

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant was born and raised in Germany, but has lived and worked in the U.S. since 1987. He became a naturalized U.S. citizen in 2002. The vast majority of his interests are in the U.S., and his foreign ties do not make him vulnerable to coercion. Further, he has acted to renounce his foreign citizenship and relinquish his passport. Applicant has mitigated the security concerns about possible foreign preference and foreign influence. Clearance is granted.

CASENO 04-10535.h1

DATE: 03/22/2006

DATE: March 22, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-10535

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

David P. Price, Esquire

SYNOPSIS

Applicant was born and raised in Germany, but has lived and worked in the U.S. since 1987. He became a naturalized U.S. citizen in 2002. The vast majority of his interests are in the U.S., and his foreign ties do not make him vulnerable to coercion. Further, he has acted to renounce his foreign citizenship and relinquish his passport. Applicant has mitigated the security concerns about possible foreign preference and foreign influence. Clearance is granted.

STATEMENT OF THE CASE

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to give Applicant a security clearance. On June 7, 2005, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline B (foreign influence) and Guideline C (foreign preference). Applicant timely answered the SOR, and requested a hearing.

The case was assigned to me on August 24, 2005, and I convened a hearing October 20, 2005. The parties appeared as scheduled and the government presented four exhibits (GE 1 through 4), which were admitted without objection. Applicant and three other witnesses testified, and he submitted a single exhibit admitted without objection as Applicant's Exhibit (AE) A. DOHA received the transcript (Tr) on November 1, 2005.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is 44 years old and works as an independent consultant subcontracted to a large defense contractor supporting the U.S. Navy. He requires a security clearance for his work. He was born and raised in Germany, receiving a masters degree in engineering there in 1987, after which he accepted a job with a large U.S. corporation. He met his wife around this time and, after a period of "trans-Atlantic dating," the two were married in May 1989. Applicant has lived and worked in the U.S. ever since and became a naturalized citizen in 2002. That same year, based on his understanding of a recent change in German law, he also renewed his German citizenship.

Applicant's parents and only brother are citizens of and live in Germany. His mother and father are in their 70s and are retired after working for a major car manufacturer for most of their adult lives. They live off their pensions. Applicant's older brother is an electrician and has worked for the same power company since completing his apprenticeship after high school. Applicant and his brother have inheritance interests in their parents' future estate. The bulk of any inheritance lies in their parents' house, which Applicant's father built himself in 1968. Applicant estimates the total value of the estate, which would be evenly divided by him and his brother, at around \$350,000.

Before receiving U.S. citizenship, Applicant maintained his German citizenship and a passport from that country. He last renewed the German passport in 2001, but took action to relinquish both the passport and his German citizenship in July 2005 after retaining counsel, who advised him of the full scope of the government's security concerns stated in the SOR. Applicant's passport is in his attorney's custody pending completion of the German government's response to Applicant's renunciation request. German law provides the passport may not be cancelled until the citizenship renunciation process is complete.

Since coming to the U.S., Applicant has developed a technical and consulting expertise in a business management software system employed by major international and U.S. corporations. In 1996, he and three co-workers, who had been working for a consulting firm implementing that software, started their own consulting firm. In 2001, they sold their company to a German subsidiary of the company that originally developed the aforementioned business management software. Applicant received 22% of the \$10 million selling price in installments, the last of which he received in February 2005. The sales agreement required Applicant to stay with the company for up to four years in a consulting capacity, but he and the purchaser agreed to end the relationship after two years.

Applicant has significant real estate and investment holding in the U.S. His current net worth is more than \$2.8 million. He has no such interests in Germany or any other foreign country or entity. His financial advisor testified that in all their dealings, Applicant has been completely honest, has demonstrated sound judgment, and has conducted his affairs with

integrity. He is not aware of any connection between the sale of Applicant's business and the maintenance of his German citizenship.

Applicant was interviewed by a Defense Security Service (DSS) agent during his background investigation. In the course of the interview, Applicant acknowledged the possibility maintaining his German citizenship in addition to his U.S. citizenship would be helpful in matters of inheritance and in doing business in Europe. On this latter point, Applicant has never pursued business interests outside the U.S. The sale of his business to a German subsidiary of a U.S. firm was initiated when the purchaser approached Applicant and his partners.

Applicant has traveled to Germany several times in the past 10 years. He has used only his U.S. passport for travel since becoming a U.S. citizen, but also carried his German passport for convenience if necessary. He maintains regular contact with his parents and brother, and his parents and several friends from Germany have visited him and his wife in the U.S. over the years. None of Applicant's German contacts is an agent of or employed by the German government.

Germany is an open society, governed as a freely-elected democratic republic, with a representative legislature, a periodically-elected chancellor as the executive leader, and an independent judiciary. Germany is not known to engage in human rights abuses or other oppressive conduct towards its citizenry. While it differs, as allies often do, with the U.S. on a number of issues, Germany has, since 1945, generally aligned itself with U.S. foreign policy, military, and commercial interests.

Applicant is generally regarded as a thorough professional, a solid family man, and firmly rooted in all aspects of his life here in the U.S. A retired senior Naval officer, who now works for the prime contractor whom Applicant supports, and who works closely with Applicant on a daily basis, testified Applicant is his top consultant and extremely reliable and honest. He also testified that Applicant has an excellent reputation for honesty and integrity in the workplace.

POLICIES AND BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽²⁾ for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the

government meets its burden, it establishes that it is not clearly consistent with the national interest for an applicant to have access to classified information. The applicant must then present sufficient evidence to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, applicants bear a heavy burden of persuasion to comply with the government's compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. (3) The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government. (4)

The Directive sets forth adjudicative guidelines (5) for consideration when evaluating an applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of disqualifying and mitigating conditions listed under each adjudicative guideline as may be applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are Guideline B (foreign influence) and Guideline C (foreign preference).

CONCLUSIONS

The government alleged Applicant exercises dual citizenship (SOR ¶ 1.a), possessed, at the time DSS interviewed him in 2004, a foreign passport (SOR ¶ 1.b), carries both his U.S. and foreign passports when he travels (SOR ¶ 1.c), renewed his foreign citizenship while holding U.S. citizenship (SOR ¶ 1.d), and maintains foreign citizenship to facilitate potential overseas business opportunities and inheritance interests in his native country (SOR ¶ 1.e). The government has submitted sufficient information to support these allegations, thereby supporting its preliminary decision to deny Applicant's request for a clearance because of possible foreign preference. As addressed through Guideline B, a security concern arises when it is shown an applicant acts in such a way as to indicate a preference for a foreign country over the United States. If so, he or she also may be prone to provide information or make decisions that are harmful to U.S. interests. (6) Applicant's actions in retaining a foreign passport and renewing his foreign citizenship to comply with foreign laws, despite also being a U.S. citizen, support application of Guideline C disqualifying condition (DC) 1 (7) and DC 2 (8) with respect to SOR ¶¶ 1.a, 1.b, 1.c, and 1.d.

As to the allegations he maintains dual citizenship for potential business opportunities, he has not pursued any such opportunities and the record support for this allegation lies solely in his acknowledgment to DSS that it may be helpful. As for the inheritance ramifications of his German citizenship, these are future interests at best. Applicant could as easily predecease his parents as inherit their estate. Without more information, not provided here, to more definitively tie Applicant's maintenance of foreign citizenship to an actual benefit and not a speculative interest, I conclude the allegations in SOR ¶ 1.e do not present disqualifying security concerns.

I have also reviewed all of the available mitigating conditions (MC) under Guideline C. As to Applicant's possession of a foreign passport, the Directive does not provide for correlative mitigation of DC 2. However, an August 2000 memorandum from the Office of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (OASDC3I), which makes possession of a foreign passport per se disqualifying, also provides relief where an applicant has relinquished his passport. Here, the Applicant relinquished his passport, not to the German government, but to his attorney, who will then deliver it to Germany. This is a requirement of German law - that Applicant's passport cannot be cancelled until relinquishing of his citizenship, an act not actually required under the Directive, is complete. I conclude Applicant has complied with the OASDC3I memorandum, and that the record supports application of MC 4. [\(9\)](#) The totality of information about Applicant's foreign citizenship warrants conclusion of Guideline C in favor of Applicant.

