

DATE: May 3, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-06054

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esq., Department Counsel

FOR APPLICANT

Herbert M. Silverberg, Esq.

SYNOPSIS

Applicant retained his Slovak passport after he became a U.S. citizen, and has not surrendered it, because it "is my only proof of Slovak citizenship, and is key to any potential return to Slovakia when I retire." Although Applicant mitigated foreign influence security concerns resulting from the presence of members of his family in Slovakia and his wife's family in Poland, he failed to mitigate foreign preference security concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 4 May 2004, DOHA issued a Statement of Reasons [\(1\)](#) (SOR) detailing the basis for its decision-security concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on 21 May 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 6 December 2004. On 28 February 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 10 March 2005.

FINDINGS OF FACT

Applicant is a 61-year-old scientist/engineer and technical fellow for a defense contractor. He has held a secret clearance since 1997 and is now seeking a top secret clearance. He is married and has three adult children.

Applicant was born in Slovakia, although at the time it was part of Czechoslovakia. In 1958, his father was arrested and imprisoned for more than two years, as a political prisoner, for, among other things, listening to Radio Free Europe and Voice of America radio broadcasts. Tr. 54. In 1964, Applicant went to Poland to study. He received his Ph.D. in mathematics in 1970. Tr. 58.

While in Poland, he met his future wife, who was also a student. They were married in 1974. All three of their children

were born in Poland. The first two were taken to Czechoslovakia and granted citizenship there. The third child was born while martial law was in effect in Czechoslovakia, so the couple was unable to take him there to apply for citizenship in that country. He was a Polish citizen.

Applicant and his family first came to the U.S. in 1979 while Applicant taught at a U.S. university. After a year, Applicant and his family returned to Poland. In 1983, at the invitation of another U.S. university, the family returned to the U.S. After several stints as visiting professor at various universities, Applicant started working in the private sector, eventually finding work with a defense contractor. He and his family were granted asylum in 1988, permanent residency in 1989, and became U.S. citizens in 1995. Answer.

In 1994, before he became a U.S. citizen, Applicant returned to his homeland on his Czechoslovakian passport. As the Slovak Republic had separated from Czechoslovakia, his passport was confiscated and he had to obtain a Slovak Republic passport to return to the U.S. The Slovak Republic passport expired in August 2004. Applicant traveled to the Slovak Republic on a few occasions after he became a U.S. citizen, but always on his U.S. passport.

Applicant's oldest son has spent quite a bit of time traveling in Eastern Europe. During 2001, he shared an apartment with his sister who was studying at an English language medical school in Poland. She returned to the U.S. after only six months. He also spent time living with his maternal grandmother in Poland and his paternal grandmother in The Slovak Republic. Both of his grandfathers are deceased. He is currently attending graduate school in the U.S. His brother is attending the same institution and his sister is enrolled in medical school in the U.S.

In addition to his mother, Applicant has a brother and two sisters still living in the Slovak Republic: his brother works for the Slovak Red Cross; one sister is a professor of special education; and his other sister is an engineer. Applicant has several aunts and uncles in the Slovak Republic. His wife's mother, two of her three brothers, and a sister live in Poland, but are not associated with the government. Her third brother lives in the U.S., but is still a Polish citizen. Applicant used to send his mother \$50 each month, but no longer does. Applicant's wife buys things for her mother and sister when she visits them in Poland.

In a 9 October 2002 signed, sworn statement, Applicant stated: "I am not willing to relinquish my passport from The Slovak Republic. The passport is my only proof of Slovak citizenship, and is key to any potential return to Slovakia when I retire."

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An 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.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline C-Foreign Preference

In the SOR, DOHA alleged Applicant exercised dual U.S./Slovak Republic citizenship (§ 1.a), possessed a valid Slovak Republic passport (§ 1.b), did not intend to relinquish his Slovak Republic passport (§ 1.c), and intends to retire in the Slovak Republic (§ 1.d). Applicant admitted §§ 1.a and 1.b, but denied §§ 1.c and 1.d. When an applicant acts in such a way as to indicate a preference for a foreign country over the U.S., then he may be prone to provide information or make decisions that are harmful to the interests of the U.S. Directive § E2.A3.1.1.

The Government's evidence and Applicant's admissions constitute substantial evidence of potentially disqualifying conditions under Guideline C-the exercise of dual citizenship (DC E2.A3.1.2.1) and the possession of a foreign passport (DC E2.A3.1.2.2). Applicant admitted being a dual U.S./Slovak citizen and possessing a valid Slovak Republic passport. The sole evidence of his *exercise* of dual citizenship is his retaining possession of his Slovak Republic passport after he became a U.S. citizen in 1995. *See* ISCR Case No. 01-02270 (Aug. 29, 2003) (Possession of a foreign passport without use is still exercise of dual citizenship).

