

DATE: January 30, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-15958

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's possession, use, and renewal of a foreign passport after becoming a U.S. citizen demonstrated a foreign preference and was not mitigated where Applicant had neither surrendered the passport nor obtained formal approval for its use. However, Applicant was not potentially subject to foreign influence where his parents and sister were foreign nationals, but reside in the United States. Clearance denied.

STATEMENT OF THE CASE

On 10 January 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 29 January 2003, Applicant answered the SOR and requested an administrative decision on the record. Applicant did not respond to the File of Relevant Material issued 17 July 2003. The record closed on 31 August 2003, the date the response was due at DOHA. The case was assigned to me on 25 September 2003.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR, except for subparagraphs 1.c. and 2.c.; accordingly I incorporate those admissions as findings of fact.

Applicant--a 34-year-old employee of a defense contractor--seeks access to classified information. He has not previously held a clearance.

Applicant was born in Aruba in 1969, making him a citizen of the Netherlands. He derived French citizenship from his mother. He emigrated to the U.S. with his family in approximately 1978, and was educated in the U.S. He became a naturalized U.S. citizen in May 1998. He considers himself a U.S. citizen, pledges allegiance to the U.S., and will bear

⁽²⁾

arms for the U.S.

When naturalized, Applicant had a Dutch passport (issued in September 1995 and valid to September 2000) and a French passport (issued in July 1997 and valid until July 2002). He used the French passport to travel to France because it was more convenient than using his U.S. passport. He renewed his French passport in July 2002 (now valid until July 2012) and continues to use it, despite suggesting in his April 2002 sworn statement (Item 6) that he would let it expire. He is unwilling to surrender his French passport or renounce his French citizenship for sentimental reasons. He has not obtained U.S. Government approval for possession or use of his French passport.

Although Applicant asserts that he lost his Dutch citizenship when he became a naturalized U.S. citizen, he has provided no corroboration of that claim. Notably, he reported his dual citizenship with the Netherlands on his clearance application executed in February 2001

Applicant's father is a Dutch citizen residing in the U.S. His mother is a French citizen residing in the U.S. His sister is also a French citizen residing in the U.S.

The record contains no character references or information on Applicant's work performance.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

FOREIGN PREFERENCE (GUIDELINE C)

E2.A3.1.1 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.

E2.A3.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A3.1.2.1. The exercise of dual citizenship:

E2.A3.1.2.2. Possession and/or use of a foreign passport;

E2.A.1.3. Conditions that could mitigate security concerns include:

None.

FOREIGN INFLUENCE (CRITERION B)

E2.A2.1.1. 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 not citizens of the United States or may be subject to duress. These situations 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.

E2.A2.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A2.1.2.1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident in, a foreign country;

E2.A2.1.3. Conditions that could mitigate security concerns include:

None.

On 16 August 2000, the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD, C³I) issued a memorandum⁽³⁾ to clarify the application of Guideline C, Foreign Preference, to cases involving possession and/or use of a foreign passport. In pertinent part, the ASD, C³I memorandum **"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."**(Emphasis added).

Burden of Proof

Initially, the Government must prove controverted facts alleged in the SOR. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation, or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with

the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

Although Applicant has been a citizen of France, the Netherlands, and the United States, since his naturalization as a U.S. citizen in 1998, his foreign citizenships possess little security significance if based solely on his birth in a foreign country or derivation from his parents. For Applicant's conduct to fall within the security concerns of Guideline C, Foreign Preference, he must have acted in a way to indicate a preference for a foreign nation over the United States. However, inimical intent or detrimental impact on the interests of the United States is not required before the Government can seek to deny access under Guideline C. The Government has a compelling interest in ensuring those entrusted with this Nation's secrets will make decisions free of concerns for the foreign country of which they may also be a citizen. Under this assessment, I conclude the Government has established its case under Guideline C and Applicant has not mitigated the security concerns.

While Applicant claims to prefer his U.S. citizenship, his conduct suggests otherwise. He continued to use his French passport after his naturalization as a U.S. citizen, and renewed it before it was to expire in July 2002. He is unwilling to surrender the passport or to renounce his French citizenship.

The ASD, C³I Memorandum controls the resolution of the foreign preference issue. The memorandum provides that Applicant's past possession and use of his foreign passport can be mitigated only if Applicant surrenders the foreign passport or obtains U.S. Government approval for its use. Applicant has undertaken neither action.

Further, Applicant meets none of the mitigating conditions (MC) for foreign preference. MC 1 does not apply because Applicant's dual citizenship is not based solely on his parents' citizenships or his birth in Aruba, but is based on his active exercise of dual citizenship after his naturalization. MC 2 does not apply because all indicators of possible dual citizenship have occurred since Applicant obtained U.S. citizenship. MC 3 does not apply because Applicant's conduct

has not been sanctioned by the U.S. Finally, MC 4 does not apply because Applicant has not expressed a willingness to renounce his foreign citizenship.

While Applicant has a legal right to maintain his dual citizenship with its attendant benefits and responsibilities--and indeed his maintenance of dual citizenship may be quite prudent given the realities of modern society--he has not demonstrated that he can be counted on to always act in preference to the United States. I resolve Guideline C against Applicant.

However, Applicant does not appear to be vulnerable to foreign influence as alleged in the SOR. While his parents and sister are foreign nationals, they live in the U.S. There is no evidence to suggest that they are, or may be, susceptible to pressure from a foreign government.

I resolve Guideline B for Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline C: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Paragraph 2. Criterion B: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the 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 Applicant.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated 2 January 1992--amended by Change 3 dated 16 February 1996 and by Change 4 dated 20 April 1999 (Directive).
2. He has registered with the Selective Service System as required by Federal law.
3. The so-called "Money Memo" because it was signed by Arthur L. Money.