



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



In the matter of:

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) ISCR Case No. 14-03983
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Applicant for Security Clearance

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

03/24/2015

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the security concern generated by her possession of a German passport, German national identity card, and acceptance of a stipend from a German, non-profit foundation. Her relatives, friends, and professional acquaintances living in Germany do not generate a security risk. Clearance is granted.

Statement of the Case

On November 3, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines B, Foreign Influence, and C, Foreign Preference. 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 DoD for SORs issued as of September 1, 2006.

Applicant answered the SOR on November 20, 2014, admitting all of the allegations except subparagraphs 1.a and 2.d, and requesting a hearing. On January 29, 2015, the case was assigned to me. On February 11, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing scheduling the case for March 16, 2015. I held the hearing as scheduled. During the hearing, I received one Government exhibit (GE 1) and six Applicant exhibits (AE A through AE F). Also, I considered the testimony of Applicant and two witnesses. DOHA received the hearing transcript (Tr.) on March 24, 2015. At the close of the hearing, I left the record open, at Applicant's request, for her to submit additional exhibits. Within the time allotted, she submitted four additional exhibits that I incorporated into the record as AE G through AE J.

Findings of Fact

Applicant is a 34-year-old single woman. She was born in the United States and raised in Germany, immigrating there when she was a toddler. Applicant has a bachelor's degree in psychology, and both a master's degree and a doctorate in neuroscience. (Tr. 21) She was educated entirely at German universities.

Applicant has an avid interest in international development. She is particularly interested in the issue of educational gender inequity in developing countries. (Tr. 44) While earning her doctorate, she worked with a non-government organization whose goal was to apply neuroscience to the economic development of impoverished countries. (AE E)

In 2009, Applicant was accepted into a post-doctoral fellowship at a prestigious U.S. university. The program fellows researched the issue of gender-based violence as an impediment to educational advancement in impoverished countries. (Tr. 44) While working through the fellowship, Applicant supported herself financially through a stipend received from a German non-profit foundation whose goal is to foster international academic exchange between scientists. (Tr. 25)

In 2011, when the fellowship ended, Applicant decided she wanted to stay in the United States. (Tr. 35) She successfully pursued another two-year fellowship. She received a stipend from the agency that admitted her into the fellowship. (Tr. 35-36) In total, Applicant received approximately \$93,000 in financial aid from both stipends.

In 2013, Applicant was hired by her current employer, a non-profit organization that sponsors science and technology fellowships, placing scientists from all over the world in multiple federal government agencies. The program is highly competitive. (Tr. 51; AE E)

Applicant has been working for a U.S. government agency through her employer for the past two years. In addition to education issues, she focuses on sustainable development. (AE E) Her main role is as "an advisor on research and analytic activities of the Division" (AE E)

Applicant is a dual citizen of the United States and Germany. As of the date of the hearing, she possessed a German passport and a German national identification card. The German passport expired in 2010. (AE G) She used it for three trips to Germany between 2009 and 2012.¹ (Answer at 2) She used her U.S. passport on her last visit in 2014. (Tr. 39)

Applicant's German identity card was valid as of the hearing date. She used it to facilitate travel to European Union countries. (Answer at 2) During Applicant's interview with a security investigator, she expressed a willingness to surrender both her German passport and her national identification card. On March 18, 2015, Applicant surrendered both documents to her employer's facility security officer (FSO). (AE G)

While living in Germany, Applicant voted in several elections. In 2009, she voted in a German election after moving to the United States. (Tr. 37) She voted out of a sense of civic responsibility and an interest in politics. She also has been voting in U.S. elections since 2004.

Over the years, Applicant's interest in German politics has waned. (Tr. 38) She is no longer knowledgeable about German political affairs and has only voted in U.S. elections during the past five years. (Tr. 37)

As of the date of the SOR, Applicant had a German-based bank account with a balance of \$1,500 USD. (Tr. 29) She kept it after coming to the United States to study, and used it on return trips to Germany. Also, Applicant had a credit card issued by a British bank with a \$5,000 USD balance. (Tr. 29) Applicant has withdrawn the money from the German bank, closed the account, and paid nearly half of the credit card. (AE H, I) She will close the credit card account as soon as she satisfies the credit card balance. (Answer at 3)

Applicant's parents are citizens and residents of Germany. Her father is a retired physics professor and her mother is a biology professor. (Tr. 43) Applicant talks with them twice per month. She has returned to Germany to visit them four times since moving to the United States. (Tr. 39) Her parents visit her in the United States approximately once per year. (Tr. 39)

Applicant has multiple other acquaintances living in Germany, including aunts, uncles, friends, and professional associates. (Answer at 3) With the exception of an aunt whom she met on a flight layover while visiting Germany in 2014, her contact is limited to e-mails and Facebook posts. (Answer at 3; AE B)

¹Although the German passport had expired by 2011, a German customs official told her upon entering the country that she could still use it. (Answer at 2)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. 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."

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.

Analysis

Guideline C, Foreign Preference

Under this guideline, 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" (AG ¶ 9). Here, Applicant's possession and use of a German passport and German identity card trigger the application of AG ¶ 10(a)(1), "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."

Applicant has also voted in German elections and received a stipend from a German foundation to attend a post-doctoral training program. AG ¶¶ 10(a)(30, "accepting educational . . . benefits from another country," and 10(a)(7), "voting in a foreign election," apply.

Applicant's German passport has been expired since 2010. In March 2015, she relinquished her German passport and German identity card. The stipend that Applicant received was to facilitate her attendance at an American university. She has not received any money from the German foundation in nearly four years. In 2011, she decided to

relocate to the United States permanently, and took a job with a contractor that supports a U.S. federal government agency. Gainfully employed for four years, it is unlikely that Applicant will need a stipend for future educational pursuits. Consequently, although no mitigating condition explicitly applies, the passage of time since she received the stipend and the unlikelihood that she would ever apply for another stipend mitigate the security concern.

Applicant's surrender of her passport and national identification card to her company's FSO triggers the application of AG ¶ 10(e), "the passport has been destroyed or surrendered to the cognizant authority." As for Applicant voting in German elections, this is an unusual case, in that Applicant is a U.S. citizen by birth who spent her entire life in Germany before relocating to the United States to pursue her post-doctoral studies. Under these circumstances, I draw no negative security inferences from Applicant having voted in German elections despite being a U.S. citizen. Although she voted in a German election after having moved to the United States, Applicant decided to make the United States her permanent home. She is disengaged from German politics, and no longer votes in German elections. Applicant has mitigated the foreign preference security concerns.

Guideline B, Foreign Influence

Under this guideline, "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 the U.S. interests, or is vulnerable to pressure or coercion by any foreign interest" (AG ¶ 6). Moreover, "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" (*Id.*).

Applicant's family, friends, and professional associates who are German citizens and relatives raise the issue of whether AG ¶ 7(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. According to the Appeal Board, "a current and accurate assessment of the 'geopolitical situation' and the security/intelligence profile of the country vis a vis the U.S." is crucial in the Guideline B analysis. (ADP Case No. 06-14978 (App. Bd. Oct 11, 2007) at 4) Here, there is no record evidence of the geopolitical situation and security/intelligence profile of Germany vis a vis the United States. Under these circumstances, I conclude that Applicant's family, friends, and professional associates do not trigger a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. AG ¶ 7(a) does not apply.

Applicant's German bank accounts raise the issue of whether AG ¶ 7(e), "a substantial business, financial, or property interest in a foreign country, or in any foreign-

owned or foreign-operated business which could subject the individual to heightened risk of foreign influence or exploitation,” applies. Applicant closed her bank account and is satisfying the credit card account. The remaining amount owed is nominal. AG ¶ 7(a) does not apply.

Whole-Person Concept

Under the whole-person concept, 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.

I considered the whole-person concept in my evaluation of the relevant mitigating and disqualifying conditions, particularly with respect to the length of time that has elapsed since Applicant received the educational benefits from the German foundation and the length of time that she has been living in the United States since making the decision to return, as an adult.

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
Subparagraphs 1.a-1.d:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a - 2.d:	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.

MARC E. CURRY
Administrative Judge