

DATE: April 16, 2003

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 02-08235

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's exercise of dual citizenship, her possession of a foreign passport, and her significant foreign contacts, have not been mitigated. Clearance is denied.

**STATEMENT OF THE CASE**

On October 15, 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 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 November 1, 2002, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on March 3, 2003, and a notice of hearing was issued on March 5, 2003, setting the hearing for March 25, 2003. At the hearing the Government presented four exhibits. The Applicant presented no exhibits, but did testify on her own behalf. The official transcript (Tr.) was received on April 10, 2003.

On August 16, 2000, a memorandum was issued by Mr. Arthur Money, Assistant Secretary of Defense for Command, Control, Communications and Intelligence, clarifying "the application of Guideline C to cases involving an Applicant's possession or use of a foreign passport." The Applicant received a copy of this memorandum. (*See*, Government Exhibit 3).

**FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and testimony presented at the

hearing. The Applicant is 31 years of age and has a Doctorate in Physics. She is employed as a Senior Scientist by a defense contractor. She seeks a security clearance in connection with employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for a clearance because she has acted in such a way as to show a preference for another country over the United States.

The Applicant is a dual citizen of New Zealand and the United States. She was born in New Zealand in 1971, to parents who were United States citizens. She states that her parents immediately registered her as a United States citizen born abroad. The Applicant grew up in New Zealand, and as a child visited the United States every couple of years. She obtained a New Zealand passport as a child to use to re-enter New Zealand when her family vacationed in the United States.

The Applicant attended a University in New Zealand from 1990 to 2001. She chose to obtain her college education in New Zealand because it was less expensive for her. She obtained her Bachelors of Science Degree in Physics, a Post Graduate Diploma in Photonics, a Master of Science in Photonics and a Doctorate in Physics. The Applicant states that she chose her field of study with the intent of coming to the United States. The Applicant financed her education by working three jobs and obtaining a student loan through the New Zealand Government. She is currently in the process of paying back her student loan in the approximate amount of \$28,000.00.

In May 2001, the Applicant moved to the United States to pursue her career. She wants to maintain her New Zealand citizenship, however, because she plans to retire there someday.

The Applicant presently possesses a New Zealand passport that was issued to her on March 2000, which will not expire until March 2010. She also possesses a United States passport that she obtained about the same time she obtained her New Zealand passport. The Applicant admits that she used her New Zealand passport in preference to her United States passport when she traveled to New Zealand, Australia, Italy, Egypt, and Israel during the period from April 1995 through June 1995. She does not plan to renew the New Zealand passport when it expires if she is living in the United States.

The Applicant has voted in New Zealand elections, and has exercised rights, privileges and benefits provided exclusively for New Zealand citizens. She states that she is not employed as an agent or an official representative of any foreign government. She states that she has no foreign property, business connections or financial interests in New Zealand.

The Applicant indicated that she only received and became aware of the Money Memorandum and its provisions several days before the hearing. In all fairness, the record was left open an additional five days after the hearing to give her sufficient time, if she so chose, to relinquish her foreign passport to the appropriate authorities. The Applicant submitted no response.

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

The Applicant's spouse is a citizen of New Zealand, and her parents and in-laws are all citizens of New Zealand and reside there. The Applicant's parents contact her every couple of weeks by telephone or e-mail. Her husband's parents call him about once a week, but the Applicant does not speak with them.

The Applicant's sister also lives in New Zealand. The Applicant indicates that she has the potential to inherit from her families estate, but because of the devaluation of the New Zealand dollar, it is more beneficial for her sister to inherit their parents home.

## 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;
2. Possession and/or use of a foreign passport;

#### Condition that could mitigate security concerns:

None.

#### 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:

1. An immediate family member, or 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:

None.

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 her 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 of record 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 contacts have a direct and negative impact on her suitability for access to classified information.

The Applicant is a dual citizen of New Zealand and the United States. She has indicated that she wants to maintain her foreign citizenship, in order to possibly retire in New Zealand someday. She presently possesses a New Zealand passport. The Applicant has failed to comply with the provisions of the Money memorandum that requires dual citizens to surrender their foreign passports to be eligible for access to classified information. In addition, the Applicant has not surrendered her New Zealand passport. Thus, she has not demonstrated an unequivocal preference for the United States. Under the circumstances of this case, I find against the Applicant under Guideline C.

With respect to Guideline B, the Applicant has many foreign contacts, as well as emotional and family ties, in New Zealand. Her immediate family members, in this case her husband, is a citizen of New Zealand, but resides in the United States with the Applicant. The Applicant's parents, sister and in-laws are all New Zealand citizens and reside in New Zealand. She maintains regular contact with her family in New Zealand. There remains the possibility of pressure being placed on them, and through them, on the Applicant. It is the Applicant's burden to show that these ties are not of a nature that could create the potential for influence that could result in the compromise of classified information. She has

not done so. Accordingly, I cannot say that she would not be vulnerable to foreign influence. The risk is considerable, and is of present security significance. Accordingly, the Applicant's request for a security clearance must be denied under Guideline B.

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline C or Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, she has not met her ultimate burden of persuasion under Guidelines C or 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: Against the Applicant.

Subparas. 1.a.: Against the Applicant 1.b.: Against the Applicant

1.c.: Against the Applicant 1.d.: Against the Applicant

1.e.: Against the Applicant

Paragraph 2: Against the Applicant.

Subparas. 2.a.: Against the Applicant

2.b: Against the Applicant

2.c.: Against the Applicant

2.d: Against the Applicant

### **DECISION**

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge