

DATE: June 22, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-21567

**DECISION OF ADMINISTRATIVE JUDGE**

**ROGER C. WESLEY**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant who initiated and has maintained active dual citizenship with the country of his parents' ancestry (Mexico) and wants to maintain his Mexican citizenship to facilitate his inheriting of his father's home in Mexico. He fails to extenuate and mitigate security concerns associated with his active maintenance of a dual citizenship between Mexico and the US and manifests a preference for Mexico over the country (US) of his birthplace. By contrast, Applicant's immediate family members who reside in the US as citizens of Mexico are not shown to be either foreign agents or vulnerable to pressure or coercion such as to pose foreign influence concerns. Clearance is denied.

**STATEMENT OF THE CASE**

On June 23 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant. The SOR 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, and recommended referral to an administrative judge for determination whether clearance should be granted or continued.

Applicant responded to the SOR on July 30, 2003, and elected to have his case decided on the basis of the written record. Applicant was furnished the File of Relevant Material (FORM) on February 25, 2004, and received it on March 4, 2004. Applicant did not respond to the FORM within the 30 days provided him. The case was assigned to me April 12, 2004.

**SUMMARY OF PLEADINGS**

Under Guideline C, Applicant is alleged to (a) exercise dual citizenship with Mexico and the United States, (b) have applied for citizenship with Mexico in December 2001 and was issued Mexican citizenship prior to April 2003, even though he was already a US citizen by birth, (c) have resided in Mexico for approximately 25 years to at least 1990, and (d) want to maintain his dual citizenship with Mexico in order to inherit his father's house in Mexico (estimating it to be

worth \$100,000.00), and in part, because of the travel benefits to Mexico.

Under Guideline B, Applicant is alleged to have parents and a sister, who are citizens of Mexico residing in the US.

For his answer to the SOR, Applicant admitted each of the allegations without explanation.

### **FINDINGS OF FACT**

Applicant is a 41-year-old microelectronic assembler who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference adopted as relevant and material findings. Additional findings follow.

Applicant's parents and sister immigrated to the US in 1962. Applicant was born in the US not long after his parents' arrival. By virtue of his birth in the US, he became a citizen of this country. Following his mother's heart attack in 1965, Applicant and his family returned to Mexico. Applicant spent the ensuing 25 years in Mexico, going to school, growing up, and eventually working, before returning to the US in 1990.

While in Mexico Applicant met his wife (W) to be (in 1972) and married there in 1990, just prior to their returning to the US. W previously applied for and received her resident alien certificate. She has not to date documented any application for US citizenship.

In 1991 Applicant, accompanied by his parents and sister, returned to the US. Once in the US, his parents worked as legal residents for several years. According to Applicant, his parents have since applied for US citizenship and plan to complete their US citizenship applications after they transfer title to their exican home to Applicant. Both Applicant's parents and sister currently reside in the US. Applicant's sister is a legal alien who currently resides with his parents and retains her Mexican citizenship.

Applicant applied for and received his Mexican citizenship in 1991 to facilitate his eligibility to inherit his father's home in Mexico (valued at \$100,00.00). Only citizens of Mexico are eligible to inherit property in the country in their name. This and the ease of travel in Mexico with Mexican citizenship comprise Applicant's stated reasons for taking out Mexican citizenship and his parents' reasons for delaying their application for US citizenship.

Except for the Mexican citizenship he applied for and was granted in December 2001, Applicant has no personal or business ties to Mexico. He has no exican passport and no intention of obtaining one.

Applicant has never received or provided assistance to any foreign source and assures he has no reason to believe any of his immediate family members residing in the US or Mexico might in any way be vulnerable to pressure, coercion, or compromise.

Since 2000 Applicant has taken several vacation trips to Mexico, which he financed with his own savings. He has taken no other trips abroad, business or personal. He has no foreign passport and no plans to obtain one. Further, he has had no contact with any hostile countries and always travels on his US passport. Applicant last visited Mexico in December 2000. While in Mexico he stayed at his parents' home. During this stay, he also saw W's parents, who he doesn't know very well and maintains little contact. Applicant assures he has had no adverse security incidents with his current employer. His claims are accepted.

### **POLICIES**

The Adjudicative Guidelines of the Directive (Change 4) list guidelines to be considered by judges in the decision making process covering DOHA cases. Judges must consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and

impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

### **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:**

DC 1: The exercise of dual citizenship

DC 6: Using foreign citizenship to protect financial or business interests in another country.

