

DATE: January 16, 2008

In re:)
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 -----) ISCR Case No. 07-04079
 SSN: -----)
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 Applicant for Security Clearance)
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**DECISION OF ADMINISTRATIVE JUDGE
SHARI DAM**

APPEARANCES

FOR GOVERNMENT
Alison O'Connell, Esq.

FOR APPLICANT
Pro Se

SYNOPSIS

Applicant is a 32-year-old employee of a federal contractor. She was born in the United Kingdom and became a naturalized U. S. citizen in 1997. In 2002, she renewed her United Kingdom passport and does not intend to relinquish it or her dual citizenship. She did not mitigate the security concerns raised by foreign preference. Clearance is denied.

STATEMENT OF THE CASE

On February 15, 2006, Applicant submitted an Electronic Questionnaire for National Security

Positions (e-QIP). The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On August 7, 2007, as required by Department of Defense Directive 5220.6 ¶E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision—security concerns raised under Guideline C (Foreign Preference) of the Adjudicative Guidelines issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued.

On August 13, 2007, Applicant filed a response to the SOR, admitting all of the allegations, and elected to have the case decided on the written record in lieu of a hearing. On October 11, 2007, Department Counsel prepared a File of Relevant Material (FORM), containing six Government Items (Items), and mailed Applicant a complete copy on October 11, 2007. Applicant received the FORM on October 23, 2007, along with notification that she had an additional 30 days in which to submit additional information. Applicant chose not to submit additional documentation and on December 13, 2007, DOHA assigned the case to me.

FINDINGS OF FACT

Based on the entire record, including Applicant’s admissions in her response to the SOR, I make the following findings of fact:

Applicant is a 32-year-old married woman. She was born in the United Kingdom (England). She became a naturalized U.S. citizen in November 1997. She received a graduate degree from a U.S. university in 2003. Since January 2005, she has worked as a business analyst for a federal contractor. Prior to that she worked for other companies. In June 2001, she married her husband, a U.S. citizen. (e-QIP).

In May 2007, Applicant answered Interrogatories requested by the Government regarding her dual citizenship. (Item 6). In her response, she indicated that she has a United Kingdom passport, which was issued in January 2002, because she was born in England. It expires in January 2012. (*Id.* at 3). She further stated that “Should I wish to work in England a passport more easily facilitates this process.” (*Id.* at 4). She indicated that she wished to retain that passport “so the option to work in England is more easily accessible.” (*Id.*). She has not taken any actions to surrender or destroy that passport. (*Id.*).

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth criteria which must be evaluated when determining security clearance eligibility. Within the Revised Guidelines are factors to consider in denying or revoking an individual’s request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual’s request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence in order to reach a fair, impartial and common sense decision.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not only the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive, Enclosure 2, ¶ E2.2.2. The decision to deny an individual a security clearance is not necessarily a judgment about an applicant's loyalty. Executive Order 10865, § 7. Instead, it is a determination that an applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988). The Directive presumes a rational connection between past proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence in refutation, extenuation, or mitigation sufficient to overcome the position of the government. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); Directive, Enclosure 3, ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his clearance." *Id.*

CONCLUSIONS

After considering all facts in evidence and legal standards, including the "whole person" concept, I conclude the following in regard to the allegations contained in the SOR:

Guideline C: Foreign Preference

Guideline ¶ 9 articulates the Government's concern regarding 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."

Based on the evidence and Applicant's admissions, the Government raised a security concern under one Foreign Preference Disqualifying Condition: the "exercise of any privilege or obligation 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: possession of a current foreign passport." Guideline ¶ 10(a)(1). Since becoming a U.S. citizen in 1997, Applicant obtained a foreign passport in 2002 that does not expire until 2012.

After the Government raised a disqualification, the burden shifted to Applicant to rebut or mitigate the allegations. Six Foreign Preference Mitigating Conditions are potentially applicable

under Guidelines ¶ 11 (a) through (f). They are as follows:

- (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- (b) the individual has expressed a willingness to renounce dual citizenship;
- (c) 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;
- (d) use of a foreign passport is approved by the cognizant security authority;
- (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated;
- (f) the vote in a foreign election was encouraged by the United States Government.

Based on my evaluation of the record evidence as a whole, I conclude none of the above applies. Although Applicant's foreign citizenship is based on her birthplace, she continued to acknowledge that citizenship in 2002 when she applied for a passport after becoming a U.S. citizen. Hence, Guidelines ¶ 11(a) and (c) do not apply. As Applicant clearly stated that she has no intention to renounce her dual citizenship or surrender her United Kingdom passport, Guidelines ¶ 11(b) and (e) cannot apply. There is no evidence to indicate that her possession of the foreign passport was approved by a federal authority, as required by Guideline ¶ 11(d). Under the facts in this case, Guideline ¶ 11 (f) is inapplicable.

“Whole Person” Analysis

In addition to evaluating the disqualifying and mitigating conditions under the guideline, the adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Directive ¶ E2.2.1 describes the essence of scrutinizing all appropriate variables in a case as the “whole person concept.” In evaluating the conduct of an applicant, an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct, to include knowledgeable participation; (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.

In the present case, there is some information about positive attributes to Applicant's life as a U.S. citizen, such as her university studies and husband who is a U.S. citizens. However, those are insufficient to outweigh the fact that Applicant refuses to relinquish dual citizenship or surrender her foreign passport, which she intends to maintain for potential employment in the United Kingdom. Consequently, Applicant did not provide sufficient evidence to mitigate those security concerns raised under foreign preference. Accordingly, Guideline C is decided against her.

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 as follows:

Paragraph 1: Guideline C (Foreign Preference) AGAINST Applicant

Subparagraphs 1.a through 1c: Against Applicant

DECISION

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

Shari Dam
Administrative Judge