



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
SSN:)	ISCR Case No. 06-23358
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: Pro se

April 30, 2008

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted her Security Clearance Application (SCA), on June 8, 2005. On October 11, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under foreign preference (Guideline C) and foreign influence (Guideline B). The action was taken pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted her answer to the SOR on November 12, 2007. She elected to have her case decided administratively without a hearing. A copy of the government's File of Relevant Material (FORM, the government's evidence in support of the SOR) was sent to Applicant on February 5, 2008. Applicant received the FORM on February 26, 2008. Applicant's response was due by March 26, 2008. No response was received.

The case was assigned to this administrative judge on April 17, 2008. Based upon a review of the FORM, Applicant's eligibility for access to classified information is denied.

Findings of Fact

Applicant admitted all allegations under paragraph 1 (foreign preference) and paragraph 2 (foreign influence). Applicant is 55 years old, married since 1972, and has been employed since 1981 as a specialist assembler for a defense contractor. She seeks a security clearance.

Foreign Preference (FP)

Under module 3 of her SCA (Item 4) that she completed and certified in June 2005, Applicant entered information about her citizenship status in the United States (U.S.). Applicant indicated she became a naturalized U.S. citizen in December 2000. She also indicated she had never held a U.S. passport. She answered "yes" to the last question under module 3 that she is a dual citizen (SOR 1.a.) of the U.S. and Mexico. Under module 15 (in the last 7 years, have you had an active passport issued by a foreign government?), Applicant answered "No."

Applicant provided a sworn statement to an investigator of the Office of Personnel Management (OPM) on June 25, 2007. She was asked to provide information about her citizenship and the circumstances surrounding her detention or arrest in March 1988 for alien smuggling. She and her husband maintain dual citizenship with Mexico because they may want to retire (SOR 1.b.) in the country someday. Applicant voted in a Mexican election in 2006, and planned to vote in 2007 (SOR 1.c.) because it is the best way to maintain Mexican citizenship.

In her June 25, 2007 sworn statement, Applicant also provided details of being stopped in March 1988 for transporting her mother's neighbor in a car across the border. As she and her husband were leaving her mother's residence in Mexico, her mother asked Applicant to bring a neighbor back to the U.S. At the border crossing, the border patrol asked for the passports of the occupants of Applicant's car. Applicant and her husband displayed their green cards, and the neighbor presented her passport for inspection. When the neighbor's passport was checked, it turned out to be Applicant's passport that Applicant lost in 1972. Applicant became perturbed as she wondered how her passport wound in the neighbor's possession. Applicant was charged with alien smuggling. (SOR 1.d.) Her criminal record (Item 6) indicates no disposition. From the information provided in the FORM, including Applicant's statement, it is impossible for me to find how providing transportation constitutes evidence of preference under the foreign preference guideline. SOR 1.d. is found in Applicant's favor.

Foreign Influence (FI)

Applicant was born in Mexico on December 3, 1952. Applicant's mother, 72 years old, is a retired, resident citizen of Mexico (SOR 2.a.) Applicant visits her mother

two or three times a week (SOR 2.b.) Applicant's 55-year-old brother, a truck driver, is a resident citizen of Mexico (SOR 2.c.), and she visits him about two or three times a month (SOR 2.d.) Applicant's sister, not referenced in the SOR, is a 42-year-old resident citizen of Mexico and unemployed. (Item 4) Applicant's niece is employed in office and building maintenance. Applicant's sister-in-law and niece are resident citizens of Mexico. (SOR 2.e., Item 5)

Applicant has two children who were born in the U.S. Her son is single and employed as a sheriff in the U.S. Her daughter is married and employed as a translator. Her three sisters, nieces, and nephews live in the U.S. No additional information was provided.

Character Evidence

Applicant did not provide any evidence to dispute, explain, or mitigate the allegations of the SOR. She provided no evidence that addresses her job performance.

Administrative Notice

I have taken official notice of the following U.S. government agency publications:

1. U.S. Department of State Background Note: Mexico, dated February 2007. (Exhibit 7)
2. U.S. Department of State, Consular Affairs, Travel Warning: Mexico, dated October 24, 2007. (Exhibit 8)

The noticed documents indicate that after becoming a republic in 1824, Mexico implemented its first constitution in 1917, providing for three branches of government, the executive, legislative and judicial. In the last decade, the Mexican Congress has become a more important component of the Mexican government through increased representation of opposition political groups in the legislative chamber. Mexico has been and continues to be a strong ally of the U.S. Their close relationship has resulted in many important agreements, accords, and partnerships in commercial, cultural, educational areas, as well as security objectives such as the war on terrorism, and decreasing the flow of drugs into the U.S. However, the October 2007 travel warning alerts U.S. travelers to be vigilant due the presence of criminal activity in many parts of the country. Though there is no indication that U.S. citizens have been targeted, a large number of kidnappings (some still unresolved) of U.S. citizens have occurred in recent years.

