

DATE: April 23, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-24999

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's exercise of dual citizenship, including possession of an expired foreign passport, with no desire to renounce his dual citizenship, has not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On August 18, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on September 5, 2003, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on January 29, 2004, and a notice of hearing was issued on February 3, 2004, setting the hearing for March 2, 2004. At the hearing the Government presented six exhibits. The Applicant presented four exhibits, and testified on his own behalf. The official transcript (Tr.) was received on March 23, 2004.

On August 16, 2000, a memorandum was issued by Mr. Arthur Money, Assistant Secretary of Defense for Command, Control, Communications and Intelligence, clarifying "the application of Guideline C to cases involving an Applicant's possession or use of a foreign passport." The Applicant received a copy of this memorandum. (See Government Exhibit 1).

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and testimony presented at the

hearing. The Applicant is 47 years of age and has a Doctorate in Physics. He is employed as an Engineer by a defense contractor. He seeks a security clearance in connection with employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for a clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant is a dual citizen of the United Kingdom and the United States. He was born in the United Kingdom in 1956, to parents who were citizens of the United Kingdom. The Applicant grew up and obtained his education in the United Kingdom. After finishing his doctorate degree, in 1986, he moved to South Africa and worked there. In 1991, he returned to the United Kingdom and began working for a British aerospace company where he held a NATO security clearance. In 1990, the Applicant's British company transferred him to the United States where he worked for several years before returning to the United Kingdom in 1993. The Applicant continued to work for the British aerospace company in Britain until 1997. (See Applicant's Exhibits C). In 1997, he moved to the United States and joined a defense contractor with whom he has since been employed.

In a signed sworn statement provided to the Defense Security Service dated May 14, 2002, the Applicant stated that he possessed a United Kingdom passport that was issued to him on February 23, 1994. The foreign passport expired on February 23, 2004. (See Government Exhibits 4, 5 and 6). The Applicant indicated that he would probably renew the passport for employment purposes in order to obtain employment in the European Union if he is ever laid off in the United States. (See Government Exhibit 3).

The Applicant was granted his United States citizenship in 2000. (See Applicant's Exhibits E and D). In 2002, after becoming a United States citizen, the Applicant used his foreign passport to enter France for convenience purposes. He also used it to enter Britain in 2003. The Applicant stated that the foreign passport allows him free crossing of all of the borders of the European Union and access to British health care. (Tr. p. 38). He has two pensions in the United Kingdom, one that is worth approximately \$20,000.00. (Tr. p. 34). The Applicant's parents and other extended family members and friends reside in the United Kingdom. His wife is also a dual citizen of the United Kingdom and the United States.

The Applicant testified that he has not renewed his foreign passport and has no intent to renew it unless he is laid off and needs to seek employment in the European Union. He does not see a conflict with maintaining his dual citizenship status. If his security clearance was not impacted by his foreign passport, he would renew his European passport for convenience purposes. (Tr. p 42). Furthermore, if he ever needs to live in Europe for more than 90 days he will renew it, as his parents, who live in Britain are elderly and frail. (Tr. p. 43). He has no desire to renounce his dual citizenship. (Tr. pp. 44 - 45). The Applicant is aware of the Money Memorandum and its provisions. (Tr. p. 47).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Preference

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:

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

Condition that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing 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 determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline C (foreign preference) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another

nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts have a direct and negative impact on his suitability for access to classified information.

The Applicant is a dual citizen of the United Kingdom and the United States. Therefore, disqualifying condition 1, "the exercise of dual citizenship" applies. He has indicated that he wants to maintain his foreign citizenship, in order to be able to obtain employment in the European Union if he is ever laid off in the United States. He presently possesses an expired British passport. The Applicant has failed to comply with the provisions of the Money Memorandum that requires dual citizens to surrender their foreign passports to be eligible for access to classified information. I find that the Applicant has not surrendered his foreign passport. Therefore, disqualifying condition 2, "possession and or use of a foreign passport" also applies. Thus, he has not demonstrated an unequivocal preference for the United States. Under the circumstances of this case, I find against the Applicant under Guideline C.

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline C of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guidelines C.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subparas. 1.a.: Against the Applicant 1.b.: Against the Applicant

1.c.: Against the Applicant 1.d.: Against the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge