

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant is a 45-year-old naturalized citizen of the United States employed by a defense contractor. Applicant is entitled to dual citizenship with Trinidad and Tobago, her country of birth, and retained and used her passport from that country for her personal convenience. Applicant's maternal grandmother and her husband's parents and siblings are citizens and residents of Trinidad and Tobago. Applicant has since surrendered her foreign passport. All Applicant's immediate family members live in this country and all are naturalized citizens of the United States, or are applying for citizenship. All Applicant's financial interests are in this country. Considering the extent of Applicant's ties to the United States, Applicant has mitigated the security concerns arising from her dual citizenship and possible foreign influence. Clearance is granted.

CASENO: 02-28472.h1

DATE: 08/23/2004

DATE: August 23, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-28472

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL J. BRESLIN**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 45-year-old naturalized citizen of the United States employed by a defense contractor. Applicant is entitled to dual citizenship with Trinidad and Tobago, her country of birth, and retained and used her passport from that country for her personal convenience. Applicant's maternal grandmother and her husband's parents and siblings are citizens and residents of Trinidad and Tobago. Applicant has since surrendered her foreign passport. All Applicant's immediate family members live in this country and all are naturalized citizens of the United States, or are applying for citizenship. All Applicant's financial interests are in this country. Considering the extent of Applicant's ties to the United States, Applicant has mitigated the security concerns arising from her dual citizenship and possible foreign influence. Clearance is granted.

**STATEMENT OF THE CASE**

Under Executive Order 10865, *Safeguarding Classified Information Within Industry*, (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, (Jan. 2, 1992), as amended and modified (the "Directive"), the Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On November 7, 2003, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline C, Foreign Preference, and Guideline B, Foreign Influence, of the Directive.

Applicant answered the SOR in writing on December 2, 2003. She elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on May 12, 2004. Department Counsel provided a complete copy of the file of relevant material (FORM) to Applicant, along with notice of her opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the

FORM on July 2, 2004. By letter dated July 19, 2004, Applicant submitted an additional statement in response to the SOR, and a letter from the Embassy of Trinidad and Tobago acknowledging Applicant's surrender of her passport. The case was assigned to me on August 10, 2004.

### FINDINGS OF FACT

Applicant admitted the allegations in the SOR, paragraphs 1.a, 1.b, 1.c (in part), 1.d, 2.b, 2.c, 2.d, and 2.g. Item 3, Applicant's Answer to SOR, dated December 2, 2003, at 1-2. Those admissions are incorporated herein as findings of fact. She denied the allegations in the SOR, paragraphs 1.e, 2.a, 2.e, and 2.f. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 45 years old, and works for a defense contractor. Item 4, Security Clearance Application, dated May 15, 2001, at 1, 2. She was born in Trinidad and Tobago, *id. at 1*, and moved to the United States with her family in 1982. Item 5, Statement of Applicant, dated June 10, 2002, at 1. She returned to Trinidad and Tobago in 1984 to marry. *Id.* Thereafter, Applicant lived in Trinidad and Tobago, with occasional visits to the United States, until 1987, when she and her husband established permanent residence in the United States. *Id.* Applicant became a naturalized citizen of the United States in 1997. Item 4, *supra*, at 1.

When Applicant became a citizen of the United States, she retained dual citizenship with Trinidad and Tobago. *Id.* She also kept her Trinidad and Tobago passport issued in 1995. Applicant used her Trinidad and Tobago passport to travel to that country in 1997, 1999, and 2001. Item 3, *supra*, at 2; Item 4, *supra*, at 6; Item 5, *supra*, at 3. Applicant used her Trinidad and Tobago passport for these trips because it allowed her to pass more easily through customs and to move about freely in the country. Item 3, *supra*, at 2; Item 5, *supra*, at 6.

