



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



In the matter of:)	
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)	ISCR Case No. 14-04725
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

April 6, 2015

Decision

Synopsis

Applicant, who is 28 years old, is a native-born United States citizen. He applied for and received a passport from the Philippines, which he was able to do because his parents, who are now United States citizens, were Philippine citizens when he was born. Applicant only applied for his Philippine passport for convenience, and he has subsequently cut his passport into small pieces and mailed it to the Philippine Consul-General, indicating that he was returning his Philippine passport, and he would not be reapplying for it in the future. Mitigation has been shown. Clearance is granted.

MOGUL, Martin H., Administrative Judge:

On October 27, 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline C for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2,

1992) (Directive); and the adjudicative guidelines (AG) and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant replied to the SOR (RSOR) in writing on October 31, 2014, and he requested the case be decided by a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on January 21, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on that date, and the hearing was convened as scheduled on February 19, 2015. The Government offered Exhibit 1, which was received and admitted without objection. Applicant testified on his own behalf and submitted no documents at the time of hearing. The record was left open to allow Applicant to submit evidence and he timely submitted a letter, marked as Exhibit A, which was also admitted without objection. DOHA received the transcript of the hearing (Tr) on February 25, 2015. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is granted.

Findings of Fact

In his RSOR, Applicant admitted SOR allegation 1.a. The admitted allegation is incorporated herein as a finding of fact. After a complete and thorough review of the evidence in the record, as reviewed above, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 28 years old, and he was born in the United States. He has never been married, and he has no children. Applicant received an Associate of Arts degree in Computer Studies. Applicant's parents, who were Philippine citizens, became United States citizens; his father in 1994, and his mother in 1997. (RSOR, Tr at 15-18.) His father served honorably in the United States Navy for 20 years. (Tr at 24-25.) Applicant is employed by a defense contractor, and he is seeking a DoD security clearance in connection with his employment in the defense sector.

Paragraph 1 (Guideline C - Foreign Preference)

The SOR lists one allegation regarding Foreign Preference, under Adjudicative Guideline C.

1.a. It is alleged in the SOR that Applicant possessed a Philippine passport that was issued on August 31, 2013, and which is not scheduled to expire until August 31, 2018. Applicant wrote on his RSOR that he was born in the United States before his parents became United States citizens. This allowed Applicant to be considered a natural-born Philippine citizen by the Philippine Government. As a result of his Philippine citizenship, he was entitled to a Philippine passport without having to pledge allegiance or take an oath. He applied for and received a Philippine passport simply for convenience, so if he visited the Philippines, he could stay longer without having to pay extra fees. (Tr at 20-23.)

Applicant contended on his RSOR that having a Philippine passport in no way indicated a preference for any country over the United States. He continues to have a

United States passport and be a United States citizen, and he has no desire to relinquish his United States citizenship or passport. He also wrote that he would never provide information or make decisions that are harmful to the interests of the United States.

At the hearing, Applicant again reiterated his loyalty to the United States, and indicated his desire to destroy his Philippine passport. He thereafter introduced his passport, and with Department Counsel and I watching, he cut the passport into many small pieces. (Tr at 24-28.) After the hearing Applicant sent his shredded passport to the Philippine Consul-General with a letter, in which he wrote that he was returning his destroyed Philippine passport since he no longer has a need for it. He also wrote that he did not intend to renew or acquire another Philippine passport in the future. A copy of Applicant's letter to the to the Philippine Consul General, with a certified mail receipt attached, was submitted by Applicant. (Exhibit A.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline C, Foreign Preference

Under AG ¶ 9 the security concern involving foreign preference arises, “[W]hen 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.”

Applicant’s application, receipt, and retention of a Philippine passport raises foreign preference concerns under disqualifying condition AG ¶ 10(a) as the “exercise of any right, privilege or obligation of foreign citizenship.”

Since Applicant’s dual citizenship was based solely on his parents’ citizenship, and he was willing to and has destroyed his Philippine passport, I find that mitigating conditions AG ¶ 11(a) and (e) apply to this case. After considering all of the evidence of record under Guideline C, I conclude that the mitigating evidence substantially outweighs any disqualifying evidence.

Whole-Person Concept

Under the whole-person concept, the Administrative Judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual’s age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent 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.

Under AG ¶ 2 (c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case under Guideline C. Based on all of the reasons cited above as to why the mitigating conditions apply and outweigh any disqualifying condition, I find that the evidence leaves me with no significant questions or doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has mitigated the security concerns.

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:

Paragraph 1, Guideline C: FOR APPLICANT

Subparagraphs 1.a.: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul
Administrative Judge