

DATE: December 9, 2003

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-16652

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Gregory A. Vega, Esquire

SYNOPSIS

Applicant is a 32-year-old contract manager, born in the U.S. to Australian parents who have resided in the U.S. for many years. Applicant has lived here all of her life and considers herself to be an American. In the last 20 years, she has traveled to Australia on only three occasions, using the Australian passport she first obtained as a child and that she has renewed periodically since then. She has always used her U.S. passport for all other travel. She has infrequent contact with her relatives in Australia and no other ties to that country. She has surrendered her Australian passport and renounced her Australian citizenship. litigation has been established. Clearance is granted.

STATEMENT OF THE CASE

On February 13, 2003, 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, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons

why DOHA could not make the preliminary affirmative finding required under the Directive that it

is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

On March 11, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have a hearing before a DOHA Administrative Judge. The matter was assigned to another Administrative Judge, but was reassigned to me on June 18, 2003, because of caseload considerations. A Notice of Hearing was issued on July 9, 2003, and the hearing was conducted on July 31, 2003. At the hearing, Applicant testified, called two other witnesses, and offered five exhibits, which were marked and admitted as Applicant's Exhibits (AX) A-E. The Government did not call any witnesses, but offered six exhibits, which were marked and admitted as Government Exhibits (GX) 1-6. On August 16, 2003,

Applicant timely submitted five post-hearing exhibits to me through Department Counsel. There being no objection, these six exhibits were marked and admitted as AX F - J. The transcript (Tr) was received at DOHA on August 8, 2003.

FINDINGS OF FACT

Applicant is a 32-year-old contract manager for a defense contractor. The SOR contains four allegations under Guideline C (Foreign Preference) in the Directive, all of which Applicant admits; with explanations. The admissions are incorporated herein and are deemed findings of fact.

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

Guideline C (Foreign Preference)

1.a. - At the time of the hearing on July 31, 2003, Applicant *was* a dual citizen of Australia and the United States. However, as she promised at the hearing, she telephoned the Australian consulate in State A, and asked for information about surrendering her passport and renouncing her Australian citizenship (Tr at 49-51). She actually completed the process on August 15, 2003, by completing and submitting to the Australian Embassy a Form 128, *Declaration of Renunciation of Australian citizenship* (AX F, AX G, AX H, AX I, and AX J). Up until the hearing, she had not realized how seriously the U.S. considered her possession of dual citizenship and having a foreign passport (Tr at 44-46). She had not seen the Money memorandum (GX 3) until just a few days before the hearing. (Tr at 48).

1.b. - As of October 5, 2002, as part of her answer to the Interrogatories (GX 1), Applicant forwarded to the Defense Security Service (DSS), a copy of her current Australian passport, which was issued on March 10, 2001, and was valid until March 10, 2011.

1.c. - Applicant applied for and was issued an Australian passport on March 10, 2001 after becoming a U.S. citizen in 1971 and having a valid U.S. passport since June 1993. Prior to the hearing, she contacted the Australian Embassy and informed them about her intention to return the Australian passport (Tr at 38). She has since done so. (AX F).

1.d. - Applicant used her Australian passport instead of her U.S. passport when traveling to Australia in December 1992, November 1995, and April 2001, to avoid the need for a visa. An American citizen by birth, her Australian-born parents obtained an Australian passport for her as a child, for ease of entry into that country and because of concerns about anti-American terrorism abroad. As an adult, she has used her the Australian passport only to enter that country on three occasions, and her U.S. passport for all other travel (Tr at 33, 34 and AX C and D).

Applicant grew up in the U.S., went to school (AX A and B), married an American, has two children, three and less than one year old, and considers herself to be only an American. (Tr at 36-38). Her parents are retired and living in State A. She has not seen her Australian relatives for three years (Tr at 29). Two of her friends and colleagues think highly of her and consider her to be loyal to the U.S. over any other country. (Tr at 55-67).

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant

in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors,

individually and collectively, in reaching my overall conclusion.

Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent to this case:

GUIDELINE C (Foreign Preference)

Conditions that could raise a security concern and may be disqualifying:

1. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport;

Conditions that could mitigate security concerns include:

1. Dual citizenship is based solely on parents' citizenship or by birth in a foreign country;
4. Individual has expressed a willingness to renounce dual citizenship.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

Applicant was born in the United States in 1971 (AX B). She has lived in the U.S. for her entire life, and had been to Australia on only a few occasions. The record shows 40 years of close ties to the U.S. and no ties (personal, financial, or otherwise) at all to Australia, except for some relatives with whom she has infrequent contact. Her parents and all of her immediate family are in the U.S.

Considering the entire record, the only conduct relevant to the Foreign Preference issue is her renewal and limited use of an Australian passport at a time when she was not aware that it could be construed as showing a preference for Australia. I conclude that the reason her renunciation of her Australian citizenship and passport occurred so recently is that she was not made aware of the basis for the government's concerns until receiving the Government's exhibits, after which she acted promptly.

Guideline C (Foreign Preference) ⁽¹⁾

Overall, the record shows that Applicant's words and conduct demonstrate an unequivocal

preference, commitment, and identification with the United States. I find no basis to conclude that Applicant might be prone to provide information or make decisions that are harmful to the United States. I include in my consideration the fact that Australia is generally recognized by the U.S. government as a longtime close friend and ally without a history of espionage against this country. On these bases, I conclude there is minimal risk that Applicant would ever act against the interests of the United States. She has demonstrated that she possesses the integrity, good judgment, reliability, and

trustworthiness required of someone seeking access to the nation's secrets.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline C (Foreign Preference) For the Applicant

Subparagraph 1.a.. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c.. For the Applicant

Subparagraph 1.d. For the 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 Applicant.

BARRY M. SAX

ADMINISTRATIVE JUDGE

1. The absence of any concerns cited under Guideline B (Foreign Influence) is noted.