

DATE: May 11, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-19963

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's dual citizenship is based on his birth in the United Kingdom. His conduct since moving to the United States in 1968 has indicated a clear preference for the United States over the United Kingdom. He has surrendered his United Kingdom passport and has renounced his United Kingdom citizenship. Clearance is granted.

STATEMENT OF THE CASE

On July 16, 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 administratively reissued on April 20, 1999), issued a Statement of Reasons (SOR) to 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on August 6, 2003, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's written case (FORM) on or about September 10, 2003. Applicant filed a response to the FORM on October 16, 2003. The case was assigned to me on November 4, 2003.

FINDINGS OF FACT

Applicant is a 61 year old employee of a defense contractor. He has been married to a natural born United States citizen since 1973.

Applicant was born in the United Kingdom. In 1968, he moved to the United States. He has lived here and worked in the defense industry since then. In 1978, he became a United States citizen.

In 1998, applicant acquired a United Kingdom passport. He never used the passport, and in October 2003, he surrendered it to the United Kingdom authorities. At about the same time, he filed a declaration with the United Kingdom authorities renouncing his United Kingdom citizenship. The process of renunciation takes four to six months to complete. Applicant's sole allegiance has been to the United States since he became a United States citizen.

Applicant's 90 year old mother is a citizen and resident of the United Kingdom. Applicant has a son and daughter who are citizens and residents of the United Kingdom. The son and his family have applied to immigrate to the United States with the applicant acting as their sponsor. Applicant's daughter was born in the United States in 1969. At age five, she moved to the United Kingdom with her mother (a United Kingdom citizen) after the mother and applicant divorced. Applicant has not seen her since 1998. He believes she is still a United States citizen. Applicant has another daughter who was born in the United States and resides here. He also has two stepchildren who reside in the United States

Applicant has two brothers who are citizens and residents of the United Kingdom. He has not been very close to his brothers since he left the United Kingdom.

Letters from various professional associates of applicant were admitted into evidence. These individuals, many of whom hold important positions in the United States defense industry, describe applicant as a loyal and patriotic American who has made significant contributions to the United States defense effort.

CONCLUSIONS

With respect to Guideline B, the evidence establishes that applicant's elderly mother, two brothers, and two of his children, are citizens and residents of the United Kingdom. These facts require application of Disqualifying Condition E2.A2.1.2.1 (*an immediate family member . . . is a citizen of, or resident or present in, a foreign country*).

There is no evidence that any of applicant's United Kingdom family members are agents of the United Kingdom. In addition, there is no evidence that any of these family members are in a position to be exploited by the United Kingdom in a way that could force applicant to choose between loyalty to these family members and loyalty to the United States. The United Kingdom is a democracy and close ally of the United States. It is difficult to imagine the United Kingdom forcing one of its citizens to pressure a United States citizen to betray the United States. Even if this unlikely scenario were to occur, applicant's clear and unequivocal allegiance to, and preference for, the United States leads me to conclude applicant would never betray the United States. Based on these facts, Mitigating Condition E2.A2.1.3.1 (*a determination that the immediate family member(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*), is applicable, and Guideline B is found for applicant.

With respect to Guideline C, the evidence establishes that at the time the SOR was issued, applicant was a dual citizen, and that he had exercised that dual citizenship by acquiring a United Kingdom passport. These facts require application of Disqualifying Conditions E2.A3.1.2.1 (*the exercise of dual citizenship*) and E2.A3.1.2.2 (*possession and/or use of a foreign passport*).

Since being advised of the Money Memorandum and the negative security implications of maintaining his United Kingdom citizenship, applicant has surrendered the United Kingdom passport to the United Kingdom authorities, and has renounced his United Kingdom citizenship. By doing so, he has satisfied the security requirements of the Money Memorandum, and has qualified for Mitigating Condition E2.A3.1.3.4 (*individual has expressed a willingness to renounce dual citizenship*). In addition, because applicant's dual citizenship is based solely on his birth in the United Kingdom, Mitigating Condition E2.A3.1.3.1 (*dual citizenship is based solely on parents' citizenship or birth in a foreign country*) is applicable.

It is clear that since moving to the United States 35 years ago, applicant's conduct has indicated a clear preference for the United States over the United Kingdom. His statements of allegiance to the United States are credible and worthy of belief, and are corroborated by many of his long-term United States colleagues. Given the clear and convincing evidence of his loyalty to, and preference for, the United States, Guideline C is found for applicant.

FORMAL FINDINGS

GUIDELINE B: FOR THE APPLICANT

Subparagraph 1a: for the applicant

Subparagraph 1b: for the applicant

GUIDELINE C: FOR THE APPLICANT

Subparagraph 2a: for the applicant

Subparagraph 2b: for the applicant

Subparagraph 2c: for the applicant

Subparagraph 2d: 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.

Joseph Testan

Administrative Judge