

DATE: April 2, 2003

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23214

**DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

This 28-year-old engineer has dual citizenship with the U.S. and the United Kingdom. He was born and grew up there to an American father and a United Kingdom mother. He possesses a United Kingdom passport and will not surrender it, nor renounce his United Kingdom citizenship, because he may want to return there in the future. Department of Defense policy states that possession of a foreign passport is incompatible with holding a security clearance. Applicant's possession of the United Kingdom passport makes him ineligible, and he has not met the requirements of either of the stated exceptions. No mitigation has been established. Clearance is denied.

**STATEMENT OF THE CASE**

On September 30, 2002, 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 amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons

why DOHA could not make the preliminary affirmative finding required under the Directive that it

is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

On October 29, 2002, Applicant submitted a response to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the written record, i.e., without a hearing. Department Counsel issued a File of Relevant Material (FORM) on January 29, 2003. The FORM instructed Applicant that any response to the FORM had to be submitted within 30 days of its receipt by Applicant. Applicant did not submit any response to the FORM. The matter was assigned to me for resolution on March 11, 2003.

## FINDINGS OF FACT

Applicant is a 28-year-old structural engineer. The SOR contains six allegations, 1.a. - 1.f., under Guideline C (Foreign Preference) and two allegations, 2.a and 2.b., under Guideline B (Foreign Influence). Applicant's responses are basically admissions of the factual portions of the allegations and denials of the conclusionary portions (GX 3).

After considering the totality of the evidence derived from the contents of the FORM, I make the following FINDINGS OF FACT as to each SOR allegation:

### Guideline C (Foreign Preference)

1.a. - Applicant continues to exercise dual citizenship with the United States and the United Kingdom.

1.b - Applicant continues to possess a United Kingdom passport, which expires on March 2, 2009;

1.c. -Applicant owns \$2,000.00 in ordinary shares in a bank in the United Kingdom and maintains an account of approximately \$1,000.00;

1.d. - During the period from August 1998 to July 1999, Applicant was employed by a university in Country A. This employment was organized by a United Kingdom organization similar to the Peace Corps.

1.e. - From October 1994 to June 1998, Applicant attended a university in the United Kingdom, and obtained a Master's Degree in Engineering.

1.f. - Applicant is unwilling to relinquish his United Kingdom passport or to renounce his United Kingdom citizenship, because he might return to the United Kingdom to live and work in the future.

### Guideline B (Foreign Influence)

2.a. - Applicant's mother is a citizen of the United Kingdom and resides in the United Kingdom;

2.b. - Applicant's brother is a dual citizen of the United States and the United Kingdom and resides in the United Kingdom.

## POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant

in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding

the conduct, to include knowing 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Because Applicant chose to have this matter decided without a hearing and without submitting any additional information in response to the FORM, all credibility determinations and findings of fact are necessarily based entirely on the contents of the FORM.

Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent to this

case:

### GUIDELINE C (Foreign Preference)

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

1. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport;
4. Accepting *educational*, medical, or other benefits . . . from a foreign country. (Emphasis added).

Conditions that could mitigate security concerns include:

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

### Guideline B (Foreign Influence)

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

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;
8. Substantial financial interest in a foreign country, or in any foreign-owned or operated business that could make the individual vulnerable to foreign influence.

Conditions that could mitigate security concerns include:

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 person(s) involved and the United States;
2. Contacts and correspondence are casual and infrequent;
5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

### CONCLUSIONS

Applicant was born in March 1975 in the United Kingdom and lived there until moving to the United States in August 1999 to obtain employment as an engineer and to enjoy the "other half of my heritage" (GX 6 at page 2). He has held both U.S. and United Kingdom passports for many years and still does, as of the closing of the record in this case. His United Kingdom passport was renewed on March 2, 1999, while he was still residing in the United Kingdom, but he has

not used it since arriving in the U.S., relying only on his U.S. passport. "[His] loyalty to the United States is unlimited, and [he has] no reservations about [his] loyalty [to the United States]" (GX 6 at page 3).

Applicant admits an affiliation with the United Kingdom, "the country of my birth," but he states that "every aspect of how I conduct my life clearly indicates a preference for the United States" (GX 3). He was born in the United Kingdom to an American father and a United Kingdom mother, so that his citizenship in both countries is derived from that of his parents. He has no intention of renouncing his United Kingdom citizenship and will not surrender his United Kingdom passport, which remains valid until 2009. His explanation is that he "may wish . . . to return to the United Kingdom . . . at some point in the distant future" (GX 3 and GX 6). After considering the evidence, taken as a whole, I conclude:

*SOR 1.a., 1.b., and 1.f.* - Applicant's exercise of his United Kingdom citizenship, with no expressed intent to renounce it, is a single negative factor that must be considered along with all other relevant information. However, his continuing possession of the United Kingdom passport creates an absolute bar against his holding a DoD security clearance, since there is no evidence that Applicant obtained official approval from an appropriate agency of the United States Government. Pursuant to a Memorandum from Arthur L. Money, Assistant Secretary of Defense, dated August 16, 2000, "*Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline*," (GX 4), Applicant's continuing possession of a United Kingdom passport makes him ineligible to hold a DoD security clearance.

*SOR 1.c.* - Applicant admits the shares and bank account cited, but claims the \$3,000.00 involved is a "minimal and insignificant sum. [He holds] the vast majority of [his] financial interests in the United States, thus showing a preference for the United States" (GX 3). In the context of his career as an engineer, I conclude that \$3,000.00 is a relatively small sum and not likely to outweigh his much more significant financial ties to the United States.

*SOR 1.d.* - Applicant admits the employment in Country A in 1998 - 1999, as alleged. The position was as an English teacher at a Country A university, as part of a United Kingdom service program. He accepted the short term position while awaiting for a position in his field to open up in the United States. I conclude that Applicant's acceptance of the opportunity to teach English in a Country A university for a short period, while awaiting a job opening in the United States, does not suggest a preference for either Country A or the United Kingdom over the United States.

*SOR 1.e.* - While Applicant was an American by birth, through his father's citizenship, he was raised in United Kingdom and attended United Kingdom lower schools as a child, so it was "a natural progression to complete my education there" (GX 3, at page 2). In context, Applicant's explanation is credible and does not suggest a preference for the United Kingdom, particularly since he promptly left the United Kingdom for the United States upon graduating.

*SOR 2.a. and 2.b.* - Applicant admits the allegations as to his mother and brother. Applicant states that they are "in no way connected to any political or military institutions in that allied country." He denies that the concerns expressed are applicable since the United Kingdom is the United States's "closest political ally" (*Id.*). Based on the totality of the evidence, I conclude that these allegations are not of current security significance.

Based on the totality of the evidence, and considering his actions and statements, as discussed above, Applicant has not demonstrated an unequivocal preference for the United States. In any case, and his continuing possession of the United Kingdom passport, by itself, makes him ineligible to hold a DoD security clearance.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline C (Foreign Preference) Against the Applicant

Subparagraph 1.a.. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f. Against the Applicant

Guideline B (Foreign Influence) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. 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.

**BARRY M. SAX**

**ADMINISTRATIVE JUDGE**