

DATE: January 22, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-32806

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant seeks to continue his security clearance. He used his Egyptian passport while traveling within Egypt, his native land, after he became a U.S. citizen in 1974, but used his U.S. passport to travel to Egypt. Applicant surrendered his Egyptian passport, and expressed a willingness to renounce his dual Egyptian citizenship. The last incident of use was in 2000. Applicant has siblings residing in Egypt, and has a minimal shared financial interest in his late parents' house there. Applicant has mitigated the foreign preference and foreign influence security concerns. Clearance is granted.

STATEMENT OF THE CASE

On October 2, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, 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 of Reasons (SOR) to Applicant. The SOR detailed reasons under the personnel security Guideline C (Foreign Preference) and Guideline B (Foreign Influence) 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. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed statement, dated October 19, 2003, and sworn to on October 28, 2003, Applicant responded to the SOR allegations. He requested a hearing. This case was assigned to me on November 26, 2003.

A Notice of Hearing was issued on November 26, 2003, setting the hearing for December 3, 2003. Applicant waived the fifteen day notice period. (Tr.7) On that date, I convened the hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government presented four exhibits which were admitted into evidence. Applicant appeared and testified, and offered five exhibits, all of which were admitted into evidence.

Applicant also had three witnesses testify on his behalf. I received the transcript (Tr.) of the hearing on December 30, 2003.

FINDINGS OF FACT

Applicant admitted the allegations in subparagraphs 1.a., 1.b., and 1.c., and the allegations in subparagraphs 2.a. and 2.b. of the SOR. Those admissions are incorporated herein as findings of fact. At the hearing, Applicant changed his answer on the record and denied the allegation in subparagraph 1.c. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is 59 years old. He is married. He has lived in the U.S. for 34 years and became a citizen in 1974. His wife became a citizen in 1977. They have four children and two grandchildren. Applicant and his wife immigrated from Egypt. Applicant has a Ph.D. in aerospace engineering. Applicant has had a security clearance since 1982. (Exhibit 1 at 1 to 4; Exhibit 2; Exhibits D and E; Tr. 57, 58)

Applicant obtained his U.S. passport in 1975. He maintained an Egyptian passport at the same time. He used it for travel to Egypt to visit his family over the years. Applicant found the Egyptian passport made it easier to travel within Egypt, than it would have been on a U.S. passport. Applicant traveled to Egypt in 1992, 1994, and 2000. Applicant used his U.S. passport to enter and depart Egypt, but used his Egyptian passport for internal Egyptian travel. His Egyptian passport does not show any entry or departure stamps on it. His Egyptian passport expires on July 19, 2007 and his U.S. passport expires on June 24, 2006. On October 23, 2003, Applicant mailed his Egyptian passport to the General Manager of Passports and Immigration in Cairo, Egypt, with a cover letter stating he was surrendering his Egyptian passport. The passport was cancelled by the Egyptian government, and was stamped on three pages with the word "Cancelled". (Answer; Exhibit 2; Exhibit 4 at 3; Exhibits A, B, C, and D; Tr. 24, 46, 60, 62)

Applicant will renounce his Egyptian citizenship if requested to do so, for the purposes of continuing his 35 year employment with the same defense contractor. He will not be disloyal to the U.S., and will report any inappropriate contacts regarding his classified work to the company's security officer. (Answer; Exhibit D; Tr. 63)

Applicant has a share in his parents' house in Egypt, in which a sister lives at the present time. Applicant asserts the value of his share of the house is \$4,000. Applicant's three siblings are older than he is, and are retired in Egypt. Applicant's contacts with them occur on holidays, significant family events, and any personal health crises. (Exhibit D at 2 and 3; Tr. 63 to 65)

Applicant submitted character witnesses who testified about his excellent reputation in the company for honesty, trustworthiness, and competency. (Tr. 28 to 42)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The president has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* Section 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicted upon the applicant meeting the security guidelines contained in the Directive.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1., Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. See *Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a prima facie case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. See Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. See Exec . Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of 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. Directive ¶ E2.A3 .1.1.

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

The exercise of dual citizenship. Directive ¶ E2.A3.1.2.1.

Possession and/or use of a foreign passport. Directive ¶ E2.A3.1.2.2.

E2.A3.1.3. Conditions that could mitigate security concerns include:

Dual citizenship is based solely on parents' citizenship or birth in a foreign country. Directive ¶ E2.A3.1.3.1.

Individual has expressed a willingness to renounce dual citizenship.

Directive ¶ E2.A3.1.3.4.

Applicable also is the Memorandum of August 16, 2000, entitled "Guidance of DoD Central Adjudication Facilities (CAF) Clarifying the Application of Foreign Preference Adjudicative Guidelines", by the Assistant Secretary of Defense

for Command, Control, Communications and Intelligence (ASDC3I), commonly known as the "Money Memo". This memorandum guidance states that

possession and/or use of a foreign passport may be a disqualifying condition. . . The only applicable mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the possession and use of a foreign passport in preference to a U.S. passport raised doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent application of the guideline requires that any clearance be denied or revoked until the applicant surrenders the

foreign passport or obtains official approval for its use from the appropriate agency of the

United States Government.

GUIDELINE B: Foreign Influence

The Concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or 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.

Directive, ¶ E2.A2.1.1.

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

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. Directive, ¶ E2.A2.1.2.1.

Conditions that could mitigate security concerns include:

A determination that the immediate family member(s) 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. Directive, ¶ E2.A2.1.3.1.

Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities. Directive, ¶ E2.A2.1.3.5

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to each allegation set forth in the SOR:

Guideline C - Foreign Preference: The Government met its burden and established the facts by substantial evidence. Individuals who act in ways that indicated preference for a foreign country over the United States may be prone to provide information or make decisions that are harmful to the interests of the United States. (Directive ¶ E2.A3.1.1.) Applicant used his Egyptian passport for his own convenience on internal travel in Egypt, which indicates a foreign preference, exercising the rights and privileges of a citizen of that country, holding himself out as a citizen of that country and not as a citizen of the United States. ISCR Case No. 99-0295, 2000 DOHA LEXIS 219 at *15 (App. Bd. Oct. 20, 2000) Applicant declared he is a dual citizen, and he exercised dual citizenship by using an Egyptian passport after he became a United States citizen. Clearly, Applicant does have a foreign preference based on his use of the Egyptian passport. Applicant cannot have a foreign preference and a security clearance in the United States. DC 3 applies. Therefore, Disqualifying Conditions (DC) 1 (dual citizenship) and 2 (possession and use of a foreign passport) apply.

Applicant must now meet his burden to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3

(App. Bd. Dec. 19, 2002). Applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3. Here, Applicant met his burden. He has overcome the requirements of the ASDC3I memorandum which reiterates that the failure to surrender the foreign passport is a disqualifying condition by surrendering his passport. He returned it to the Egyptian government, and it was cancelled. He also has expressed a willingness to renounce his Egyptian citizenship.

Mitigating Condition (MC) 1 (Dual citizenship is based solely on the parent's citizenship or birth in a foreign country) applies. In addition, his willingness to renounce dual citizenship makes MC 4 applicable. Therefore, I find for Applicant on this guideline.

Guideline B - Foreign Influence: Disqualifying Condition (DC) 1 (An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen or, or resident or present in, a foreign country) applies. Applicant has siblings in Egypt.

I find Mitigating Condition (MC) 1 (the immediate family members are not agents of a foreign power or in a position to be exploited) is applicable. Applicant showed that none of Applicant's family members are agents of any government. Applicant showed no vulnerability to influenced by coercive or noncoercive means because of his siblings living in Egypt, because they are all older than he is and retired. Applicant said he would report any inappropriate contacts by persons seeking classified information. Applicant's contacts with his siblings are not casual or infrequent because of the family relationship. Applicant's shared interest in his late parents' house is of minimal value, and MC 5 applies. These foreign contacts are considered in light of all of the evidence on the record. I find for Applicant on this Guideline.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline C: For Applicant

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Paragraph 2 Guideline B: For Applicant

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

DECISION

In light of all the circumstances and facts presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Philip S. Howe

Administrative Judge