

DATE: June 30, 2006

In Re:

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Applicant for Security Clearance

CR Case No. 04-11161

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN GRATTAN METZ, JR**

**APPEARANCES**

**FOR GOVERNMENT**

Daniel F. Crowley, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant mitigated the security concerns raised under foreign preference by demonstrating that she lost her Zimbabwean citizenship as a matter of Zimbabwean law when she became a naturalized U.S. citizen in November 2003, and she had surrendered her Zimbabwean passport to the Zimbabwean Embassy in February 2006. Applicant mitigated the security concerns raised under foreign influence by demonstrating that her family members living in Zimbabwe were not agents of a foreign government or so situated as to provide a point of influence on Applicant. Clearance granted.

**STATEMENT OF THE CASE**

Applicant challenges the 13 July 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of foreign preference, foreign influence, and personal conduct. (1) Applicant answered the SOR on 9 August 2005 initially requested a decision without hearing, but later requested a hearing. DOHA assigned the case to me 20 December 2005 and I convened a hearing on 23 February 2006. DOHA received the transcript 7 March 2006.

**FINDINGS OF FACT**

Applicant admitted the factual allegations under Guideline B. She denied being a dual citizen under Guideline C and denied intending to falsify her clearance application under Guideline E. I incorporate her admission as findings of fact. She is a 38-year-old employee of a defense contractor, who has not previously held a clearance.

Applicant was born in Zimbabwe in May 1967. She initially came to the U.S. in 1992 on a visitor visa, but changed it to student visa when she entered community college, and eventually became a legal permanent resident of the U.S. She became a naturalized U.S. citizen in November 2003. Six days later, she applied for her clearance.

When Applicant applied for her clearance (G.E. 1), she disclosed her foreign birth, potential dual citizenship, foreign

passport, foreign relatives, and her foreign travel (an October 1999 trip back to Zimbabwe for her father's funeral).<sup>(2)</sup> She did not disclose that she owned a house in Zimbabwe that she purchased for \$20,000 at a time when she thought she might return to live in Zimbabwe. She testified credibly that she omitted the property because she misconstrued the question to mean business property, of which she had none. Her mother lived in the house until 2004, when it was torn down under a government program aimed at destroying what it considered to be "trash" houses in the countryside.<sup>(3)</sup>

When Applicant immigrated to the U.S. in 1992, she did so using a Zimbabwean passport. Under U.S. immigration law, she was required to maintain a current passport from her country of citizenship. When Applicant became a naturalized U.S. citizen in November 2003, she possessed a Zimbabwean passport valid until November 2009. She has credibly stated that she retained the passport only as a record that she was in the U.S. legally, and that she did not intend to renew it. In her July 2004 sworn statement (G.E. 2), she stated her willingness to renounce her Zimbabwean citizenship and surrender her passport. This was before she learned that she had lost her Zimbabwean citizenship as a matter of Zimbabwean law when she became a U.S. citizen and before she knew the consequences of retaining her foreign passport for any purpose. When she became aware of those consequences, she surrendered her Zimbabwean passport (A.E. C).<sup>(4)</sup>

Applicant's mother, some siblings, and step-siblings are citizens and residents of Zimbabwe. However, in the family structure of Zimbabwe she has virtually no contact with her step-siblings. Two of her step-brothers were policemen but one of them is dead.<sup>(5)</sup> Her step-mother, who used to be a citizen and resident of Zimbabwe, is now dead.<sup>(6)</sup> One of her brothers is a retired, disabled veteran of the Zimbabwean army, who now works in a medical clinic for veterans.<sup>(7)</sup> The only other family member who has any connection to the government is a brother who serves as a local magistrate.

Applicant's character references--her company supervisor and the government agency program manager who monitors the contract--consider her a reliable and trustworthy person. She has an excellent work record and her employer recommends her for a clearance. She has adequately safeguarded company proprietary information. (AE A, B).

Zimbabwe is a developing nation with a poor human rights record. However, it is not known to be a collector of intelligence or economic information against the U.S.

## **POLICIES AND BURDEN OF PROOF**

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. 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 for or against Applicant. However, specific adjudicative 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. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline C (Foreign Preference), Guideline B (Foreign Influence), and Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. 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.<sup>(8)</sup>

## CONCLUSIONS

The government did not establish a Guideline C case. Applicant's dual citizenship was based solely on her birth Zimbabwe. She has not exercised her Zimbabwean citizenship since becoming a U.S. citizen. In accordance with U.S. law, she maintained her Zimbabwean passport until she became a U.S. citizen, but surrendered it once she became aware of the consequences of retaining it for any purpose. She lost her Zimbabwean citizenship as a matter of law when she became a U.S. citizen. I resolve Guideline C for Applicant.

The government established a case for disqualification under Guideline B by demonstrating that Applicant's has family members who are citizens and residents of Zimbabwe. However, Applicant has met the relevant mitigating condition under foreign influence. None of her family members are agents are of a foreign government involved in any collection activity, and none of them are so situated as to provide a point of influence on Applicant, thus satisfying Mitigating Condition (MC) 1.<sup>(9)</sup> In particular, Zimbabwe does not collect U.S. economic or intelligence information. I resolve Guideline B for Applicant.

The government did not establish a Guideline E case, as Applicant lacked the requisite intent to mislead the government. I resolve Guideline E for Applicant.

## FORMAL FINDINGS

Paragraph 1. Guideline C: FOR APPLICANT

Subparagraph a: For Applicant

Subparagraph b: For Applicant

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph a: For Applicant

Subparagraph b: For Applicant

Subparagraph c: For Applicant

Subparagraph d: For Applicant

Subparagraph e: For Applicant

Subparagraph f: For Applicant

Subparagraph g: For Applicant

Paragraph 3. Guideline E: FOR APPLICANT

Subparagraph a: For 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 granted.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).

2. This is Applicant's only trip back to Zimbabwe, and occurred before she became a U.S. citizen. Travel to attend her father's funeral has no independent security significance. At best, it shows her ties to her father, who otherwise no longer presents any potential point of influence on Applicant. I find SOR 1.d. for Applicant.

3. As Applicant no longer has the property interest in Zimbabwe, SOR 1.e. is found for Applicant.

4. Which confirms not only her surrender of the passport, but her loss of Zimbabwean citizenship.

5. I find SOR 1.g. for Applicant.

6. I find SOR 1.c. for Applicant.

7. I find SOR 1.f. for Applicant.

8. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).

9. 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 or in a position to be exploited by 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.