

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: After security concerns arose over Applicant's foreign preference because of her dual citizenship, she voluntarily chose to comply with the Department of Defense (DoD) policy requirements and destroyed her foreign passport in January 2004. After she became a naturalized United States (U.S.) citizen in April 2000, she obtained a U.S. passport in June 2000 and used it on subsequent travel to Peoples Republic of China ("China"). Although she has relatives who are citizens of China, they are elderly and do not have ties to the government; there is no evidence they are in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to them and the U.S. She has mitigated the allegations of foreign preference and influence. Clearance is granted.

CASENO: 02-10909.h1

DATE: 10/05/2004

DATE: October 5, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-10909

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

After security concerns arose over Applicant's foreign preference because of her dual citizenship, she voluntarily chose to comply with the Department of Defense (DoD) policy requirements and destroyed her foreign passport in January 2004. After she became a naturalized United States (U.S.) citizen in April 2000, she obtained a U.S. passport in June 2000 and used it on subsequent travel to Peoples Republic of China ("China"). Although she has relatives who are citizens of China, they are elderly and do not have ties to the government; there is no evidence they are in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to them and the U.S. She has mitigated the allegations of foreign preference and influence. Clearance is granted.

STATEMENT OF THE CASE

The Government could not reach the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant, ⁽¹⁾ so the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on June 20, 2003. The SOR detailed security concerns in paragraph 1 over foreign preference (Guideline C) and in paragraph 2 over foreign influence (Guideline B). Applicant received the SOR and replied to these SOR allegations in an Answer of July 12, 2003; she requested a decision be made without a hearing.

The case was assigned to Department Counsel who on December 17, 2003, prepared a File of Relevant Material (FORM) which was then forwarded to Applicant on December 22, 2003, for reply within 30 days of receipt. Applicant received the FORM on January 7, 2004; she replied on January 27, 2004 with attachments (Exhibit A) to which Department Counsel did not object. On March 10, 2004, the case was assigned to me.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following findings of fact:

Applicant, 44 years old, has been a senior engineer from 2000 to present at a defense contractor in State #1. She completed an Office of Personnel Management (OPM) Security Clearance Application (Standard Form 86) (SF 86) in May 2000. (Exhibit 3) Before moving to the U.S. Applicant worked as an engineer in China. (Exhibit 5)

Applicant received a B.S. degree from a university in State #1 in December 1999; previously she had studied at a community college. (Exhibit 3) Applicant married in 1983; they have one daughter born in China in 1985 who became a naturalized US citizen in April 2000 and received a U.S. passport in September 2000. (Exhibits 1, 2; Exhibit A) Another daughter born in the United States (U.S.) in 1992 is a U.S. citizen. (Exhibit 3)

Foreign Preference

Born in China, Applicant moved to the U.S. in the 1991 to join her husband who had resided in the U.S. in State #2 from 1981-1988. In January 1999 she obtained a replacement passport when China required persons who maintained residence in the U.S. to obtain a replacement passport; it expired in January 2004. She maintained and used her Chinese passport only before she became a U.S. citizen when she traveled to China from December 1999 to January 2000. (Exhibits 3, 4, 5)

When she became eligible, she became a naturalized U.S. citizen in April 2000 and obtained a U.S. passport in June 2000 and used it on subsequent travel to China from December 2000 to January 2001. When questioned by the Defense Security Service (DSS) in April 2001 and again in March 2002 she maintained she did not claim dual citizenship and was willing to relinquish her Chinese passport if necessary to have access to classified information. Further she had no financial interests in China and no cultural or personal ties. (Exhibits 3, 4, 5)

In January 2004 after receiving the FORM with the DoD policy guidance to "surrender" her foreign passport, Applicant asked a security specialist at her corporation to witness her shred ⁽²⁾ her Chinese passport (which had expired on January 5, 2004) as her intent was to comply with DoD security guidelines to surrender her passport. She provided a photocopy of her destroyed passport. (Exhibit 11; Exhibit A)

