

KEYWORD: Foreign Preference; Foreign Influence; Personal Conduct

DIGEST: Applicant, who is a U.S. naturalized citizen and was a citizen of Honduras solely by virtue of his birth and his parents' birth in the country, mitigates security concerns associated with his past dual citizenship with Honduras and the U.S. by surrendering his expired Honduran passport, renouncing his Honduran citizenship, and demonstrating his property interests in Honduras derive only beneficially from his wife's Honduran legal and equitable interest in her home. Because Applicant's immediate and extended family members who reside in Honduras are shown to pose no discernible vulnerability to pressure or coercion, foreign influence concerns are also mitigated. Applicant successfully refutes allegations of falsification of his security clearance. Clearance is granted.

CASENO: 02-27375.h1

DATE: 03/29/2005

DATE: March 29, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-27375

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Department Counsel

FOR APPLICANT

Arthur O. Schott, III

SYNOPSIS

Applicant, who is a U.S. naturalized citizen and was a citizen of Honduras solely by virtue of his birth and his parents' birth in the country, mitigates security concerns associated with his past dual citizenship with Honduras and the U.S. by surrendering his expired Honduran passport, renouncing his Honduran citizenship, and demonstrating his property interests in Honduras derive only beneficially from his wife's Honduran legal and equitable interest in her home. Because Applicant's immediate and extended family members who reside in Honduras are shown to pose no discernible vulnerability to pressure or coercion, foreign influence concerns are also mitigated. Applicant successfully refutes allegations of falsification of his security clearance. Clearance is granted.

STATEMENT OF CASE

On March 10, 2004, 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, 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, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on March 23, 2004, and requested a hearing. The case was assigned to me on October 8, 2004, and was scheduled for hearing on December 7, 2004. A hearing was convened on December 7, 2004, for the purpose of considering whether it is clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of three exhibits; Applicant relied on two witnesses (including himself) and nine exhibits. The transcript (R.T.) of the proceedings was received on December 17,

2004.

PROCEDURAL ISSUES

Before the close of the hearing, Department Counsel requested official notice be taken of a U.S. State Department consular information sheet covering Honduras. There being no objection from Applicant, and good cause being shown, official notice was taken of the State Department document.

Before the close of the hearing, the Government moved to amend the SOR to add subparagraph 1.e to allege Applicant possesses a foreign passport. There being no objection from Applicant, and good cause being demonstrated, the Government's amendment motion was granted. Applicant admitted the new allegation and committed to surrendering his Honduran passport and renouncing his Honduran citizenship. He added his explanation that he was told by a U.S. immigration official that he could keep his Honduran passport as a souvenir.

Prior to the close of the hearing, Applicant requested the record remain open to permit him the opportunity to supplement the record with documentation of his surrender of his expired Honduran passport and renunciation of his Honduran citizenship. There being no objection from the Government, and good cause being demonstrated, Applicant was granted 15 days to supplement the record. The Government, in turn, was afforded five days to respond. Within the time permitted, Applicant furnished a copy of a cover letter from applicant's counsel with an accompanying letter from the Honduran consulate confirming Applicant's surrendering his Honduran passport and Applicant's affidavit of December 14, 2004 confirming his surrender of his Honduran passport and renunciation of his Honduran citizenship. Applicant's submissions were accepted as Applicant's exhibits J and K, respectively.

SUMMARY OF PLEADINGS

Under Guideline C, Applicant is alleged to have a preference for Honduras, manifested by the following: (1) He owns a home in Honduras, from which he receives rental income; (2) he invests all of his Honduras rental income in a Honduras cooperative company, and (3) he intends to reside in his Honduras home after he retires.

Under Guideline B, Applicant is alleged to (a) have a mother and five siblings who are citizens and residents of Honduras; (b) he maintains telephone contact with his mother and siblings; (c) he provides \$100.00 to \$200.00 every three months to his mother in Honduras; (e) he traveled to Honduras from July 1998 to August 1998 and from June 2002 to July 2002 to visit his relatives, and (f) he owns a home in Honduras, from which he earns rental income, and intends to retire there.

