

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Security concerns remain over Applicant's foreign preference activated by his dual citizenship and his decision to retain a foreign passport: he stated that he would not relinquish the foreign passport even though current Department of Defense (DoD) policy requires it. However, he has mitigated the allegations of foreign influence. Although his father and sister are citizens of Sweden, there is no evidence that they have ties to the government, or could be exploited by a foreign power in a way that would force him to choose between his ties to them and to the United States (U.S.). Clearance is denied.

CASENO: 02-11404.h1

DATE: 08/30/2004

DATE: August 30, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-11404

**DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Security concerns remain over Applicant's foreign preference activated by his dual citizenship and his decision to retain a foreign passport: he stated that he would not relinquish the foreign passport even though current Department of Defense (DoD) policy requires it. However, he has mitigated the allegations of foreign influence. Although his father and sister are citizens of Sweden, there is no evidence that they have ties to the government, or could be exploited by a foreign power in a way that would force him to choose between his ties to them and to the United States (U.S.). Clearance is denied.

### 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, <sup>(1)</sup> so the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on October 9, 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 the SOR allegations in an Answer of November 10, 2003; he admitted allegations 1.a., 1.b., 1.c., 1.f., 1.g., 1.i., 2.a., 2.b., 2.c., 2.d.; and he denied in whole or in part 1.d., 1.e, and 1.h. He requested a hearing. The case was assigned to Department Counsel who attested it was Ready to Proceed.

On February 18, 2004, the case was assigned to me. Subsequently, a mutually convenient date for hearing was agreed to. A Notice of Hearing, issued on February 18, 2004, set the matter for March 8, 2004, at a location near where Applicant works and lives. At the hearing the Government introduced four exhibits which were admitted into evidence (TR 13-15; Exhibits 1-4). Applicant testified himself, but offered no exhibits. The transcript (TR) was received on arch16, 2004.

## **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, 26 years old, went to work for a defense contractor State #1 in June 2001. He was asked in August 2001 to complete an Office of Personnel Management (OPM) Security Clearance Application (Standard Form 86) (SF 86) to seek a security clearance. (TR 10; Exhibit 1)

In May 2001 he received a BS from a U.S. university in State #2. (Exhibit 1; TR 21)

### **Foreign Preference**

Applicant was born in Sweden in 1977. His mother a U.S. citizen was living in Sweden with his father, a citizen of Sweden. He visited the U.S. every two to three years as a child. He received a U.S. certificate asserting he was a U.S. citizen in June 1992 as his mother is a U.S. citizen and he was born abroad. He obtained a U.S. passport in August 1997 which expires in August 2007. Applicant remained a legal resident of Sweden until 2001 when he made the U.S. his official residence when he moved to State #1. He maintained his Swedish citizenship and obtained his current Swedish passport in 1997; it expires in July 2007. He uses it for trips to Sweden; He uses his U.S. passport to enter the U.S. He maintains his Swedish citizenship. As a student, he obtained benefits: (1) a free education and (2) free health care and social security. If he were laid off in the U.S., he could travel to Sweden to obtain these benefits. He is currently on the Swedish military reserve list where he will be until he is thirty; he was allowed to study in the U.S. without doing his military service in Sweden. He has not performed any military training, but he would be drafted if Sweden went to war. (2) He is eligible to vote in Sweden, but has not done so. He has a savings account in Sweden with approximately \$30. He closed his bank account in Germany in 2003. (Answer; Exhibits 1, 2, 3, 4; TR 18-25) His decision on which passport to use is "whichever one is easiest to get through passport control." (TR 22)

Applicant lived in Sweden while he attended high school from 1996-1997 and worked in the summer in Sweden from June to August 1996 and again from June to August 1997. He lived with his father in Germany in 1998 and attended a university there. He traveled to Sweden in December 2000 and also went to Denmark, Germany and Switzerland; and he traveled again in April 2001 to visit his parents. He traveled to Sweden, Denmark, Germany and Austria in February 2002 to visit his parents. From June to August 1999 and again from May to August 2000 he worked for a German company in Germany and was regarded by them as a Swedish citizen. (Answer; Exhibits 1, 2; TR 25-27)

Applicant states he would "decline to provide United States classified information to any foreign intelligence agency or military organization, including those of Sweden, and would report any suspicious incidents or overt approaches made." (Exhibit 2) However, Applicant is unwilling to relinquish his Swedish passport (3) or citizenship as the laws of both

countries allow for multiple citizenship. Also, in the future he might want to work in Europe which would be easier to do as a citizen of Sweden. (Answer; TR 20, 31-32, 33)

### **Foreign Influence**

Applicant communicates with his parents once a week by telephone. Applicant's mother is a U.S. citizen who resides in Sweden and works as a nurse. (4) She has not become a citizen of Sweden. His father is Swedish and is self-employed; he lived in Germany for five years until he returned to Sweden in February 2003. In the past he worked for the government of Sweden and traveled frequently to the U.S. as he did work with the U.S. government. His sister is a citizen of Sweden and resides there; in the past she worked for the government of Sweden but is currently not working. He has several close friends in Sweden. (Answer; Exhibits 1, 2; TR 20, 27-30)

### **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 (5)**

**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 (6);

**Conditions that could mitigate security concerns include:**

None

**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**

If an individual acts in such a way as to indicate a preference for a foreign country over the United States, this conduct raises a security concern under Guideline C, Foreign Preference, as the individual 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.

Further, DoD policy clarification of August 16, 2000 explains that "possession and/or use of a foreign passport" may be a disqualifying <sup>(7)</sup> condition. To mitigate an Applicant must surrender his foreign passport or obtain official approval for its use.

While dual citizenship is not prohibited *per se* by policies of the United States, any conduct indicating possible foreign preference does raise a security concern where such action would increase the risk of an individual being influenced by the needs, desires, or aims of a foreign nation. Applicant's possible foreign preference arise from his active exercise of dual citizenship even after a certificate in June 1992 established him as a U.S. citizen.

Applicant possessed a foreign passport and used it multiple times on trips to Sweden even after his U.S. passport was issued to him. Applicant did so for convenience and maintains he will do so in the future even after he received the DoD policy guidance and the SOR explicitly raising security concerns over his use of a foreign passport.

The DoD policy guidance furnishes an avenue for individuals to mitigate the security concern: an applicant must either surrender the foreign passport or obtain official approval for its use from the appropriate agency of the United States Government. Applicant indicated he would not surrender his foreign passport.

Further, Applicant is still subject to a military obligation in Sweden for four more years.

Thus, Applicant failed to demonstrate he meets the foreign preference mitigating conditions (MC). While he maintains that he would not compromise classified U.S. information, that statement by itself does not establish the preference sufficiently under DoD security policy. Applicant's repeated use of his foreign passport casts doubt as to whether he can be counted on to make decisions without regard to Sweden or his personal interests there.

Further, he submitted no references attesting to his good character. He took no action to indicate he would fall within MC 4 as he did not express any willingness to renounce his dual citizenship. In this case, after reviewing all of the evidence in the record and considering all of the security policies, including the August 16, 2000, policy clarification memorandum, I conclude he has not met the DoD mitigation conditions to indicate his clear preference for the United States. Acts indicative of foreign preference warrant careful scrutiny. Hence, I resolve SOR paragraph 1 and subparagraphs 1.a. through 1.i. against Applicant.

### **Guideline B - Foreign Influence**

Applicant mitigated the Government's security concerns over Applicant's possible foreign influence raised by his close ties of affection to citizens of a foreign country: Applicant's relatives and friends have no current ties to their foreign government; nor is there any substantial likelihood that they would exercise foreign influence over Applicant. While his mother resides in Sweden, she is a U.S. citizen. While his father and sister are citizens of Sweden and reside there and he has two close friends there, Applicant is not vulnerable to duress merely because of these ties especially in the light of Sweden's democratic government. It is improbable that his family would create a situation that could result in the compromise of classified information. 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. The Government presented no evidence that the policies of Sweden, historically a neutral country, pose any threat to the U.S. While acts indicative of foreign influence warrant careful scrutiny, after considering the Enclosure 2 Adjudicative Process factors and the Adjudicative Guidelines, here I conclude these ties do not raise such 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: 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

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against 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 not 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. Applicant testified that the last time Sweden went to war was in 1812. (TR 23)
3. Applicant attested that the DoD policy memorandum on Guideline C was sent as an attachment to his SOR. (TR 33)
4. While the health care in Sweden is run by the government, I conclude such government contact does not raise a security concern as there is no connection to foreign policy issues.
5. Clarification of Department of Defense Policy on Foreign Preference: The Department of Defense issued a policy memorandum on August 16, 2000, clarifying the policy on Foreign Preference, Guideline C:

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.

6. 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 . . . ."
7. The policy contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country.
8. **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 (e.g., foreign military service) occurred before obtaining United States citizenship;
  3. Activity is sanctioned by the United States;
  4. Individual has expressed a willingness to renounce dual citizenship.