



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



In the matter of:)
)
) ISCR Case No. 14-06620
)
Applicant for Security Clearance)

Appearances

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

05/18/2016

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant is a naturalized U.S. citizen from the United Kingdom (U.K.). He has not engaged in any actions or made any statements to indicate a preference for the United Kingdom. Furthermore, Applicant’s few friendships with individuals who are citizens and residents of that country are too causal and infrequent to serve as source of vulnerability for him. Clearance is granted.

Statement of the Case

On September 12, 2015, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the foreign influence and foreign preference guidelines.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance and recommended

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant timely answered the SOR and requested a hearing. On December 29, 2015, I issued a pre-hearing order to the parties regarding the exchange and submission of discovery, the filing of motions, and the disclosure of any witnesses.² The parties complied with the terms of the order.³ At the hearing convened on January 13, 2016, I admitted Government's Exhibits (GE) 1 and 2 and Applicant's Exhibits (AE) A through E, without objection. After the hearing, Applicant timely submitted AE F through H, which were also admitted without objection.⁴ I received the transcript (Tr.) on January 19, 2016.

Findings of Fact

Applicant, 55, has worked for a federal contractor since May 2012. At the time he competed his security clearance application in September 2012, he was a citizen of the United Kingdom and a permanent resident of the United States. Applicant disclosed the following details of his U.K. citizenship on his security clearance application: (1) that he held a U.K. passport that did not expire until June 2013; (2) that he voted in a U.K. election in 1979; 3) that he owned two homes in the United Kingdom, which he disposed of in 1996 and 2011, respectively; 4) that he worked for the United Kingdom Defense Ministry from 1979 to 2007; and, 5) that he held a security clearance issued by the U.K. government in 1979. Applicant also disclosed having a bank account in the United Kingdom with an estimated balance of \$320,000, as well as several extended family members and friends who are citizens and residents of the United Kingdom.⁵

Applicant is a native of the United Kingdom. He began his career as an employee of the U.K. Ministry of Defence (Ministry) when he was 18 years old. In 1997, the Ministry detailed Applicant to a multi-national defense program based in the United States. Applicant expected that his U.S. posting would last no more than three years, but his assignment was extended for an additional seven years. In 2006, the Defense Ministry offered Applicant the choice of being recalled to the United Kingdom for an office position or early retirement. Applicant accepted the latter. In 2007, he retired from the U.K. civil service and received severance pay, which he deposited into a U.S.-based investment fund. Because of his length of service to the Ministry, Applicant is entitled to a pension from the U.K. government, which is payable when he turns 60.⁶

After accepting early retirement, Applicant decided to remain in the United States with his U.S.-citizen wife, whom he married in 2001. They decided to continue living

² The prehearing scheduling order is appended to the record as Hearing Exhibit (HE) I.

³ The discovery letter, dated June 30, 2015 is appended to the record as HE II.

⁴ Correspondence regarding the parties' post-hearing submissions is appended to the record as HE IV.

⁵ GE 1.

⁶ Tr. 20-23.

near her relatives. Shortly after retiring from U.K. civil service, Applicant applied for U.S. permanent resident status, which he received in 2008. Applicant continued working on multi-national defense projects as a contractor with a U.K.-based government contracting firm. His employment required him to maintain his U.K.-issued security clearance. In 2010, Applicant returned to the U.K. to complete an in-person interview for his periodic reinvestigation. Applicant's employment with the U.K. contracting firm ended in 2012 when the company lost its contract. After that employment terminated, Applicant no longer had a need for a U.K. security clearance and he was read out of access. Applicant provided a letter from the Defence Ministry confirming that he no longer holds any U.K. security clearances and that Applicant had renounced his U.K. nationality.⁷

Both Applicant's wife and his father died in 2011 after suffering lengthy illnesses. After his wife's death, Applicant decided to remain in the United States to remain close to his wife's family. Applicant did not return to the United Kingdom to bury his father. He inherited cash and his father's home. Applicant sold the home in August 2011. Currently, Applicant has approximately \$584,000 in U.S.-based assets and approximately \$150,000 (USD) in his U.K. bank account.⁸

Applicant listed three friends on his security clearance application who are citizens and residents of the United Kingdom. He also discussed the relationships during his October 2012 background interview. Applicant last saw two of the three friends at his wedding in 2001. He last had telephonic contact with them in 2011. Applicant has not seen the third friend, a former Ministry of Defence co-worker, in person since at least 1992, and last had telephonic contact with her in 2015 to exchange Easter greetings. Also, because of the nature of his work on multi-national defense projects, Applicant has contact with employees of the Ministry of Defence. Since moving to the United States in 1997, Applicant has traveled to the United Kingdom on three occasions in 2001, 2003, and 2010. Each trip was alone and for professional reasons.⁹

Applicant has no plans to return to the United Kingdom. He became a naturalized U.S. citizen in 2014 and obtained a U.S. passport in 2015. Applicant considers himself fully integrated into American society. Applicant testified that even at work, whenever he enters a U.K.-controlled facility he is treated as a U.S. citizen and requires an escort.¹⁰

⁷ Tr. 20-22, 30-31, 36; GE 1; AE B.

