and the United States (U.S.). He remains unwilling to renounce his Irish citizenship. (Tr at 54). His state of mind is that "at some time I will want to go back to Europe and not to have some European citizenship would make that a lot more difficult." (Tr at 55). He "may move back to Ireland on a permanent basis" when he retires. (GX 2 at page 2). He is also concerned that "the future of health care in this country may make it necessary for him to go back to Europe, where there is a more civilized attitude to health care - sorry to - not to be offensive, but talking about a very stark reality, that it may be too expensive for me to maintain my own health care in this country. If I'm a European citizen, I have some rights that are better than those here. And as I get older, those things . . . matter to me." (Tr at 54).

1.b. - Applicant renewed his Irish passport in July 1999, five months after becoming a U.S. citizen in January/February 1999.

1.c. - As of February 4, 2002, the date of interview with an agent of the Defense Security Service (DSS), Applicant still possessed the Irish passport, which was valid until July 2009. He used the Irish passport when traveling to Ireland and other European countries

1.d. - As of the same date, February 4, 2002, Applicant did not intend to relinquish his Irish passport. However, at the hearing, Applicant offered copies of two documents, one a letter from the Consulate General of Ireland, dated October 7, 2003, stating that "[Applicant] no longer holds a valid Irish passport as he has surrendered it to the Irish Consulate." (AX A), and the other a copy of the passport, stamped "Cancelled." (AX B). I find that Applicant has complied with the requirements of the Money Memorandum, cited in full below,

1.e. - Applicant worked for a company in Ireland from 1980 to 1986. He will be eligible for a pension, valued at approximately \$20,000 to \$25,000 when he becomes 65, in about 11 years.

1.f. - Applicant owns approximately \$20,000 in savings bonds issued by the Irish Post Office.

However, the "substance of [Applicant's] financial interests, including retirement, is based on United States investments." (Response to the SOR).

### ***Guideline B (Foreign Influence)***

2.a. - Applicant's mother, sister, brother-in-law, and two brothers are citizens of Ireland and reside in Ireland.

2.b. - Applicant resides with a female citizen who is a dual citizen of Ireland and the U.S. She is employed as a consultant with an Irish organization similar to the U.S. Peace Corps. She currently works with the University of Bethlehem in the West Bank/Palestine. The University is run by a U.S. religious order and she deals primarily with the staff, rather than the student body. She was due to return home to the U.S. within a few months of the hearing. She is "pro American." GX 2 at page 3).

2.c. - Applicant has a sister who is a citizen of Ireland and resides in Italy.

2.d. - Applicant has a sister who is a citizen of Ireland and resides in England.

2.e. - Applicant has a brother who is a dual citizen of Ireland and the U.S. and resides in the U.S.

2.f. - Applicant has a brother who is a citizen of Ireland and resides in Germany.

2.g. - Applicant traveled to Ireland in December 2003 (Tr at 33), September 2001, October 2000, December 1999, June/July 1999, March 1998, October/November 1997, March 1996, June 1995, May 1993, and December 1992. (GX 1).

While still residing in Ireland in the 1980s, Applicant worked for an Irish company in developing computer simulation language for the U.S. Army. (Tr at 34).

### 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.

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 may make decisions that are harmful to the interests of the United States.

Conditions that could raise a security concern and may be disqualifying:

1. The exercise of dual citizenship.

2. Possession of a foreign passport.

4. Accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country.

Conditions that could mitigate security concerns include:

1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country.

2. Indicators of a foreign preference, such as financial benefits and interests, occurred before obtaining U.S. citizenship.

#### Guideline B (Foreign Influence)

*The Concern:* A security risk may exist when members of an individual's immediate family (1) are not citizens of the

United States or (2) may be subject to duress.

Conditions that could raise a security concern and may be disqualifying:

1. An immediate family member . . . is a citizen of, or resident in, a foreign country.
2. Sharing living quarters with a person or persons regardless of their citizenship status, if the potential for adverse foreign influence exists.
8. A substantial financial interest in a foreign country, or in any foreign owned or operated business that could make the individual vulnerable to foreign influence.

