



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



In the matter of:)
)
)
) ISCR Case No. 14-01468
)
Applicant for Security Clearance)

Appearances

For Government: Robert Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

01/21/2015

Decision

HENRY, Mary E., Administrative Judge:

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

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on October 14, 2013. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on June 17, 2014, detailing security concerns under Guideline C, foreign preference, and Guideline B, foreign influence. 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 July 12, 2014, and he answered it on July 17, 2014. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on September 21, 2014, and I received the case assignment on October 16, 2014. DOHA issued a Notice of Hearing on November 26, 2014, and an amended Notice of Hearing for a change in hearing location on December 3, 2014. I convened the hearing as scheduled on December 10, 2014. The Government offered one exhibit (GE) marked as GE 1, which was received and admitted into evidence without objection. Applicant testified. He submitted exhibits (AE) marked as AE A through AE F, which were received and admitted into evidence without objection. The record closed on December 10, 2014. DOHA received the hearing transcript (Tr.) on December 22, 2014.

Procedural Ruling

Notice

Applicant received the notice of the date, time and place of the hearing less than 15 days before the hearing. I advised Applicant of his right under ¶ E3.1.8. of the Directive to receive the notice at least 15 days before the hearing. Applicant affirmatively waived this right under the Directive. (Tr. 8.)

Request for Administrative Notice

Department Counsel did not submit a request that I take administrative notice of facts relating to Poland. I will, however, take administrative notice of certain facts limited to matters of general knowledge and matters not subject to reasonable dispute as related to Poland. These facts are set out in the Findings of Fact below.

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR. His admission is incorporated herein as findings of fact. He also provided additional information to support his 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 53 years old, works as an engineer for a DOD contractor. He began his current employment in September 2013. He has worked as an engineer for more than 15 years. His manager and a co-worker describe Applicant as organized, efficient, responsible, hardworking, and a team player. They respect his work skills and his work ethic. Both recommend him for a security clearance.¹

Applicant was born in Poland, where he was raised. Around 1990, he emigrated from Poland to Canada to further his education. Applicant became a Canadian citizen in

¹AE A; AE B; Tr. 18, 47.

1995 and obtained a Canadian passport. Applicant graduated from a Canadian university in 1996 with a bachelor's degree in engineering. Shortly thereafter, he began working for a company in Canada. In 1999, Applicant immigrated into the United States and began working for U.S. companies. While a Canadian citizen, Applicant retained his Polish passport and citizenship. He renewed his Canadian passport in 2009. Applicant became a naturalized U.S. citizen in April 2012. In August 2012, he renewed his Polish passport before he applied for his current job and submitted his e-QIP.²

Applicant married his first wife in 1986 and they divorced in 1993. He has one son from this marriage, who is 27 years old. This son is a resident and citizen of Poland. He works as an engineer for a major international company in Poland. Applicant and his second wife married in 1999. His wife has dual citizenship with the United States and Poland. She is a resident of the United States. They have an 11-year-old son, who was born in the United States, resides in the United States with his parents, and has a U.S. passport. Applicant has performed volunteer work for which he has been commended.³

Applicant's 92-year-old father, a retired farmer, is a citizen and resident of Poland. Applicant's father has short-term memory problems.⁴ He lives with Applicant's 67-year-old brother, who is a citizen and resident of Poland. His brother is retired and divorced. Applicant's father-in-law and mother-in-law are divorced. His 69-year-old father-in-law is a dual citizen of Poland and the United States. He resides in the United States. His 72-year-old mother-in-law is a citizen and resident of Poland. She is a retired pharmacy assistant. His sister-in-law is a citizen of Poland⁵ who lives in the United States and works in child care. Applicant's older son is involved with his church in Poland and is studying theology. None of these individuals work for the Polish government or are involved in the Polish military or with Polish intelligence. They are not involved in political action committees or groups. Neither Applicant nor his son served in the Polish Army.⁶

Applicant talks with his father and brother by telephone once a week. Applicant talks with his adult son about once a month. His family members are not aware that he is applying for a security clearance as they generally discuss family matters and health issues during their telephone conversations. Applicant's father-in-law last traveled to Poland about 10 years ago. Applicant traveled to Poland in 2007. Between March 2008 and August 2013, Applicant traveled to Poland to visit his family, using his Polish

²GE 1; Tr. 20-24.

³GE 1; AE C.

⁴Applicant testified that his father remembers more about World War II than he does about current matters. Tr. 40.

⁵Applicant is not sure if she is also a U.S. citizen.

