

DATE: July 25, 2006

In Re:

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SSN: -----

Applicant for Security Clearance

CR Case No. 05-10023

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Candace Le'i, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has surrendered his expired and defaced Argentine passport and has made a request to renounce his Argentine citizenship to the Argentine Embassy. His foreign preference has been mitigated and no longer raises a security concern. Clearance is granted.

**STATEMENT OF THE CASE**

On February 23, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on March 17, 2006, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on April 29, 2006. A notice of hearing was issued on May 2, 2006, scheduling the hearing for May 18, 2006. At the hearing the Government presented seven exhibits. The Applicant presented three exhibits and he testified on his own behalf. The official transcript (Tr.) was received on May 26, 2006.

**FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 46 years of age and has a Ph.D. He is employed as a Program anager for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is

ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant is a dual citizen of Argentina and the United States. He was born in Argentina in 1959, to Argentine parents. In 1963, at the age of 4, he moved with his parents to the United States. He grew up in the United States, obtained a Ph.D. degree, and has no intention of ever returning to live in Argentina. He is married to a United States citizen and they have a thirteen year old son who was born in the United States. He expresses a deep loyalty and obligation to the United States. His parents, who are United States citizens and reside in the United States, are now retired.

He has never exercised any privileges granted him by the Argentinian government. He has no siblings or immediate family in Argentina. The Applicant has no connections with anyone in the Argentinian government and he has no foreign assets or investments of any kind.

On April 30, 1985, the Applicant became a naturalized United States citizen and at the same time was issued a United States passport. (*See* Government Exhibit 1). He has used his United States passport since then to travel abroad. His Argentine passport that was valid from 1975 through December 31, 1983, has expired and he has no intentions of ever renewing it.

In 1989 the Applicant, was working for a United States defense contractor and traveled to Argentina on official government business. He presented his United States passport to enter and exit the country. As he entered Argentina, it was brought to his attention by immigration officials that because his United States passport indicated that he was born in Argentina, he would not be able to leave Argentina without a valid Argentine passport. The fact that the Applicant had also not completed his mandatory military service in Argentina was also discussed. The Applicant informed them that, as a minor, his parents had informed the Argentine government that the Applicant was a full time student in the United States and was exempt from the military service. Since the Applicant was on official government business at that time, the United States Embassy intervened on the Applicant's behalf, and the Applicant was allowed to enter and exit Argentina without his United States passport being stamped. (Tr. p. 28).

The Applicant believes that in order to properly renounce his Argentinian citizenship, he must appear in court in Argentina. However, he requested that the record remain open to allow him the opportunity to destroy his expired passport and return it to the Argentine Embassy. He also indicated that he wanted to renounce his Argentine citizenship at that time. (Tr. pp. 30-32).

The record was left open until June 1, 2006, to allow the Applicant to provide additional documentation. A letter dated May 19, 2006, indicates that the Applicant mailed his defaced Argentine passport to the Argentine Embassy and requested to renounce his Argentine citizenship. The Applicant also attached the certified mail receipt, Post Office receipt, Domestic Return Receipt, and the USPS Track and Confirm Search Results. (*See* Applicant's Post-Hearing Exhibit).

Letters of recommendation from the Senior Contract Administrator and a coworker of the Applicant state that they consider the Applicant to be exceptionally reliable and trustworthy. He has a high level of integrity, professionalism and is respected by all of his colleagues. He is loyal to the United States and has always properly safeguarded classified information. (*See* Applicant's Exhibits A and B).

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

## 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.

### Condition that could raise a security concern:

1. The exercise of dual citizenship.

### Conditions that could mitigate security concerns:

1. Dual citizenship is based solely on parent's citizenship or birth in a foreign country;
4. Individual has expressed a willingness to renounce dual citizenship.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "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. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline C (foreign preference), and that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

### **CONCLUSIONS**

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

The Applicant is a dual citizen of Argentina and the United States. He considers himself only an American citizen and has made the United States his home. He has lived in the United States for all but four years of his life, and has a valid United States passport that he uses to travel abroad. He has no intentions of ever returning to live in Argentina. At the time of the hearing the Applicant had not yet renounced his Argentine citizenship but indicated that he was willing to do so. Since the hearing, he has surrendered his expired and defaced Argentine passport and requested to renounce his Argentine citizenship to the Argentinian Embassy.

The Applicant is married to a United States citizen and their child is a United States citizen. The only association he has with Argentina is the fact that he was born there. He has expressed loyalty and obligation to the United States ranging from a safe country of residence, a wonderful source of education, an income to provide his family, and a livelihood that allows him to provide service to the United States Government. Mitigating Conditions (1) *Dual citizenship is based solely on parent's citizenship or birth in a foreign country* and (4) *Individual has expressed a willingness to renounce dual citizenship* are applicable. The Applicant has clearly demonstrated an unequivocal preference for the United States. Under the circumstances of this case, I find for the Applicant under Guideline C (Foreign Preference).

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline C of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline C .

### **FORMAL FINDINGS**

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subparas. 1.a.: For the Applicant 1.b.: For the Applicant 1.c.: For the Applicant

### **DECISION**

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge