



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)

ISCR Case No. 14-05457

Appearances

For Government: Jeff A. Nagel, Department Counsel

For Applicant: *Pro se*

April 10, 2015

Decision

LOKEY-ANDERSON, Darlene, Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on February 11, 2014. (Government Exhibit 1.) On December 5, 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 for SORs after September 1, 2006.

The Applicant responded to the SOR on December 18, 2014, and he requested a hearing before a Defense Office of Hearings and Appeals (DOHA) Administrative Judge. This case was assigned to this Administrative Judge on February 18, 2015. A notice of hearing was issued on February 19, 2015, scheduling the hearing for March 18, 2015. The Government presented one exhibit, referred to as Government Exhibit 1, that was admitted without objection. The Applicant presented two exhibits, referred to as Applicant's Exhibits A and B that were admitted without objection. The Applicant also testified on his own behalf. The official transcript (Tr.) was received on March 27,

2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 53 years old, and married with two children. He has a Ph.D. in aerospace engineering. He is employed as an Aerospace Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

Applicant admitted each of the allegations set forth in the SOR under this guideline. He was born in Germany in 1962. He grew up there until the age of sixteen. In 1978, he came to the United States as a foreign exchange student on a visa. He then returned to Spain, where his parents lived, for two years. In 1980, he graduated from high school in Spain. In the summer of 1981, he returned to the United States to start college. He stated that he never had a rigid plan to stay in the United States or to go back to Germany. He allowed destiny to lead the way. He obtained his college degrees here, and met his wife, a native-born American citizen. He worked as a college professor for seven years until he got tenure. He then decided to shift his focus to industry before he became too rooted in academia. Applicant stated that he made a number of trips to Germany with his family in the 1990's, mainly to develop a strong bond between the two families, and to give his wife insight into his German roots. During the summer of 1996, Applicant returned to Germany and worked for a company there for three months. He returned to the United States and worked at a software company.

In 2009, Applicant was hired by his current employer. This is his first time applying for a security clearance. Applicant became a naturalized citizen in November 2013. (Tr. p. 39.) He stated that he had no strong motivation to get his United States citizenship. (Tr. p. 39.) Applicant currently leads a team of engineers.

Although his immediate family resides in the United States, he has strong loyalties to Germany. Hypothetically, when asked how he would divide his loyalties and affinities toward the two countries, Applicant stated that it would be a 60/40 split. (Tr. p. 49.) The United States at 60% and Germany at 40%. He admits that he is a dual citizen of both Germany and the United States. He currently possesses a German passport that does not expire until June 2012. He has used his German passport to travel abroad on multiple occasions. However, since becoming a United States citizen, he has not traveled outside of the United States.

Applicant plans on going back to Germany sometime in the future, and he cannot rule out ever moving back to Germany permanently. He states that it is hard to know what the future may bring. (Tr. p. 44.) Applicant has no property or financial assets in

Germany. Likewise, he does not own a house in the United States. He believes his net worth in the United States is approximately \$200,000 to \$300,000. (Tr. p. 46.)

Applicant testified that since he does not have a security clearance as of yet, if he travels overseas, he will use his German passport to travel into Germany, and his United States passport to travel back into the United States, for convenience purposes to avoid the lines. (Tr. p. 47.)

Applicant stated that while living in the United States, he continued to vote in German elections as long as he was permitted under German law. He eventually lost his right to vote in German elections, and that troubled him. If he could still legally vote in Germany, he would certainly continue to do so. (Tr. p. 42.) He explained that that if you have not lived for fifteen years consecutively in Germany, at least nine months out of the year, you are prohibited from voting. (Tr. p. 40.) When Applicant reached the point where he was no longer permitted to vote in Germany, and his employer was encouraging him to obtain his citizenship, he became more interested in pursuing it. (Tr. p. 41.)

Applicant's children are both dual citizens of the United States and Germany. They have both American passports and German passports. He wants them to obtain their German passport to allow them as many opportunities as possible. (Tr. p. 38.) Applicant finds it important to send his son to Germany as often as he can. His son has spent three summers in Germany so far. Applicant wants his son to know the German language, its culture, his relatives, and to stay in touch with the family to better understand the Applicant.

Applicant testified that he is not as close to his family in Germany as he would like. He talks with his parents on skype every month or two and his brother about two to three times a year. He has a sister that resides in Vanuatu, and it is difficult to stay in touch. He also has a friend from school in Germany.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern, which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Preference

9. *The Concern.* When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or he may be prone to provide information or make decisions that are harmful to the interests of the United States.

Conditions that could raise a security concern:

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.

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavioral changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress, and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence, which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline C (foreign preference) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's situation and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

The evidence shows that the Applicant is a dual citizen with split loyalties to the United States and Germany. He believes that since he was raised in Germany until the age of sixteen, he carries the German culture and heritage with him that partially steers his fundamental values and attitudes even now. Although he came to the United States some years ago, he has continued to return to Germany on a fairly regular basis and has made it a big part of his family's commitment. Admittedly, here in the United States, he obtained his degrees, met his wife, had two children, and made it his home.

He also established his work. However, despite the fact that he appears to be a man of integrity, good character, fairness and decency, he conveys an exceptionally strong loyalty to Germany. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. There are also indicators that show a strong foreign preference. For example, while living in the United States, Applicant regularly voted in German elections. He plans to travel on the German passport in the future if he can, for convenience purposes. He also plans to return to Germany sometime in the future, possibly to retire. In my opinion, Applicant would find it very difficult if he were ever confronted with a situation where he had to choose between protecting the interests of the United States and the interests of Germany. And more importantly, it is not clear where his loyalties would lie.

Under the particular facts of this case, the possibility of foreign influence does exist, and could create the potential for conduct resulting in the compromise of classified information. Based upon the facts set forth above, I find that the Applicant is vulnerable to foreign preference.

Under Foreign Preference, Disqualifying Condition 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* applies. None of the mitigating conditions are applicable. Applicant currently possesses a valid German passport that he plans to keep and use for his convenience. He has strong loyalties to Germany, almost as strong as his loyalties to the United States. Under these circumstances, I find against the Applicant under Guideline C (Foreign Preference).

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline C of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guideline C.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.
Subpara. 1.a.: Against the Applicant
Subpara. 2.b.: Against the Applicant
Subpara. 2.c.: Against the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge