

DATE: March 17, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-02828

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has serviced the interests of the United States for more than 37 years. His service includes three years of active duty in the Marine Corps during the Vietnam War, a 27 year career as a sky marshal, special agent, and supervisory special agent with the U.S. Customs Service, and his current support of the U.S. Department of State as a contractor. The record demonstrates that Applicant's acquisition of Irish citizenship is a reflection of his pride in his heritage rather than a preference for a foreign country. To whatever extent Applicant may be deemed to have exercised his Irish citizenship through the acquisition of a passport, his action has been mitigated by his surrender of the same without ever having used it. Clearance is granted.

STATEMENT OF THE CASE

On September 25, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order ⁽¹⁾ and Department of Defense Directive, ⁽²⁾ issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline B (Foreign Influence) and Guideline C (Foreign Preference). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant her access to classified information and recommends that her case be submitted to an Administrative Judge.

On October 10, 2003, DOHA received a response to the SOR from Applicant, in which he requested a hearing. The case was assigned to me on November 18, 2003. A notice of hearing was issued on November 26, 2003, and the hearing was scheduled for December 17, 2003. For good cause shown, the hearing was postponed and held on January 21, 2004. During the hearing, seven Government exhibits, eight Applicant exhibits, and the testimony of one Government witness and three Applicant witnesses, including Applicant, were received. The transcript (Tr) was received on January 30, 2004.

PROCEDURAL ISSUE

During the hearing, Department Counsel moved to allow Applicant time to surrender his Irish passport. I granted Applicant until February 20, 2004 to submit evidence of the same. On January 31, 2004, Applicant submitted a letter from the Irish Embassy confirming that he had surrendered his passport and that it had been cancelled. Department Counsel had no objections to this additional evidence. I have marked the same as Applicant Exhibit I and included it in the file.

FINDINGS OF FACT

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

Applicant is a 58-year-old government contractor. He conducts background investigations on applicants for security clearances. Applicant has a contract with U.S. Department of State from whom he has been issued a top secret security clearance. He now seeks a security clearance from the Department of Defense (DoD) as part of a contract with that agency.

Applicant is a native-born citizen of the United States of Irish ancestry. The same is true of his wife of 33 years. They have five children, all of whom are native-born citizens of the U.S.

Despite a heart murmur which could have excused him from military service, Applicant enlisted in the United States Marine Corps and served three years of active service from 1967-1970. He was a sky marshal with the U.S. Customs Service from 1970-1973. Applicant served on flights to Europe and the Middle East. He continued service with the Customs Service as a special agent and supervisory special agent, including service with the Vice-President's Drug Task Force, until his retirement in 1998. He received an award for his distinguished service with the Customs Service.

Because his grandparents were Irish citizens, Applicant obtained Irish citizenship on October 14, 1996. On July 24, 1998, he obtained an Irish passport that he never used for any travel. Applicant's wife obtained her Irish citizenship, based on the fact that her parents were Irish citizens. His children have obtained or have applied for Irish citizenship as well. Applicant's only trips to Ireland were a pleasure visit with his wife in 1970 and two flights as a sky marshal in 1971 or 1972. Neither Applicant nor his wife own any property or other financial interest in Ireland or receive any benefits from the Irish Government.

Because of his dual citizenship, Applicant was required to sign an oath as a condition of obtaining a security clearance from the U.S. Department of State. He agreed not to exercise his Irish citizenship as specified. The oath does not address possession or use of a foreign passport.

On January 28, 2004, Applicant surrendered his Irish passport to the Irish Embassy and his passport was cancelled.

POLICIES

The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion to demonstrate that it is clearly consistent with the national interest to grant or continue a security clearance. Directive E3.1.15.

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. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

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 B: Foreign Influence

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 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. The Directive E2.A2.1.1. Conditions that could raise a security concern and may be disqualifying under Guideline B include E2.A2.1.2.1, 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 (Disqualifying Condition 1).

Conditions that could mitigate security concerns include E2.A2.1.3.1, a determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters) co-habitant, or associate(s) in question 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 (Mitigating Condition 1).

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. The Directive E2.A3.1.1. Conditions that could raise a security concern and may be disqualifying include: E2.A3.1.2.1, the exercise of dual citizenship (Disqualifying Condition 1); and E2.A2.1.2, 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."

Conditions that could mitigate security concerns include E2.A3.1.3.4, the individual has expressed a willingness to renounce dual citizenship (Mitigating Condition 4).

CONCLUSIONS

Guideline B: Foreign Influence

The fact that Applicant's wife and children have become citizens of Ireland as well as of the United States raises Disqualifying Condition 1. Like Applicant, they have obtained Irish citizenship because of their ancestral pride. However, none of them are agents of Ireland or any foreign power and their dual citizenship does not place them in a position to be exploited by a foreign power. They continue to reside in the United States and have no financial or other interest in Ireland. The celebration of their heritage by Applicant's family does not have the potential to force Applicant to choose between loyalty to them and the United States. Therefore, these conditions are mitigated pursuant to Mitigating Condition 1. I find in favor of Applicant with regard to both SOR ¶ 1.a and SOR ¶ 1.b.

Guideline C: Foreign Preference

The fact that Applicant became a citizen of Ireland as well as of the United States and acquired an Irish passport raises both Disqualifying Condition 1 and Disqualifying Condition 2.

Based on his experience in obtaining a security clearance from the State Department, Applicant was unaware of the fact his passport was a disqualifying factor in obtaining a security clearance from DoD. Applicant has mitigated Disqualifying Condition 2 by surrendering his Irish passport to the Irish Embassy. Now that Applicant is aware of the

disqualifying nature of a foreign passport and based on the caliber of person he is, as discussed below, there is no basis for concluding that he will seek re-issuance of the passport. Therefore, I find in favor of Applicant with respect to SOR ¶ 2.b and SOR ¶ 2.c, to the extent it addresses Applicant's refusal to surrender his Irish passport.

Although Applicant may have acquired dual citizenship with Ireland, his only exercise of that citizenship was acquiring an Irish passport. However, he never used that passport and has surrendered it. Although the record may technically support Disqualifying Condition 1, it does not establish a foreign preference on the part of Applicant. Although Applicant is unwilling to renounce his Irish citizenship, that act is not required for him to be granted a security clearance. As the DOHA Appeal Board has recognized, the issue in a security clearance determination is not whether an applicant is a dual national, but rather whether an applicant shows a preference for a foreign country through actions. ISCR Case No. 98-0252 (September 15, 1999) at 4. Consequently, neither SOR ¶ 2.a nor SOR ¶ 2.c, to the extent it addresses Applicant's refusal to renounce his Irish citizenship, establish disqualifying conditions.

Applicant has served the interests of the United States for more than 37 years. Although there is evidence that he could have avoided military service because of a medical condition, he chose to serve in the United States Marine Corps during the Vietnam War. Applicant completed three years of active honorable service. Following his military service, Applicant elected to continue to serve his country with a distinguished career in the U.S. Customs Service, culminating with his receipt of an award for his distinguished service and retirement in 1998. Applicant continues to serve this nation in his capacity as a contractor with the U.S. Department of State.

The record demonstrates that Applicant's acquisition of Irish citizenship is a reflection of his pride in his heritage rather than a preference for a foreign country. To whatever extent Applicant may be deemed to have exercised his Irish citizenship through the acquisition of a passport, his action has been mitigated by his surrender of the same without ever having used it. In accordance with E2.2.3 of the Directive, an overall common sense determination in this case leads to but one reasonable conclusion. I find in favor of Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Paragraph 2. Guideline C: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.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. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.

2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.