**Mitigating Conditions:** None.

### **Foreign Influence**

*The Concern:* A security risk may exist when an individual's immediate family, including co-habitants, and other persons to whom he or she may be bound by affection, influence, or are obligation *are not* citizens of the United States *or may* be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

#### **Disqualifying Conditions:**

DC 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.

DC 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.

#### **Mitigating Conditions:**

MC 1: A determination that the immediate family members 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 persons involved and the United States.

MC 5: Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

### **Burden of Proof**

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government

to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

### CONCLUSION

Applicant is a conscientious microelectronics assemble with a defense contractor who after being born in the US returned to Mexico for a number of years before returning to the US in 1990. Upon his return to the US, he applied for and obtained (1991) Mexican citizenship. Claiming his principal affections still lie with the US, he assures he only took out citizenship with Mexico to ensure his eligibility to inherit his father's home in Mexico.

Dual citizenship concerns necessarily entail allegiance assessments and invite critical considerations over acts indicating a preference or not for the interests of the foreign country over the interests of the US. In a different vein, the continued Mexican citizenship of his parents and sister (who currently reside in the US) raise potential concerns about their being vulnerable to future pressure or duress that could result in the compromise of classified information. The issues, as such, raise concerns over Applicant's preference for a foreign country over the US and the potential for members of Applicant's immediate family being placed at risk to pressure or duress to induce Applicant to divulge classified information he might be privy to.

#### **Foreign Preference**

By virtue of his birth in the US, Applicant became a US citizen; even though his parents remained Mexican citizens. Applicant's recited reasons for taking out exican citizenship (*viz.*, maintaining his eligibility to inherit his father's Mexican home and easing his travel when in Mexico) are cited as firm evidence of his preference for Mexico over his birth country (US). Such actions may be considered relevant to a foreign preference issue when assessing the significance of an applicant's conduct and circumstances after he acquired foreign citizenship. *See* ISCR Case No. 99-0511 (Dec. 19, 2000). So, Applicant's pre-Mexico citizenship schooling in Mexico, his many years of living in Mexico (25 altogether), and his father's house situated in Mexico (which he stands to inherit) may affect what inferences to draw with respect to his motives for later taking out Mexican citizenship and retaining it.

Still, the primary issue here is whether Applicant by applying for and receiving his citizenship in Mexico in 1991 following his return from Mexico, manifested a preference for his birthplace (Mexico) over his birth (the US). That he preserved his inheritance rights in Mexico by his obtaining Mexican citizenship is an important consideration in evaluating the preference issue, but it is not dispositive.

Without denying his affection for his adopted country (Mexico) and place of his father's home (which Applicant stands to inherit), Applicant insists that his preference remains for his birth country (US), which he would never compromise under any circumstances, should competing geopolitical interests develop between the two countries. No question but that Applicant manifested his support for the US in several important ways since returning to this country in 1990: He abstained from applying for a Mexican passport; he has raised three young children as US citizens who attend school in the US, and he has impressed his college administrator and work superiors with his conscientious work ethic.

But Applicant also has manifested enough recent ties and interests in Mexico to raise some doubts as to whether he would always prefer the US over Mexico should their interests clash. Doubt by itself is enough to invoke two disqualifying conditions of the Adjudicative Guidelines for foreign preference: DC (the exercise of dual citizenship) and DC 6 (using foreign citizenship to protect financial interests or business interests in another country). Not only does he have deep historical roots and family in Mexico, but he applied for and obtained his Mexican citizenship for the purposes of facilitating his inheritance of his father's home and easing restrictions on his traveling in Mexico, both valid reasons for his wanting to obtain Mexican citizenship. Collectively considered, these ties undercut his US preference claims and make his expressed desire to seek and retain his Mexican citizenship all the more understandable. They also make the compelling case for ascribing a preference to Applicant for the country of his adoption (Mexico) over the US,

were he forced to choose. For when pressed to make a choice, the country of an individual's adoption, family and heritage can often be expected to triumph over his birthplace country. While such choices cannot be presumed with absolute certainty, they can be ascribed with sufficient predictive judgements based on the individual's past conduct and circumstances to satisfy the security suitability burdens governed by *Department of Egan*, 484 U.S. 518, 528-29 (1988).

While entirely understandable, Applicant's taking out Mexican citizenship reflects motivational influences across a wide spectrum of interlocking personal interests in Mexico that are not checked by Applicant's (a) professed affections for the US and (b) assurances that he can be trusted to safeguard US secrets irrespective of his continued dual citizenship with Mexico.

To be fair to Applicant, he has by all accounts been totally up-front about his dual citizenship history, inheritance rights and family relationships associated with his roots and ties to Mexico. Were Applicant's Mexican citizenship limited solely to his parents' citizenship and birth in Mexico, his US preference claims would be more persuasive. His choices were active ones, however, and reflect conscious elections he made to promote his personal and business interests in Mexico while still employed in the US. These are choices incompatible with his claimed preference for the US. Without more developed information in the record, none of these choices can be considered to have been US sanctioned by virtue of Applicant's retaining his US citizenship. So, under the circumstances as developed in this record, Applicant may not take advantage of any of the mitigating conditions covered by the Adjudicative Guidelines for foreign preference.

Taking into account all of the evidence presented in the record, Applicant does not absolve himself of the security concerns raised by his exercising dual citizenship with another country (Mexico) and fails to convince that his exhibited preference for a foreign country over the US does not expose him to future risks of his providing information that could be harmful to the security interests of the US. His actions continue to create the kind of competing allegiance concerns for clearance holders that manifest in active dual citizenship exercise cases. Adverse conclusions warrant with respect to the allegations covered by sub-paragraphs 1.a through 1.d of Guideline C.

### **Foreign Influence**

Besides preference concerns, Government concerns over the risk of Applicant's mother, father and sister (all citizens of Mexico residing in the US) also confront Applicant's security clearance application. Because Applicant's parents and sister who continue to maintain their Mexican citizenship represent members of his immediate family their status raises security concerns covered by disqualifying condition (DC) 1 (immediate family members having foreign citizenship or residence) of the Adjudication Guidelines for foreign influence. The residence status of these relatives in the US pose some potential concerns for Applicant because of the risks of coercion or influence that could compromise classified information under Applicant's possession and/or control.

From what is known from Applicant's own statement, neither his parents nor his sister have any current working/non-working relationships with Mexico's government or have any history of ever being subjected to any coercion or influence to date, or appear to be vulnerable to the same. Taking Applicant's explanations about his parents and sister at face value, any risk of foreign duress or influence on Applicant and/or his immediate family would appear to be insubstantial. Mexico is a close neighbor and friend with a democratic form of government and an emerging history of respect for human rights and the rule of law. This is not to suggest that Mexico might not at some future time draw DoD concerns about industrial espionage activity or other forms of intelligence collection. Even mature democracies are known to maintain active intelligence gathering regimes. To ask any more in the way of corroboration from Applicant would put Applicant basically to the burden of proving the negative: a daunting, if not impossible burden to fulfill without demonstrated access to Mexican intelligence organizations.

Whatever potential security risks that arise as the result of Applicant's having immediate family members with Mexican citizenship residing in the US are by every reasonable measure mitigated. Applicant's situation is set in marked contrast to the hypothetical situation in which the country of citizenship for the individual's immediate family has interests inimical to those of the US. While the foreign influence provisions of the Adjudicative Guidelines are ostensibly neutral as to the nature of the subject country, they should not be construed to ignore the geopolitical aims and policies of the particular foreign regime involved. And in Applicant's case, the country of his ethnic heritage has no known history of

hostage taking or disposition for exerting pressure or influence.

Because of the residence status of Applicant's immediate family members in the US, any potential risk of a hostage situation becomes an acceptable one, for which the mitigation benefits of MC 1 (presence of immediate family in host country poses no unacceptable security risk) of the Adjudicative Guidelines are fully available to Applicant. Applicant may also claim the mitigation benefits of MC 5 (minimal foreign financial interests). Overall, any potential security concerns attributable to Applicant's having family members who are citizens of Mexico residing in the US are sufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand risks of exploitation and pressure attributable to his familial relationships in Mexico. Favorable conclusions warrant with respect to subparagraph 2.a of Guideline B.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive.

### **FORMAL FINDINGS**

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS and the FACTORS and CONDITIONS listed above, this Administrative Judge makes the following separate FORMAL FINDINGS with respect to Appellant's eligibility for a security clearance and occupancy of a sensitive position:

CRITERION C (FOREIGN PREFERENCE): AGAINST APPLICANT

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

Sub-para. 1.d: AGAINST APPLICANT

CRITERION B: (FOREIGN INFLUENCE): FOR APPLICANT

Sub-para. 2.a FOR 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 Applicant's security clearance.

Roger C. Wesley

Administrative Judge