⁶Response to SOR; GE 1; Tr. 28-34, 37, 45-47.

passport. He did not encounter any problems with representatives of the Polish government at any level.⁷

Applicant renewed his Polish passport after he became a U.S. citizen because it provided him with easier entry into Poland. When he completed his e-QIP, he learned that it was not acceptable to hold U.S. citizenship as well as exercise rights of his Canadian and Polish citizenships by maintaining passports. Applicant returned his Canadian passport to the Canadian consulate in September 2013, which held the passport until it expired in April 2014. Applicant is eligible to apply for a new Canadian passport. He returned his Polish passport to the Polish consulate in September 2013. By so doing, he no longer has any valid documentation proving his Polish citizenship. Applicant has only his U.S. passport, which he uses for all his travel. He understands why the DOD wants him to have only one passport.⁸

In the last 10 years, Applicant and his wife have not voted in Polish elections. They do not own any property in Poland nor do they have any bank accounts or other assets in Poland. Applicant has not taken any formal steps to renounce his Polish citizenship because it is a long, difficult, and formal procedure. He has no intent to renew his Polish passport. His allegiance is to the United States, which he considers his country. He has emotional ties to his family in Poland, but not to the country. He and his wife plan to stay in the United States.⁹

Applicant has not formally renounced his Canadian citizenship. He has no intention of renewing his Canada passport. While working in Canada, Applicant opened, with the assistance of his employer, a retirement account which is the equivalent of a 401K retirement account. At the present time, the account is valued at approximately \$9,500. He plans to close the account, but under Canadian law, he cannot close this account until August 2015, when it matures. Applicant has a retirement account with his current U.S. employer, which is presently valued at \$33,000. He has two other accounts in the United States: an investment account valued at \$100,000 and a money market account valued at \$98,000.¹⁰

⁷Response to SOR; GE 1; Tr. 36, 45.

⁸Response to SOR; GE 1; AE E; Tr. 22-24, 38.

⁹Tr. 39-44.

¹⁰Response to SOR; AE D; AE F; Tr. 24-27.

Administrative Notice

Poland¹¹

Poland is a key ally in Central Europe, and one of the United States' strongest partners on the continent in fostering transatlantic security and prosperity and in promoting democracy in Eastern Europe and around the world. The United States and Poland partner closely on issues such as NATO capabilities, democratization, counterterrorism, nonproliferation, missile defense, human rights, economic growth and innovation, energy security, and regional cooperation in Central and Eastern Europe. Poland contributes soldiers to the NATO International Security Assistance Force (ISAF) in Afghanistan; maintains troops in the Balkans, mainly in the NATO Kosovo Force; and is contributing a full battalion to the NATO Response Force, with soldiers on call for rapid deployment. On November 9, 2012, the United States opened a full-time aviation detachment in Poland to increase interoperability through joint training exercises and regular rotation of U.S. military aircraft.

The strong U.S.-Poland relationship, and shared commitment to freedom, dates back to the American Revolution. The United States established diplomatic relations with the newly formed Polish Republic in 1919. Poland was invaded and occupied by Nazi Germany and the Soviet Union in World War II. A communist regime took power in 1947 following the war. In 2014, Poland celebrated the 25th anniversary of the 1989 end of communist rule, the 15th anniversary of its membership in NATO, and the 10th anniversary of its membership in the European Union (EU).

Poland graduated from USAID assistance in 2000 and capitalized on its successful transition experience to become a provider of assistance to other countries in the region, as well to the Middle East and North Africa. The U.S.-Poland Democracy Dialogue is a unique framework for U.S. partnership with Poland on democracy promotion. Poland is active in the EU. U.S. security assistance enhances Poland's capability to meet its NATO obligations and to deploy and sustain professional forces in multilateral operations, often in support of U.S. deployments in places like Iraq and Afghanistan. U.S. assistance is also helping Poland to prepare for hosting NATO missile defense assets in the 2018 time frame.

Strong economic growth potential, a large domestic market, tariff-free access to the EU, and political stability are prime reasons that U.S. companies do business in Poland. Opportunities for trade and investment have attracted foreign investors into all sectors, and the United States is one of Poland's top investors. Poland is the leading trade partner of the United States in Central Europe. As an EU member, Poland applies the EU's common external tariff to goods from other countries, including the United States. The United States and Poland have signed a double taxation treaty and a bilateral treaty on business and economic relations. The June 2012 U.S.-Poland

¹¹Fact Sheet, Bureau of European and Eurasian Affairs, United States Department of State, March 21, 2014.

Business Summit promoted expansion of bilateral commercial relations, and the United States and Poland have a robust Economic and Commercial Dialogue.

