



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



In the matter of:)
)
) ISCR Case No. 14-03918
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: Jacob T. Ranish, Esq.

11/16/2015

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file, pleadings, and testimony, I conclude that Applicant provided sufficient information to mitigate security concerns under Guideline C for foreign preference. Eligibility for access to classified information is granted.

Statement of the Case

On March 14, 2013, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP) to obtain a security clearance for his employment with a defense contractor. On May 1, 2013, Applicant was interviewed by a security investigator for the Office of Personnel Management (OPM). After reviewing the results of the background investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On November 10, 2014, the DOD issued to Applicant a Statement of Reasons (SOR) detailing security concerns for foreign preference under Guideline C. 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 in the DOD on September 1, 2006.

Applicant answered the SOR on December 4, 2014. He denied the allegations, that as a dual citizen of Italy and the United States, he exercised his Italian citizenship by accepting Italian educational and medical benefits, residing in Italy to meet Italian citizenship requirements, and maintaining a bank account in Italy. He admitted that he voted in an Italian election in 2010. Department Counsel was ready to proceed on September 7, 2015, and the case was assigned to me on September 17, 2015. The Defense Office of Hearings and Appeals (DOHA) sent Applicant a Notice of Hearing on September 30, 2015, for a hearing scheduled for October 15, 2015. I convened the hearing as scheduled. The Government introduced three exhibits I marked and admitted into the record without objection as Government Exhibits (GX) 1 through 3. Applicant and one witness testified. Applicant introduced seven exhibits I marked and admitted into the record without objection as Applicant Exhibits (AX) A through G. DOHA received the transcript of the hearing on October 23, 2015.

Procedural Issues

Applicant requested that I take administrative notice of certain facts concerning Italy. He provided U.S. State Department documents concerning Italy (AX A and AX B). I will take administrative notice of facts concerning Italy as noted in my Findings of Fact.

Findings of Fact

After thoroughly reviewing the case file, the testimony, and the exhibits, I make the following findings of fact.

Applicant is 28 years old. He is a high school graduate with some college credits. He has been employed by a United States electronics company since March 2012. He worked for the company as a technician for approximately three years in a European country. He is now employed as a field service representative by the company in the United States since October 2014. (Tr. 18-20, 42-44; GX 1, e-QIP, dated March 14, 2013)

Applicant's father, a United States citizen, was a member of the U.S. military assigned in Italy when he met and married Applicant's mother, an Italian citizen. Applicant, the oldest of four brothers, was born in Italy. Applicant's father was later assigned to a base in the United States and Applicant and his parents moved to the United States. Applicant's mother received a permanent resident green card, and worked for a U.S. company while the family was in the United States. After approximately a year, Applicant's father was again assigned by the U.S. military to Italy. After a number of years on this assignment, Applicant's father accepted a job with a U.S. company contracted to do work for the U.S. military on a U.S. military base in Italy. Applicant's father still works for the DOD contractor in Italy. His mother is employed as a nurse for an Italian hospital. (Tr. 20-23)

Applicant lived most of the first 25 years of his life in Italy. He and his three brothers were born and raised in Italy. Applicant and his brothers are considered dual

citizens of Italy and the United States because of his birth in Italy to an Italian mother and a U.S. citizen service member serving in Italy. He also has a stepbrother who was born in the United States and lives in the United States. Applicant's father registered Applicant's birth with the U.S. officials in Italy as required and he has a U.S. birth certificate. He has only had a U.S. passport and never had an Italian passport. Applicant and his family always had access to the U.S. military bases in Italy. He would go to U.S. military bases in Italy a few days a week. He celebrated U.S. holidays on the bases, and particularly liked celebrating the Fourth of July on the U.S. bases. He enjoyed celebrating with his family and friends the U.S. holidays of Thanksgiving, Christmas, Labor Day, and Memorial Day. He was a young boy when the United States invaded Iraq and he was excited and proud to see all of the deployment activities and movements on the U.S. bases. Applicant watched movies made in the United States and followed U.S. sports. (Tr. 23-26, 34-38; AX F, U.S. Facilities Access Pass, dated August 14, 2008)

Applicant has one brother who is a staff sergeant on active duty in the U.S. Air Force stationed at an air base in the United States. He has two brothers who live with their parents in Italy. One of these brothers is a college student studying computers and the other brother is still in high school. His brother in college plans to move to the United States for employment when he completes college. Applicant believes that when his brothers come to live in the United States, his parents will follow their sons.

Applicant has an Italian identification card, which he turned over to his facility security officer (FSO). He has no friends or relatives that are part of the Italian government. He has no allegiance to the Italian government, and he never agreed with their politics. Applicant is willing to renounce his Italian citizenship. He has not done it yet since he has not had the opportunity. Italian citizenship cannot be renounced while living in Italy. An application to renounce Italian citizenship can only be submitted by a person living outside Italy. Applicant only recently moved from Italy to the United States. He was told by his company's security officials that renouncing his Italian citizenship now may highlight that he is being considered for a U.S. security clearance. (Tr. 30-34; AX E, Letter, dated September 24, 2015)

Applicant and his brothers were educated through high school in the Italian education system. The Italian education system is similar to the U.S. system. It is free public education paid by taxes and all Italian children are eligible for the education. As dual citizens of Italy and the United States, Applicant and his brothers were eligible to attend the Italian schools. Because of their education in the Italian school system, Applicant and his brothers are fluent and literate in both English and Italian. (Tr. 35-37, 40-41)

Applicant has received medical treatment and benefits from the Italian medical system as well as from the U.S. military medical system on the U.S. bases. The Italian medical system is paid through taxes and is available to all Italian citizens. As the dependent of a U.S. service member and contractor serving overseas, Applicant was

eligible for treatment in the U.S. military medical system. He used the medical system that was most available to him. (Tr. 32-34, 38-39, 42-43)

Applicant voted in the Italian parliamentary elections in 2010. He was 23 years old, and he felt a civic duty as an Italian citizen to participate in the elections. He felt comfortable with his knowledge of Italian politics to cast a vote. He cannot vote in Italian elections again since he relinquished his Italian identity card to his FSO. (Tr. 38-40)

Applicant at one time had a bank account in Italy. He no longer has an Italian bank account and all of his funds are in U.S. banks. (Tr. 32; AX C, Bank Statement, dated October 7, 2015; AX D, Bank Statement, dated October 7, 2015)

Applicant's brother enlisted in the Air Force in 2009 from a U.S. air base in Italy. He plans to reenlist in 2016. He has a security clearance at the Top Secret/Sensitive Compartmented Information (TS/SCI) level. Applicant is two years his senior. He and Applicant had the same upbringing in Italy. They watched U.S. television, followed U.S. sports, and celebrated U.S. holidays. They attended Italian public schools for their education, and used Italian and U.S. medical facilities. His entire family is proud to be U.S. citizens and they are loyal to the United States. He believes his brother is a person of high character, good reliability, and sound judgment.

Applicant presented seven letters of recommendation from his supervisors and fellow employees. They all attest to Applicant's professionalism, competence, good work performance, and good behavior. They note he is hard working, and willing to assist any member of the staff. They state he is diligent, reliable, mature, and honest. They recommend that he be granted eligibility for access to classified information because of his integrity and reliability. (AX G, Letters, Various dates)

Italy is one of the closest allies of the United States on the European continent. The U.S. enjoys warm and friendly relations with Italy, and Italy is a steadfast and active transatlantic partner. The U.S. and Italy foster democratic ideals and international cooperation, especially in the areas of strife and civil conflict. The U.S. partnership with Italy is one of the strongest since Italy is a leader in peacekeeping and military operations around the world. Italy is host to over 30,000 U.S. military and civilian personnel on some of the largest and most important U.S. military bases in Europe. Italy also works closely with the United States to combat drug trafficking, human trafficking, and terrorism. Italy has been an early and active partner in the fights against Isil and Ebola. Italy and the United States belong to and closely cooperate in the same international organizations. Italy is a global leader in nuclear nonproliferation and works closely with the United States to keep nuclear material out of the hands of terrorists. President Obama recently said:

"The United States would not be what we are or who we are without the contributions of generations of Italian American. Italy, of course, is one of our closest and strongest allies. And any time Italians and Americans get

together it's also a chance to celebrate the deep bonds of history and friendship and family."

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 must be considered 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, 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 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 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.

Analysis

Guideline C, 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 may be prone to provide information or make decisions that are harmful to the interests of the United States. (AG ¶ 9) The principal goal of the foreign preference assessment is to determine the risk, based on foreign associations, that information may be compromised if access to sensitive information is granted. It is not a measure of Applicant's loyalty to the United States.

Applicant was born in Italy and is a dual citizen of Italy and the United States. He has only a United States passport but he does hold an Italian identification card. He was educated in Italian schools and received Italian medical benefits. At one time he had an Italian bank account and voted in an Italian election. These facts raise the following foreign preference disqualifying condition under AG ¶ 10:

(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; (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country; (4) residence in a foreign country to meet citizen requirements; and (7) voting in a foreign election.

I considered the following foreign preference mitigating conditions under AG ¶ 11:

(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; and

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

These mitigating conditions apply. Applicant is considered a dual citizen of Italy and the United States because he was born in Italy to a U.S. serviceman father stationed in Italy and an Italian mother. He was raised in a U.S. environment on U.S. military bases in Italy and followed U.S. customs and lifestyle. Applicant expressed his willingness to renounce Italian citizenship, but he has not had the opportunity under Italian law to do so. He received free Italian educational benefits available to all Italian

students when he was a minor because he attended Italian schools through high school. He was eligible for and took advantage of medical benefits from both the United States and Italy. The Italian medical benefits are free and available to all Italian citizens. Applicant's birth certificate was issued by U.S. authorities and he never had an Italian passport. He always had a U.S. passport. He had an Italian identification card, which he turned over to his FSO. He no longer has an Italian bank account and all of his funds are in U.S. banks. He voted once in an Italian election when he was in his early 20s, but he is no longer eligible to vote in Italy because he does not have an Italian identification card in his possession. Applicant works for a U.S. company, and he now resides in the United States. He does not plan to reside in Italy. Applicant presented sufficient information to establish that he has a stronger preference for the United States than for Italy. Applicant mitigated security concerns based on foreign preference.

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. 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 access to sensitive information 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. The whole-person concept requires consideration of all available information about Applicant to reach a determination concerning Applicant's eligibility for access to classified information.

Applicant is a dual United States and Italian citizen by his birth in Italy to a U.S. service member father and an Italian mother. He lived a U.S. lifestyle on U.S. military bases in Italy even though he attended Italian schools. He never held an Italian passport but only a U.S. passport. He always worked for a U.S. company and he resides now in the United States. His brother is a U.S. service member, raised like Applicant on U.S. military bases in Italy, who has been granted eligibility for access to classified information. It is noted that Italy is one of the United States strongest and closest allies. Applicant established a deep and longstanding preference for the United

States. These facts leave me without questions and doubts about Applicant's eligibility and suitability for access to classified information. For all these reasons, I conclude Applicant has mitigated any foreign preference for Italy. Eligibility for access to classified information is granted.

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

THOMAS M. CREAN
Administrative Judge