

DATE: August 6, 1997

In re:

SSN:

Applicant for Security Clearance

ISCR OSD Case No. 97-0221

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR THE GOVERNMENT

Michael H. Leonard, Esq.

Department Counsel

FOR THE APPLICANT

Henry A. Sullivan, Esq.

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STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended by Change 3, issued a Statement of Reasons (SOR) dated March 19, 1997, to the Applicant which detailed 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 conduct proceedings and determine whether clearance should be granted, continued, denied or revoked.

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

On April 30, 1997, Applicant responded to the allegations set forth in the SOR and requested a hearing. The case was assigned accordingly to this Administrative Judge on May 21, 1997, and on May 29, 1997, a hearing was scheduled for June 6, 1997. [\(1\)](#)

On June 2, 1997, the Government filed a Request to Take Notice of Adjudicative Facts. The following day, on June 3, 1997, the Government filed an amended request, asking this Administrative Judge to take notice of the following:

On -----, and -----, a two-round sequence of national parliamentary elections were held in [foreign country B].

On June 4, 1997, Applicant, through counsel, filed her objections to the Government's request of June 2, 1997, but indicated she did not oppose the Amended Request to Take Notice of Adjudicative Facts, to the extent that those facts

were only that the two-round sequence of elections were held on the dates stated.

At the hearing held as scheduled on June 6, 1997, Applicant stipulated to as fact that which was the subject of the Government's amended request of June 3, 1997. With the stipulation, the Government withdrew its pending motions to take official notice of adjudicative facts. Three Government exhibits and nine Applicant exhibits were admitted into the record at the hearing. In addition to Applicant's testimony, four witnesses appeared on her behalf: her spouse, two professional colleagues (the head of the communications division and the associate group leader of the optical communication technology group) and a close friend. A transcript of the hearing was received by this office on July 21, 1997. [\(2\)](#)

FINDINGS OF FACT

After a thorough review of the evidence in the record, and upon due consideration of same, this Administrative Judge renders the following findings of fact:

Applicant is a 29 year old ----- with a doctorate degree in ----- . She has worked for her current employer (company A), a federally funded research center, as a staff member in the ----- group since September 1995. Applicant seeks to retain a Top Secret security clearance which was granted to her on June 21, 1996.

Applicant was born abroad (in a country other than of her parents' nationality) on February 1, 1968, to citizens of foreign country B. A citizen of country B herself by virtue of her birth to country B nationals, Applicant was raised in various countries all around the world because of her father's status as a ----- with a major international organization. In about September 1977, Applicant resided for the first time in her life in country B where she went to high school. Travel was on a passport issued by foreign country B. In September 1985, Applicant came to the United States on a student visa to pursue undergraduate studies in electrical engineering, mathematics and humanities at a major technological university (university C).

During finals of her sophomore year in 1987, Applicant met her spouse, a United States citizen, who was studying at university C on a ----- scholarship. They were married soon thereafter on -----, 1987, and had a daughter on -----, 1993, who is a citizen of both the United States and foreign country B, the latter citizenship gained by virtue of her birth to Applicant. While her spouse was on active duty in a branch of the United States military from December 1990 to December 1995, to include a period where he was stationed overseas from about August 1991 to August 1992, Applicant continued to reside in the United States and pursue her graduate education at university C.

In early summer 1990, Applicant applied for resident alien status in the United States and that next winter was granted permanent resident alien status. On February 9, 1995, Applicant became a United States naturalized citizen, swearing allegiance to the United States, and intending to exercise the rights and privileges afforded thereby. The decision to become a United States citizen was her own. Shortly after becoming a naturalized citizen, Applicant went to foreign country B's consulate with her expired foreign country B passport in hand to inform them of her change in citizenship status. Applicant was advised acquisition of United States citizenship would not automatically revoke her country B citizenship and that she would have to take affirmative steps to renounce, including petitioning a country B court. [\(3\)](#) Applicant did not pursue the matter further at that time as she was not aware that her dual citizenship was a concern of the Department of Defense. She retained her country B passport and renewed it through the consulate on March 22, 1995. After obtaining her naturalization, Applicant got a ----- fellowship for outstanding students which allowed her to complete her doctorate degree.

By virtue of her status as a citizen of country B, Applicant was entitled to exercise voting rights in country B's local and national elections. Applicant was forwarded information from the consulate about the candidates and issues and provided a ballot prior to scheduled elections. Concerned with what she viewed as the resurgence of extremism both on the left and the right, Applicant in --- 1995 voted in the first round of presidential elections in country B. She elected not to vote in the second round of those elections as those candidates with platforms which she considered "bizarre" had not garnered sufficient vote to proceed to the second round. Applicant has never been affiliated with any political party in foreign country B.

In September 1995, Applicant earned her Ph.D. degree in electrical engineering from university C. That same month, she commenced employment full-time with company A as a staff member in the ----- group. She apprised her employer of her dual citizenship status. Aware that other employees of the company held dual citizenship status, Applicant did not consider that her status as a citizen of the United States and country B would pose a problem. From September 18, 1995 to September 20, 1995, Applicant took a business trip to foreign country D to present a paper at an ----- symposium on ----- . Applicant took with her both her foreign country B passport and her United States naturalization papers. On entry into foreign country D on September 18, 1995, Applicant presented her foreign country B passport. On her return into the United States on or about September 20, 1995, she presented to U.S. customs her naturalization papers.

Required to obtain a security clearance for her continued employment, Applicant, in application for a Top Secret security clearance, executed a Personnel Security Questionnaire (PSQ), a Department of Defense Form 398, on or about October 10, 1995. Applicant disclosed thereon her dual citizenship status, stating that she maintains her citizenship with foreign country B in order to retain voting privileges.

In conjunction with her background investigation, Applicant was interviewed by a Special Agent of the Defense Investigative Service (DIS) on April 4, 1996. During that interview, Applicant indicated that she maintains dual citizenship status because it allows her to vote in country B national elections. She related she would have to petition a country B court to renounce her citizenship which would take a "great deal of time, money, and effort to accomplish this objective." She denied the exercise or acceptance of privileges or benefits from country B, to include receipt of honors or titles, financial compensation due to employment or retirement, educational or medical benefits, or other social welfare benefits, with the exception of voting in national elections. Applicant admitted that she votes in country B elections as she is concerned with the political future of that country. With respect to the use of her country B passport, Applicant explained that she had always traveled on her foreign country B passport and that she had not had the opportunity since her naturalization to apply for a United States passport. Applicant volunteered that she had taken a business trip to foreign country D in September 1995 but that she did not use her foreign country B passport as a passport was not required for entry. Applicant denied any national allegiance to country B or other foreign country, expressing her satisfaction with her life in the United States and avowing her allegiance thereto. She stated an intent to obtain a United States passport and to use it in preference to her foreign country B passport.

After the interview, Applicant checked her foreign country B passport and discovered that she had used it to gain entry into foreign country D in September 1995. Applicant contacted the DIS Special Agent and a second interview was conducted on May 2, 1996. Applicant stated she had not recalled during her prior interview that she had used her foreign country B passport during the business trip in September 1995.

On June 21, 1996, Applicant was granted a Top Secret security clearance for her duties at company A. Knowledgeable of Applicant's dual citizenship status and the potential security concerns posed by Applicant's extensive foreign background, Applicant's supervisors submitted her application for special access, recommending her without hesitation.

Applicant obtained her United States passport on December 9, 1996. In December 1996, she took a trip to country B to visit her mother who was residing there for the winter. Applicant used her United States passport on that trip and intends to use her United States passport on all future trips requiring a passport. Applicant is prepared to surrender her foreign country B passport to country B's consulate or to deliver it to United States authorities if requested to do so.

On March 25, 1997, Applicant received the SOR. On an unspecified date in April 1997, Applicant was informed by a branch of the United States Armed Forces that her request for special access was denied. In April 1997, she contacted foreign country B's consulate about renouncing her country B citizenship. Applicant was provided a copy of country B's law on the issue. From her reading as a non-legal person who is fluent in country B's language, and based on information imparted by the consulate, Applicant understands the process of renunciation must commence within a year of acquiring foreign citizenship, in her case no later than February 9, 1996. Applicant would be willing to renounce her foreign country B citizenship if legally possible.

Applicant did not vote in either round of the two round sequence of foreign country B national parliamentary elections held on ----- and ----- . Although Applicant remains concerned with the political future of foreign country B,

she no longer intends to exercise any voting rights in foreign country B now that she is aware that it is a concern for her defense-related duty. Since becoming a citizen of the United States, she has voted in all the United States national, state and local elections for which she has been eligible, to include a town referendum on -----, 1997. Applicant is not currently affiliated with any U.S. political party.

Applicant and her spouse purchased a home in the United States and are active in their community. Applicant intends to pursue her career in the United States and together with her spouse, raise their daughter in this country.

Applicant is held in high esteem at company A for her technical abilities. Applicant was one of two persons nominated in her technical division to describe outstanding work within the division to the entire company. This was an honor all the more rare because she had been with the company only since September 1995. The head of the ----- division considers Applicant one of the key personnel on which to build the future of his division. Applicant is regarded by her immediate supervisor as one of the most outstanding members of the ----- group. With respect to her personal character, Applicant has demonstrated herself to be reliable and trustworthy. There have been no adverse incidents with respect to the handling of classified information since Applicant was granted access to Top Secret on June 21, 1996.

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the seriousness, recency, frequency and motivation for an applicant's conduct; the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the circumstances or consequences involved; the age of the applicant; the absence or presence of rehabilitation, the potential for coercion or duress, and the probability that the conduct will or will not recur in the future. *See* Directive 5220.6, Section F.3. and Enclosure 2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

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.

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
- (8) voting in foreign elections

Conditions that could mitigate security concerns include:

- (4) individual has expressed a willingness to renounce dual citizenship

* * *

Under the provisions of Executive Order 10865 and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue her 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 she 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 the Court's rationale, doubts are to be resolved against the Applicant.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility and demeanor of those who testified, this Judge concludes that the Government has established its case with regard to criterion C.

A citizen of foreign country B from birth and of the United States since her U.S. naturalization on -----, 1995, Applicant's dual citizenship would be of little security significance if it was based solely on her birth to country B nationals. Indeed, in order for conduct to be cognizable under criterion C, foreign preference, the individual must have *acted* in such a way to indicate a preference for a foreign country over the United States. Voting in the first round of foreign country B national elections in May 1995 and use of her foreign country B passport to enter foreign country D on September 18, 1995, after she had become a United States citizen, constitute affirmative acts in exercise of foreign citizenship which raise legitimate questions as to whether Applicant can be counted on to place the United States interests paramount. Inimical intent or detrimental impact on the interests of the United States is not required before the Government can seek to deny access under criterion C. The Government has a compelling interest in ensuring that those entrusted with the Nation's secrets will make decisions free of concerns for the foreign country in cases of dual citizenship.

Applicant voted in the first round of country B presidential elections in May 1995 because she was concerned with the political future of foreign country B. With respect to the presentation of her foreign country B passport to enter foreign country D on September 18, 1995, it has not been demonstrated that Applicant lacked the opportunity to obtain a United States passport after she was naturalized on -----, 1995. Notwithstanding the rigors of her academic studies and the demands of raising her then two year old daughter, the procedure to obtain a passport is not particularly onerous. That Applicant failed to avail herself of the opportunity is understandable, however. There is no evidence that she anticipated any foreign travel between February 1995 and September 1995 when she was preoccupied with her doctoral thesis. On September 12, 1995, Applicant requested approval for the business trip scheduled to commence on September 18, 1995, which was signed off as approved by her group supervisor on the same day (September 12, 1995). At best, Applicant would have had only five days to obtain her United States passport. The concern, therefore, is not with her failure to procure a United States passport prior to that business trip, but rather that she presented her foreign country B passport when she also had proof of her United States citizenship with her. Applicant submits that she used her foreign passport

solely out of necessity and in no way to indicate a preference for foreign country B. Had Applicant been denied entry after presentation of her naturalization papers, then her position would have merit. There is no evidence that her use of her country B passport was other than voluntary.

In determining the current security significance of Applicant's voluntary exercise of privileges afforded her as a citizen of foreign country B, this Administrative Judge must consider the Adjudicative Guidelines pertaining to foreign preference set forth in Enclosure 2 to the Directive. Of the nine listed potentially security disqualifying conditions (DC), Applicant's conduct falls within DCs 1. (exercise of dual citizenship), 2. (possession and/or use of a foreign passport), and 8. (voting in foreign elections). Applicant expects an inheritance from distant relations in foreign country B, but she was unaware of the relations until their deaths and has not used her foreign citizenship to protect this inheritance or other financial interest. Nor has Applicant accepted any social welfare or educational benefits from foreign country B. Applicant, moreover, testified credibly that her undergraduate education was paid for by her parents and her graduate education through academic fellowships, to include a ----- fellowship for outstanding students once she became a United States citizen.

Foreign preference concerns are mitigated under the Directive if the dual citizenship is based solely on birth (mitigating condition 1.), the indicators of possible foreign preference occurred before obtaining United States citizenship (MC 2.), the activity is sanctioned by the United States (MC 3.) or the individual has expressed a willingness to renounce dual citizenship (MC 4.). Although Applicant became a citizen of country B by virtue of her birth to country B foreign nationals, the voluntary nature of her affirmative exercise of dual citizenship privileges precludes favorable consideration of MC 1. On its face, MC 2. is not applicable, inasmuch as Applicant used her foreign country B passport and voted in country B national elections after she became a United States naturalized citizen. There is no evidence that her voting or use of the passport was sanctioned by any official of the United States.

During an interview of April 4, 1996, Applicant denied any allegiance to any country other than the United States or that she would ever use a position of trust to serve the interests of another Government in preference to those of the United States. However, she also stated during the interview her intent to maintain her dual United States/country B citizenship status and voting rights in foreign country B "because it is inordinately difficult to renounce her [foreign country B] citizenship due to the court proceedings, and because [she would] always have an interest in [country B's] political future." Since learning that her dual citizenship status raises security concerns, Applicant no longer intends to exercise her dual citizenship rights, to include voting, and would be willing to terminate her citizenship with country B if possible. Given the recency of her willingness to renounce her foreign country B citizenship and the fact it was motivated primarily by the Government's concerns, it is imperative that this change in intent be confirmed by positive action. To her credit, Applicant obtained a United States passport as she had promised and she used it in preference to her foreign country B passport when she visited country B in December 1996.⁽⁴⁾ After receiving the SOR, Applicant contacted foreign country B's consulate to inquire as to how she could renounce her country B citizenship. While she has not commenced formal steps to relinquish that citizenship, it is because she understands from the advice of the consulate that it is no longer legally possible. Since September 1995, Applicant has not exercised any right or benefit of foreign country B citizenship while making civic and professional commitments consistent with her United States citizenship. In addition to voting in all the United States elections for which she has been eligible, Applicant has assumed responsibility for maintaining the local bicycle trail and teaching Sunday school. Confirmed by the testimony of supervisory personnel, Applicant at work has not only demonstrated outstanding technical acumen, but she has exhibited reliability, trustworthiness, and personal integrity, to include adhering to her security responsibilities as an employee cleared to the Top Secret level. Although Applicant indicates she is still concerned with the political future of foreign country B, it is noted that her concern extends to other international nations as well. Applicant's conduct in contacting the DIS Special Agent herself after her April 4, 1996 interview to correct the record as to the use of her foreign country B passport is further evidence that her representations can be relied on and that she takes her security responsibilities seriously. While acts indicative of foreign preference warrant careful scrutiny, Applicant has persuaded this Administrative Judge that she will no longer exercise any rights or privileges of citizenship other than those afforded her as a citizen of the United States. Accordingly, subparagraphs 1.a., 1.b., 1.c. and 1.d. are resolved in her favor.

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

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.

Elizabeth M. Matchinski

Administrative Judge

1. In her Answer, Applicant requested the earliest possible date for a hearing.
2. There was an inordinate delay in this office's receipt of the transcript which has not been satisfactorily explained. The index to the transcript is inaccurate in that listed are two "Appellant" exhibits which have nothing to do with this case; Govt. Ex. 1 is a Personnel Security Questionnaire dated 10/10/95; Govt. Ex. 2 is a sworn statement dated 4/4/96; Govt. Ex. 3 is a sworn statement dated 5/2/97. It also does not adequately identify Applicant Exhibits A, B, E, F, G, H, and I. The transcription of the proceedings is accurate, however.
3. Applicant testified that had she been required to relinquish her ----- citizenship to become a United States citizen, she would have done so. Tr. p. 47.
4. Her conduct in this regard predates the denial of special access or issuance of the SOR.