

KEYWORD: Guideline c

DIGEST: Applicant argues that the Judge erred in his mitigation analysis, of Applicant's foreign passport. The Judge concluded that concerns arising from Applicant's having applied for and having received foreign citizenship and having used a foreign passport multiple times were not adequately mitigated Applicant having turned his passport over to his FSO for the duration of his current employment. This conclusion is consistent with the record. Adverse decision affirmed.

CASENO: 15-00424.a1

DATE: 04/20/2016

DATE: April 20, 2016

In Re:)	
)	
-----)	ISCR Case No. 15-00424
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On July 25, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline C (Foreign Preference) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On February 10, 2016, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge David M. White denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge’s application of the mitigating conditions was erroneous and whether the Judge’s whole-person analysis failed to address the totality of the evidence. Consistent with the following, we affirm.

The Judge’s Findings of Fact

In 2004, while he was in college, Applicant applied for dual citizenship with Ireland, in order better to understand his family history and to gain employment opportunities in Europe. In 2008, Applicant was granted Irish citizenship and issued a passport that will expire in 2018. Applicant used his Irish passport for foreign travel four times in 2010 and 2011, though he never went to Ireland. Applicant’s wife is also a dual citizen of the U.S. and the United Kingdom.

In 2012, during a prior employment, Applicant revealed his dual citizenship and Irish passport on his security clearance application (SCA). After he completed it, he became aware that his passport could be of security concern, so he surrendered it to the facility security officer (FSO) for the duration of his employment. When he left the company, he obtained his passport, and his FSO submitted an incident report. After he began working for his current employer he again surrendered his passport to the FSO “for safe keeping and return to him upon his request.” Decision at 3. Applicant formally acknowledged that the return of the document would generate an incident report which could result in revocation of his clearance.

There is no evidence in the record concerning the quality of Applicant’s work performance, his track record with handling sensitive information, or his history of compliance with security procedures.

The Judge’s Analysis

The Judge found that Applicant had provided little evidence in mitigation, except for his conditional surrender of his foreign passport to the FSO. He concluded that this was not sufficient to outweigh the Government’s concerns about Applicant’s foreign preference. In the whole-person analysis, the Judge stated that Applicant’s explanations for his acquisition of dual citizenship were insufficient to meet his burden of persuasion.

Discussion

In presenting his appeal arguments, Applicant contends that the Judge failed to consider all

of the evidence in the record. He argues that a JPAS entry about him having left his prior employer on good terms undermines the Judge's finding that he had presented nothing about his work performance. He also argues that his 2012 SCA investigation included interviews with family members and other persons, which would support a favorable finding about his character.¹ Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 14-06093 at 3 (App. Bd. Dec. 4, 2015). Moreover, the Judge's whole-person analysis complies with the requirements of Directive ¶ 6.3, in that the Judge considered the totality of the evidence in reaching his decision. *See, e.g.*, ISCR Case No. 14-02806 at 4 (App. Bd. Sep. 9, 2015).

Applicant argues that the Judge erred in his mitigation analysis, in particular in his treatment of Applicant's passport.² The Judge concluded, in essence, that concerns arising from Applicant's having applied for and having received foreign citizenship and having used a foreign passport multiple times were not adequately mitigated merely by showing that Applicant had turned his passport over to his FSO for the duration of his current employment. This conclusion is consistent with the record. The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. "The general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security.'" *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also* Directive, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge

¹Applicant's brief asserts that this investigation resulted in the grant of a clearance. There is nothing in the record that explicitly supports this assertion.

²The record shows that Applicant's clearance was approved in September 2007 (Item 4, SCA, at 62), and the Judge found Applicant's Irish citizenship was granted in 2008.

Member, Appeal Board

Signed: James F. Duffy _____

James F. Duffy
Administrative Judge
Member, Appeal Board