



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

SSN: -----

Applicant for Security Clearance

)
)
)
)
)
)

ISCR Case No. 08-01874

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro Se*

September 12, 2008

Decision

WESLEY, Roger C., Administrative Judge:

HISTORY OF CASE

On May 12, 2008, 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, issued a Statement of Reasons (SOR) to 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 Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on June 2, 2008, and requested a hearing. The case was assigned to me on June 16, 2008, and was scheduled for hearing on July 16, 2008. A hearing was held on July 16, 2008, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of two exhibits; Applicant relied on one witness (himself) and no exhibits. The transcript (R.T.)

was received on July 23, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility to access classified information is granted.

Procedural Rulings and Evidentiary Issues

Before the close of the hearing, Applicant requested leave to consider retention of his Swedish passport and document its surrender should he make the decision to do so. For good cause shown, Applicant was granted 10 days, to July 28, 2008 to supplement the record. The Government was afforded two days to respond. Within the time permitted, Applicant supplemented the record with a faxed cover sheet, letter confirming his decision to surrender his Swedish passport and documented surrender of his passport to his employer's facility security officer (FSO). Department counsel did not object to these post-hearing submissions. Applicant's post-hearing exhibits were admitted and considered as exhibits A and B.

SUMMARY OF PLEADINGS

Under Guideline C, Applicant is alleged to (a) be a dual citizen of the U.S. and Sweden, (b) possess a valid Swedish passport that does not expire till December 12, 2012, (c) have used his Swedish passport on trips to European countries in July 1985, May 1998, April 2001, November 2002, and March 2008, (d) have indicated an unwillingness to surrender, destroy, or invalidate his Swedish passport, (e) have indicated he used his Swedish passport to protect his financial or business interests, (f) have resided in and were employed in Sweden from December 1999 to April 2001, and (g) has a pension account from the government of Sweden that will remain in effect until he retires.

For his answer, Applicant admitted all of the allegations in the SOR with explanations. He claimed he became a Swedish citizen as a minor, and his Swedish citizenship is based solely on a parent's citizenship.

In his answer, Applicant claimed his visits to European countries were mostly family-oriented, with the only exception being the academic research work he pursued at a Swedish technical university in the field of noise and vibration control for civil transportation he pursued. He claimed his Swedish pension account was created for him when he studied at a Swedish technical university and was very small. It is an account he would be happy to close, assuming that it is possible to do so. Applicant's research did not encounter any conflicts with the security interests of the U.S.

FINDINGS OF FACT

Applicant is a 35-year-old engineering specialist for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant's background

Applicant is a U.S. citizen by birth (see ex. 1; R.T., at 21). He is unmarried and has no children (R.T., at 29). He holds undergraduate and graduates in the sciences from recognized American universities.

All of Applicant's immediate family members are U.S. citizens. He became a Swedish citizen as a minor through his mother's Swedish citizenship (R.T., at 21-22, 27). He never took an oath of allegiance to Sweden and has no plans to do so (R.T., at 33). His mother arranged for his Swedish citizenship, and Applicant had nothing to do with the application process.

Applicant possessed a valid Swedish passport for Swedish identity and family heritage reasons (R.T., at 22), and last used it in March 2008 (R.T., at 42). The passport is due to expire in December 2012 (R.T., at 39). He has held three passports, and obtained his current passport in December 2007 by filing a renewal application (R.T., at 40-41). He has traveled to European Union (EU) countries using his Swedish passport mostly for family and cultural reasons (R.T., at 22, 43-44). He never used his Swedish passport to protect his financial interests, but expressed plans to retain the passport (see ex. 2; R.T., at 23-24). He repeated his reluctance to surrender or destroy his Swedish passport, but requested time to reconsider his decision (see ex. 2; R.T., at 49-52). If afforded an option to surrender his Swedish passport at this time, he indicated he would strongly consider it (R.T., at 52-54). Following the hearing, he documented his surrender of his Swedish passport to his employer's FSO (see ex. D).

Applicant worked and lived in Sweden between December 1998 and April 2001 (*compare* ex. 1 with R.T., at 23-25, 35-36, 61), while conducting scientific research at a Swedish technical university in the field of noise and vibration control for civil transportation. His academic work included taking and teaching classes (R.T., at 38). Applicant has no desire to take up permanent residence in Sweden.

Applicant has a Swedish pension account worth about \$160.00 (R.T., at 25-26, 61-62). This account was created for him by the Swedish university he worked for while enrolled at the university. This account is particularly small when compared to his U.S. portfolio, which includes his home valued at \$255,000.00 and his equity in the home, valued at around \$75,000.00 (R.T., at 60). He has no special interest in retaining the account, and he could probably close it.