The government also alleged Applicant has relatives who are citizens of and live in Germany (SOR ¶ 2.a), has traveled to Germany several times in the past six years (SOR ¶ 2.b), is an heir to his parents' estate in Germany (SOR ¶ 2.c), and received compensation from a German company that bought his business (SOR ¶ 2.d). The government produced sufficient information to support these allegations, thereby supporting, in part, its preliminary decision to deny Applicant's request for a clearance because of possible foreign preference. As addressed through Guideline B, a security concern arises when it is shown 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 U.S. citizens 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. [\(10\)](#)

The allegations in SOR ¶¶ 2.b and 2.c do not, without more, raise a security concern. Travel to a foreign country is not by itself disqualifying. And, for the same reasons discussed under SOR ¶ 1.e, above, being an heir to a foreign estate is a speculative interest at best. It is difficult to establish how maintaining one's foreign citizenship would preserve such an interest when Applicant may or may not ever claim it. At most, the allegations in SOR ¶¶ 2.b and 2.c "plead" evidence that may support the above-stated Guideline B security concern.

The allegation in SOR ¶ 2.d presents a security concern requiring consideration of Guideline B DC 8; [\(11\)](#) however, available information shows Applicant did not purchase, nor does he have a financial interest in a foreign-owned business. Rather, he received money from the sale of his own business to a foreign-owned subsidiary of a U.S. company. After the sale, he served in a consulting capacity, but that relationship ended in 2003. All of Applicant's assets arise from his life and contacts in the U.S. only. His net worth, consisting solely of U.S.-based assets, is in excess of \$2.8 million. Even were he to inherit one-half his parents' estate with his brother, that interest would be less than \$200,000, or roughly 14% of his current net worth. In light of all the available information about Applicant's finances, the only possible foreign financial interest identifiable in this record is both speculative and, in comparison to Applicant's U.S. interests, minimal. These facts support application of MC 5. [\(12\)](#)

The government established Applicant's parents and brother are citizens of and reside in Germany. He has close, regular [\(13\)](#)

contact with all three, both in person and on the telephone. On these facts, DC 1 applies. However, none of Applicant's German relatives are agents of or employed by the German government. Nor are they in a position to be exploited or coerced by the German government. Support for this latter conclusion lies in the nature of the German government as an open, representative government that is generally aligned with the United States politically, culturally, and commercially. Applicant's parents are living a quiet, retired life devoid of political activism or government connections. His brother is a career electrician who has worked for the same employer for over 30 years. They live in a country where, for the past 60 years, government oppression, the denial of due process, and arbitrary persecution are virtually non-existent. Guideline B MC 1 applies here, and, on balance, I conclude Applicant has mitigated the security concerns about possible foreign influence.

A fair and commonsense assessment⁽¹⁴⁾ of the entire record before me shows the government properly expressed reasonable doubts about Applicant's suitability to have access to classified information. The SOR was based on reliable information about his foreign citizenship, actions related thereto, and his foreign contacts and interests. Such issues bear directly on an applicant's ability to protect classified information, and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. However, when considered in light of the entire record, including Applicant's comprehensive and lasting ties in the U.S., and his recent actions regarding his foreign citizenship and passport, I conclude the government's concerns have been adequately addressed and the security issues mitigated. In short, available information shows it is clearly consistent with the national interest to grant Applicant's request for access to classified information.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline C (Foreign Preference): FOR THE APPLICANT

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d: For the Applicant

Subparagraph 1.e: For the Applicant

Paragraph 2, Guideline B (Foreign Influence): FOR THE APPLICANT

Subparagraph 2.a: For the Applicant

Subparagraph 2.b: For the Applicant

Subparagraph 2.c: For the Applicant

Subparagraph 2.d: 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 a security clearance for the Applicant. Clearance is granted.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
3. *See Egan*, 484 U.S. at 528, 531.
4. *See Egan*; Directive E2.2.2.
5. Directive, Enclosure 2.
6. Directive, E2.A3.1.1.
7. Directive, E2.A3.1.2.1. The exercise of dual citizenship;
8. Directive, E2.A3.1.2.2. Possession and/or use of a foreign passport;
9. Directive, E2.A3.1.3.4. Individual has expressed a willingness to renounce dual citizenship.
10. Directive, E2.A2.1.1.
11. Directive, E2.A2.1.2.8. A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence.
12. Directive, E2.A2.1.3.5. Foreign financial interests are minimal and not sufficient to affect the individual's security

responsibilities.

13. Directive, 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;

14. Directive, E2.2.3.