

DATE: June 10, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-21319

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Robert J. Tuider, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Twenty-seven-year-old naturalized American Applicant has acted promptly to mitigate foreign preference concerns on the part of the Government. She has submitted an application to renounce her Jamaican citizenship and surrendered her Jamaican passport. Applicant has also closed her Jamaican bank account, which was opened for her by her father and which never contained a significant balance. Clearance is granted.

STATEMENT OF THE CASE

On October 31, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement Reasons (SOR) to Applicant. The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant her access to any classified information and recommends that his case be submitted to an Administrative Judge. On November 13, 2002, the Applicant executed a response to the SOR and requested a hearing. This case was assigned to the undersigned Administrative Judge on January 17, 2003. A notice of hearing was issued on February 20, 2003, and the hearing was held on March 10, 2003. During the hearing, four Government (Govt) exhibits, three Applicant exhibits, and the testimony of the Applicant were received. The transcript (Tr.) was received on March 13, 2003.

PROCEDURAL ISSUE

Prior to the conclusion of the hearing in this case, I requested that Applicant provide Department Counsel with any notice she might receive concerning her application to renounce her Jamaican citizenship and the surrender of her Jamaican passport. On March 26, 2003, Applicant provided Department Counsel with evidence of the surrender of her Jamaican passport to the Jamaican Ambassador to the United States. Department Counsel forwarded that evidence to me on April 2, 2003. Since that evidence is relevant and material to my decision in this case and Department Counsel has

not objected to it, I have marked that evidence as Applicant Exhibit D and have considered it in rendering this decision.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, including Applicant's admissions to all of the allegations in the SOR, I make the following findings of fact:

Applicant is a 27-year-old programmer employed by a defense contractor and is seeking a security clearance. Applicant was born in Jamaica. At the age of 12, she immigrated to the United States in 1988 to join her mother, who had previously immigrated. ⁽¹⁾ Her father joined the family a year later. ⁽²⁾ Applicant attended high school and college in the United States, obtaining a degree in computer science. ⁽³⁾

Applicant's father obtained a Jamaican passport for her when she was three years old and renewed it for her in 1993. ⁽⁴⁾ Applicant became a naturalized citizen of the United States in 1997, as did the other members of her immediate family. ⁽⁵⁾ Applicant obtained a U.S. passport in 1999 and has used it to travel outside the U.S. ever since. ⁽⁶⁾

Applicant does not own property in Jamaica but her parents still own the home they resided in before they came to the United States. ⁽⁷⁾ She used her Jamaican passport to travel there for one week vacations in August 1998 and October 1998. ⁽⁸⁾

At the time of her birth, Applicant's father opened a Jamaican bank account for her, as he did for her sister. ⁽⁹⁾ He withdrew the balance of \$2,239.25 in Jamaican dollars (\$110.00 in U.S. dollars) and closed the account for her in December 2002. ⁽¹⁰⁾

Applicant traveled to Jamaica in December 2002 in an effort to surrender her passport, which is due to expire in December 2003. Since she did not have the money necessary to submit an application to renounce her Jamaican citizenship, Applicant returned to the U.S. ⁽¹¹⁾ After she obtained the necessary funds, Applicant returned to Jamaica in February 2003 and submitted her application to renounce her Jamaican citizenship. ⁽¹²⁾ Her cost for submitting the application, including necessary signatures, was approximately \$650.00 in U.S. currency. ⁽¹³⁾ The Jamaican Government informed Applicant that they would notify her by mail of when to submit her passport. ⁽¹⁴⁾

On March 26, 2003, Applicant surrendered her Jamaican passport to the Jamaican Ambassador to the United States. ⁽¹⁵⁾

POLICIES

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable 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.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

Guideline C: Foreign Preference

The concern is that 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.

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

The exercise of dual citizenship (Disqualifying Condition 1);

Possession and/or use of a foreign passport (Disqualifying Condition 2). Pursuant to an August 16, 2000 memorandum by 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" (ASDC3I Memo), "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 United States Government;"

Using foreign citizenship to protect financial or business interests in another country (Disqualifying Condition 6).

Conditions that could mitigate security concerns include:

Dual citizenship is based solely on parents' citizenship or birth in a foreign country (Mitigating Condition 1);

Individual has expressed a willingness to renounce dual citizenship (Mitigating Condition 4).

CONCLUSIONS

Guideline C. - Foreign Preference

The Government's evidence concerning Applicant's conduct establishes Disqualifying Condition 1 and Disqualifying Condition 2. Applicant exercised dual citizenship with Jamaica through her possession and use a Jamaican passport for foreign travel after she became a naturalized citizen of the United States.

Applicant was forthright in her security clearance application, providing the information upon which the Government relies. At the hearing, she was an articulate witness, who appeared very creditable.

Mitigating Condition 1 is not applicable in this case. Applicant's Jamaican citizenship did result from her birth in that country and she, personally, never applied for a Jamaican passport. However, she did exercise her Jamaican citizenship, after becoming an adult and a U.S. citizen, by using the Jamaican passport that her father had obtained and renewed for her.

However, Applicant's limited use of her Jamaican passport, subsequent to becoming a U.S. citizen, is mitigated in light of all the evidence of record. At the time of these trips, which were vacations at her parents' home, Applicant was only 22-years-old. She used the only passport in her possession, which her father had obtained for her. Applicant has used her U.S. passport for all of her foreign travel since she obtained it in 1999. She obtained her U.S. passport nearly a year before she submitted her security clearance application. In that application, Applicant provided complete and accurate information on her dual citizenship, possession of a foreign passport, and foreign travel.

Although Mitigating Condition 1 is not applicable in this case, the evidence does support the application of Mitigating Condition 4. Applicant has not only expressed a willingness to renounce her Jamaican citizenship but has actually submitted the necessary application to the Jamaican Government. In this regard, it is also noteworthy that it cost Applicant approximately \$650.00 to submit the application, plus her travel costs to Jamaica, on two occasions, in an effort to surrender her passport. Even though the Jamaican Government instructed Applicant to retain her Jamaican passport pending the processing of the application, she has complied with the requirement of the ASDC3I Memo, by subsequently surrendering it to the Jamaican Embassy.

The Government has also attempted to demonstrate a foreign preference on the part of Applicant based on her Jamaican bank account. However, the evidence does not establish Disqualifying Condition 6. The bank account upon which the

Government bases its allegation was opened for Applicant by her father at the time of her birth. At it's zenith, the amount in Applicant's account was a mere \$110.00 in American funds. Moreover, the account is no longer in issue, having been closed at Applicant's request.

To the extent the Government has raised foreign preference concerns regarding Applicant, she has acted promptly to resolve them and clearly demonstrate that she is a suitable candidate for a security clearance.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline C: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1 c: For Applicant

DECISION

In light of all the evidence in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Signed

Roger E. Willmeth

Administrative Judge

1. Govt. Ex. 2 at 1.
2. *Id.*
3. Tr. 29-30.
4. Govt Ex. 3; Govt. Ex. 2 at 1; Tr. 29.
5. Govt. Ex. 2 at 1; Tr. 29.
6. Ap. Ex. C; Govt. Ex. 2 at 1.
7. Govt. Ex. 2 at 2.
8. Govt. Ex. 2 at 2; Govt. Ex. 3 at 7-8.
9. Govt. Ex. 4; Tr. 24.
10. Ap. Ex. B; Tr. 24.
11. Tr. 14-15.
12. Ap. Ex. A; Tr. 15.
13. Tr. 22-23.
14. Tr. 16.

15. Ap. Ex. D.