

DATE: October 18, 2007

In re:)
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 -----) ISCR Case No. 07-03867
 SSN: -----)
)
 Applicant for Security Clearance)
)
)

**DECISION OF ADMINISTRATIVE JUDGE
MARY E. HENRY**

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant became a U.S. citizen in 2003. He continues to maintain his Swedish citizenship and hold an active Swedish passport, which he uses for travel to Sweden. He declines to renounce his Swedish citizenship or destroy, return, or otherwise invalidate his Swedish passport. Applicant has not mitigated the government's security concerns under Guideline C. Clearance is denied.

STATEMENT OF THE CASE

On May 23, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, 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 Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR 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 Applicant. Specifically, the SOR sets forth security concerns arising under Guideline C (Foreign Preference) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005 and implemented by the Department of Defense, effective September 1, 2006. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. On June 25, 2007, Applicant submitted a notarized response to the allegations. He elected to have his case decided on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and provided Applicant with a complete copy on August 10, 2007. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit a response or additional evidence. DOHA assigned this case to me on October 5, 2007.

PROCEDURAL ISSUES

In its submission of relevant material, the government has requested that I take administrative notice of certain facts concerning Sweden based on information contained in two United States Department of State reports.¹ I hereby take notice of the information contained therein.

FINDINGS OF FACT

Applicant admitted the allegations under Guideline C, subparagraph 1.a.-1.d. of the SOR.² Those admissions are incorporated as findings of fact.³ After a complete review of the evidence in the record and upon due consideration, I make the following findings of fact.

Applicant is 48 years old. When he completed his security clearance application in March 2006, he listed his job as a field representative for a Department of Defense contractor in the aviation industry. In his April 2007 response to the interrogatories, he indicated that he was again working for an American air line carrier, but did not state when he began this employment.⁴

¹The Department of State Reports are: 1) Sweden, Country Reports on Human Rights Practices - 2006; and 2) Background Note: Sweden, Bureau of European and Eurasian Affairs, August 2007.

²Government Exhibit 3 (Applicant's response to the SOR, dated June 25, 2007) at 1.

³*Id.*

⁴Government Exhibit 4 (Applicant's Security Application (S-86), dated March 31, 2006) at 1-3; Government Exhibit 5 (Interrogatories and answers, dated April 24, 2007) at 5.

Applicant was born and raised in Sweden. He received a college degree in mechanical engineering in 1979 from a Swedish university. Upon graduation, he served in the Swedish Army for less than a year. For the next eight years, he worked for Swedish companies. His parents are citizens of and residents of Sweden.⁵

Applicant married a U.S. born citizen in 1993. They own a house in the U.S. For at least the last 10 years, Applicant has worked for American air line carriers in the U.S. as a pilot, or other aviation companies as a mechanic or field representative.⁶

The United States (U.S.) granted Applicant citizenship in 2003. He still retains his Swedish citizenship. He holds a Swedish passport issued in 2002 with an expiration date of 2012. Applicant also holds a U.S. passport, issued in April 2003. He traveled to Sweden for pleasure in 2002, 2004 and 2005, using his Swedish passport. He used his U.S. passport to travel to Iraq for business. He declines to destroy, surrender or invalidate his Swedish passport or renounce his Swedish citizenship. As his explanation for this decision, he states that he works in the aviation industry, which traditionally has unstable employment. When the “Open Sky” agreement with Europe becomes effective, European air carriers will fly into the U.S. at will. Should he again be furloughed from his current employment with an American airline carrier as a pilot, he wants the option to obtain employment with European air carriers. With his Swedish passport, he could more readily find work with a European air carrier, live in the U.S., and commute to work from his U.S. residence.⁷

I take administrative notice of the following adjudicative facts from the U.S. Department of State reports submitted by the government. Sweden is a constitutional monarchy with a multiparty, parliamentary form of government. Legislative authority is vested in the unicameral parliament. Elections are held every four years, and are free and fair. The king is the largely symbolic head of state. The prime minister is the head of the government and exercises executive authority. The government respects the human rights of its citizens. Swedish citizens enjoy many of the same freedoms as American citizens, including freedom of speech, religion, press, and assembly. Sweden has an independent judiciary and arrests are made based on warrants issued by duly authorized officials. Sweden became a member of the European Union in 1995. Sweden and the U.S. have a close and strong friendship, and work with each other on many issues. Sweden is a member of the United Nations and the NATO Partnership for Peace. Sweden’s foreign policy is one of staying free of alliances in peace time so as to remain neutral in war. In 2002, Sweden revised its security doctrine to allow for cooperation in response to threats against peace and security.⁸

POLICIES

⁵Government Exhibit 4, *supra* note 3, at 1-2, 5-6, 10-11.

