

DATE: December 31, 2003

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-19121

**DECISION OF ADMINISTRATIVE JUDGE**

**PAUL J. MASON**

**APPEARANCES**

**FOR GOVERNMENT**

Catherine Engstrom, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's use of her Russian passport in August 2001 and August 2003, after she received her United States (U.S.) citizenship in August 2000 represent affirmative acts of preference for a foreign country over the U.S. The fear Applicant's father has that the Russian government taps phones or reads letters places Applicant's parents in a position to be exploited by a foreign government in a way that could force Applicant to choose between loyalty to her parents and the U.S. Clearance is denied.

**STATEMENT OF CASE**

On July 9, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6, dated January 2, 1992, as amended by Change 4 thereto, dated April 20, 1999, issued an 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 Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. On July 26, 2003, Applicant responded to the SOR and requested a hearing before an Administrative Judge.

The case was assigned to me on September 8, 2003. On September 22, 2003, this case was set for hearing on October 29, 2003. The Government submitted three exhibits and Applicant submitted six exhibits. Testimony was taken from Applicant. The transcript was received on November 6, 2003.

**RULINGS ON PROCEDURE**

Government exhibits shall be referred to as (GE) while Applicant's exhibits shall be marked as (AE). References to the transcript shall be referred to as (Tr.) followed by the page number.

In my review of the evidence in this case, I have taken official notice of the Russian Consular Information Sheet

(October 24, 2003).

## FINDINGS OF FACT

The SOR alleges foreign preference (Guideline C) and foreign influence (Guideline B). Applicant's admissions to the factual allegations shall be incorporated in to the following findings of fact:

**Foreign Preference.** Applicant, a 35-year-old electronic technician, has worked for the same defense contractor since 1997. In conjunction with her employment, Applicant completed a security-clearance application (SCA, GE 2) on January 22, 2001, <sup>(1)</sup> disclosing: (1) she was born in Russia in August 1968; (2) she is a U.S. citizen having been naturalized on August 1, 2000, indicating she had no U.S. passport, and declaring her dual citizenship to the US. and Russia; (3) and, she had been attending a local U.S. university since 1999. In response to question 15 of the SCA (whether, in the last 7 years, applicant has an active passport issued by a foreign government?), Applicant indicated she had a Russian passport issued in April 1994 that had expired in October 2000. In response to question 16 of the SCA (non-official travel outside the U.S. in the last 7 years), Applicant replied she traveled to Russia in July 1995 for pleasure.

In Applicant's sworn statement (GE 2), dated March 28, 2002, Applicant indicated she renewed her passport in October 1998, and it is scheduled to expire in October 2003. However, Applicant did not furnish information about her renewed passport in her January 2001 SCA. When asked why she did not reveal the renewed passport information on her SCA, she attributed the omission to a typographical error. (Tr. 59)

Also in her March 2002 sworn statement, Applicant explained she used the Russian passport twice for travel to Russia to visit her family. At the hearing, Applicant testified she used her Russian passport in August 2001 and October 2003 for travel to Russia. Applicant also indicated in her March 2002 sworn statement she was willing to renounce the Russian citizenship if renunciation was a condition to obtaining a security clearance. She expressed an intention to have a U.S. passport before traveling to Russia by the summer of 2002. She obtained a U.S. passport in July 2002. (Tr. 64)

At the hearing, Applicant explained her unsuccessful efforts in early October 2003 in trying to surrender her Russian passport at the Russian embassy. (Tr. 33; AE A) She went to the embassy on October 7, 2003, and the official refused to accept her passport because she had not renounced her citizenship. (AE A) When she attempted to process an application to renounce her citizenship, she was told she would have to return to Russia to retrieve additional documents such as registration documents and other documents verifying she had paid all her Russian taxes. It cost \$400.00 to process a petition for renunciation of citizenship. (AE E) Although she testified she could neither demonstrate she had paid all her Russian taxes nor retrieve her precinct registration document (Tr. 36), she testified at a later point that she would try to get her parents to obtain the same documents she did not believe she could produce to renounce her citizenship. (Tr. 75) Applicant's passport expired on October 27, 2003 and is at Applicant's home. (Tr. 37-39)

**Foreign Influence.** Applicant's father is 62-years-old, and is a resident citizen of Russia. He is retired from his position as a scientific magazine publisher. Applicant paid the \$130.00 petitioning fee for her father's U.S. residency petition. (AE C) Her mother, 63-years-old, is also a resident citizen of Russia, and formerly worked as a heat and power engineer at 1 of 26 electrical power plants in Moscow, Russia.

