

KEYWORD: Foreign Preference

DIGEST: Applicant is a 43-year-old U. S. Citizen, who held an Australian passport from 1994 until July 2007 when it was destroyed at his request by his employer’s security officer. His wife was born in Australia and is a U.S. resident alien, awaiting U.S. citizenship. He mitigated the security concerns raised by foreign preference. Clearance is granted.

CASENO: 06-2466.h1

DATE: 08/29/2007

DATE: August 29, 2007

In re:	)	
	)	
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SSN: -----	)	ISCR Case No. 06-24666
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
SHARI DAM**

**APPEARANCES**

**FOR GOVERNMENT**

D. Michael Lyles, Esq.

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 43-year-old U. S. citizen, who held an Australian passport from 1994 until July

2007 when it was destroyed at his request by his employer's security officer. His wife was born in Australia and is a U.S. resident alien, awaiting U.S. citizenship. He mitigated the security concerns raised by foreign preference. Clearance is granted.

### **STATEMENT OF THE CASE**

On December 15, 2005, Applicant submitted a security clearance application (SF 86). The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on April 23, 2007, detailing the basis for its decision-security concerns raised under Guideline C (Foreign Preference) of the Adjudicative Guidelines issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006.

On May 10, 2007, Applicant filed a written response to the SOR, admitting the allegation, and elected to have the case decided on the written record in lieu of a hearing. On June 22, 2007, Department Counsel prepared a File of Relevant Material (FORM), containing six Government Items and mailed Applicant a complete copy on June 27, 2007. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation or mitigation. Applicant received the FORM on June 28, 2007, and timely submitted additional information. Department Counsel did not object to Applicant's documents that I later marked as Applicant Exhibits (AX) 1 and 2. The case was assigned to me on August 13, 2007.

### **FINDINGS OF FACT**

Based on the entire record, including Applicant's admissions in his response to the SOR, I make the following findings of fact:

Applicant is a 43-year-old married man, who was born and resides in the United States. His wife was born in Australia and is a resident alien of the United States.<sup>1</sup> She intended to obtain U.S. citizenship in the summer of 2007.<sup>2</sup> They married in 1995 in the United States, and had two children who were born here. He attended a university in the United States from 1986 to 1989. Since August 1995, he has worked as a technician for a federal contractor.<sup>3</sup> He held a clearance from 1986 to 1991 and from 1995 to the present.<sup>4</sup> He completed his most recent SF 86 in December 2006.

In 1994, Applicant obtained an Australian passport in order to travel more conveniently to

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<sup>1</sup>Item 4 at 14.

<sup>2</sup>Item 3.

<sup>3</sup>Item 4 at 11.

<sup>4</sup>Item 3.

Australia to visit his wife's family. It is valid until 2014.<sup>5</sup> Although he indicated his desire to maintain the passport at the time he filed his Answer, he was willing to surrender it, if it interfered with his security clearance status.<sup>6</sup> He does not have any financial interests in Australia.<sup>7</sup>

After being notified that possessing a current foreign passport created security concerns, Applicant surrendered it to his company's security office for destruction. On July 24, 2007, the passport was shredded in front of the Manager of Security and Facilities Operations.<sup>8</sup> He was unaware of the pertinent adjudicative guidelines or the Department of Defense's policy that holding a foreign passport could raise a security concern and operate as a potential disqualifying condition under the foreign preference guideline.<sup>9</sup>

## POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth criteria which must be evaluated when determining security clearance eligibility. Within the Revised Guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence in order to reach a fair, impartial and common sense decision.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not only the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive, Enclosure 2, ¶ E2.2.2. The decision to deny an individual a security clearance is not necessarily a judgment about an applicant's loyalty. Executive Order 10865, § 7. Instead, it is a determination that an applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988). The Directive presumes a rational connection between past proven conduct under any of the

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<sup>5</sup>Sometime prior to 1994, Applicant became a dual citizen of Australia. (Item 4 at 14). The Government did not allege, and I did not consider, his dual citizenship as a disqualifying condition.

<sup>6</sup>Item 3.

<sup>7</sup>*Id.*

<sup>8</sup>AX 1.

<sup>9</sup>AX 2.

disqualifying conditions listed in the guidelines and an applicant's security suitability. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence in refutation, extenuation, or mitigation sufficient to overcome the position of the government. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); Directive, Enclosure 3, ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his clearance." *Id.*

## CONCLUSIONS

After considering the facts in evidence and legal standards, including the "whole person" concept, I conclude the following in regard to the allegations contained in the SOR:

### Guideline C: Foreign Preference

Under this Guideline, a security concern arises if "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."

Based on Applicant's admission that he held an Australian passport, valid from 1994 until 2014, the Government established a disqualifying condition under Foreign Preference Disqualifying Condition (FI 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."

The Government having established a disqualification, the burden shifted to Applicant to rebut or mitigate the allegations. After learning that his Australian passport could jeopardize his security clearance, he had it destroyed by his employer, which triggered the application of Foreign Preference Mitigating Condition (MC) 11(e) "the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated."

### "Whole Person" Analysis

In addition to evaluating the disqualifying and mitigating conditions under the Guideline, the adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Guideline 2 describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the conduct of an applicant, an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of

continuation or recurrence.

After considering the totality of the evidence, including Applicant's long work history for a federal contractor, during which time he held a security clearance, and his willingness to dispose of his passport once he learned of the potential problems it created for his employment, I concluded that he does not pose a security risk and that he sufficiently mitigated the security concerns raised under foreign preference. Accordingly, Guideline C is found for him.

### **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 as follows:

Paragraph 1: Guideline C (Foreign Preference)      FOR APPLICANT

Subparagraph 1.a:      For Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

Shari Dam  
Administrative Judge