



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-02025
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: Stacey Morrison, Personal Representative

February 12, 2015

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**Decision**  
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CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on May 14, 2012. On July 11, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline C for Applicant. The action was taken under 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 adjudicative guidelines (AG), effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (Answer) on July 22, 2014, and requested an Administrative Determination by an administrative judge. Department Counsel issued a File of Relevant Material (FORM) on October 8, 2014. Applicant responded to the FORM (Response) on November 11, 2014. His Exhibit A is a re-submission of Item 7 from the FORM, and his Exhibit B is a submission of the disqualifying and mitigating conditions for Guideline C. Department Counsel had no objection, and the documents are entered into evidence. The case was assigned to me on January 5, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

## Findings of Fact

In his Answer to the SOR, dated July 11, 2014, Applicant admitted the factual allegations in Paragraph 1.b., with explanations. He “denied, in part, admitted in part” the factual allegations in Paragraph 1.a. of the SOR.

Applicant immigrated to the United States from Scotland in 1965. (Response at page 1.) In 1966, he enlisted in the U.S. Air Force and served honorably for 20 years. (*Id.*) He became a naturalized U.S. citizen in 1986. (Response at page 1.)

### Guideline C - Foreign Preference

1.a. Applicant was granted a security clearance in 2002. (Item 3 at page 1.) In 2009, he renewed his expired British passport. (Response at page 2.) He is a dual national of the United States and of the United Kingdom.<sup>1</sup> (*Id.*)

1.b. Applicant’s British passport expires in 2019. (Response, Exhibit A at page 11.) In his Answer to the SOR, Applicant avers that he would only use his British passport “should an emergency arise while . . . [his] daughter [who is also his Personal Representative] is in Scotland . . . [as he wants] to be able to get to her as quickly and efficiently as possible.” (Answer at page 2.) In his Response, through his Personal Representative, he now avers he “has no intentions(*sic*) of using the passport.” (Response at page 2.)

## Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the 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 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 over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG Paragraph 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. Paragraph 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

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<sup>1</sup>Department Counsel has not asked the undersigned to take administrative notice of any facts regarding the United Kingdom.

and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph 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 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 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.

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**

Paragraph 9 of the adjudicative guidelines sets out the security concern relating to Foreign Preference:

When 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.

Subparagraph 10(a)(1) is applicable: “*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.*” Here, the Applicant, is a dual national with the United Kingdom, and possesses a current British passport. He intends to use his British passport for travel to the United Kingdom only in case of an emergency, involving his daughter. I find no countervailing mitigating condition that is applicable here. Subparagraph 11(b) notes that where “*the individual has expressed a willingness to renounce dual citizenship,*” this is mitigating. However, Applicant expressed no such willingness. Subparagraph 11(e) notes that where “*the passport has been destroyed, surrendered to a cognizant security authority, or otherwise invalidated,*” this is also mitigating. Applicant has expressed no such willingness to destroy, surrender, or invalidate his British 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 the Applicant's conduct and all the circumstances. 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 Administrative Judge should also 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."

I have considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant has not mitigated the security concerns arising from his Foreign Preference. However, in light of his 20 years of honorable service in the U.S. Air Force, should he express a willingness to renounce his dual nationality with the United Kingdom; and destroy, surrender, or invalidate his British passport, he should not be dissuaded from applying for a security clearance in the future.

## **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
Subparagraph 1.b:	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.

Richard A. Cefola  
Administrative Judge