⁶*Id.* at 3-4.

⁷*Id.* at 1, 5; Government Exhibit 5, *supra* note 3, at 2, 3, 5. The U.S. and European Union have not yet signed an agreement on use of air space and airport landing rights.

⁸*See* footnote 1.

The revised Adjudicative Guidelines set forth disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. An administrative judge need not view the revised adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, are intended to assist the administrative judge in reaching fair and impartial common sense decisions. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the revised AG should be followed whenever a case can be measured against this policy guidance. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.⁹

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.¹⁰ The government has the burden of proving controverted facts.¹¹ The burden of proof is something less than a preponderance of the evidence.¹² Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.¹³ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁴

No one has a right to a security clearance,¹⁵ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹⁷ Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and

⁹Directive, revised Adjudicative Guidelines (AG) ¶ 2(a)(1)-(9).

¹⁰ISCR Case No. 96-0277 at 2 (App. Bd., July 11, 1997).

¹¹ISCR Case No. 97-0016 at 3 (App. Bd., Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

¹²*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹³ISCR Case No. 94-1075 at 3-4 (App. Bd., Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

¹⁴ISCR Case No. 93-1390 at 7-8 (App. Bd. Decision and Reversal Order, Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

¹⁵*Egan*, 484 U.S. at 531.

¹⁶*Id.*

¹⁷*Id.*; Directive, revised AG ¶ 2(b).

patriotism of an applicant.¹⁸ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

Guideline C - Foreign Preference

The Foreign Preference Guideline identifies the following security concern: *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.* (AG ¶ 9)

Applicant admitted the four Guideline C allegations in the SOR. Based on his admissions and the facts in this case, a potential security concern arises under one Guideline C disqualifying condition. Applicant retains his Swedish citizenship and holds an active Swedish passport, which he uses when traveling to and inside Sweden. By using his Swedish passport for travel to Sweden after becoming a U.S. citizen, he exercised a right and privilege of foreign citizenship. Thus, Disqualifying Condition (DC) ¶¶ 10(a) *exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member* and 10(a)(1) *possession of a current foreign passport*, a security concern is raised.

Under the potentially applicable Guideline C Mitigating Conditions (MC), Applicant could mitigate security concerns by demonstrating that *dual citizenship is based solely on parents' citizenship or birth in a foreign country* (MC ¶ 11(a)), *the individual has expressed a willingness to renounce dual citizenship* (MC ¶ 11(b)), *exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor* (MC ¶ 11(c)), *use of a foreign passport is approved by the cognizant security authority*, (MC ¶ 11(d)), and *the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated* (MC ¶ 11(e)).¹⁹

Applicant grew up in Sweden, his place of birth. After immigrating to the U.S. and becoming a U.S. citizen, Applicant chose to maintain his citizenship with Sweden and to exercise his rights of Swedish citizenship, including the right to possess and use of a valid Swedish passport. He declined to renounce his dual citizenship, destroy his Swedish passport, surrender his Swedish passport to the cognizant authorities, or otherwise invalidated this passport. Because his employment with American airline carriers fluctuates, he has decided to retain his Swedish passport and citizenship because both expand his ability to obtain employment with a European airline carrier, should his current employer furlough him again. The evidence of record fails to reflect that his use

¹⁸Executive Order No. 10865 § 7.

¹⁹MC ¶ 11(f) *the vote in a foreign election was encouraged by the United states Government* does not apply to this case.

of his Swedish passport for personal travel has been approved by a cognizant security authority. Consequently, Applicant has not mitigated the government's security concerns.

Whole Person Analysis

Protection of our national security is of paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the adjudicative process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Thus, in reaching this decision, I have considered the whole person concept in evaluating Appellant's risk and vulnerability in protecting our national interests.

Applicant is not involved with drugs nor does he have problems with his finances or excessive alcohol use. He is married and owns property in the U.S. He lives a normal American life, with one exception. He retains his Swedish citizenship. When he became a U.S. citizen, Applicant swore allegiance to the U.S. and no other country. By retaining his Swedish citizenship, his loyalties became divided between two countries.

Applicant is unwilling to renounce his Swedish citizen and give up his Swedish passport. His sole reason for retaining Swedish citizenship and possession of a Swedish passport is economic. While his reasoning is clearly understandable because his chosen career does not provide job stability, this decision places Applicant in a precarious situation which could result in pressure, coercion, duress, or exploitation by other governments seeking information from the United States. Because he is not willing to abandon his ties to Sweden, he has not mitigated the government's security concerns. Accordingly, I find against Applicant.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

SOR ¶ 1-Guideline C :	AGAINST APPLICANT
Subparagraphs a-d:	Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is denied.

Mary E. Henry
Administrative Judge