

KEYWORD: Foreign Preference; Personal Conduct

DIGEST: Applicant is a 45-year-old employee of a defense contractor. Applicant was born in Switzerland. She came to the U.S. in 1984, and became a U.S. citizen in 1995. Applicant maintained dual citizenship, and possesses a valid current Swiss passport. She did not falsify a statement to a government investigator or on her security questionnaire, because she was unaware at the time that her mother in Switzerland maintained a small savings account on her behalf. Applicant has mitigated the personal conduct security concerns, but has not mitigated the security concerns based on her foreign preference. Clearance is denied.

CASENO: 06-23935.h1

DATE: 04/27/2007

DATE: April 27, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-23935
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
EDWARD W. LOUGHRAN**

APPEARANCES

FOR GOVERNMENT

Emilio Jaksetic, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 45-year-old employee of a defense contractor. Applicant was born in Switzerland. She came to the U.S. in 1984, and became a U.S. citizen in 1995. Applicant maintained dual citizenship, and possesses a valid current Swiss passport. She did not falsify a statement to a government investigator or on her security questionnaire, because she was unaware at the time that her mother in Switzerland maintained a small savings account on her behalf. Applicant has mitigated the personal conduct security concerns, but has not mitigated the security concerns based on her foreign preference. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On January 19, 2007, DOHA issued a Statement of Reasons¹ (SOR) detailing the basis for its decision—security concerns raised under Guideline C (Foreign Preference) and Guideline E (Personal Conduct) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense for SORs issued after September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR in writing on February 7, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on February 27, 2007. A notice of hearing was issued on March 6, 2007, scheduling the hearing for March 27, 2007. Applicant waived the 15-day notice requirement. With the consent of the parties, the hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government offered two exhibits that were marked as Government Exhibits (GE) 1 and 2, and admitted without objection. Applicant testified and offered one exhibit that was marked Applicant Exhibit (AE) A, and admitted without objection. DOHA received the hearing transcript (Tr.) on April 11, 2007.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 45-year-old employee of a defense contractor. She has worked directly or indirectly for the U.S. Government since about 1992. Applicant was born in Switzerland. She came to the U.S. in 1984, and became a U.S. citizen in 1995. She attended college in Switzerland, and has a master's degree from an American university. Applicant is divorced from a U.S. citizen. She has two children who are dual U.S. and Swiss citizens.²

Applicant maintained dual citizenship with Switzerland after becoming a U.S. citizen. She exercised her Swiss citizenship by obtaining a Swiss passport in 2004, which will not expire until 2014. She still possesses the Swiss passport. Applicant has traveled extensively since becoming a U.S. citizen. She has always used her U.S. passport, except when entering and exiting Switzerland, which requires its citizens to use their Swiss passport.³

Applicant's reason for obtaining and maintaining the Swiss passport is to ease her entry to Switzerland if there is an emergency related to her parents. Her parents are citizens and residents of

¹Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive).

²Tr. at 29-30, 41-42, 47; GE 1, 2.

³Tr. at 25-26, 33, 37-38; Applicant's response to SOR; GE 1, 2.

Switzerland. Her father is 77 years old, and has heart problems. Her mother is 72, and had knee surgery. Applicant expressed a willingness to renounce her Swiss citizenship, but not until her parents are deceased. U.S. citizens can travel to Switzerland for 90 days on a tourist visa. In order to stay longer, some type of extension is required. Applicant wants to maintain the ability to stay longer if necessary.⁴

Applicant's mother maintained a savings account in Switzerland on Applicant's behalf since Applicant was a child. As of December 2006, the balance in the account was approximately \$356, in U.S. currency. Applicant was unaware of this account until she contacted her mother in December 2006, in order to obtain information to respond to DOHA interrogatories. Her mother informed her at that time about the savings account. The account has since been closed. Applicant currently has no foreign assets. She owns her home in the United States and has other U.S. assets.⁵

Applicant was interviewed pursuant to a background investigation in 2005. She told the investigator that she did not have any financial interests in Switzerland.⁶ Applicant believed the statement was true because she was unaware of the Swiss savings account at that time.

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), on May 23, 2006. She responded "No" to Question 17a, which asked, "[d]o you have any foreign property, business connections, or financial interests?"⁷ Applicant's answer was truthful to the best of her knowledge because she was unaware of the Swiss savings account when the eQIP was submitted.

POLICIES

"[N]o one has a 'right' to a security clearance."⁸ As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information."⁹ The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."¹⁰ An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance. The clearly consistent standard indicates that security clearance determinations

⁴Tr. at 20-25; Applicant's response to SOR; GE 1 at 23.

⁵Tr. at 17, 35-36; Applicant's response to SOR; GE 2; AE A.

⁶Tr. at 33.

⁷GE 1 at 28.

⁸*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁹*Id.* at 527.

¹⁰Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

should err, if they must, on the side of denials.¹¹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹² The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.¹³

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in listed in the Directive and AG ¶ 2(a).

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions section below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline C, 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. This raises a security concern under the foreign preference guideline.

Based on all the evidence, Foreign Preference Disqualifying Condition (FP DC) 10(a) (*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: (1) possession of a current foreign passport*), applies in this case.

I have considered all the Foreign Preference Mitigating Conditions (FP MC), and I especially considered FP MC 11(a) (*dual citizenship is based solely on parents' citizenship or birth in a foreign country*) and FP MC 11(b) (*the individual has expressed a willingness to renounce dual citizenship*). Applicant actively exercised her dual citizenship by obtaining and using a Swiss passport after becoming a U.S. citizen. I do not find FP MC 11(a) totally applicable. Applicant has expressed a willingness to renounce dual citizenship, but only after her parents pass away. That is insufficient to totally invoke FP MC 11(b).

¹¹ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹²*Id.*; Directive, ¶ E2.2.2.

¹³Exec. Or. 10865 § 7.

Guideline E, Personal Conduct

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

As discussed above, Applicant provided what she thought were truthful answers to the investigator and on the e-QIP. No Personal Conduct Disqualifying Condition is applicable.

Whole Person Analysis

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive and AG ¶ 2(a). I have also considered every finding of fact and conclusion discussed above.

Applicant is an obviously intelligent, professional woman. She has a good job, with a stable employment record. She has provided valuable service to the United States Government. Her testimony was sincere and forthright. Her reasons for maintaining dual citizenship and a Swiss passport stem from her concern for her parents. I also considered that the country at issue is Switzerland. Nonetheless, security concerns persist based upon Applicant's possession and use of a valid current foreign passport.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the personal conduct security concerns, but has not mitigated the security concerns based on her foreign preference.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline C: AGAINST APPLICANT

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant

Paragraph 2. Guideline E:	FOR APPLICANT
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Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant

DECISION

In light of all of 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.

Edward W. Loughran
Administrative Judge