



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 12-06713
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

04/01/2014

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the security concerns arising from his possession and past use of a foreign passport. He has lived and worked in the United States for over 40 years. He surrendered his foreign passport to his facility security officer and established that his preferences squarely lie with the United States. Clearance is granted.

Statement of the Case

On November 26, 2013, the Department of Defense (DoD), in accordance with DoD Directive 5220.6, as amended (Directive), issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline C (Foreign Preference). On December 9, 2013, Applicant answered the SOR and requested a hearing to establish his eligibility for access to classified information.

On February 21, 2014, I was assigned Applicant's case. After coordinating with the parties, I scheduled the hearing via video teleconference for March 21, 2014. At hearing, Department Counsel offered exhibits (Gx.) 1 and 2, which were admitted into evidence without objection. Applicant testified and offered exhibits (Ax.) A – Q, which

were also admitted without objection. The hearing transcript (Tr.) was received on March 31, 2014.

Findings of Fact

Applicant is in his sixties. He was born in the United Kingdom (UK) and immigrated to the United States over 40 years ago. He has lived and worked in the United States ever since. He has owned a home and paid taxes in the United States for over 30 years. He will shortly be celebrating his 30th wedding anniversary to his wife, a U.S. citizen by birth. His son was born, raised, and lives in the United States. The vast majority of his assets, to include his substantial retirement accounts, are located in the United States. He was granted U.S. citizenship in the early 1990s. Applicant is published in peer-reviewed journals and highly regarded in his field. He has previously worked on projects benefiting the U.S. Government without issue. He submitted character references from friends and colleagues who attest to his reliability and trustworthiness. (Tr. at 22-29; Gx. 1 – 2; Ax. A – B, D, F – Q; Answer)

Applicant applied for and was granted a UK passport after becoming a U.S. citizen. He used the UK passport only for personal convenience when traveling to the UK and other countries within the European Union. Applicant has not held a security clearance before and was unaware that possessing a foreign passport could make him ineligible for a security clearance until he received the SOR. He thereafter surrendered his UK passport to his facility security officer (FSO). The FSO states that Applicant's employer will maintain the foreign passport until such time as Applicant no longer requires a clearance, terminates employment, or requests the return of the foreign passport. In the event that Applicant requests the return of his UK passport, the FSO will immediately report such to the Government. (Tr. at 20-22, 29-33; Gx. 1; Ax. C)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are only eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry*, § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant's eligibility, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a common sense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant

or proven by Department Counsel.” Directive ¶ E3.1.15. An applicant also bears the ultimate burden of persuasion to establish his or her eligibility.

In resolving the ultimate question regarding an applicant’s eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.¹

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

Analysis

Guideline C, Foreign Preference

Under AG ¶ 9, the concern involving foreign preference arises “[w]hen an individual acts in such a way as to indicate a preference for a foreign country over the United States.” Such an individual “may be prone to provide information or make decisions that are harmful to the interests of the United States.”

Applicant’s acquisition and use of a UK passport raises this concern and also establishes the disqualifying condition at AG ¶ 10(a), “exercise of any right, privilege or obligation of foreign citizenship,” to include “possession of a current foreign passport.”

Applicant mitigated the foreign preference concern. He surrendered the foreign passport to his FSO. Furthermore, the evidence firmly established that he does not have a preference for the UK or any foreign country over the United States. Specifically, Applicant established the mitigating condition at AG ¶ 11(e), “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.”

¹ See also, ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) (“Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.”).

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).² I hereby incorporate my above comments and highlight some additional whole-person factors. Applicant's personal character and integrity, which are vital matters in assessing an individual's suitability for a security clearance, are unassailable. He has been candid about his foreign passport and foreign connections from the start of his background investigation. Furthermore, I had an opportunity to observe his demeanor at hearing. I found him credible when he testified about his deep and longstanding loyalties and connections to the United States. I agree with his long-time friend, who provided a character reference and noted that Applicant considers the United States his "home." (Ax. A) These favorable whole-person factors, in conjunction with the mitigating conditions noted above, mitigate the foreign preference concern. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility for access to classified information.

Formal Findings

I make the following formal findings regarding the allegations in the SOR:

Paragraph 2, Guideline C (Foreign Preference): FOR APPLICANT

Subparagraph 1.a: For Applicant

Conclusion

In light of the record evidence and for the foregoing reasons, it is clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge

² The non-exhaustive list of adjudicative factors are: (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 participation is 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.