

DATE: June 25, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-21102

DECISION OF ADMINISTRATIVE JUDGE

BURT SMITH

APPEARANCES

FOR GOVERNMENT

Nygina T. Mills, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a dual citizen of the United States and Ireland, and he possesses a valid passport issued by the Irish government. Applicant retains his Irish passport for reasons of personal convenience, and he expresses no intent to surrender it to the issuing authority. Applicant is therefore ineligible for clearance due to policy restrictions set forth in the DoD "Money Memorandum." Clearance is denied.

STATEMENT OF THE CASE

On January 17, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to Applicant. The SOR details 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. It recommended referral to an Administrative Judge to determine whether a clearance should be granted or denied. In a written answer received by DOHA on February 6, 2003, Applicant responded to the SOR, and he elected to have his case decided on the written record in lieu of a hearing.

A complete copy of the Government's File of Relevant Material (FORM) was provided to Applicant on April 4, 2003, and he was afforded thirty days to file objections and/or submit further material in refutation, extenuation, or mitigation. Applicant received the FORM on April 11, 2003, but he did not submit a reply. The case was assigned to me on May 23, 2003.

RULINGS ON PROCEDURE

The case file initially received by me did not indicate Applicant was provided a copy of the "Money Memorandum," [\(1\)](#) DoD policy clarification in security clearance cases involving the possession and/or use of a foreign passport. (See Order, dtd June 16, 2003.) On June 19, 2003, Department Counsel furnished to me a copy of an undated DOHA letter

previously sent to Applicant that enclosed Applicant's SOR as well as a copy of the Money Memorandum. The letter establishes that Applicant was provided a copy of the Memorandum when he received the SOR, and he was given an opportunity to address it in his answer.

FINDINGS OF FACT

In Applicant's written answer to the SOR, he admitted to all of the Government's factual allegations. In view of Applicant's admissions, the Government's factual allegations are found to be true, and they are incorporated herein.

Applicant is a native-born American citizen whose parents were born in Ireland. (FORM, Item 4.) He is 74 years old, and he is employed by a defense contractor as a consultant.

On April 8, 2002, Applicant was interviewed by DoD investigators concerning issues of Applicant's foreign travel, foreign connections, and dual citizenship. Applicant provided the investigators a sworn statement. (FORM, Item 5.) Applicant holds a US passport with an expiration date of May 2004. However, Applicant conceded in his sworn statement that he is a dual citizen of the United States and Ireland, based upon his birth in America and his parents' birth in Ireland. Applicant holds an Irish passport (renewed) with an expiration date of December 2007. Applicant states he keeps his dual citizenship because it is "just a family thing." (FORM, Item 5, p. 2.) He declares his allegiance is solely to the United States.

Aside from a voluntary renewal of his Irish passport, there is no evidence Applicant has exercised his dual citizenship with Ireland in other ways. The file reflects no activities connected with Ireland such as travel, investments, property ownership, bank accounts, or other indicia of an exercise of dual citizenship. Nevertheless, Applicant presents no evidence indicating plans to surrender his foreign passport to the issuing authority.

POLICIES

Enclosure 2 of the Directive, as amended by DepSecDef Memorandum dated June 7, 2001, sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. The guidelines are divided into those that may be considered in deciding whether to deny a security clearance (Disqualifying Conditions, hereafter DC) and those that may be considered in deciding whether to grant a clearance (Mitigating Conditions, hereafter MC).

Based upon a consideration of the entire record, I find the following adjudicative guidelines have application in this case:

Guideline C - Foreign Preference. *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.

Disqualifying Conditions applicable:

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

Mitigating Conditions applicable:

1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country.

The whole person concept. In addition to the above guidelines, the Directive provides in Para. E.2.2.1. that under the "whole person concept" the Administrative Judge shall consider nine specified factors related to a determination of Applicant's security worthiness.

The "Money Memorandum." The DoD "Money Memorandum" of August 16, 2000, clarifies DoD policy regarding the possession and/or use of foreign passports. It 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." Under the Money Memorandum, possession and/or use of a foreign passport is not mitigated by reasons of personal convenience, safety, requirements of foreign law, or the identity of the foreign country.

Burden of Proof. The Government must prove all controverted facts that tend to demonstrate Applicant is ineligible for clearance. Applicant must overcome the Government's case by persuasive evidence in refutation, mitigation, or changed circumstances. However, Applicant always bears the ultimate burden of proving it is clearly consistent with the national interest to grant him or her access to classified information.

CONCLUSIONS

In the defense industry, the security of classified information is entrusted to civilian workers who must be counted upon to safeguard it 24 hours a day. The Government is therefore appropriately concerned where reliable information indicates an Applicant for clearance may be subject to manipulation, duress, or divided allegiances due to his or her foreign preference. On a commonsense basis, these circumstances might easily contribute to a compromise of defense secrets through coercion, conflicting loyalties, or foreign sympathies.

In this case, Applicant is a dual citizen of Ireland and the United States. His US citizenship derives from his birthplace in America, and his Irish citizenship derives from his parents' birthplace in Ireland. ⁽²⁾ Applicant retains his Irish citizenship for reasons that amount to personal convenience. He expresses no intention to renounce his foreign citizenship or to surrender his foreign passport. ⁽³⁾

It is administratively noticed that the United States and Ireland enjoy a long history of mutually supportive relations with shared cultural, social, and political values. However, it is DoD policy that an Applicant for a security clearance must be denied access to classified information unless the Applicant surrenders his or her foreign passport or obtains official approval for its use from an appropriate agency of the United States. Possession and/or use of a foreign passport is not mitigated by reasons of personal convenience or the identity of the foreign country.

Applicant was furnished a copy of the Money Memorandum, and he has been made aware of the DoD policy that applies in this case. His reason for retaining his Irish passport is an expression of personal convenience, but this is not satisfactory as a mitigating factor under Guideline C of the Directive. Applicant presents no other explanation or information that might be considered in mitigation. Accordingly, Applicant is not eligible for a DoD security clearance under the circumstances presented by this case, due to application of the Money Memorandum.

On balance, I conclude the Government has met its burden of proving all factual allegations in the SOR. For his part, Applicant has not introduced persuasive evidence in refutation, mitigation, or changed circumstances that offsets or outweighs the Government's case. In reaching these conclusions, I have given consideration to the whole person concept, but Applicant does not bring himself favorably within the factors set forth in the Directive sufficient to justify a grant of clearance.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1. (Foreign Preference): Against the Applicant.

Subparas. 1.a.-1b.: Against 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 Applicant's request for a security clearance.

Burt Smith

Administrative Judge

1. Memorandum, AsstSecDef for Command, Control, Communications and Intelligence, subject "*Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline,*" August 16, 2000. It is known administratively as the 'Money Memorandum' because it was issued by Arthur L. Money, AsstSecDef. It is also known as the ASD C3I Memorandum.
2. MC 1 has application.
3. DC 1 and DC 2 have application.