

KEYWORD: Foreign Preference

DIGEST: Applicant was born in Portugal and came to the United States as an infant. He was educated in the United States, is a naturalized United States citizen, and has a United States passport. He applied for and received a Portuguese Citizen Identification Card after becoming a United States citizen and receiving a United States passport. He obtained the identification card to be able to inherit his family's holdings in Portugal and to have a bank account in Portugal. Applicant has exercised dual citizenship and has not mitigated security concerns for foreign preference. Clearance is denied.

CASENO: 03-16791.h1

DATE: 06/10/2005

DATE: June 10, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-16791

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was born in Portugal and came to the United States as an infant. He was educated in the United States, is a naturalized United States citizen, and has a United States passport. He applied for and received a Portugese Citizen Identification Card after becoming a United States citizen and receiving a United States passport. He obtained the identification card to be able to inherit his family's holdings in Portugal and to have a bank account in Portugal. Applicant has exercised dual citizenship and has not mitigated security concerns for foreign preference. Clearance is denied.

STATEMENT OF THE CASE

On November 16, 2004, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on November 22, 2004. The SOR alleges security concerns under Guideline C (Foreign Preference) of the Directive.

Applicant answered the SOR in writing on December 17, 2004, and admitted the allegations under Guideline C. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on April 1, 2005. Applicant received a complete file of relevant material (FORM) on April 11, 2005, and was provided the opportunity to file objections and submit material to

refute, extenuate, or mitigate the disqualifying conditions. His response was due May 11, 2005. As of May 13, 2005, he had not responded. The case was assigned to me on May 18, 2005.

FINDINGS OF FACT

Applicant is a 27-year-old engineer for a defense contractor. He came to the United States from Portugal with his family when he was 15 months old. He was educated in the United States, receiving his bachelor's degree from a United States university. He is a naturalized United States citizen as are his parents and sister who all reside in the United States. Applicant received a United States passport on September 10, 1997.⁽¹⁾

Applicant does not hold a Portuguese passport. However, he applied for and received a Portuguese Citizen Identification Card on July 18, 2001.⁽²⁾ He obtained the card at the request of his family so he can inherit the family holdings in Portugal. His parents own and keep a house in Portugal that he will inherit. The identification card enables him to open and keep a bank account in Portugal for the deposit of gifts from his family. Applicant admits he travels to Portugal to visit family about every other year. Applicant has not served in the Portuguese military, voted in a Portuguese election, accepted any benefits from Portugal, sought any political office in Portugal, or performed or acted to serve the interests of Portugal. He has not resided in Portugal but does visit the country. Applicant will not renounce his Portuguese citizenship, but would only give it some thought. He does feel it is appropriate for him to inherit the assets in Portugal his parents worked to accumulate.⁽³⁾ Applicant admits he is a dual citizen of both the United States and Portugal.⁽⁴⁾

POLICIES

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."⁽⁵⁾ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.⁽⁶⁾

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

"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." An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽⁷⁾ An administrative judge should consider: (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 applicant'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 of recurrence.⁽⁸⁾

A person granted access to classified information enters into a special relationship with the government. 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. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.⁽⁹⁾ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.⁽¹⁰⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽¹¹⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽¹²⁾ "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability."⁽¹³⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽¹⁴⁾

Based upon a consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline C - Foreign Preference: A security concern exists when an individual acts in such a way as to indicate a preference for a foreign country over the United States, such that 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 would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions section below.

CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

The government has established its case under Guideline C. Applicant's affirmative action to obtain a Portuguese Citizen Identification Card, and using that identification card to have a bank account and inherit property in Portugal brings the matter under E2.A3.1.2.1 (*the exercise of dual citizenship*), and E2.A3.1.2.6 (*using foreign citizenship to protect financial or business interest in another country*). Applicant admits he is a United States citizen who holds dual citizenship with Portugal. He has a Portuguese Citizen Identification Card for financial purposes and to inherit property. I conclude the above disqualifying conditions have been established.

Applicant has not raised any conditions to mitigate the disqualifying conditions. Foreign Preference Mitigating Condition E2.A3.1.3.1 (*dual citizenship is based solely on parent's citizenship or birth in a foreign country*) does not apply. While Applicant may be a Portuguese citizen through his parents and his birth in Portugal, he affirmatively chose to obtain a Portuguese Citizen Identification Card and exercise his dual citizenship when he was a 22-year-old adult. Mitigating Condition E2.A3.1.3.2 (*indicators of possible foreign preference occurred before obtaining United State citizenship*) does not apply. Applicant's exercise of dual citizenship occurred in 2001, ten years after becoming a naturalized United States citizen, and five years after receiving a United States passport. Mitigating condition E2.A3.1.3.4 (*individual has expressed a willingness to renounce dual citizenship*) does not apply because Applicant has expressly stated he will only seriously consider renouncing his Portuguese citizenship if he determines it is in his best interest and something he would be willing to do. I conclude Applicant has not mitigated the security concerns based on his foreign preference for Portugal.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is not 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: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

DECISION

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

Thomas M. Crean

Administrative Judge

1. FORM, Item 4 (Security clearance application, dated Nov. 26, 2002).
2. FORM, Item 6 (Portugese Citizen Identification Card, dated Jul. 18, 2001).
3. FORM, Item 5 (Applicant's statement, dated May 5, 2003), at 2.
4. FORM, Item 5 (Applicant's statement, dated May 5, 2003) at 1; FORM, Item 4 (Security clearance application, dated Nov. 26, 2002), question 3.
5. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
6. Directive ¶ E2.2.1.
7. *Id.*
8. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
9. *See* Exec. Or. 10865 § 7.

10. Directive ¶ E3.1.14.

11. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

12. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

13. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

14. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.