On July 2, 2004, as part of the FORM, the Government furnished Applicant with a copy of a memorandum providing guidance to DoD Central Adjudication Facilities adjudicating security concerns where applicants possess foreign passports. Item 6, Memorandum from Arthur L. Money, Assistant Secretary of Defense for Command, Control, Communications, and Intelligence, entitled "*Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline*," dated August 16, 2000. After receiving the Government's FORM, Applicant surrendered her Trinidad and Tobago passport to the embassy of that country. Additional Materials, Embassy of Trinidad and Tobago Letter, dated July 16, 2004.

Most of Applicant's relatives live in the United States. Item 4, *supra*, at 1-2. Her husband, mother, father, and two brothers are naturalized citizens of the United States who reside here. Item 4, *supra*, at 3; Item 5, *supra*, at 1-2. Her sister also lives here and is in the process of applying for U.S. citizenship. Item 5, *supra*, at 1-2. Applicant owns

property in the United States and intends to reside here permanently. Additional Materials, Applicant's Letter dated July 19, 2004, at 1.

Applicant has some relatives in Trinidad and Tobago. Item 4, *supra*, at 3. Her 75-year-old maternal grandmother still lives there, as do her husband's parents and her brother-in-law. *Id.* at 4; Item 5, *supra*, at 2. Applicant sends small monetary gifts to her grandmother on special occasions such as Mother's Day and her birthday, but does not provide her regular support. Item 5, *supra*, at 4. She has limited contact with her maternal grandmother, consisting mainly of exchanging holiday cards and sporadic visits. *Id.* at 5.

Applicant's husband does not send funds to his parents regularly, but sends them \$500.00 or less when needed. *Id.* Applicant and her husband share a mutual fund account in Trinidad and Tobago which he opened to facilitate the transfer of funds to his parents. *Id.* at 4. Applicant's husband recognized that it was easier to wire funds, and does not use the fund for that purpose. *Id.* The balance in the fund is less than \$50.00. *Id.*

Applicant's father-in-law owns and operates a furniture business in Trinidad and Tobago. Item 5, *supra*, at 7. Applicant's spouse was a consultant for the business for a period of time, but no longer serves in that capacity. Item 5, *supra*, at 7. Applicant's husband once considered returning to Trinidad and Tobago to take over the business, but the business has not been profitable and Applicant's husband is abandoning that option. *Id.*

Applicant's husband's brothers are also citizens and residents of Trinidad and Tobago. *Id.* at 2. Neither of them have ever worked for the government of that country, its military, or its intelligence services. *Id.* at 5.

## POLICIES

In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline C, 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. Directive, ¶ E2.A3.1.1.

Guideline B, Foreign Influence: A security risk may exist when an individual's immediate family, including cohabitants, or other persons to whom he 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. 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. Directive, ¶ E2.A2.1.1.

On August 16, 2000, the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD/C3I) issued a passport policy clarification pertaining to Adjudicative Guideline C, Foreign Preference. The memorandum states, in pertinent 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 mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the 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 States Government. Modification of the Guideline is not required.

Other conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"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." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the

circumstances surrounding the conduct, to include knowledgeable 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. *Id.*

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. Directive, ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "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.

## CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR:

### **Guideline C, Foreign Preference.**

The Government's documentary matters and Applicant's admissions constitute substantial evidence of several disqualifying conditions under Guideline C of the Directive. Paragraph E2.A3.1.2.1 of the Directive provides that it may be a disqualifying condition if an applicant exercises dual citizenship. Also, ¶ E2.A3.1.2.2 indicates that possession or use of a foreign passport may be disqualifying. Applicant admits that she exercises dual citizenship with the United States and the country of Trinidad and Tobago. Moreover, she admits having possessed and used a passport from Trinidad and Tobago after becoming a naturalized citizen of the United States.

These security concerns can be mitigated where it is determined that dual citizenship is based solely on the applicant's birth in a foreign country. Directive, ¶ E2.A3.1.3.1. Here, Applicant was born in Trinidad and Tobago, and later became a naturalized citizen of the United States. Her dual citizenship is based on the fact of her birth in Trinidad and Tobago.