Foreign Influence

Applicant does not have frequent contact with her family members who reside in China; she calls them on a monthly basis. (Exhibits 1, 2, 5)

She had been away from China for ten years before she returned in 1999-2000 to see her family. Before her mother died in 2000, she provided \$3,000 to pay for her mother's hospital bills from 1997 to 2000. (Exhibits 1, 2, 5)

She has a father who is 76 and seriously ill; he is a resident of and citizen of China. She returned to visit him from December 2000 to January 2001. She provides \$2,000 a year to assist her father. (Exhibits 1, 2, 5)

Her elder brother and sister are also residents of and citizens of China. Her husband recently gave her siblings \$1,000 when he traveled to China. (Exhibits 1, 2, 5)

Her father-in-law has died; her mother-in-law is 85 and in poor health and is a resident of and citizen of China. Applicant's husband calls his mother on a weekly basis; there is no evidence of Applicant's contact with her mother-in-law. (Exhibits 1, 2, 5)

Applicant has a daughter who was born in 1985 who became a naturalized US citizen in April 2000. She received a U.S. passport in September 2000. (Exhibits 1, 2; Exhibit A)

Applicant stated there are no circumstances that would make her susceptible to blackmail, coercion, or embarrassment. (Exhibit 5)

The Government established that China is a "country of concern" because of the extensive intelligence efforts against the U.S. which demonstrates that the country's actions are often "hostile" to the national security interests of the U.S. (Exhibit 6, 7, 8, 9, 10)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. The mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed the following relevant Adjudication Guidelines:

Guideline C - Foreign Preference⁽³⁾

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 a security concern and may be disqualifying include:

- (1) The exercise of dual citizenship;
- (2) Possession and/or use of a foreign passport⁽⁴⁾;

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 possible foreign preference occurred before obtaining United States citizenship

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: (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.

Conditions that could raise a security concern 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

Conditions that could mitigate security concerns include:

(1) A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question 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;

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order

to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Guideline C - Foreign Preference

The active pursuit of a benefit of foreign citizenship has the potential to place Applicant in the position of being subject to the duties or obligations owed to two different countries, and raises the potential of her being subjected to competing claims. Under the adjudicative guidelines pertinent to foreign preference, disqualifying conditions (DC) E2.A3.1.2.1. the exercise of dual citizenship and E2.A3.1.2.2. possession and/or use of a foreign passport must be considered in evaluating Applicant's security worthiness. A citizen of China by birth, Applicant came to the United States in 1991 to join her husband. She became a United States citizen by naturalization in 2000, and subsequently obtained a United States passport which she used for a subsequent trip to China in 2000 to 2001. While Applicant maintained a Chinese passport which expired in January 2004, there is no evidence that she used it after becoming a U.S. citizen.

Such foreign preference concerns raised by dual citizenship are potentially overcome where the dual citizenship is based

solely on birth or the foreign citizenship of one's parents. [See mitigating condition (MC) E2.A3.1.3.1.]. While Applicant derives her foreign citizenship from her birth in China, security concerns were created by her exercise of a benefit of that foreign citizenship after becoming a U.S. citizen when she maintained this foreign passport without any official approval or sanction by the United States Government. While maintaining dual citizenship itself is not per se disqualifying, the issue is whether Applicant can be counted on to act in preference to the United States and without concern for the interests of China. As explained by the ASD(C³I) in the August 16, 2000, memorandum, possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and could facilitate travel unverifiable by the United States. In this case Applicant falls within MC 2 as she only used her foreign passport for travel before she became a naturalized U.S. citizen and had a U.S. passport, so this indicator of possible foreign preference occurred before she became a U.S. citizen.