Conditions that could mitigate a security concern include:

1. a determination that the immediate family member(s) would not constitute an unacceptable security risk.
5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

Additional guidance is provided by the August 16, 2000 Memorandum from Arthur L. Money, Assistant Secretary of Defense (the Money Memorandum), which notes the absence of a specific mitigating condition (MC) under the Foreign Preference guidelines to Disqualifying Condition (DC) 2, possession of and/or use of a foreign passport. The Money Memorandum mandates that any security clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval from the appropriate agency of the U.S. government.

The 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. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves 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.

## CONCLUSIONS

Applicant was born in Ireland in 1949 and graduated from an Irish university in 1975. He worked for an Irish company in 1988 and, on the company's behalf, came to the U.S. on numerous occasions, before being transferred to the U.S. in 1986 to work for the company's facility here. He began working for his present employer in 1988. He became a naturalized U.S. citizen in January 1999 and obtained a U.S. passport in February 1999. (GX 1 and GX 2). He presently considers himself to be both a U.S. citizen and a citizen of Ireland (GX 1, GX 2, and Tr at 27).

### *Foreign Preference -*

Applicant retains his Irish citizenship. He did not think of his possession and use of the Irish passport as an expression of any preference or Ireland over the U.S., or having any connection with his eligibility to hold a security clearance. (Tr at 37). He renewed his Irish passport in 1999, after becoming a U.S. citizen and obtaining a U.S. passport, partially out of habit and partially for convenience, since it made the entrance process into Ireland and other European countries less time consuming. (Tr at 35, 36). However, once he became aware of the Money Memorandum and understood its contents, he took prompt steps to surrender the Irish passport, as shown by AX A and AX B and Tr at 39).

I have carefully considered Applicant's explanations for his surrendering his Irish passport

while declining to renounce his Irish citizenship. (Tr at 56-57). I conclude from the totality of his statements and conduct that he surrendered his Irish passport only when he realized he would lose his clearance if he did not do so. In other words, he chose to give up some convenience in order to obtain a clearance and, impliedly, to keep his job (Tr at 57, lines 7-13). He hoped that "the practicality of dispensing with my Irish passport would have met [DoD's] needs," i.e., that he would be granted a clearance even if he retained his Irish citizenship. (Tr at 56).

His explanations for why he has not renounced his Irish citizenship are candidly stated, but raise some serious issues. His explanation that he will return to Europe in the future and that having Irish citizenship at that time would make things "easier," presumably including access to the Irish (or another country's) health care system suggests the lack of an unequivocal preference for the United States. It also suggests that while Applicant appreciates the opportunity to earn a living in his specialty in the U.S., he continues to consider Ireland to be his home. There is no problem with feeling that way in the context of maintaining his U.S. citizenship, but holding a DoD security clearance is a privilege that must be earned by word and deed, with the burden being on the Applicant to establish that he is eligible and not on the government to establish that he is not.

The Money Memorandum states that "possession and/or use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the U.S. is paramount and it could also facilitate foreign travel unverifiable by the U.S." The surrender of a foreign passport satisfies the requirement of the Money Memorandum as to mitigation of the DC 2, possession and/or use of a foreign passport, but it does not mitigate DC 1, exercise of dual citizenship. The reality is that an individual with dual citizenship could later obtain a new passport from the other country of citizenship. In some cases, this reality may be outweighed by evidence of the individual's unequivocal commitment to the U.S. In the present case, however, for the reasons discussed below, Applicant has not established such an unequivocal preference for the U.S. Based on the totality of the record, I conclude Applicant has not carried his burden of proof.

Disqualifying Condition (DC) 1 applies, since Applicant continues to exercise dual citizenship and indicates his intention to do so in the future; DC 2 is no longer applicable, since Applicant has surrendered his Irish passport, but his retention of Irish citizenship, coupled with his stated intent to return to Europe in the future, minimizes the weight to be given his surrender of the passport. He is not only able, but likely, to obtain a new Irish passport at any time of his choosing, before or at the time of his retirement. DC 4 is applicable since Applicant states an interest in returning to Ireland or another European country to obtain health care and possibly other benefits in the future. Mitigating Condition (MC) 1, dual citizenship is based on parents' citizenship or being born in Ireland, is applicable, but the weight given this factor is lessened by his affirmative act of renewing his Irish passport. No other mitigating conditions are applicable under the facts of this case.

