

DATE: September 29, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 05-11864

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN GRATTAN METZ, JR**

**APPEARANCES**

**FOR GOVERNMENT**

D. Michael Lyles, Esquire, Department Counsel

Francisco J. Mendez, Jr, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant mitigated the security concerns raised under foreign preference by demonstrating that she did not consider herself a dual citizen of Jamaica, that she became subject to administrative revocation of her Jamaican citizenship under Jamaican law when she became a naturalized U.S. citizen in June 1997, she had surrendered her Jamaican passport to the Jamaican Embassy in May 2006, and was willing to renounce her Jamaican citizenship. She mitigated the security concerns raised under foreign influence by demonstrating that her father--a U.S. citizen residing in Jamaica--was not an agent 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 18 January 2006 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of her clearance because of foreign preference, foreign influence, and personal conduct. (1) Applicant answered the SOR on 8 February 2006 and requested a hearing. DOHA assigned the case to me 2 May 2006 and I convened a hearing on 10 August 2006. DOHA received the transcript 23 August 2006.

**FINDINGS OF FACT**

Applicant admitted the factual allegations under Guidelines C and B. She denied intending to falsify her clearance application under Guideline E. I incorporate her admission as findings of fact. She is a 33-year-old information systems engineer employed by a defense contractor since January 2001. She has not previously held a clearance, but was granted access to public trust information in non-DoD agencies in 2001. (2)

Applicant was born in Jamaica in December 1973. She initially came to the U.S. in 1976 with her parents, because her mother had a position at the Jamaican embassy in public relations/marketing. Applicant attended elementary school in

the U.S. from kindergarten through fourth grade. Around 1980, when she was about seven (2<sup>nd</sup> or 3<sup>rd</sup> grade), her parents separated and ultimately divorced. Her father remained in the U.S. Applicant returned to Jamaica with her mother, and attended fifth and sixth grade in Jamaica.

After sixth grade, Applicant's mother got another job in the U.S., and Applicant returned to the U.S. with her. She finished middle school and high school in the U.S, and obtained both her bachelor's and master's degrees from U.S. colleges. She became a naturalized U.S. citizen in June 1997. While in college, she met a man she later married in August 2001. They both work at the same company, although not on the same projects. He has had a clearance since before 1997. They own property in two states, have a two-year old son born in the U.S., and maintain retirement and other accounts in the U.S. Applicant has no financial interests in Jamaica.

Applicant's mother is a citizen of Jamaica, residing in the U.S. as a legal permanent resident. Her two brothers are naturalized U.S. citizens residing in the U.S. Her father is also a U.S. citizen, but he now lives in Jamaica.

When Applicant applied for her clearance in November 2003 (G.E. 1), she disclosed her foreign birth, foreign relatives, and her foreign travel (10 trips between 1997 and 2003, seven of them to Jamaica).<sup>(3)</sup> She did not disclose that she possessed a Jamaican passport valid until September 2006. She also did not disclose that her godfather--a long-time family friend known as "uncle" in keeping with Jamaican culture--had been prime minister of Jamaica since March 1992.<sup>(4)</sup>

Applicant testified credibly that she failed to disclose her possession of the passport both because she thought the passport was no longer valid and because she misread the passport question to look back five years instead of seven (Tr. 66). However, she disclosed her possession of the Jamaican passport--as well as the fact that she used it to enter Jamaica in June 1998--during a subject interview in March 2005. She also testified credibly that she did not think to disclose her godfather on her clearance application as contact with a foreign government because she has never had any contact with him in his official capacity as prime minister of Jamaica, and thinks of him only as her godfather. He retired as prime minister of Jamaica in March 2006.

When Applicant first came to the U.S. in 1976, and when she returned to the U.S. after sixth grade, she did so using a Jamaican passport. Under U.S. immigration law, she was required to maintain a current passport from her country of citizenship. When she became a naturalized U.S. citizen in June 1997, she possessed a Jamaican passport valid until September 2006. In fact, she used that passport to travel to Jamaica in June 1997 before she was naturalized. She has credibly stated that she retained the passport only because she did not know what else to do with it, no one asked her to surrender it, and she was not aware of any negative ramifications associated with holding on to it, as she had not had any employment contact with the government (Tr. 63). However, she did use it once to enter Jamaica once in July 1998, after she became a U.S. citizen. She was vaguely aware at the time that she could have traveled to Jamaica with her naturalization certificate, but used her Jamaican passport out of habit and convenience, and to skirt the much longer "foreign arrivals" line at immigration (Tr. 63). Nevertheless, she thinks she may have used her naturalization certificate to re-enter the U.S. after that trip. She never used her Jamaican passport after the 1998 trip. She obtained her U.S. passport in May 2000, and has used only that passport for her foreign travel since.

Applicant's father resides in Jamaica and works as a retail store manager. Applicant has not had very frequent contact with him since her parents separated, but does talk to him by telephone a couple of times per year, and has personal contact with him once every few trips to Jamaica. Applicant and her husband usually stay in the tourist areas in Jamaica, and her father comes to visit them there. However, on occasion, she and her husband have driven to his home to see him. In similar fashion, her contacts with her godfather have been very infrequent. He has sometimes visited Applicant and her husband when they have vacationed in Jamaica. Sometimes he visits them when he has speaking engagements in the U.S.

Applicant's character references--her company supervisor and a co-worker--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 and the sensitive information she has had access to on her non-DoD contracts.

Under Jamaican law, Applicant did not lose her Jamaican citizenship automatically when she became a naturalized U.S. citizen. However, Jamaican law provides that the Governor General of Jamaica may, by order, deprive Applicant of her citizenship because she became a naturalized U.S. citizen. Jamaican law also provides for renunciation of citizenship, but the process is both convoluted and expensive. Applicant has expressed a willingness to renounce her Jamaican citizenship, but has not formally done so because of the expense. She considers herself only a citizen of the U.S.

Jamaica 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. The internet link to the Jamaican Embassy embedded in the U.S. State Department on-line Background Note on Jamaica leads to a web page that contains only tourist information [Appellate Exhibit (App.Ex.) 1]. The United States maintains close and productive relations with the Government of Jamaica. The United States is Jamaica's most important trading partner. Jamaica is a popular destination for American tourists; more than 800,000 Americans visited in 2000. In addition, some 10,000 American citizens, including many dual-nationals born on the island, permanently reside in Jamaica. [Background Note-Jamaica, March 2006 (Official Notice document 2)]

## **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>(5)</sup>

## **CONCLUSIONS**

The government established a case for disqualification under Guideline C case by demonstrating that Applicant exercised dual citizenship with Jamaica by possessing and using her Jamaican passport in July 1998--after she became a naturalized U.S. citizen. <sup>(6)</sup> However, several mitigating factors apply. Applicant acquired her Jamaican citizenship only because she was born there. <sup>(7)</sup> She left Jamaica when she was three and, except for two years in Jamaican elementary school, her cultural experience has been growing up in the U.S. In accordance with U.S. law, she maintained her Jamaican passport until she became a U.S. citizen, and although she used it once under circumstances where she had no reason to know of any potential adverse consequences for using it, she surrendered it once she became aware of the consequences of retaining it for any purpose. Although she did not lose her Jamaican citizenship as a matter of law when she became a U.S. citizen, she is subject to administrative revocation of her Jamaican citizenship because she became a U.S. citizen. Further, she considers herself only a citizen of the U.S., and has stated a willingness to renounce her Jamaican citizenship. <sup>(8)</sup> I resolve Guideline C for Applicant.

The government established a case for disqualification under Guideline B by demonstrating that Applicant's father

resides in Jamaica and her godfather (not a member of her immediate family) was formerly prime minister of Jamaica. (9) However, Applicant has met the relevant mitigating conditions under foreign influence. Her father is not an agent of a foreign government involved in any collection activity, and is not so situated as to provide a point of influence on Applicant, thus satisfying Mitigating Condition (MC) 1. (10) In particular, Jamaica does not collect U.S. economic or intelligence information, and there is no evidence in the record to suggest that Jamaica poses any threat to U.S. interests. Further, her contacts with her father and her godfather are casual and infrequent (11) and she has reported her foreign contacts as required. (12) While her contacts with her godfather were not the result of her being on official government business, (13) they were also not contacts with her godfather in his capacity as prime minister of Jamaica, but only as her godfather and family friend. 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

Subparagraph c: For Applicant

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph a: For Applicant

Subparagraph b: For Applicant

Subparagraph c: 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. Based on a Questionnaire for Public Trust Positions (SF 85P)(A.E. C) she executed in February 2001.
3. Most of her trips to Jamaica included her husband, and occurred largely because Jamaica is a place where they like to vacation. This travel has no independent security significance, a fact implicitly recognized by the government because it alleged no foreign influence concerns over Applicant's travel to Spain and Canada for vacation. I find SOR 2.c. for Applicant.
4. The government did not allege this omission as a falsification in the SOR, but pursued the issue in cross-examination.

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

6. E2.A3.1.2.1. The exercise of dual citizenship; E2.A3.1.2.2. Possession and/or use of a foreign passport;

7. E2.A3.1.3.1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country;

8. E2.A3.1.3.4. Individual has expressed a willingness to renounce dual citizenship.

9. 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; E2.A2.1.2.3. Relatives, cohabitants, or associates who are connected with any foreign government;

10. 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.

11. E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent;

12. E2.A2.1.3.4. The individual has promptly reported to proper authorities all contacts, . . .from persons or organizations from a foreign country, as required;

13. E2.A2.1.3.2. Contact with foreign citizens are the result of official United States Government business;