Under Guideline E; Applicant is alleged to have falsified his security clearance application (SF-86) of December 2000 by failing to list his five siblings and his foreign property when responding to questions 9 and 17 (*sic*) of the questionnaire.

For his response to the SOR, Applicant admitted most of the allegations under Guidelines B and C, denying only his investing all of his Honduran property income in a cooperative (claiming his wife does the investing, not himself). He also denied deliberately falsifying his SF-86. He claimed no current investment income from his house in Honduras.

FINDINGS OF FACT

Applicant is a 45-year old employee of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Born and raised in Honduras in 1959, Applicant played soccer in his youth but never served in the Honduran military (R.T., at 64). He married his spouse (W), of Austrian descent, in 1980. They have three children from their marriage, ages 24, 21 and 17, respectively. He emigrated to the U.S. in 1992 with his wife and children to be close to her father who was already naturalized as a U.S. citizen and living in the U.S.. Applicant himself became a naturalized U.S. citizen in October 1997 and never used his Honduras passport (*see ex. 3*) thereafter to travel to Honduras or any other country. He believed at the time he was renouncing his Honduran citizenship by becoming a naturalized U.S. citizen. However, he neither formally renounced his Honduran citizenship nor surrendered his expired Honduran passport at the time. Rather, he retained his Honduras passport as a family souvenir, which a U.S. immigration official indicated he could lawfully do (*see ex. K*). To avoid any confusion over whether he could retain his Honduran passport (which subsequently expired in 2001) without jeopardizing his security clearance, he went to the local Honduran Consulate in December 2004, where he surrendered his Honduras passport and formally renounced his Honduran citizenship (*ex. K*).

Applicant owns land in Honduras which his mother financed for him in 2002. With the 500 lempiras (about \$38.00) his mother gave him, he purchased the land with his brothers (*see C*; R.T., at 28-29, 64-65). Applicant does not know how much the land has since appreciated. The home in Honduras that he admits to having an interest in is actually W's. W

rents the home and currently places the rental income in a local Honduran bank account (*see ex. I*), which is not an investment company. Applicant's cooperative investment account where W previously deposited some of her rental income has since been closed (R.T., at 33). Since closing his cooperative account, W gives what is left of the monthly rental income after the mortgage to Applicant who deposits it in a local Honduran bank account (R.T., at 33-34, 88-92, 103-04). While Applicant claims a customary interest in the home as W's spouse (something he can do under Honduran law as the husband of a Honduran property owner), he does not consider himself the legal owner of the house and makes no financial decisions about the home (R.T., at 32-33, 61-62). W corroborates Applicant in assuring she is the sole legal and equitable owner of the Honduras home (R.T., at 88-92). Her assurances are accepted. Although Applicant derives indirect financial benefit from his wife's property, he does not have an interest in the home that can be characterized as either a legal or equitable share under Honduran law.

Applicant owns a home in the U.S. (*see exs. D and E*) and maintains two bank accounts and a 401(k) retirement account in the U.S. as well (*see exs. F and G*). His children (all U.S. citizens by birth) have attended public schools in the US. He is the recipient of a certificate of good conduct from his local police department, documenting his lack of any problems with local law enforcement (*see ex. A; R.T., at 21*).

Besides his mother who is a citizen and resident of Honduras, Applicant has four brothers and six sisters who are each citizens and residents of Honduras (R.T., at 51-52). His father and one sister have since passed away. Neither his mother nor any of his siblings have ever served in the Honduras military. None of them have ever worked for the Honduras Government or any of its affiliations, and none have ever had any involvement or interest in Honduran politics (R.T., at 51-52). Applicant last visited his family in Honduras approximately two years ago. He and his wife send his mother and siblings \$200.00 or less every month to help sustain them (R.T., at 23-24, 54-55, 88). He maintains monthly contact with his mother and siblings, who in Applicant's opinion are at no risk to being pressured, influenced, or coerced by Honduran authorities to enlist disclosures of classified information from Applicant. W's father passed away about three years ago. However, she has a brother who is a dual U.S.-Honduran citizen and splits his time between the U.S. and Honduras; she has little contact with her brother and his wife (R.T., at 96). W also has a mother, who is a Honduran citizen who resides in the U.S. (R.T., at 97).

Since becoming a naturalized U.S. citizen in 1997, Applicant has visited Honduras three times (last in 2002 with W and his three children), each time using his U.S. passport. He has never used his Honduran passport since becoming a U.S. citizen. When he retires, he intends to split his time between Honduras and the U.S., but not permanently retire to W's home in Honduras as claimed by the Government.

Based on the information furnished in the U.S. State Department's consular sheet, Honduras is a democratic country with a developing economy. For Honduran-born citizens like Applicant who have become U.S. citizens, they retain their Honduran citizenship as dual nationals unless and until they formal step to renounce their Honduran citizenship (*see U.S. State Department Consular Information Sheet of November 2004*). Security concerns inside Honduras remain considerable due to high crime rates and limited law enforcement resources. Considerable caution is recommended for traveling U.S. citizens.

Asked to complete an SF-86 in December 2000, Applicant omitted the names of his siblings living in Honduras and the home his wife owns in Honduras (*see ex. 1*). Applicant attributes his omissions to his confusion over the electronic framing of the question, stemming from his language barriers (R.T., at 38-39). He cites his previous identification of his

siblings on a company insurance application as indicative of his lack of any intent to deliberately withhold information about his siblings in Honduras (R.T., at 38, 60-61). And he attributes his omission of the Honduran home he claims a customary interest in to his belief that he does not have either a legal or equitable interest in his wife's home (R.T., at 42-43, 61-62). Assessing the credibility of Applicant's claims in light of his exhibited demeanor, corroborative support from his wife, and surrounding circumstances, inferences warrant that Applicant did not knowingly and wilfully omit information about his siblings and W's property when answering questions 9 and 17 (not 12 as alleged in the SOR) of his Sf-86.

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

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

Foreign Influence

The Concern: A security risk may exist when an individual's immediate family, including co-habitants, and other persons to whom he or she may be bound by affection, influence, or are 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. 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.

Personal Conduct

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a

deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant is a conscientious member of a defense contractor who after being born and raised in Honduras, emigrated to the U.S. in 1992 to join his father-in-law (already a naturalized US citizen) and seek better economic opportunities. One in the US, he and his wife had three children together and became naturalized US citizens. Both Applicant and his wife have immediate family members who are citizens and residents of Honduras, and with whom they maintain mostly regular contact (with the exception of W's brother). Believing he had implicitly renounced his Honduran citizenship when he swore allegiance to the US, he opted at the time to keep his Honduran passport (which expired in 2001) as a souvenir and forego formal renunciation of his Honduran citizenship. He has since surrendered his expired Honduran passport and renounced his Honduran citizenship.

Dual citizenship concerns necessarily entail country allegiance assessments and invite critical considerations over acts indicating a preference or not for the interests of the foreign country over the interests of the U.S. In a different vein, the continued residence of Applicant's immediate family members (his mother and ten brothers and sisters) and his wife's brother in Honduras raises potential concerns about their being vulnerable to future pressure or duress that could result in the compromise of classified information. The issues, as such, raise concerns over Applicant's preference for a foreign country over the U.S. and the potential for members of Applicant's immediate and extended family being placed at risk to pressure, duress, or influence.

