

DATE: June 26, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR OSD Case No. 97-0197

DECISION OF ADMINISTRATIVE JUDGE

JOHN R. ERCK

APPEARANCES

FOR THE GOVERNMENT

Michael H. Leonard, Esquire

Department Counsel

FOR THE APPLICANT

Pro Se

STATEMENT OF THE CASE

On March 18, 1997, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, "Safeguarding Classified Information Within Industry," dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6 "Defense Industrial Personnel Security Clearance Review Program" (Directive) dated January 2, 1992, as amended by Change 3, dated February 13, 1996, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make a preliminary determination that it was clearly consistent with the national interest to grant or continue a security clearance for him.

A copy of the SOR is attached to this Decision and included herein by reference.

Applicant responded to the SOR in writing on March 24, 1997, and requested a hearing before a DOHA Administrative Judge. The case was assigned to this Administrative Judge on May 5, 1997. On May 29, 1997, a hearing was convened for the purpose of considering whether it was clearly consistent with national security to grant Applicant's security clearance. The Government's case consisted of three exhibits; Applicant relied on his own testimony, the testimony of his wife and five exhibits. A transcript of the proceedings was received on June 9, 1997.

FINDINGS OF FACT

The SOR alleges that Applicant holds and has traveled with the passport of Country X (subparagraph 1.a.), that he has registered for the military service of that Country (subparagraph 1.b.), that he had voted in a local election in that Country between 1994 and 1996 (subparagraph 1.c.), that he intends to vote in future elections of that Country (subparagraph 1.d.), and the SOR further alleges that Applicant's spouse is employed locally by the Navy of Country X (subparagraph 1.e.).

Applicant admitted, with explanation, the factual allegations set forth in subparagraphs 1.a., 1.b., and 1.e. of the SOR, and denied, with explanation, the factual allegations set forth in subparagraphs 1.c. and 1.d. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

Applicant is 38 years old and has been employed by a defense contractor since May 1994. Previously he has worked directly for the -----, and as a contract employee for the -----, the -----, and the ----- . He has not held a security clearance and is currently applying for a clearance at the secret level. A favorable preliminary determination could not be made on Applicant's suitability for a security clearance because his connections with Country X suggest that he may prefer a foreign country over the United States.

In his answer to the SOR and during the administrative hearing, Applicant admitted that he is a citizen of, and holds a passport of Country X. He explained that he has dual citizenship because he was born in the United States to a mother who was a citizen and an employee of Country X, and a father who was an American citizen. He has used the passport of Country X to enter and leave that Country--as required by law, and he has used his American Passport for all other travel.

Applicant admits that he registered for military service in Country X. He explains that he was living in Country X when he turned 18--an age when all male citizens (of that country) are required by law to present themselves for military service. If he had not registered, Applicant would have risked imprisonment; he would have been unable to continue his studies at the university; and he would have been unable to obtain the identification card which is a prerequisite for holding a job or obtaining a driver's licence. Applicant did not subsequently serve in the armed forces of Country X.⁽¹⁾ Attachment C to Department Counsel's Pre-hearing Memorandum of Law, and the certified translated documents submitted by Applicant, affirm that registering for military service is a legal requirement of Country X (Applicant's Exhibit D).

Applicant denies that he voted in an election **in** Country X within the past three years. He admits that he voted in a local election of Country X during that time period, but states that he voted through that country's local embassy. He last voted in an election **in** Country X in 1986. Applicant explains that he voted in that election because he is legally required to vote. Likewise with respect to Applicant's future voting intentions, he states in answer to the SOR that "voting is not a question of intention, it is a question of obligation." He will vote in future elections of Country X, not because he wants to, but because he is required to vote and is subject to penalties if he does not vote. Attachment C to Department Counsel's Pre-hearing Memorandum of Law, and the certified translated documents submitted by Applicant affirm this legal requirement (Applicant's Exhibit D).

Applicant admits that his wife is a citizen of Country X, and that she is employed by the ---- of that country.⁽²⁾ He explained that his wife has had a Green Card--documenting her status as a resident alien--which she obtained through his sponsorship. She gave up her Green Card in order to be able to sponsor a nanny for child care. He went on to explain that he earns four times (roughly) what his wife earns. Applicant and his wife have two young children--ages two and three; they also have dual citizenship.

Applicant testified that his principal allegiance is to the United States; he was educated in American primary and secondary schools;⁽³⁾ he graduated from college in the United States and all of his professional ties and employment have been in this country. He has maintained dual citizenship as a matter of convenience. Dual citizenship makes it easier for him to travel from the United States to Country X where he and wife have friends and relatives. His wife is a native and citizen of Country X, and he has relatives there because his mother is also a native of that country. He stated in answer to the SOR that he would renounce the citizenship of Country X if that course of action was required; he reiterated his willingness to give up his citizenship in Country X--if it became necessary--at his administrative hearing (Tr. 67, 73).

Applicant has excellent work references as documented by letters from those for whom he has worked.

POLICIES

The Adjudicative Guidelines of the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations with reasonable consistency that are clearly consistent with the interests of national security. In making those overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines but in the context of the factors set forth in section F.3. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate that the facts proven have a nexus to an applicant's lack of security worthiness.

The following Adjudicative Guidelines are deemed applicable to the instant matter.

FOREIGN PREFERENCE

(Criterion C)

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, the he or she may be prone to provide information or make a decisions that are harmful to the interests of the United States.

Conditions that could raise a security concern and may be disqualifying include:

- (1) The exercise of dual citizenship;
- (2) Possession and/or use of a foreign passport;
- (3) Military service or a willingness to bear arms for a foreign country;
- (8) Voting in foreign elections;

Conditions that could mitigate security concerns include:

- (1) Dual citizenship is based solely on parents' citizenship or birth in a foreign country
- (3) Activity is sanctioned by the United States;
- (4) Individual has expressed a willingness to renounce dual citizenship.

Burden of Proof

The Government has the burden of proving any controverted facts alleged in the Statement of Reasons. If the Government establishes its case, the burden of persuasion shifts to the applicant to establish his security suitability through evidence which refutes, mitigates, or extenuates the disqualifying conduct and demonstrates that it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands that Court's rationale, doubts are to be resolved against an applicant.

CONCLUSIONS

Having considered the record evidence in accordance with the appropriate legal precepts and factors, this Administrative Judge concludes that the Government has established its case with regard to Criterion C.

In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section F.3, as well as those referred to in the section dealing with the Adjudicative Process, both in the Directive.

With respect to Criterion C allegations, Applicant has admitted that he is a citizen of Country X and holds a passport of that country. He admits that he uses the passport of Country X for travel into and out of that Country, and he admits that he registered for military service in Country X. He has also admitted that he voted in elections of that country in the past, and that he intends to satisfy his legal obligation to vote in future elections of Country X. And Applicant admits that his wife is a citizen and employee of Country X.

Applicant's significant connections with Country X raise a security concern because they suggest that he may make decisions which would be harmful to the interests of the United States. However, these security concerns have been mitigated by his explanation of the circumstances under which his connections with Country X were established and have been maintained.

Applicant is a citizen of Country X because his mother was a citizen and an employee of that country when he was born. He has dual citizenship because he was born in the United States and his father was/is an American citizen. Although he has lived in Country X at different times in his life, and has voted and registered for military service in order to fulfill the statutory requirements of citizenship in Country X, he did not play an active role in acquiring the citizenship of that country..

The security concerns raised by Applicant's established connections to Country X are further dispelled by his testimony describing his more significant ties and allegiance to the United States. In addition to having been born in the United States, he has attended principally American Schools, even while residing in Country X. He received his college education in the United States and has spent his entire professional life in this country--working directly for the U.S. Government, or indirectly, through his work for private employers on government contracts. Because of these significant ties, he was credible when he testified that his principal allegiance is to the United States. This Administrative Judge believes his assurance--made initially in response to the SOR, and more recently during his administrative hearing--that he would forfeit his citizenship in Country X if it became necessary.

Applicant's current ties with Country X--maintaining a passport and voting in its elections--appear to be the minimum requirements for avoiding penalties and maintaining his citizenship in that country. His justification for maintaining dual citizenship--i.e., that it makes travel between the two countries easier--would be frivolous if dual citizenship violated United States law. However, he is not violating the law. Since Department Counsel has not proffered any evidence that Applicant's recent actions to maintain his citizenship--holding a passport of Country X and voting in Country X elections--are prohibited by U.S. law or regulation, this Administrative Judge has concluded that these activities are sanctioned, at least implicitly. Applicant's interest in being able to travel to Country X with minimal inconvenience is understandable in view of the friends and family that he and his wife have in that Country. Accordingly, subparagraph 1.a. through 1.d. of Criterion C are concluded for Applicant.

An additional disqualifying condition--improperly alleged under Criterion C in the SOR--is the citizenship and employment of Applicant's wife; she is both a citizen of Country X and an employee of that Country's ----. While the foreign citizenship and employment of an applicant's spouse (by a foreign government) are not identified as disqualifying under Criterion C (Foreign Preference), they are identified as disqualifying conditions under Criterion B (Foreign Influence). Under the circumstances of this case, these conditions are found to be mitigated and not disqualifying. Applicant has reduced the likelihood of foreign influence by being consistently honest and forthright about his wife's citizenship and employment status. He disclosed this information initially on the security questionnaire (SF 86) which he completed in January 1996 during his background investigation. The foreign financial interest resulting from his wife's employment by a foreign government is a concern, but it is reduced considerably by the fact that she earns only about one-fourth the income Applicant earns from his employment by a DoD contractor. Her salary from a foreign government is found to be insufficient to affect Applicant's security responsibilities.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 (Criterion C) 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

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant's security clearance.

John R. Erck

Administrative Judge

1. Applicant did not register for military service in the United States because registration was not required for men born before December 31, 1959 (See question 20 of Government Exhibit 1).
2. Applicant disclosed this information to the Department of Defense when he completed his security questionnaire (See Government Exhibit 1).
3. Applicant testified that he attended American schools even when he was living in Country X.