According to Applicant's sworn statement (GE 2), her sister is a resident citizen of Russia who graduated with an economics degree. The sister was also an auto manufacturing student, but currently is the assistant director of an orchestra. (Tr. 49) According to Applicant, her parents and her sister will come to the U.S. to stay with her. (Tr. 72, 73)

According to (GE 2), Applicant's uncle and aunt are resident citizens of Russia. Applicant's uncle is deceased. (Tr. 70) The only information Applicant had about his aunt was that she is very sick. (Tr. 70) Applicant does not have much contact with her. (Tr. 71)

When Applicant was asked why she could not telephone her parents to request they retrieve the documents needed to renounce Russian citizenship, Applicant responded her father is afraid the Russian government could have the telephones tapped. When asked why she could not make the same request to her parents in writing, Applicant indicated the letters could be read by the Russian government. Applicant testified, "[w]e have so many situations when the

information you're providing and the Russian government know(s) what's in the mail." (Tr. 81)

**Character evidence.** Although Applicant indicated on her SCA she was a dual citizen, she testified that mentally she never considered herself a dual citizen. (Tr. 55) Applicant voted for the current president in the last U.S. election. (Tr. 89) She has no property in Russia. (Tr. 90)

Her facility security officer has known her since October 1998 and believes Applicant is a diligent performer who is a valuable asset to her employer. (AE F)

Considering the evidence as a whole, Applicant's overall credibility is undermined by: (1) failing to disclose on her January 2001 SCA that she had renewed her Russian passport in October 1998 (scheduled to expire in October 2003), and, (2) her continued use of her Russian passport even after her sworn statement in arch 2002 indicating she would relinquish her Russian passport and obtain a U.S. passport before traveling to Russia.

## POLICIES

Enclosure 2 of the Directive sets forth disqualifying conditions (DC) and mitigating conditions (MC) that must be given binding consideration in making security clearance determinations. These conditions must be considered in every case according to the pertinent guideline; however, the conditions are in no way automatically determinative of the decision in any case nor can they supersede the administrative judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the conditions exhaust the entire realm of human experience or that the conditions apply equally in every case. In addition, the judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Conditions most pertinent to evaluation of the facts in this case are:

### **Foreign Preference (Guideline C)**

#### Disqualifying Conditions (DC):

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

Also applicable in determining whether foreign preference exists is the Memorandum of August 16, 2000, entitled "Guidance to DoD Adjudication Facilities (CAF) Clarifying the Application of Foreign Preference Adjudicative Guidelines," by the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I), commonly known as the "money Memo." The memorandum guidance indicates that:

possession and/or use of a foreign passport may be a disqualifying condition. It contains no mitigating factor related to the applicant's 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 the guideline are that the possession and use of a foreign passport in reference to a U.S. passport raises doubt as to whether the person's allegiance to the U.S. is paramount and it could also facilitate foreign travel unverifiable by the U.S. 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 U.S. Government.

#### Mitigating Conditions (MC):

1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country;
2. Indicators of possible foreign preference occurred before obtaining U.S. citizenship;
3. Activity is sanctioned by the U.S.;

4. Individual has expressed a willingness to renounce dual citizenship.

### **Foreign Influence**

#### Disqualifying Conditions (DC):

1. An immediate family member, or a person to whom the individual has close bonds of affection or obligation, is a citizen of, or resident or present in, a foreign country.
3. Relatives, cohabitants, or associates who are connected with any foreign government.

#### Mitigating Conditions (DC):

1. A determination that the 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 US.
3. Contact and correspondence with foreign citizens are casual and infrequent;

### **General Policy Factors (Whole Person Concept)**

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at pages 16 and 17 of Enclosure 2 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 behavioral changes; (7) the motivation for the conduct; and, (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

### **Burden of Proof**

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information 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.

The Government must establish a *prima facie* case under foreign preference (Guideline C) and foreign influence (Guideline B), that establishes doubt about a person's judgment, reliability and trustworthiness. Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation which demonstrates that the past adverse conduct is unlikely to repeat itself and Applicant presently qualifies for a security clearance.

### **CONCLUSIONS**

**Foreign preference.** The foreign preference guideline (Guideline C) applies to actions taken by an individual that indicate a preference for a foreign country over the U.S. A citizen of Russia by birth, Applicant came to the U.S. in 1994 with her former husband. Even though she renewed her Russian passport in October 1998 (expiration date of October 2003), she indicated on her January 2001 SCA that her Russian passport had expired in October 2000. Applicant was naturalized as an American citizen in August 2000 but still considered herself a dual citizen when she furnished her January 2001 SCA.

In her sworn statement dated March 2002, Applicant stated she would renounce her citizenship if it was a requirement

for her to receive a security clearance. Applicant took no action to renounce her citizenship until October 2003, about 3 weeks before the hearing.

Even though Applicant obtained her U.S. citizenship in August 2000, she traveled to Russia on her Russian passport in August 2001. She used her Russian passport a second time for travel to Russia in August 2003 even though she received her U.S. passport in July 2002. Her Russian passport, which expired two days before the hearing, is still in her possession at home. By renewing her Russian passport in 1998, and using it to enter Russia in August 2001 and August 2003, after she received her U.S. citizenship in August 2000 and after she obtained her U.S. passport in July 2002, she engaged in affirmative acts of foreign citizenship (DC 1, DC 2) that raise a reasonable inference she has a preference for a foreign country over the U.S. The Government has established a case of foreign preference.

Foreign preference concerns may be mitigated if the dual citizenship is based solely on the parents' citizenship or birth in Russia (MC 1), the indicators of possible foreign preference occurred before obtaining U.S. citizenship (MC 2), the activity is sanctioned by the U.S., and the individual has expressed a willingness to renounce dual citizenship (MC 4). Applicant has failed to meet her ultimate burden of persuasion under any of the mitigating conditions. While Applicant's dual citizenship is based on her birth in Russia, she accepted one of the benefits of Russian citizenship by obtaining and using her Russian passport both before and after she received her U.S. citizenship. Her use of the Russian passport removes MC 1 from consideration.

Foreign preference concerns may also be mitigated under MC 2 if the indicators of foreign preference occurred before obtaining U.S. citizenship. Applicant's use of her foreign passport on two occasions after obtaining U.S. citizenship forecloses favorable application of MC 2.

Applicant claims she would not have been able to use a U.S. passport to enter Russia because U.S. citizens who have at one time held Russian citizenship are required to renounce Russian citizenship before applying for a Russian visa in their U.S. passport. Second, Applicant claims the Russian embassy refused to take her Russian passport. As a result of the embassy's refusal to take the passport, Applicant believes she has eliminated any foreign preference concerns by deciding to let the Russian passport expire at home.

As set forth in the ASDC3I memorandum, possession and/or use of a foreign passport under the foreign preference guideline has no mitigating condition for necessity based on foreign law. Hence, possession of a foreign passport may be mitigated only when the individual has obtained approval for possession of the passport from the U.S. Government. There has been no showing by Applicant that she has received approval from the U.S. Government to retain and use her passport, notwithstanding the fact the passport has expired.

Although Applicant claims her expired Russian passport should remove any foreign preference concerns, that claim is not credible when weighed against the evidence as a whole, particularly Applicant's failure to disclose on her SCA in January 2001 that she had renewed the Russian passport in October 1998. In sum, Applicant's expiration claim is not accepted as evidence she has no preference for Russia over the U.S.

Although Applicant expressed an unconditional willingness at the hearing to renounce her dual citizenship (MC 4) status that is indicated on her SCA in January 2001, she has taken very little action in that direction. In March 2002 she stated she would renounce her citizenship if it were a requirement to obtaining a security clearance. Even though the U.S. cannot require an applicant renounce their dual citizenship, MC 4 is nonetheless a mitigating circumstance that may be viewed as supporting the notion an applicant's sole preference is for the U.S. Applicant's investigative inquiries on October 7, 2003 to renounce her citizenship are inadequate to qualify as a meaningful effort by Applicant to renounce her dual citizenship.

In view of Applicant's failure to provide an accurate history of her Russian passport on her SCA in January 2001, and using her Russian passport on two additional occasions after receiving her U.S. citizenship in August 2000, thereby placing her foreign travel outside the scope of U.S. immigration controls, Applicant's evidence in mitigation does not carry her ultimate burden of persuasion under the foreign preference guideline. Subparagraphs 1.a. and 1.b. are found against Applicant.

**Foreign Influence.** Under the foreign influence guideline (B) a security risk may exist when an individual's immediate

family, including cohabitants, and other persons to whom her or she may be bound by affection, influence, or obligation are not citizens of the U.S. or may be subject to duress. Applicant's parents, sister, aunt and uncle are still resident citizens of Russia even though Applicant has petitioned for her father to transfer residency to the U.S. (DC 1) Applicant's father is 62 years old. Before he retired, he was a publisher of an electronics and science magazine. Though her father is not a foreign agent or official of a foreign government, the father's fear of having his telephone tapped or letters read by the Russian government, raise serious concerns he is in position to be exploited economically or politically by the government in a way that could force Applicant to choose between loyalty to her father and the U.S. Therefore, Applicant has failed under MC 1 to overcome the foreign influence that could be exerted on her by her father through coercive or non-coercive means.

Applicant's mother was employed by a heat and power facility consisting of 26 power plants in Moscow, Russia. Because her employment at the power facility probably involved the distribution and regulation of large amounts of energy, the overall administration and operation of the facility was probably conducted by the Russian government. Since she is 61 years old and retired, I do not find she is an agent of a foreign government. However, as she is the wife of Applicant's father, she is also in a position to be exploited in a way that could force Applicant to choose between loyalty to her and the U.S.

Applicant's sister has no ties with the Russian government. She graduated from college with an economics degree and presently works as an assistant director of a local orchestra. There is no evidence she is an official or has ever served in any capacity in the Russian government. Applicant's uncle has died and Appellant possesses very little information about her aunt. Unlike Applicant's parents, MC 1 applies to remove any foreign influence concerns preliminarily raised by the foreign citizenship status of Applicant's sibling, uncle and aunt. In reaching negative findings under the foreign preference and foreign influence guidelines, I have also considered the general factors of the whole person concept.

### **FORMAL FINDINGS**

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (foreign preference, Guideline C): **AGAINST THE APPLICANT.**

- a. Against the Applicant.
- b. Against the Applicant.

Paragraph 2 (foreign influence, Guideline B): **AGAINST THE APPLICANT.**

- a. Against the Applicant.
- b. For the Applicant.
- 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.

Paul J. Mason

Administrative Judge

1. Applicant signed the SCA on January 4, 2001. (GE 1)