

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: British-born Applicant who has resided in the U.S. since 1997 and was naturalized as a U.S. citizen in 2001--a dual citizen of both countries--retained his British passport after he was naturalized. He surrendered the British passport in September 2004 in compliance with the August 2000 ASD/C³I memorandum implementing a passport policy clarification. Applicant's wife is a native-born U.S. citizen, and his parents (who intend to emigrate to the U.S. to reside with Applicant) and two sons are U.K. citizens and residents (one son resides in the U.S.). The government's security concerns are mitigated by the evidence developed herein. Clearance is granted.

CASENO: 03-13907.h1

DATE: 03/22/2005

DATE: March 22, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-13907

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Jr., Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

British-born Applicant who has resided in the U.S. since 1997 and was naturalized as a U.S. citizen in 2001--a dual citizen of both countries--retained his British passport after he was naturalized. He surrendered the British passport in September 2004 in compliance with the August 2000 ASD/C³I memorandum implementing a passport policy clarification. Applicant's wife is a native-born U.S. citizen, and his parents (who intend to emigrate to the U.S. to reside with Applicant) and two sons are U.K. citizens and residents (one son resides in the U.S.). The government's security concerns are mitigated by the evidence developed herein. Clearance is granted.

STATEMENT OF THE CASE

On August 3, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to 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 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, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn, written statement, dated August 18, 2004, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on August 31, 2004. A complete copy of the file of relevant material (FORM) [\(1\)](#) was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He submitted additional documentation on September 20, 2004. Department Counsel offered no objection to those materials. The case was assigned to me on October 12, 2004.

FINDINGS OF FACT

Applicant has admitted all of the factual allegations pertaining to foreign influence under Guideline B (subparagraphs 1.a. through 1.c.) and foreign preference under Guideline C (subparagraphs 2.a. and 2.b.). Those admissions are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 50-year-old employee of a defense contractor, and he is seeking to obtain a security clearance the level of which has not been divulged.

Applicant was born in 1954 in the United Kingdom of British parents, (2) and became a naturalized U.S. citizen in July 2001. (3) Both parents (his mother is 74-years-old and his father is 76-years-old) (4) are citizens and residents of the U.K. (5) His first wife, whom he married in 1980 in the U.K., (6) and whom he divorced in 1995, (7) remains a citizen and resident of the U.K. They had two children-sons born in 1982 and 1983-both of whom are citizens of the U.K. (8) His oldest son resides in the U.S. (9) Applicant married his current wife, a native-born citizen of the U.S., in 1995. (10) They reside together in the U.S. (11)

Applicant served on active duty with the Royal Air Force (RAF) from October 1970 until he retired in April 1997. (12) At the time of his retirement, he was a Chief Technician. (13) As a result of his retirement, he now draws a pension. (14) He has been employed by different U.S. companies in the United States since April 1997, (15) and has been employed by his current employer--a U.S. government contractor--since October 1998, where he now serves as a contract logistics engineer. (16) The quality of his professional performance has not been characterized.

After Applicant married his current wife in 1995, he eventually entered the U.S. as a permanent resident alien. (17) At the same time, he was required to obtain a British passport with an expiration date 10 years in the future (April 2005) as a condition of emigrating to the U.S. (18) In August 2001, when asked if he had ever been a dual citizen of the U.S. and another country, he responded "yes," and identified the U.K. (19) Applicant has continued to be a dual citizen of the U.K.

as well as the U.S., and has, until September 2004, maintained a passport from each country. Since becoming a naturalized U.S. citizen, he has never used his British passport.⁽²⁰⁾ In January 2004, Applicant had expressed reservations about relinquishing his British passport, citing concerns over the health of his parents. Nevertheless, he surrendered it to the British Embassy in September 2004.⁽²¹⁾ Applicant no longer possesses a valid British passport and has announced a willingness to renounce his British citizenship if that action is deemed necessary.⁽²²⁾

The United Kingdom is, and has continued to be since the War of 1812, our closest military and political ally, in peace and in war, sharing a common tradition of constitutional liberties as well as military research and intelligence facilities. It is a nation whose interests are not inimical to the United States.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E.2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider are: (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.

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 B - FOREIGN INFLUENCE: 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: (1) not citizens of the United States or (2) 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.

GUIDELINE C - 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 and may be disqualifying, as well as those which could mitigate security concerns, pertaining to each of the adjudicative guidelines are set forth and discussed in the Conclusions section below.

On August 16, 2000, the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD/C³I) issued a passport policy "clarification" pertaining to Adjudicative Guideline C--foreign preference. ⁽²³⁾ A photocopy of the memorandum was furnished to Applicant on several occasions. The memorandum states, in pertinent part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. 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 raises 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 unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government.*** Modification of the Guideline is not required. (Emphasis supplied)

Since the protection of the national security is the paramount determinant, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security," ⁽²⁴⁾ or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded both standards are one and the same. In reaching this Decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided

drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

CONCLUSIONS

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

The government has established its case under Guideline C. Applicant has been portrayed as a dual citizen of the U.S. and the U.K. who has acted in such a way as to indicate a preference for a foreign country--in this instance, the United Kingdom--over the United States, and in so doing, he may be prone to provide information or make decisions harmful to the interests of the United States. In support of its contentions, the government has cited Applicant's acceptance and possession of a British passport; his failure to surrender that passport; and his receipt of a military retirement pension from the RAF. Applicant's actions clearly fall within Foreign Preference Disqualifying Condition (FP DC) E2.A3.1.2.1. (*the exercise of dual citizenship*), FP DC E2.A3.1.2.2. (*possession and/or use of a foreign passport*), and FP DC E2.A3.1.2.4. (*accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country*).