Foreign Preference

By virtue of his birth in Honduras to parents of Honduran descent and citizenship, Applicant was endowed with Honduran citizenship through his parents. What is clear from a review of the State Department's Consular Information sheet of November 2004 is that a Honduran-born citizen's becoming a naturalized citizen of another country does not automatically deprive the Honduran citizen of his Honduran citizenship. By taking citizenship in another country (such as the U.S.) the Honduran-born citizen becomes a dual citizen of both countries. In this respect, Honduras' practice is consistent with the practices of many countries who (like Honduras) do not recognize an oath of allegiance to another country (such as the U.S.) as implicit renunciation of the person's Honduras citizenship. This lack of uniformity in the handling of citizenship issues by nation states was duly noted by the Appeal Board in ISCR Case No. 02-06806 (February 25, 2003) and in ISCR Case No. 00-0516 (December 7, 2001). By taking express action to renounce his Honduran citizenship, Applicant absolved himself of any continuing concerns associated with his holding dual citizenship.

While Applicant has never used his Honduran passport (which expired in 1997) after becoming a naturalized US citizen, he retained it in his possession until recently. Such continued possession, even without use and/or expiration (as here), has been considered by the Appeal Board to violate the *per se* bar of DoD's August 2000 memorandum concerning foreign passports (*hereinafter* "ASDC3I memorandum). See ISCR Case No. 03-06174 (February 28, 2005); ISCR Case No. 01-01295 (December 13, 2001). Risks of his being taken hostage behind Honduran lines and denied the customary diplomatic intercession made available to U.S. citizens traveling on US passports is the generally accorded rationale for insisting on the traveler's use of a US passport when traveling abroad.

So, while Applicant's limited exercise of dual citizenship by holding on to his Honduran passport is sufficient to invoke Disqualifying Condition (DC) E2.A3.1.2 (*Possession and/or use of a foreign passport*) of the Adjudicative Guidelines for foreign preference, his avoiding any use of his Honduran passport after becoming a U.S. citizen and now surrendering the expired passport to the Honduran consulate mitigates this foreign passport security concern.

Other preference concerns manifest in Applicant's claimed ownership of foreign real estate and investment accounts in Honduras and declared intent to retire in W's Honduran home are sufficiently refuted to preclude any application of disqualifying conditions pertinent to using foreign citizenship to protect financial or business interests in another country. Further, Applicant mitigates any residual foreign preference concerns by demonstrating (a) his dual citizenship with Honduras was solely by virtue of his parents' citizenship in Honduras and (b) he has since surrendered his expired Honduran passport and renounced his Honduran citizenship. Applicant may take advantage, accordingly, of two of the mitigating conditions for foreign preference: E2.A3.1.3.1 (*Dual citizenship is based solely on parents' citizenship or birth in a foreign country*) and E2.A3.1.3.4 (*Individual has expressed a willingness to renounce dual citizenship*).

Considering all of the circumstances surrounding Applicant's dual citizenship exercise and meaningful mitigation efforts, conclusions warrant that Applicant's exhibited active dual citizenship by his retaining his Honduran passport after becoming a naturalized US citizen, expressing a customary interest in his wife's Honduran home, and indicating interest in retiring in W's Honduran home are mitigated. By mitigating the Government's preference concerns, Applicant demonstrates his continued preference for the US since becoming a naturalized US citizen. Applicant's demonstrated preference for the US satisfies his burden requirements in successfully discounting the Government's claimed security risks. Favorable conclusions warrant with respect to subparagraphs 1.a through 1.e of Guideline C.

Foreign Influence

Besides foreign preference concerns, Government finds security risks associated with (a) Applicant's (a) beneficial property interest in a Honduran home from which he and his wife receive income in his wife's name, (b) his regular contacts with his family members residing in Honduras, and (c) his expressed intent to reside part of the time in their Honduran home after he retires. Although Applicant's ties to his wife's brother do not appear to be particularly close, his connections with his mother and siblings are quite close and invite application of Disqualifying Condition (DC) E2.A2.1.2.1 (*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*) and E2.A2.1.2.8 (*A substantial financial interest in a country, or in any foreign owned or operated business that could make the individual vulnerable to foreign influence*) of the Adjudicative Guidelines for foreign influence.

The Adjudicative Guidelines governing collateral clearances do not dictate *per se* results or mandate particular outcomes for any chosen set of guidelines covering risks of foreign influence. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing. Personnel security assessments continue to be governed by the same Change 4 requirements of the Directive for appraising the security risks associated with the individual's

having family abroad, which include both common sense assessments of country risks and information available from public sources.

So, under these adjudicative guidelines, while an applicant with immediate family domiciled in a hypothetical hostile country might pose a risk of a hostage situation, he might conversely be able to neutralize material risks of exploitation of immediate and/or extended family members residing in a friendly country. While Honduras cannot be characterized as a particularly close ally of the US, it is not described in State Department official publications as hostile either: It is characterized as a functioning democracy with a developing economy. Based on reported criminal activities in the country alone, Honduras cannot be considered a country with a political hierarchy unfriendly to the U.S. and a risk to hostage taking. Under such circumstances, Applicant's immediate and extended family members are not exploitation risks under the conditions and criteria included in the Guidelines.

While the foreign influence provisions of the Adjudicative Guidelines are ostensibly neutral as to the character of the subject country, they should not be construed to ignore the geopolitical aims and policies of the particular foreign regime involved. Honduras is a constitutional republic, governed by executive and legislative branches whose leadership and influence are directed and circumscribed by secular tenets that confirm the place of the rule of law in the Government's institutional hierarchy.

Because Honduras remains a transitioning democracy that lacks a secure infrastructure and track record for ensuring the safety of foreigners traveling in the country, the risk of a pressure or influence situation involving an immediate or extended family member of Applicant's cannot be completely discounted. However, any residual security concerns arising out of Applicant's having family and property interests in Honduras are sufficiently mitigated by Applicant's demonstrated U.S. preference and strong ties to the U.S. to permit safe predictive judgments about his ability to withstand risks of exploitation and pressure attributable to his familial relationships and contacts with his immediate and extended family members domiciled in Honduras. Favorable conclusions warrant with respect to subparagraphs 2.a through 2.f of Guideline B.

Falsification issues

Posing potential security concerns as well are Applicant's omissions of his siblings and foreign property interests in Honduras in his completed December 2000 SF-86. His omissions, however, are attributable to his mistaken reading of question 9 and his accepted belief that his beneficial interest in his wife's Honduras home and rental income entitlement didn't rise to the level of a legal interest in foreign property that needed reporting. Applicant's explanations of his omissions were persuasive enough to avert inferences of knowing and wilful omission and enable him to refute the allegations of falsification governed by Guideline E.

In reaching my decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in E2.2.1 of the Adjudicative Process of Enclosure 2 of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS and the FACTORS and CONDITIONS listed above, this Administrative Judge makes the following separate FORMAL FINDINGS with respect to Appellant's eligibility for a security clearance:

GUIDELINE C (FOREIGN PREFERENCE): FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: FOR APPLICANT

Sub-para. 1.d: FOR APPLICANT

Sub-para. 1.e: FOR APPLICANT

GUIDELINE B: (FOREIGN INFLUENCE): FOR APPLICANT

Sub-para. 2.a: FOR APPLICANT

Sub-para. 2.b: FOR APPLICANT

Sub-para. 2.c: FOR APPLICANT

Sub-para. 2.d: FOR APPLICANT

Sub-para. 2.e: FOR APPLICANT

Sub-para. 2.f: FOR APPLICANT

GUIDELINE E (PERSONAL CONDUCT): FOR APPLICANT

Sub-para. 3.a: FOR APPLICANT

Sub-para. 3.b: 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 Applicant's security clearance.

Roger C. Wesley

Administrative Judge