Applicant told the DSS in 2001 and again 2002 she was willing to relinquish her foreign passport and finally took an action to shred her expired foreign passport in January 2004 and did so with her corporate security specialist as a witness in order to comply with the ASD(C³I) mandate. While the Appeal Board has concluded in that past that this DoD mandate necessitates one to surrender⁽⁵⁾ the passport to an embassy to be cancelled, in this case the passport had already expired. Thus, I conclude that her action in shredding the passport and her previous assurances that she does not wish to maintain her dual citizenship demonstrate she has complied with the essence of the policy guideline which is to eliminate security concerns related to potentially undetected travel. The recent step taken by Applicant shows her intent to comply with the ASD(C³I) memorandum to renounce her foreign passport and corroborates her claim of sole allegiance to the United States. Applicant demonstrated through this action that her preference is for the United States. Her actions demonstrate she intended to comply with DoD security guidance to "surrender" her passport and made a reasonable interpretation of the policy guidance that had been sent to her (Exhibit 11). Further, she took her action in front of a corporate security specialist which shows she acted in good faith. As she is not a lawyer, I conclude it is not reasonable to require her to knowledgeable of DOHA Appeal Board rulings.

Thus, favorable findings are warranted with respect to subparagraph 1.a. of the SOR.

Guideline B - Foreign Influence

The Government also expressed security concerns over Applicant's possible foreign influence raised by her close ties of affection to citizens of a foreign country as China is an active collector of economic and industrial espionage. Applicant has siblings, a father, and in-laws who reside in China and who are citizens there. The security concern under Guideline B, Foreign Influence, is that 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: (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. Conditions that could raise a security concern 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.

On the other hand, contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. Applicant has relatively infrequent contacts with her family as demonstrated by her infrequent visits there. She did not make her first visit until after she had lived in the U.S. for ten years. She made a second visit a year later, but has not visited since January 2001. She has only monthly contacts on the telephone and sends a minimal amount of money to her family in China. Further, Applicant's relatives are elderly and there is no evidence that they have any ties to their foreign government or could be subject to pressure; there is no evidence of any substantial likelihood that they would exercise foreign influence over Applicant. Merely because of these family ties Applicant is not vulnerable to duress, and these security concerns are mitigated as these relatives are not in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to the person(s) involved and the United States. In addition, Applicant has had ties to the U.S. over a substantial period of time: one daughter was born in the U.S., and the other has become a naturalized U.S. citizen.

Any risk of foreign influence on Applicant and/or her immediate family would appear to be slight and clearly manageable in the light of her immediate family ties to the U.S. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude these ties are not of such a nature as to create any tangible risks of undue pressure, so do not invoke foreign influence concerns. Thus, I resolve SOR paragraph 2 and subparagraphs 2.a. through 2.d. in Applicant's favor.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1.Guideline C: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For 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 the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. Although in the FORM, the Government argues that the Applicant should have surrendered her passport to Chinese authorities, Applicant complied with the spirit of the requirement by shredding her expired Chinese passport before security officials at her corporation. (FORM at 3; Exhibit A)
3. The DoD August 16, 2000, Policy Clarification Memorandum (Exhibit 11) elucidated the policy on Foreign Preference, Guideline C and stated, in part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigation factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the

appropriate agency of the United State Government. Modification of the Guideline is not required.

4. DoD policy clarification of Guideline C issued in August 2000 made clear that "any clearance [must] be denied or revoked unless the applicant surrenders the foreign passport"

5. The Appeal Board has concluded that nothing in the ASDC3I memorandum indicates or suggests that an applicant should or must destroy a foreign passport as the ASDC3I memorandum refers to "surrender" of a foreign passport. The Appeal Board has concluded that surrender of a foreign passport involves returning it to the issuing authority or whatever other person or entity is authorized by law to accept surrender of a foreign passport. *See* ISCR Case No. 99-0480 (November 28, 2000) at p. 8. Therefore, the Appeal Board earlier concluded that the ASDC3I memorandum is not satisfied by an offer to: (a) destroy a foreign passport; (b) place a foreign passport in escrow with the security department of a defense contractor; or (c) give a foreign passport to DOHA or another department of the United States government. *Id. Also, see* ISCR Case No. 01-01295 (December 13, 2001) at p. 3.