The ASD/C³I memo states there are no mitigating factors "related to an applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country," a phrase which I construe to relate solely to the use

of a foreign passport, and not to mere possession of same. On the other hand, the memo requires a 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." In this instance, while there may be lingering skepticism as to this policy "clarification;" or the mandated disinterest in the identity of the foreign country involved, even one as closely aligned to the United States in democratic principles, constitutional ideals, and political policies as the United Kingdom, one fact is inescapable: the policy, as "clarified" by ASD/C³I and interpreted by the Appeal Board, must be complied with. Applicant's actions in surrendering his British passport to the British Embassy in September 2004 render the issue moot. Consequently, allegation 1.a. of the SOR is concluded in favor of Applicant.

Also applicable are Foreign Preference Mitigating Condition (FP MC) E2.A3.1.3.2. (*indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship*) and E2.A3.1.3.4. (*individual has expressed a willingness to renounce dual citizenship*). Also, while it is true Applicant collects a retirement pension because of his prior RAF service, I do not look upon that fact with disfavor or consider it to be of security concern, considering the nature of the government in the U.K. For the reasons expressed above, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated certain another portion of the government's case. Accordingly, allegation 1.b. of the SOR is concluded in favor of Applicant.

The government has established its case under Guideline B. Applicant has been portrayed as a person who is a potential security risk because members of his immediate family or persons to whom he is bound by affection, influence, or obligation--in this instance, his elderly parents and two sons--are either not citizens or residents of the United States or may be subject to duress. These situations raise the potential for vulnerability to coercion, exploitation, or pressure, and the exercise of foreign influence that could result in the compromise of classified information. However, the mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B:

The language of [Guideline] B (Foreign Influence) in the Adjudicative Guidelines makes clear that the possession of such family ties *may* pose a security risk. Whether an applicant's family ties in a foreign country pose a security risk depends on a common sense evaluation of the overall facts and circumstances of those family ties. *See* ISCR Case No. 98-0419 (April 30, 1999) at p. 5. [\(25\)](#)

The citizenship status of Applicant's parents and sons, as well as the residency status of his parents and one son, when considered in light of the nature of the government in the United Kingdom--a constitutional monarchy which has been the United States' oldest and closest international brother, ally, and friend, and whose interests are not inimical to the United States--facilitates an analysis involving the adjudicative guidelines and the various applicable conditions set forth therein. Applicant's wife is a native-born U.S. citizen, and only the continuing British citizenship of his parents and two sons, as well as the U.K. residency of his parents and one son, raise the issue of potential foreign influence. In this regard, see Foreign Influence Disqualifying Condition (FI DC) 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*).

However, also applicable, in this instance, is Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1. (*a determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power 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*). After an examination of the evidence, I determine that Applicant's parents and sons, considering their citizenship, residency, and work status, do not constitute an unacceptable security risk. Furthermore, their continuing personal relationship has no security significance.

Considering the nature of the government in the United Kingdom, and the absence of any scintilla of evidence that they are targets of any intelligence gathering efforts, their citizenship and residency status does not establish any doubts regarding possible duress. Thus, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the government's case with respect to Guideline B. Accordingly, allegations 2.a. through 2.c. of the SOR are concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is eligible for access to classified information.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1., Guideline C: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Paragraph 2., Guideline B: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: For the Applicant

DECISION

In light of all the circumstances 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.

Robert Robinson Gales

Chief Administrative Judge

1. The Government submitted seven items in support of its contentions.
2. Item 4 (Security Clearance Application, dated August 9, 2001), at 4-5.
 3. *Id.*, at 1.
 4. *Id.*, at 4-5.
5. *Id.* Applicant's parents have expressed a desire to reside in the U.S. with Applicant and his wife. Applicant's Response to FORM, dated September 20, 2004, at 1.
 6. *Id.*, at 4.
 7. *Id.*
 8. *Id.*, at 5.
9. Applicant's Response to FORM, *supra* note 5, at 1.
 10. *Id.*, at 4.
 11. *Id.*, at 1,4.
 12. *Id.*, at 5.

13. *Id.*, at 3.
14. Applicant's Response to FORM, *supra* note 5, at 1.
15. Item 4, *supra* note 2, at 3.
16. *Id.*, at 2.
17. *Id.*, at 6.
18. Item 2 (Response to SOR, dated August 18, 2004), at 1, 3.
19. Item 4, *supra* note 2, at 1.
20. Item 7 (Statement, dated January 27, 2004).
21. Applicant's letter of transmittal, dated September 8, 2004, attached to Applicant's Response to FORM, *supra* note 5.
22. Item 7, *supra* note 20.
23. Item 6 (ASD/C³I Memorandum from Arthur L. Money, Subject: *Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline*, dated August 16, 2000, attached to DOHA Interrogatory, undated).
24. Exec. Or. 12968, "*Access to Classified Information*;" as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program*," dated January 1987, as amended by Change 3, dated November 8, 1995, and further modified by memorandum, dated November 10, 1998. However, the Directive, as amended by Change 4, dated April 20, 1999, uses both "clearly consistent with the national interest" (Sec. 2.3.; Sec.2.5.3.; Sec. 3.2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.25.; Sec. E3.1.26.; and Sec. E3.1.27.), and "clearly consistent with the interests of national security" (Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (Enclosure 2, Sec. E2.2.2.)
25. ISCR Case No. 98-0507 (Appeal Board Decision and Reversal Order, May 17, 1999), at 10.