

KEYWORD: Foreign Preference

DIGEST: Applicant is a dual U.S. and Greek citizen. She obtained a Greek passport at age 19 that does not expire until August 2008. Applicant does not want to destroy, surrender, or invalidate her Greek passport because she may want to work in the European Union or in Greece at some future date and would need her Greek passport to prove citizenship. The record evidence is insufficient to mitigate or extenuate the negative security implications related to foreign preference. Clearance is denied.

CASENO: 06-25756.h1

DATE: 08/29/2007

DATE: August 29, 2007

In re:	)	
	)	
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SSN: -----	)	ISCR Case No. 06-25756
	)	
Applicant for Security Clearance	)	

**DECISION OF ADMINISTRATIVE JUDGE  
CLAUDE R. HEINY**

**APPEARANCES**

**FOR GOVERNMENT**

Daniel F. Crowley, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a dual U.S. and Greek citizen. She obtained a Greek passport at age 19 that does not expire until August 2008. Applicant does not want to destroy, surrender, or invalidate her Greek passport because she may want to work in the European Union or in Greece at some future date and would need her Greek passport to prove citizenship. The record evidence is insufficient to mitigate or extenuate the negative security implications related to foreign preference. Clearance is denied.

### **STATEMENT OF THE CASE**

On February 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating that DOHA could not make the preliminary affirmative finding<sup>1</sup> it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR set forth reasons why a security clearance could not be granted or continued due to foreign preference security concerns.

On March 27, 2007, Applicant answered the SOR and decided to have the matter decided without a hearing. A File of Relevant Material (FORM) dated May 2, 2007 was sent to Applicant. Applicant's response to the FORM was due 30 days after receipt of a copy of the FORM. As of July 17, 2007, no response had been received. On July 19, 2007, I was assigned the case.

### **FINDINGS OF FACT**

The SOR alleges security concerns based on foreign preference. Applicant admits the following: she was born a citizen of the U.S. in 1983, she was issued a Greek passport in February 2004 that does not expire until August 2008, she exercised dual citizenship with Greece and the U.S., and she used her Greek passport to prove her Greek citizenship for an internship in June and July 2005. The admissions are incorporated herein as findings of fact. After a thorough review of the record, I make the following findings of fact.

Applicant is a 23-year-old consultant who has worked for a defense contractor since August 2006 and is seeking to obtain a security clearance. Applicant was born in the United States in 1983. Applicant is a dual Greek and U.S. citizen. Applicant's mother and father are dual Greek and U.S. citizens. Her father was a Greek citizen who became a naturalized U.S. citizen in January 1961 and her mother was a Greek citizen who became a naturalized U.S. citizen in April 2005.

Since 1984, Applicant has gone to Greece every summer and has also traveled to Greece a few times for a few weeks during the winter. In August 2003, Applicant—then age 19—was issued a Greek passport, which expires in August 2008. In June and July 2005, Applicant was a research assistant and summer intern at the Bank of Greece in Greece. Applicant has not used her Greek passport for travel but to prove citizenship for internship. She is not willing to destroy, surrender,

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<sup>1</sup>Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.

or invalidate her foreign passport because she might want to work in Greece or the European Union in the future.

### **POLICIES**

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guideline to be applied here is Guideline C, foreign preference.

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### **BURDEN OF PROOF**

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate the government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>2</sup>

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

### **CONCLUSIONS**

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<sup>2</sup> ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15

The Government has satisfied its initial burden of proof under 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. Conditions that could raise a security concern and may be disqualifying include, Foreign Preference Disqualifying Condition (FP DC) 10(a)(1) exercise of any right, 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 and/or use of a foreign passport. Applicant was born in the U.S. and acquired her Greek passport at age 19. The passport does not expire until August 2008. Applicant does not wish to surrender the passport because she may need it to work in Greece or the European Union at some future date.

None of the foreign preference mitigating conditions (FPMC) apply. FPMC 11(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country, does not apply because Applicant was born in the U.S. and chose to obtain a Greek passport. FPMC 11(b) individual has expressed a willingness to renounce dual citizenship, does not apply because Applicant does not wish to renounce her dual citizenship and may want to use her passport for future work in Greece or the European Union. Since Applicant was a U.S. citizen from birth, FPMC 11(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, does not apply.

The use of the Greek passport has not been approved by a cognizant security authority, therefore FPMC (d) use of a foreign passport is approved by the cognizant security authority, does not apply. FPMC 11 (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated, does not apply because Applicant does not want to destroy, surrender or invalidate the passport.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Foreign Preference:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant

### **DECISION**

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

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**Claude R. Heiny**  
**Administrative Judge**