Since Applicant has surrendered his Irish passport, the Money Memorandum no longer prohibits his holding a clearance, but it does not make him automatically eligible. It is now a mitigating condition that must be considered along with any/all other positive factors. As discussed above, the present lack of an Irish passport does not outweigh the accumulated negative factors.

*Foreign Influence* - The present citizenship and resident status of Applicant's family members, remains substantially the same as cited in SOR 2.a.- 2.f. He has been in a 30-year relationship with the woman he lives with in the U.S. (Tr at 28-30, 39- ). One change from the SOR is that the brother cited in SOR 2.e., who resides in the U.S., may or may not be a citizen of Ireland. Applicant does not know for sure. (Tr at 28). A second change is that the sister cited in SOR 2.c. was divorced, left Italy, and returned to Ireland to live with her children. (Tr at 31). A third tentative change concerns the sister cited in SOR 1.b. She has been providing oversight on some health care and environmental development programs being run by the University of Bethlehem in the Middle East. (Tr at 40, 41). She acts as liaison between the University of Bethlehem and the sponsoring Irish University. (Tr at 43). She was expected to leave Bethlehem and return to Ireland within the next few months after the hearing (Tr at 32), but there is no evidence that she has done so. As Applicant describes their lives, none of his family abroad has any connection with intelligence agencies or the Irish government. (Tr at 44-47).

Applicant is not really sure of the value of the savings bonds cited in SOR1.f., or even where they are. He just knows that he has them (Tr at 47, 48). He also has no real idea about the extent of his pension rights from his Irish company. The \$25,000 figure was an estimate based on old numbers he remembers seeing. (Tr at 49). He has "no idea" if he is covered by some Irish version of U.S. social security. (Tr at 48) (SOR 1.f.). Applicant has made no efforts in the past to access these assets, because it has not been worth his time and he doesn't need the money. (Tr at 50). His U.S. home is worth about \$400,000, and he has an equivalent amount in a money market account (*Id.*). His total savings and investments exceed \$1,500,000. (Tr at 51).

Disqualifying Condition (DC) 1 applies, since Applicant has numerous close family members and associates who are citizens of Ireland, and who reside in Ireland or other European countries, except for one in the U.S. DC 2 applies since Applicant is living with a woman who is a dual U.S./Irish citizen. DC 8 applies, since approximately \$40,000 is a substantial amount. Mitigating Condition (MC) 3 is found not applicable. The record as to his travels to Ireland to visit his large family suggests that the contact is not casual and infrequent. MC 5 is applicable because the \$40,000 interest is minimal in the context of U.S. assets of about \$1.5 million and is therefore not sufficient to affect Applicant's security responsibilities.

As to Mitigating Condition 1, a consideration of the risk involved by their foreign citizenship and residency status is complicated by the conclusions reached under the Foreign Preference guidelines, above. Ireland is certainly not on a par with Iraq, for example, but the guidelines apply generally to all foreign countries. Applicant's failure to provide convincing evidence of his commitment to the U.S. and to U.S. interests, adds questions that might not otherwise exist. Based on the totality of the record evidence, I am unable to conclude that Applicant has carried his burden of proving that his foreign relatives in foreign countries (or in the U.S.) constitute an acceptable security risk.

### **FORMAL FINDINGS**

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

#### Guideline C (Foreign Preference) Against the Applicant

Subparagraph 1.a... Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f. For the Applicant

.

#### Guideline B (Foreign Influence) Against the Applicant

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the Applicant

Subparagraph 2.c. Against the Applicant

Subparagraph 2.d. Against the Applicant

Subparagraph 2.e. Against the Applicant

Subparagraph 2.f. Against the Applicant

Subparagraph 2.g. 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.

**BARRY M. SAX**

**ADMINISTRATIVE JUDGE**