Poland and the United States belong to a number of the same international organizations, including the United Nations, North Atlantic Treaty Organization, Euro-Atlantic Partnership Council, Organization for Security and Cooperation in Europe, Organization for Economic Cooperation and Development, International Monetary Fund, World Bank, and World Trade Organization. Poland also is an observer to the Organization.

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 ¶ 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 the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(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;

(4) residence in a foreign country to meet citizenship requirements;
and

(5) using foreign citizenship to protect financial. or business interests in another country.

At the time he completed his e-QIP, Applicant had passports from Poland and Canada. He holds citizenship in both countries. He is a Polish citizen by birth and he became a Canadian citizen in 1995 after residing in Canada for five years. He has a retirement account in Canada. The Government has established a security concern under AG ¶¶ 10(a)(1), 10(a)(4), and 10(a)(5).

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:

(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;

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

Applicant surrendered his Canadian and Polish passports to the consulates for each country almost immediately after he completed his e-QIP and upon learning that the DOD did not want him to hold or use any passport besides a U.S. passport. Applicant is willing to renounce his citizenship with Poland and Canada, but he has not taken the steps in Poland because the process takes a long time and is difficult. Besides holding his Polish passport, Applicant has not exercised any right connected to his Polish citizenship. His small retirement account in Canada is not a security concern because he will close the account when allowed and because the amount of money in this account is insignificant when compared to the money he has in his U.S. accounts. Applicant has mitigated the Guideline C security concerns under AG ¶¶ 11(b) and 11(e).

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(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; and

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant's wife and 11-year-old son are citizens and residents of the United States. His father-in-law is a dual citizen of the United States and Poland, residing in the United States. His sister-in-law is a citizen of Poland, residing and working in the United States. No security concern is raised by these family members. Applicant's father, brother, and mother-in-law are citizens and residents of Poland. His family relationships are not *per se* a reason to deny Applicant a security clearance, but his contacts with his father and brother must be considered in deciding whether to grant Applicant a clearance.¹² The Government must establish that these family members create a risk of foreign exploitation, inducement, manipulation, pressure, or coercion by terrorists or would create a potential conflict of interest between his obligations to protect sensitive information and his desire to help his father and brother should they be threatened by terrorists.

In determining if such a risk exists, I must look at Applicant's relationships and contacts with his extended family, as well as the activities of the Government of Poland and of terrorist organizations within Poland. The risk that an applicant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. Poland is a key ally in Central Europe, and one of the United States' strongest partners on the continent in fostering transatlantic security and prosperity and in promoting democracy in Eastern Europe and around the world. The United States and Poland partner closely on issues such as NATO capabilities, democratization, counterterrorism, nonproliferation, missile defense, human rights, economic growth and innovation, energy security, and regional cooperation in Central and Eastern Europe. The evidence of record fails to show that the Polish government targets U.S. citizens in the United States or in Poland by exploiting, manipulating, pressuring, or coercing them to obtain protected information. Thus, the concern that Poland will seek classified information is minimal. Terrorist threats are not an issue in Poland.¹³

Under the guideline, the potentially conflicting loyalties must be weighed to determine if an applicant can be expected to resolve any conflict in favor of U.S. interests. In determining if Applicant's contacts in Poland cause a security concern, I considered that Poland and the United States have a close and strong relationship, which includes working together on international security issues and trade. There is no evidence that the Polish government targets U.S. citizens for protected information. Human rights issues are not a concern in Poland. While none of these considerations by themselves dispose of the issue, they are all factors to be considered in determining Applicant's vulnerability to pressure or coercion because of his family in Poland. After a careful review of the facts in this case and the relationship between Poland and the United States, I find that a heightened risk under AG ¶¶ 7(a) and (b) is not established.

¹²ISCR Case No. 09-06457 (App. Bd., May 16, 2011).

¹³*Id.*

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.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant was born and raised in Poland when it was a communist country. He left Poland while a young man. He does not own property or have any financial assets in Poland nor has he returned to his homeland to live. Instead, he chose to live in Canada and eventually in the United States. He has lived in the United States for more than 15 years. He has obeyed the laws of the United States since his arrival. As soon as he learned that his Canadian and Polish passports were a problem, he returned them to the proper authority without hesitation. The surrender of his Polish passport extinguished any paper evidence of his Polish citizenship. His actions reflect his expressed intent to remain in the United States permanently. His closest family members are in the United States. Except for a small amount of money in a Canadian retirement account, all his financial wealth is in the United States. He has taken many steps to make the United States his home. His family contacts in Poland and his small retirement account in Canada are not a security concern because he is not at risk or vulnerable to pressure or coercion and can be trusted to protect our national interests.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his family in Poland and his connections to Canada and Poland under Guidelines C and B.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant

Conclusion

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

MARY E. HENRY
Administrative Judge