⁸ Tr. 18, 25-27, 36; GE 1; AE A, D.

⁹ Tr. 29-31, 33-34; GE 1-2.

¹⁰ Tr. 34-36.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching 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.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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

Foreign Preference

A foreign preference exists when an individual acts in such a way as to indicate a preference for a foreign country or government over the United States. The concern is that the individual may be prone to provide information or make decisions that are harmful to the United States. The SOR alleges that Applicant has an allegiance and preference to the United Kingdom because he held a security clearance issued by the country from 1979 to 2012 and because he is entitled to a pension from that country based on his years of civil service. However, neither of these facts represents a current connection to a foreign government or a current exercise of foreign citizenship.

The record shows that Applicant has all but severed his connections with the United Kingdom. He renounced his U.K. nationality and became a naturalized U.S. citizen. The overwhelming majority of his assets are held in U.S.-based financial institutions. In the 20 years he has lived in the United States, he has only returned to the United Kingdom on three occasions as required by his employment - not to visit his family or friends. He did not even return to the United Kingdom to bury his father and dispose of his assets. Instead, he elected to have a representative act on his behalf.

While Applicant is entitled to receive a pension from the U.K. government, it is a future interest not payable for at least five years. The Directive does not distinguish between present and future interests; however, it seems contrary to common sense to assess an applicant's security worthiness based on the possible occurrence of a future event. Currently, Applicant is not exercising any right or privilege of foreign citizenship. He is not required to maintain any ongoing contact with the U.K. government to secure his pension. There is no current conflict of interest because of this future interest.

Ultimately, the record does not establish that Applicant has made any statements or engaged in conduct that shows allegiance to any country other than the United States. Applicant is a U.S. citizen. He does not have dual citizenship. He does not have a foreign passport. He last voted in a foreign election almost 37 years ago. He has not taken any action to maintain residency requirements in the United Kingdom. Given Applicant's long history of civil service to the U.K government, the Government made a reasonable presumption about his allegiance to the United Kingdom. However, that presumption is not supported by the record.

Foreign Influence

"[F]oreign contacts and interest may be a security concern if the individual has divided loyalties or financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest."¹¹ The SOR alleges that Applicant's real estate and other financial interests are potential sources of foreign

¹¹ AG ¶ 6.

influence. However, Applicant has not owned real estate in the United Kingdom since 2011. Applicant does maintain an account in a U.K.-based bank. This financial interest could subject the Applicant to a heightened risk of foreign influence.¹² While the money in Applicant's foreign bank account is not insignificant, it represents a fraction of Applicant's overall net worth. The majority of his assets are held in U.S.-based financial institutions. Accordingly, the U.K. bank account is unlikely to result in a conflict of interest for Applicant or be used to influence, manipulate, or pressure him.¹³

The SOR also alleges that Applicant maintains contact with a "host of friends who reside in and are employees of the U.K. Ministry of Defence." Applicant disclosed three friends who are citizens and residents of the United Kingdom on his September 2014 security clearance application. Only one is an employee of the Defence Ministry. These connections create a potential conflict of interest between the individual's desire to protect sensitive information and technology and the desire to help foreign contacts by providing that information.¹⁴ However, these contacts are casual and infrequent. Applicant has not seen his former co-worker in the Defence Ministry in over 20 years and his only telephonic communication has been limited to exchanging holiday greetings. He has not seen his other two friends since his wedding in 2001. Given the minimal contact he has had with these friends over the years, it is unlikely that these relationships create a risk of foreign influence or exploitation. Applicant also admits to ongoing contact with various employees of the Defence Ministry through his employment on multi-national defense projects, however, the record does not support a finding that any of these relationships are so significant as to create a security concern.¹⁵

Based on the record, I have no doubts about Applicant's ability to protect and handle classified information. In reaching this conclusion, I have considered the whole-person factors in AG ¶ 2. Applicant's case presents a unique situation – a long time clearance holder for a foreign country seeking to become a U.S. clearance holder. While this scenario certainly merits additional scrutiny, Applicant has sufficiently established that he has severed his ties with the United Kingdom and that his former connections with that country do not create a conflict of interest that would prevent him from performing his obligations as a U.S. clearance holder.

¹² AG ¶ 7(e).

¹³ AG ¶ 8(f).

¹⁴ AG ¶ 7(b).

¹⁵ AG ¶ 8(c).

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, Foreign Preference: | FOR APPLICANT |
| Subparagraphs 1.a – 1.c: | For Applicant |
| Paragraph 2, Foreign Influence: | FOR APPLICANT |
| Subparagraphs 2.a – 2.c: | For Applicant |

Conclusion

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

Nichole L. Noel
Administrative Judge