



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



In the matter of:	)	
	)	
1	)	ISCR <sup>2</sup> Case No. 14-02646
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Pamela Benson, Esq., Department Counsel  
For Applicant: *Pro se*

06/30/2015

**Decision**

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny her eligibility for a security clearance to work in the defense industry. When Applicant was a Bulgarian citizen she obtained a Bulgarian passport, which is now expired. She has mitigated the foreign preference security concerns. Clearance is granted.

**History of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>3</sup> on September 24, 2014, the DoD issued a Statement of Reasons (SOR) detailing security concerns. DoD

<sup>1</sup> Applicant’s name in the caption for the two SORs and the File of Relevant Material (FORM) are slightly different and a variation of her name.

<sup>2</sup> This case has been listed as both an ISCR case and an ADP case. There are two SOR, one undated listing the case as an ADP case and the other dated September 24, 2014, which lists the case as an ISCR case. The heading for both SORs indicate this is an applicant for Public Trust Position. However, the FORM lists this case as an Applicant for Security Clearance. The case will be decided as an ISCR case due to Applicant’s job position.

adjudicators could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On October 24, 2014, Applicant answered the SOR and elected to have the matter decided without a hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel submitted the Government's case in a File of Relevant Material (FORM), dated December 19, 2014. The FORM contained six attachments (Items). No information was received from Applicant in response to the FORM. On April 16, 2015, I was assigned the case.

### **Findings of Fact**

In Applicant's Answer to the SOR, she denies the allegations. After a thorough review of the pleadings and exhibits I make the following additional findings of fact:

Applicant is a 34-year-old software development team lead<sup>4</sup> who has worked for a defense contractor since July 2005, and seeks to obtain a security clearance. Applicant was born in Bulgaria. In July 1998, she entered the United States and, in June 2011, she became a U.S. citizen. (Item 4) In June 2009, prior to becoming a U.S. citizen, she renewed her Bulgarian passport. That passport expired on August 20, 2014.

There is an August 2013 letter stating that in July 2013 Applicant was unwilling to allow a company employee to destroy her Bulgarian Passport. (Item 6) In her answer to the SOR, Applicant stated the passport had been issued by Bulgaria and was the property of Bulgaria. (Item 3) She did not believe it was appropriate for an employee at her work to destroy or invalidate the Bulgarian passport. She chose instead to invalidate the passport by allowing it to expire. (Item 3) Since becoming a U.S. citizen, she has exercised only her U.S. citizenship. (Item 3) She denies any allegiance to a foreign country over the United States. (Item 3)

### **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 must be considered in evaluating an applicant's eligibility for access to classified information.

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<sup>3</sup> 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 (AG) effective within the DoD on September 1, 2006.

<sup>4</sup> Applicant's April 2013 Electronic Questionnaires for Investigation Processing (e-QIP) indicates she was working for one company in the position as a software development team lead. However, there is an August 2013 letter from a federal health service provider (Item 6), which does not list a position. This indicates she may have changed employment. The record is unclear as to by whom she is employed.

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 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, 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 to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **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."

None of the disqualifying conditions are met. AG ¶ 10(a)(1) describes a condition that could raise a security concern and may be disqualifying in Applicant's case, "(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." This disqualifying condition does not apply. Applicant has not renewed her Bulgarian passport since becoming a U.S. citizen. Her Bulgarian passport is no longer valid. It expired in August 2014.

AG ¶ 11 provides conditions that could mitigate security concerns:

(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; and

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

Applicant was born in Bulgaria and came to the United States in July 1998. In June 2011, she became a U.S. citizen. Prior to becoming a U.S. citizen, she renewed her Bulgarian passport. That passport expired in August 20, 2014. When asked by an employee where she worked to surrender her passport so it could be destroyed, Applicant refused. She believed it was inappropriate for a company employee to destroy Bulgarian property. Applicant chose to invalidate the passport by allowing it to expire.

Applicant has renounced her Bulgarian citizenship when she became a U.S. citizenship. She chooses only to exercise her U.S. citizenship. AG ¶ 11(b) applies. All rights, privileges, obligations of foreign citizenship occurred before she became a U.S. citizen. She renewed her Bulgarian passport before becoming a U.S. citizen. AG ¶ 11(c) applies. The passport has expired, therefore it is "otherwise invalidated." AG ¶ 11(e) applies.

### **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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant was born in Bulgaria and had a Bulgarian passport. She did not want a company employee to destroy the Bulgarian passport, but chose to allow it to become invalid by allowing it to expire.

Overall, the record evidence leaves me without doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the foreign preference security concerns.

### **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 Preference: FOR APPLICANT

Subparagraph 1.a: 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 a security clearance. Eligibility for access to classified information is granted.

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CLAUDE R. HEINY II  
Administrative Judge