A clearance must "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." Memo. from Arthur L. Money, Asst Sec. Def. Command, Control, Communications, and Intelligence, to Directors of Defense Agencies, *Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline* (Aug. 16, 2000). Applicant's passport expired during the processing of his security clearance application, prior to the hearing. Nevertheless, the recent expiration of a foreign passport is not equivalent to surrender. "Surrender contemplates returning it to the issuing authority, and merely keeping a foreign passport until it expires does not satisfy this requirement in the ASDC3I memo." ISCR Case No. 01-24306 at 5 (App. Bd. Sep. 30, 2003).⁽²⁾ There is no evidence Applicant surrendered his Slovak Republic passport to the appropriate Slovak authorities.

It is mitigating when an applicant's dual citizenship is based solely on his foreign birth (MC E2.A3.1.3.1) or the applicant has expressed a willingness to renounce dual citizenship (MC E2.A3.1.4). Although Applicant's dual citizenship was originally based on his birth in the Slovak Republic, it is clear that there is more to it than just that. His reluctance to surrender his Slovak passport, because it was the only proof of his citizenship and is key to any potential return to the Slovak Republic when he retires demonstrates a foreign preference-"the right or chance to so choose"⁽³⁾ between the two countries. Applicant wants to keep his options open so he can choose whether he will retire in the U.S. or the Slovak Republic. Applicant failed to persuade me that any of the mitigating conditions apply. I find against Applicant.

Guideline B-Foreign Influence

In the SOR, DOHA alleged Applicant's wife is a dual U.S./Polish citizen (§ 2.a); his mother (§ 2.b) and his brother and two sisters (§ 2.e) are citizen residents of the Slovak Republic; he maintains weekly telephone contact with his mother (§ 2.c); he sends at least \$50 monthly to his mother (§ 2.d); he maintains e-mail contact with his siblings in the Slovak Republic (§ 2.f); he traveled to the Slovak Republic to visit his family in 1994, 1997, 1998, 2000, and 2001 (§ 2.g); his mother-in-law, two brothers-in-law, and a sister-in-law are citizen residents of Poland (§ 2.h); two of his children are dual U.S./Slovak citizens residing in the U.S. (§ 2.i); one of his children is a dual U.S./Polish citizen (§ 2.j). Applicant admitted all of the allegations except §§ 2.c and 2.i. A security risk may exist when an applicant's immediate family, or other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Directive § E2.A2.1.1.

The Government's evidence and Applicant's admissions constitute substantial evidence of a potentially disqualifying condition under Guideline B-Applicant has close ties of affection or obligation with citizen residents of two foreign countries-the Slovak Republic and Poland. DC E2.A2.1.2.1. These security concerns raised by Applicant's foreign associates may be mitigated when it is determined they are not agents of a foreign power and are not 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 involved and loyalty to the U.S. MC E2.A2.1.3.1. Applicant's foreign associates are not "agents of a foreign power." *See* 50 U.S.C. § 1801(b).

In assessing the vulnerability to exploitation of Applicant's associates, it is helpful to consider several factors, including

the character of the government and the status of the country involved. In this case, it is appropriate to examine both the Slovak Republic and Poland.

Slovakia is a parliamentary republic that officially became a member of NATO on March 29, 2004 and joined the EU on May 1, 2004. The country has provided military engineer battalions to the coalition forces in Iraq and Afghanistan. The U.S. retains strong diplomatic ties to the Slovak Republic. U.S. Department of State Background Note: Slovakia (January 2005).

Poland is a republic that became a full member of NATO in March 1999 and joined the EU in May 2004. The United States and Poland have enjoyed warm bilateral relations since 1989. Poland has supported the Global War on Terror, contributed to Operation Enduring Freedom in Afghanistan and been a leader in the coalition in Iraq, where it has deployed some 2,400 troops. Poland cooperates closely with American diplomacy on such issues as nuclear proliferation, human rights, regional cooperation in central and eastern Europe, and UN reform. U.S. Department of State Background Note: Poland (April 2005).

After considering all of the evidence, including the breadth and depth of Applicant's contacts with associates in Poland and Slovakia, the nature of the dual citizenship of his wife and younger son,⁽⁴⁾ as well as the character and status of the countries involved, I conclude MC E2.A2.1.3.1 applies. Applicant's foreign associates in Poland and Slovakia are not in a position to be exploited by a foreign power. Thus, I find for Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline C: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: For Applicant

Subparagraph 2.e: For Applicant

Subparagraph 2.f: For Applicant

Subparagraph 2.g: For Applicant

Subparagraph 2.h: For Applicant

Subparagraph 2.i: For Applicant

Subparagraph 2.j: For Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

James A. Young

Administrative Judge

1. As required by Exec. Or. 10865,(Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended and modified (Directive).
2. One can reasonably question whether an expired passport is a "passport" within the meaning of the Money Memo. Nevertheless, I am bound by the Appeal Board's decision.
3. The American Heritage Dictionary of the English Language (4th ed. 2000).
4. Applicant denied, and there is no evidence, Applicant's older son and daughter are dual citizens.