It is also mitigating where an individual expresses a willingness to renounce dual citizenship. Directive, ¶ E2.A3.1.3.4. Applicant indicated her willingness to consider that, should it become necessary. Item 5, *supra*, at 7.

Applicant's possession or use of a foreign passport would have been disqualifying under the ASD/C3I memorandum dated August 16, 2000. Item 6, *supra*. However, when this matter came to her attention, Applicant surrendered her passport.

I considered carefully all the circumstances in this case. I conclude Applicant has mitigated the security concerns arising from her dual citizenship and the use of a foreign passport.

### **Guideline B, Foreign Influence.**

The Government's documentary matters and Applicant's admissions constitute substantial evidence of a potentially disqualifying condition under Guideline B of the Directive. Paragraph E2.A2.1.2.1 provides that it may be a disqualifying condition if "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."

Paragraph E2.A2.1.3.1. defines "immediate family members" to include a spouse, father, mother, sons, daughters, brothers and sisters. The evidence indicates that none of Applicant's immediate family members reside in Trinidad and Tobago; to the contrary, they all live in the United States. All of Applicant's immediate family members are naturalized citizens of this country, except her sister who is applying for U.S. citizenship. However, the evidence indicates Applicant's maternal grandmother and her husband's relatives still live in Trinidad and Tobago. Applicant's contacts with these family members are sporadic, but it appears they are individuals to whom she has "close ties of affection or obligation" under ¶ E2.A2.1.2.1.

These circumstances "could create the potential for foreign influence that could result in the compromise of classified information." Directive, ¶ E2.A2.1.1. While the

mere possession of family ties with persons in a foreign country is not, as a matter of law, automatically disqualifying . . . [it] does raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at \*\*33-34 (App. Bd. Feb. 8, 2001).

These security concerns can be mitigated where it is determined that the family members or associates in question are not agents of a foreign power, and they are not 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 involved and the United States. Directive, ¶ E2.A2.1.3.1. In this case, it appears none of Applicant's relatives in Trinidad and Tobago are agents of a foreign power. *See* 50 U.S.C. A. § 1801(b).

In assessing whether relatives are vulnerable to exploitation, it is helpful to consider several factors, including the character of the government of the relevant foreign country. Trinidad and Tobago is a prosperous parliamentary democracy that is not hostile to our government. Its interests are not inimical to the United States. Thus, the likelihood that the government would attempt to exploit or pressure its residents to act adversely to our interests is remote.

It is important to consider the vulnerability to duress of Applicant's relatives in Trinidad and Tobago. As noted above, none of Applicant's immediate family members live in Trinidad and Tobago. Her maternal grandmother is retired. None of her relatives with whom she has close ties are government employees. Under these circumstances, the opportunity for adverse influence is substantially reduced.

Another significant factor is Applicant's vulnerability to duress. She has extensive ties to the United States, having lived here since 1987. Applicant and her immediate family reside in the United States, and are naturalized citizens or pursuing that goal. All her financial interests are in the United States. *See* Directive, ¶ E2.A2.1.3.5. Considering the extent of her ties to the United States, it appears Applicant is not unusually vulnerable to duress.

Considering all the circumstances in this case, I conclude any potential security concerns arising from Applicant's family ties to Trinidad and Tobago are mitigated by Applicant's extensive interests in the United States. I conclude Applicant is eligible for access to classified information.

### **FORMAL FINDINGS**

My conclusions as to each allegation in the SOR are:

Paragraph 1. Guideline C: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: 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

Subparagraph 2.e: For Applicant

Subparagraph 2.f: For Applicant

Subparagraph 2.g: For Applicant

### **DECISION**

In light of all of 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 Applicant. Clearance is granted.

**Michael J. Breslin**

# Administrative Judge