Applicant has no business or financial interest in Sweden besides the pension account and has no plans to invest in the country. He has never voted in a Swedish election or served in the Swedish military. He has no debts or obligations to Sweden or any foreign country. And he has accepted no educational, medical, or other benefits from Sweden that required his use of his Swedish citizenship, save for his small pension (R.T., at 63-64). He acknowledged only his small pension and his being treated by a Swedish doctor for a sore throat (R.T., at 64).

Policies

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by administrative judges in the decision making process covering DOHA cases. These Guidelines require the administrative judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the administrative judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the administrative judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Foreign Preference

The 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. See Adjudicative Guidelines (AG), ¶ 9.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

Analysis

Applicant presents as a U.S. citizen by birth who became a naturalized citizen of Sweden through his mother, who had Swedish citizenship by birth. Aside from possessing a Swedish passport and using it on several occasions to enter and exit Sweden principally for family reasons, Applicant has never exercised any active indicia of dual citizenship with Sweden. Claiming his principal affections lie with the U.S., he, nonetheless, retained his Swedish passport and a small Swedish pension account at the time of hearing.

Dual citizenship concerns necessarily entail allegiance assessments and invite critical considerations over acts indicating a preference or not for the interests of the foreign country over the interests of the U.S. The issues, as such, raise concerns over Applicant's preference for a foreign country over the U.S.

By virtue of his naturalized citizenship in Sweden to his mother of Swedish birth and citizenship, Applicant was endowed with Swedish citizenship, which could be renounced by his expressed intention or actions. This, Applicant has never done, out of respect for his mother. Since becoming a naturalized Swedish citizen as a young boy, Applicant has taken no actions and exercised no Swedish privileges that can be fairly characterized as active indicia of dual citizenship, save for (a) his limited use of his Swedish passport when traveling to European countries and (b) his possession of a small pension account. He has not voted in Swedish elections or served in the Swedish military. He holds only a small pension account in Sweden of \$160.00, which is quite minimal when compared to his U.S. asset portfolio, and has accepted no preferential educational, medical or other benefits from Sweden since becoming a naturalized Swedish citizen. Nor has he ever performed or attempted to perform duties, or otherwise acted so as to serve the interests of Sweden in preference to the interests of the U.S. since becoming a Swedish citizen.

Because Applicant possessed and used his Swedish passport and retains a small earned pension right in Sweden as the result of his brief work for a Swedish technical university between 1999 and 2001, the Government may apply disqualifying condition (DC) ¶ 10(a) of AG ¶ 9, "exercise of any right, privilege or obligations of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

- (1) possession of a current foreign passport;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;

- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country;
- (7) voting in a foreign election.”

However, Applicant’s residence time in Sweden was very brief (1999-2001) and was limited to his time spend in academic pursuits at a Swedish technical university. He claims no intention to make Sweden his permanent residence. He never voted in a Swedish election and never served in the Swedish military. He has never sought to hold political office in Sweden or used his Swedish citizenship to protect his financial or business interests.

Furthermore, Applicant’s financial interest in his Swedish pension account is still quite minimal (around \$160.00) when compared with her U.S. based portfolio and overall net worth (in excess of \$75,000.00) As a result of this agreement’s neutralizing of any country advantage in collecting old age pension benefits derived from either country, Applicant’s Swedish old age pension rights became security insignificant and were properly deleted by Department Counsel as a source of security concern at the close of the hearing.

By relinquishing his Swedish passport, Applicant has complied with the mitigation requirements of MC ¶ 11 (e), “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated,” of AG ¶ 18. And while his surrendering his Swedish passport to his FSO does not automatically mitigate any past use of the passport to enter and exit European countries, his recited limited use of the passport is insufficient by itself to demonstrate Applicant’s preference for Sweden over the U.S.

Failure to satisfy a mitigating condition may be taken into account when assessing an applicant’s overall claim of extenuation, mitigation, or changed circumstances, but may not be turned into a disqualifying condition. See ISCR Case No. 01-02270 (Appeal Bd. Aug. 29, 2003). That Applicant may wish to keep his Swedish citizenship out of respect for his mother is not sufficient reason either to preclude him from mitigating security concerns over his holding dual citizenship and a small Swedish pension, if those rights do not entail his exacting preferential retirement privileges from Sweden.

Whole person precepts favor Applicant’s preference for the U.S. over Sweden. He is a U.S. citizen by birth and has always demonstrated his loyalty for the U.S. His principal financial interests are situated in the U.S. And his time spent in Sweden was relatively brief and devoted to his educational pursuits.

Overall, Applicant persuades that his preference is with the U.S. He satisfies his proof burden in several ways: demonstrated lack of any prior exercise of any privileges associated with his Swedish citizenship, save for his limited use of his Swedish passport and maintaining a small bank account in Sweden. Applicant absolves himself of foreign preference concerns