Policies

When evaluating an applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list

potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are flexible rules of law that are applied in conjunction with the general policy factors of the whole person concept. The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national interest is the paramount consideration. AG ¶ 2b. requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility. The Government places a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Foreign Preference (FP)

Acting in a way that shows one's preference for a foreign country brings the individual's conduct with the FP guideline.

Foreign Influence (FI)

Foreign contacts and financial interests may be a security concern when they have the potential to be used to exert influence or pressure on an applicant in a way that forces him into a position of having to choose between the foreign entity and the U.S.

Analysis

Foreign Preference (FP)

The FP guideline is activated by actions taken by an individual that demonstrates a preference for a foreign country over the U.S. Following her naturalization as a U.S. citizen in December 2000, Applicant's statements and actions regarding her dual citizenship activate FP disqualifying conditions (DC) 10a. (*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: 5. (*using foreign citizenship to protect financial or business interests in another country*); and, 7. (*voting in foreign elections*). Applicant declared her dual citizenship in her SCA in June 2005. She voted in a Mexican city election in 2006, and plans to vote regularly in that election in the future to maintain her citizenship. Finally, Applicant maintains her dual citizenship because she may want to retire in Mexico in the future.

While the FP guideline has six potentially mitigating conditions, none are applicable. FP MC 11.a. (*dual citizenship is based solely on parents' citizenship or birth in a foreign country*) does not apply because the statements and actions of Applicant over the last four years demonstrating a preference for Mexico. FP MC 11.b. (*the individual has expressed a willingness to renounce dual citizenship*) is inapplicable based on Applicant's behavior to preserve not renounce her Mexican citizenship. FP MC 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 due to Applicant's statements and actions of preference that occurred after she obtained her U.S. citizenship in December 2000. The remaining three MC are irrelevant to the facts of this case. The FP guideline is found against Applicant.

Foreign Influence (FI)

Foreign contacts and interests result in security concerns where those contacts and interests create divided loyalties, or may be manipulated or induced by a foreign entity that is harmful to U.S., or is vulnerable to pressure or coercion by any foreign entity. Decisions under this guideline should include the foreign country where the contact or financial interest is located, including, but not limited to whether the foreign government targets U.S. citizens to obtain protected information and/or is associated with the risk of terrorism.

The mere possession of family ties in a foreign country is not automatically disqualifying under the foreign influence guideline. When assessing the family ties, it is important to weigh the totality of these ties in a foreign country, rather than trying to weigh them in isolation. ISCR Case No. 01-22693 at 7 (App. Bd. Sept. 22, 2003) Considering the record as a whole, the government has established its case under the FI guideline. FI DC 7.a. (*contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation,*

pressure, or coercion) applies. Appellant visits her mother two or three times a week and her brother two or three times a month.

Three of the six mitigating conditions under the FI guideline may apply to the facts and circumstances of this case:

FC MC 8.a. (the nature of the relationships with foreign persons, the country in which these persons are located, or the position or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.);

FI MC 8.b. (there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is minimal, or the individual has such deep and long lasting relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest);

FI MC 8.c. (contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation).

FI MC 8.a has limited application. Applicant's mother is retired and was never employed nor an agent of the Mexican government. There is no evidence that Applicant's brother is an agent of the Mexican government. Applicant indicated her three sisters and nieces live in the U.S., but she provided no other information about their citizenship or the current status of her sister-in-law, and her niece referred to in the SOR. SOR 2.d. is found against Applicant. While there is no indication that Mexico targets U.S. citizens or is involved in terrorism, there is significant criminal activity in parts of the country. Applicant's frequent trips to see her family members in Mexico heighten the risk that pressure could be exerted on and through her family members to her. The limited application of FI MC 8.a. is insufficient to find in Applicant's favor under the FI guideline.

FI MC 8.b. is inapplicable as Applicant has not shown she can be expected to resolve any foreign conflict of interest in favor of U.S. interests. Her yearly voting in the Mexican elections clearly compromises the loyalty she has for the U.S. FC MC 8.c. is unavailable for mitigation because Applicant's contact with her mother and brother is more than casual and infrequent. Applicant has not mitigated the security concerns associated with the FI guideline.

Whole Person Concept (WPC)

My finding against Applicant under the FI and FP guidelines must still be evaluated in the context of nine variables known as the whole person concept. In

evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors: (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 extent to which the participation was voluntary; (6) the presence or absence of rehabilitation and other permanent 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. Based on the heightened risk of foreign pressure being exerted through her family members to Applicant, and her statements and actions demonstrating her desire to maintain Mexican citizenship, I am unable to find in Applicant's favor under the FP or FI guidelines.

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:

Paragraph 1 (Foreign Preferences, 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 (Foreign Influence, Guideline B): **AGAINST APPLICANT**

Subparagraph 2.a.	Against Applicant
Subparagraph 2.b.	Against Applicant
Subparagraph 2.c.	Against Applicant
Subparagraph 2.d.	Against Applicant
Subparagraph 2.d.	Against Applicant
Subparagraph 2.e.	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge