



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



In the matter of:)	
)	
)	ISCR Case No. 14-02867
)	
Applicant for Security Clearance)	

Appearances

For Government: Allison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

04/03/2015

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on May 8, 2013. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on October 24, 2014, detailing security concerns under Guideline C, Foreign Preference. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on October 28, 2014. She submitted a notarized, written response to the SOR allegations dated November 10, 2014, and she requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on February 18, 2015. Applicant received the FORM on February 23, 2015. She had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She submitted a response dated March 16, 2015. DOHA assigned this case to me on March 30, 2015. The Government submitted eight exhibits, which have been marked as Items 1-8 and admitted into the record. Applicant's response to the SOR has been marked as Item 4, and the SOR has been marked as Item 1. Her written response to the FORM is admitted into the record as Applicant Exhibit A (AE A).

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶ 1.a of the SOR. Her admission is incorporated herein as findings of fact. She also provided additional information to support her request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 39 years old, works as a senior systems engineer for a DOD contractor. She has been employed with her current employer for eight years. Applicant attended college in the Netherlands from 1994 until 2000, when she graduated with a master's degree. The record lacks any evidence of disciplinary action by her employer or any violation of security or proprietary rules and procedures.¹

Applicant was born in the United States to parents who, at the time of her birth, were citizens of the Netherlands residing in the United States. Applicant has held dual citizenship with the United States and the Netherlands since birth. Applicant attended schools and college in the Netherlands, where she was raised. Applicant's mother and one sister are citizens and residents of the Netherlands. Her father is a citizen of the Netherlands and a resident of Germany as of 2013. Her other sister is a citizen of the Netherlands, residing in the United Kingdom. Applicant indicated on her e-QIP that she travels to the Netherlands at least once a year to visit her family.²

Applicant returned to the United States to live and work after the completion of college in 2000. In November 2003, she married. Her husband is a United States citizen by birth. They have three children, who are citizens of the United States by birth and reside in the United States. Applicant's daughters are nine and six years old and her son is two years old. Although born in the United States, Applicant registered the birth of

¹Item 5.

²Item 5.

her children in the Netherlands to obtain citizenship for them. Her children are dual citizens of the United States and the Netherlands.³

Applicant holds a passport from the United States and the Netherlands. When she received her security clearance in 2008, she provided her Netherlands passport to her facility security officer (FSO). On April 19, 2013, Applicant requested her Netherlands passport from her FSO. She renewed the Netherlands passport on June 5, 2013, and it will expire in June 2018. During her personal subject interview on July 1, 2013, Applicant advised the investigator that she asked for her Netherlands passport in order to register the birth of her son and obtain citizenship in the Netherlands for him. She has not returned the Netherlands passport to her FSO nor is she willing to give up her citizenship with the Netherlands.⁴

Applicant provided a copy of her United States and Netherlands passports. Her United States passport is valid until July 2017 and shows travel stamps for trips primarily to the Netherlands. Her Netherlands passport does not contain any entry or exit stamps from any country. During her personal subject interview Applicant advised that, in the past, she used a Netherlands passport for travel to other countries with her family living in the Netherlands.⁵

In her post-hearing submission, Applicant asserts that her loyalty and preference to the United States is shown by her decision to move to the United States away from her family and to remain in the United States. She states that she owns property in the United States; that her assets are in the United States; and that her immediate family is in the United States. She does pay \$10 a month for health insurance in the Netherlands, as all citizens of the Netherlands are required to do so.⁶

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶

³Item 5.

⁴Items 5, 6, and 8.

⁵Item 8.

⁶AE A.

2(c), the entire process is a conscientious scrutiny of a number of variables known as 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 security is the paramount consideration. AG ¶ 2(b) 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An applicant has the ultimate burden of persuasion for 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 transcends normal duty hours and endures throughout off-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 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.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline C, Foreign Preference

Under AG ¶ 9 the security 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, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.”

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying:

(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; and

(3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;

Applicant holds a passport from the Netherlands, and she pays for medical insurance in the Netherlands because citizens of the Netherlands are required to do so. A security concern is raised under AG ¶¶ 10(a)(1) and (3).

The Foreign Preference guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶¶ 11(a) through ¶¶ 11(f), and the following are potentially applicable:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship;

(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;

(d) use of a foreign passport is approved by the cognizant security authority.

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and,

(f) the vote in a foreign election was encouraged by the United States Government.

I have considered the above mitigating conditions and conclude that none of them apply because Applicant intends to retain her citizenship in the Netherlands and to maintain possession of her foreign passport. I recognize that she is not currently using her Netherlands passport for travel, but her decision to retain possession of the passport raises a concern about her future intent regarding this passport.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's

conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a citizen of the United States as she was born in this country. Because her parents were citizens of the Netherlands at the time of her birth, she also became a citizen of the Netherlands. She was raised in the Netherlands, where her parents lived. After finishing college, she decided to return to the United States and has lived in the United States for more than 12 years. Her husband is a United States citizen by birth and resides in the United States. Her three children are citizens of the United States by birth and reside in the United States. Applicant decided to obtain citizenship for her children in the Netherlands. They are now dual citizens of the United States and the Netherlands. Her decision to obtain dual citizenship for her children and to retain her passport from the Netherlands raises a concern about her preference for the Netherlands over the United States. Applicant has many connections in the United States and in the Netherlands. She does not appear to have separated the two, making it difficult mitigate the security concerns raised by her decisions.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from foreign preference under Guideline C.

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, Guideline C:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

Conclusion

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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARY E. HENRY
Administrative Judge