

DATE: February 18, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-18354

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has fulfilled the requirements of the Money Memorandum by returning his British passport to the British Government. However, he states that he has no intention of renouncing his British citizenship, and has extensive family and financial ties to the United Kingdom. Adverse inference is not overcome. Clearance is denied.

STATEMENT OF THE CASE

On August 22, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on August 30, 2002, and requested a hearing. The case was received by the undersigned on October 24, 2002, and Notices of Hearing were issued on October 31 and November 5, 2002.

A hearing was held on November 15, 2002, at which the Government presented four documentary exhibits. Testimony was taken from the Applicant, who also submitted two hearing exhibits and one Post-Hearing Exhibit, consisting of a cover letter from the Applicant, a letter from his Facility Security Officer and an attachment. The transcript was received on November 25, 2002.

FINDINGS OF FACT

The Applicant is 43, married and has a Bachelor's degree in Engineering. He is employed by a defense contractor as a Program Manager, and he seeks to obtain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to indicate a preference for another country over the United States.

The Applicant was born and raised in the United Kingdom. He met his wife, who is an American citizen by birth, in the United Kingdom. They were married in 1984. In 1993, the Applicant and his family moved to his wife's home town in the United States. The Applicant became a naturalized American citizen in August 2001. While he was in college in the United Kingdom the Applicant was a member of the Royal Navy Volunteer Reserve. He never served on active duty with the Royal Navy.

The Applicant surrendered his then active British passport to the Consular Section of the British Embassy on November 12, 2002. (Appellant's Exhibit A.) This conduct is in accordance with the requirements of the Memorandum dated August 16, 2000, from the 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." (Money Memorandum.) (Transcript at 46.)

The Applicant worked in the United Kingdom before coming to the United States. He has approximately \$50,000 in a retirement account there. His liquid assets in the United States amounts to approximately \$175,000. The Applicant was uncertain whether he would lose his retirement account in the United Kingdom if he revoked his British citizenship.

During the hearing, the Applicant was very ambivalent about whether he would revoke his British citizenship. For example, on page 24 of the transcript he states, "The only reason I have not renounced my citizenship is purely to leave the option open that if in the fullness of time when, you know, whenever, whatever circumstances prevail, whether they be firmly related or whether they be just a personal choice, that come a time with age, I may wish to go back. And I don't believe that's an option to me if I relinquish my U.K. citizenship." The Applicant also stated that, though he had no current plans to retire to the United Kingdom, that was an option he did not want to foreclose.

The Applicant was instructed to review the mitigating factors to Guideline C, especially number 4, "Individual has expressed a willingness to renounce dual citizenship." (Transcript at 36-37.) There followed an extensive discussion between the Applicant, the Department Counsel and the Administrative Judge concerning the Applicant's present and future intentions concerning his renunciation of his British citizenship. The Applicant, once he reviewed mitigating factor 4, seemed to indicate a willingness to renounce his citizenship. However, his testimony was ambivalent, and the record was left open for any further evidence the Applicant may wish to present. (*See, for example*, Transcript at 50-51.)

The Applicant submitted a Post-Hearing Exhibit which contained a written statement from the Applicant dated November 18, 2002. He states:

I have given great consideration to the Dual Citizenship issue. It has been my understanding for many years now that possession of Dual Citizenship with the UK and USA was acceptable and that relinquishing my UK Citizenship was not a prerequisite for obtaining a clearance. In fact [the Administrative Judge was] the first person to have ever told me outright that Clearance would not be granted if I did not relinquish my UK Citizenship. Previous to this the only step I understood to be necessary was to relinquishing (*sic*) my UK Passport, which I have done. As I am sure you noted, I was not prepared to answer this question with the commitment and assurance you required at the Hearing. I have now had the opportunity to discuss this issue with my wife and can advise that in the interest of my family I am unable to make a commitment in relinquishing my UK Citizenship.

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has immediate family members or people to whom he may be bound by affection or obligation who are not citizens of the United States, or may be subject to duress.

The Applicant's father, stepmother and his two siblings live in the United Kingdom and are British citizens. According to the Applicant, none of his relatives have worked for the British government in any capacity.

The Applicant's minor children are dual citizens of Britain and the United States.

Mitigation. The Applicant presented letters of recommendation from several co-workers, including the facility security officer. (Appellant's Exhibit B and Post-Hearing Exhibit.) They all state that the Applicant is a hard-working, able and trustworthy individual.

The Applicant's facility security officer included in the Applicant's Post-Hearing Exhibit a copy of a request for the Applicant to be granted Limited Access Authorization in 1998. This was before the Applicant became an American citizen.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Guideline B (Foreign influence)

Conditions that could raise a security concern:

- (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;
- (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.

Conditions that could mitigate security concerns include:

(None of the stated conditions have application in this case.)

Guideline C (Foreign preference)

Conditions that could raise a security concern:

- (1) The exercise of dual citizenship;
- (2) Possession and/or use of a foreign passport;
- (3) Military service or a willingness to bear arms for a foreign country;
- (6) Using foreign citizenship to protect financial or business interests in another country.

Condition that could mitigate security concerns include:

- (2) Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship;

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's

conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may have foreign connections or exhibit a foreign preference that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of showing that the Applicant is a dual citizen of the United Kingdom and the United States, that he retained his British passport after becoming an American citizen, that he has extensive foreign connections and financial interests in United Kingdom. The Applicant, on the other hand, has not mitigated any of the allegations, except in part.

The Applicant has returned his British passport to the British Embassy, as required by the Money Memorandum. Subparagraph 1.b. is found for the Applicant. In addition, his service in the Royal Navy Volunteer Reserve occurred

before the Applicant came to the United States. Subparagraph 1.d. is found for the Applicant.

The Applicant has elected not to renounce his British citizenship at this time. This was obviously a difficult decision for the Applicant to make. Given the facts of this case, I also must find that his financial interest in the United Kingdom is substantial. Finally, the Applicant has failed to state even a credible intent to renounce his British citizenship. For all the foregoing reasons I find against him with regards to Subparagraphs 1.a., 1.c., and 1e., as well as Paragraph 1.

Turning to Guideline B, the Applicant has not mitigated this allegation. He has close and continuing relationships with his family members in the United Kingdom. In addition, the Applicant is using his British citizenship to protect current and potential financial interests in that country. The amount in question is not large but, under the circumstances in this case, is still of security significance. Guideline B is found against the Applicant.

The Applicant has made what he believes to be the best decision for he and his family by retaining his British citizenship. That may well be true. However, the current security rules do not allow him to have a security clearance. On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: Against the Applicant.

Subparagraph 1.a.: Against the Applicant.

Subparagraph 1.b.: For the Applicant.

Subparagraph 1.c.: Against the Applicant.

Subparagraph 1.d.: For the Applicant.

Subparagraph 1.e.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subparagraph 2.a.: Against the Applicant.

Subparagraph 2.b.: 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 the Applicant.

Wilford H. Ross

Administrative Judge