



Applicant raised the following issue on appeal: whether the Judge's decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge's Findings of Fact**

Appellant was born in the U.S. She visited Australia after graduation, where she met her first husband. The two were divorced in the late 1990s. After the divorce, Applicant obtained Australian citizenship. She did so in order to take advantage of the Australian health care system and to qualify for an advanced degree program that would not otherwise be available to her. She has voted in Australian elections. Applicant possesses an Australian passport, which she renewed in 2010. After the hearing, Applicant notified the Judge that she had tried to surrender her passport to the Australian Consulate. She stated that the Consulate indicated that it would take the passport but would not issue a letter stating that they had done so. Her employer would not accept it either. Applicant is still in possession of the passport.

### **The Judge's Analysis**

Applicant's Australian citizenship is not based on birth or parentage but on her own application for naturalization. She was reluctant to renounce her Australian citizenship because of benefits to which it entitled her. Applicant had exercised certain prerogatives of Australian citizenship, such as obtaining the passport, utilizing the educational benefits referenced above, and voting. She never clearly indicated that she had surrendered her passport. However, even if she had surrendered it, her having availed herself of other Australian citizenship privileges precluded a favorable conclusion.

### **Discussion**

Applicant contends that the Judge did not properly evaluate her case according to its facts but, rather, relied on regulatory technicalities. She provides an explanation and context for her circumstances, claiming that she had acquired Australian citizenship "only because her ex-husband was an Australian citizen." Appeal Brief at 1. She also cites to her effort to surrender her passport and argues that, due to her marriage, she acquired "permanent resident" status, as a consequence of which she had no choice but to accept medical benefits. *Id.* at 2. She also cites to evidence that voting is a legal obligation in Australia, with a monetary penalty for those who do not do so. She reiterates information contained in the Judge's findings of fact to the effect that she had not been successful in surrendering her passport, and she notes that she has never renounced her U.S. citizenship.

We have considered Applicant's arguments in light of the record. The evidence, including her own testimony, establish that she acquired Australian citizenship not by operation of law but by choice, in order to take advantage of that country's health care system and educational benefits. *See*, for example, her answer to Department Counsel's question about why she obtained Australian citizenship after she was divorced: "Two main reasons: One being health care; the other being education." Tr. at 33. Some of the assertions in Applicant's Appeal Brief do not appear consistent with her testimony at the hearing. When taken in conjunction with the other evidence referenced

above, the Judge's conclusion that none of the mitigating conditions fully apply is sustainable. Applicant's arguments are not enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. ADP Case No. 12-09387 at 2 (App. Bd. Apr. 26, 2016).

Applicant states that her dual citizenship has not caused a concern with her performance of duty. The government need not wait until an individual mishandles or fails to safeguard protected information before it can make an unfavorable public trust decision. *See, e.g.*, ADP Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. The standard applicable to trustworthiness cases is that set forth in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) regarding security clearances: such a determination "may be granted only when 'clearly consistent with the interests of the national security.'" *See, e.g.*, ADP Case No. 12-04343 at 3 (App. Bd. May 21, 2013). *See also Kaplan v. Conyers*, 733 F.3d 1148 (Fed. Cir. 2013), *cert. denied*.

### **Order**

The Decision is **AFFIRMED**.

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

Signed: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board

Signed: James F. Duffy  
James F. Duffy  
Administrative Judge  
Member, Appeal Board