

DATE: February 5, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-08154

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Catherine Engstrom, Attorney-Advisor to Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant obtained and still retains a passport of the United Kingdom through the British citizenship of her mother. She has made no effort to surrender that passport and has made certain equivocal statements regarding her preference for United Kingdom citizenship. Applicant was apprised of Department of Defense (DoD) policy set forth in the "Money Memorandum" of August 16, 2000 and has not complied with its requirements. Clearance denied.

STATEMENT OF THE CASE

On June 13, 2002, the Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Information Within Industry* as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified issued a Statement of Reasons (SOR) to 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 Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. The undersigned was assigned to the matter on December 18, 2002.

In a sworn written statement, dated June 21, 2002, Applicant responded to the allegations set forth in the SOR, and elected to have her case decided on the written record, in lieu of a hearing. Department Counsel submitted the Government's written case on August 23, 2002. A complete copy of the file of relevant material (FORM), consisting of seven documents, was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She apparently chose not to do so. The case was assigned to, and received by, this Administrative Judge on December 18, 2002.

FINDINGS OF FACT

Applicant has admitted all of the factual allegations pertaining to foreign preference and foreign influence under

Guidelines C and B. Those admissions are incorporated herein as findings of fact. After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made.

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline B (Foreign Influence) of the Directive because Applicant's immediate family, and other persons to whom he may be bound by affection, influence, or obligation, are not United States citizens or may be subject to duress. The Government also alleges that a security risk may exist under Adjudicative Guideline C (Foreign Preference) of the Directive, since she holds a passport of a foreign country, the United Kingdom, has taken overt actions in the exercise of dual citizenship and refused to renounce that foreign citizenship. Applicant applied for a U.K. passport prior to her eighteenth birthday and holds both U.S. and U.K. passports based on her citizenship in both countries - U.S. by birth and U.K. by the citizenship of her mother. Applicant's mother is a citizen of the U.K. and resides there.

Applicant would be unwilling to take up arms for the U.S. in the admittedly unlikely event of war with the U.K. since her mother lived there and her first loyalty was to her. She has traveled abroad apparently using her U.K. passport since the travel pre-dated the obtaining of a U.S. passport. Applicant declines to surrender her U.K. passport and renounce her U.K. citizenship.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10,865 § 2. *See* Executive Order No. 12,968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12,968 § 3.1(b)

"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." Directive, ¶ E2.A3.1. 1. The possession of a foreign passport is a strong indicator of such a preference.

On August 16, 2000 the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASDC³I) issued a memorandum, the "Money emorandum", clarifying certain issues in cases involving possession and/or use of a foreign passport. The memorandum precludes the issuance of a security clearance to one holding a passport issued by another country unless the holder surrenders it or obtains approval for its use or retention from the appropriate agency of the U.S. Government.

"A security risk may exist when an individual's immediate family 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. "Directive, ¶ E2.A2.1.1. Having immediate family members who are citizens of, and residing in a foreign country, may raise a

disqualifying security concern. Directive, ¶ E2.A2.1.2.1.

Such security concerns could be mitigated by a determination "that the immediate family members 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." Directive, ¶ E2.A2.1.3

CONCLUSION

Based on the evidence of record, including Applicant's admissions, the Government has established reasons to deny her a security clearance because of foreign influence and foreign preference. Having established such reasons, the Applicant has the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at 33-34 (App. Bd. Feb. 8, 2001). Mitigating factors are not applicable since Applicant did not merely acquire U.K. citizenship derivatively but affirmatively applied for it. She refuses to renounce her U.K. citizenship and surrender her foreign passport. She refuses to express and unequivocal preference for United States citizenship. Applicant failed to offer any evidence to mitigate the concerns raised by her mother's U.K. citizenship. Since the United States and the United Kingdom have long held a 'special relationship' based on mutually shared democratic values and common interests of security and defense, mitigation is often accepted for U.K. relatives in these proceedings. Applicant has failed to offer any evidence to show that no risk was involved in that relationship. By failing to mitigate these security concerns, Applicant has failed to demonstrate that is clearly consistent with national security to grant her the clearance.

FORMAL FINDINGS

Formal Findings as required by the Executive Order No. 10,865 § 3, ¶ 7 (*See* Directive, ¶ E3.1.25), are as follows:

Paragraph 1. Guideline C : AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1. e.: Against Applicant

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraph 1. a.: Against Applicant

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge