

KEYWORD: Foreign Preference

DIGEST: Applicant is a 33-year-old United States citizen who has lived her entire life in the U.S. Her mother and father are naturalized U.S. citizens who also reside in the U.S. She is a dual citizen of the UK and the U.S. by virtue of her parents' citizenship. She maintains a valid UK passport which expires in 2008. She has no intention of surrendering it. She has not mitigated the security concerns under Guideline C. Clearance is denied.

CASE NO: 05-05320.h1

DATE:05/08/2006

DATE: May 8 , 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-05320

DECISION OF ADMINISTRATIVE JUDGE

NOREEN A. LYNCH

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 33-year-old United States citizen who has lived her entire life in the U.S. Her mother and father are naturalized U.S. citizens who also reside in the U.S. She is a dual citizen of the UK and the U.S. by virtue of her parents' citizenship. She maintains a valid UK passport which expires in 2008. She has no intention of surrendering it. She has not mitigated the security concerns under Guideline C. Clearance is denied.

STATEMENT OF THE CASE

On December 7, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Review Program* dated January 2, 1992, as amended and modified (Directive), issued a Statement of Reasons (SOR) to Applicant. The SOR alleges security concerns under Guideline C (Foreign Preference). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated December 30, 2005, Applicant responded to the SOR and elected to have her case decided on the written record, in lieu of a hearing. Department Counsel submitted the government's File of Relevant Materials (FORM) dated February 28, 2006.⁽¹⁾ Applicant received the FORM on arch 6, 2006, and was given an opportunity to file objections and submit materials in refutation, extenuation, or mitigation. Applicant did not submit a response to the FORM. The case was assigned to me on April 28, 2006.

FINDINGS OF FACT

Applicant admitted all the factual allegations of the SOR, but denied the underlying security concerns under the guidelines.⁽²⁾ Those admissions are incorporated as findings of fact. After a complete and thorough review of the evidence in the record, I make the following findings of fact:

Applicant is 33 years old. She was born and raised in the United States.⁽³⁾ Her family is from England. Her parents are naturalized U.S. citizens, living in the U.S. since 1945. Her grandparents are deceased. She is married to a dual citizen of the US and UK. She seeks to obtain a security clearance.⁽⁴⁾

The rest of Applicant's family lives in England. None of them are employed by the government, military, police or any security services.⁽⁵⁾ She remains in close contact with her family and friends by telephone, and via email. She travels to England to maintain her familial ties. She visited England in 1996, 1997, 1999, 2001, 2002, and 2003.⁽⁶⁾

When traveling, Applicant uses her U.S. passport. She maintains a valid passport issued by the United Kingdom that expires in November 2008. She does not intend to surrender her passport.⁽⁷⁾ She keeps the UK passport to connect with her heritage. After serious consideration and advisement of the implications for her security clearance, Applicant does not intend to surrender her UK passport.⁽⁸⁾

Applicant wants to maintain her British citizenship. She has never voted in their elections, nor does she own property in the UK.⁽⁹⁾

Relations between the U.S. and United Kingdom are active and cordial. England and the United States share common values and have parallel policies on most political, economic, and security issues. The United Kingdom is the closest ally of the United States.

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines For Determining Eligibility For Access To Classified Information*, sets forth the criteria which must be applied when determining security clearance eligibility. The adjudicative guidelines specifically distinguish between those factors that are considered in denying or revoking an employee's request for access to classified information (Disqualifying Conditions), and those factors that are considered in granting an employee's request for access to classified information (Mitigating Conditions). By acknowledging that individual circumstances of each case are always different, the guidelines provide substantive standards to assist an administrative judge in reaching fair and impartial common sense decisions.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at meritorious decisions. Section E2.2 of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the conduct of the applicant and the circumstances in any case, the factors an administrative judge should consider pursuant to the concept are: (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 voluntariness of the participation; (6) the presence or absence of rehabilitation and other pertinent 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.

Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interest of national security. Granting an applicant's clearance for access to classified information is predicated on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not just the *actual* risk of disclosure of such information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information in any aspect of his or her life. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information.⁽¹⁰⁾ The decision to deny a security clearance request to an individual is not necessarily a determination of the loyalty of the applicant.⁽¹¹⁾ It is merely an indication the applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

In accordance with the Directive, the government bears the initial burden of proof in the adjudicative process to establish conditions which indicate it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information.⁽¹²⁾ When the government meets this burden, a heavy burden of persuasion then falls on the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the position of the government, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.⁽¹³⁾

Based upon consideration of all the evidence submitted in this matter, the following adjudicative guideline is appropriate for evaluation with regard to the facts of this case:

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 or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

The Guideline C disqualifying and mitigating conditions are set forth and discussed in the Conclusions section below.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal standards, and conditions, including those described briefly above, I conclude the following with respect to the allegation set forth in the SOR:

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.

Foreign Preference Disqualifying Condition (FP DC) E2.A3.1.2.2. (*Possession and/or use of a foreign passport*) applies in this case. Applicant's British passport expires in 2008. She is firm in her intent not to surrender it. However, she uses her U.S. passport when traveling abroad.

FP DC E2.A3.1.2.1. (*The exercise of dual citizenship*) applies in this case. Applicant clearly stated that she does not wish to renounce her UK citizenship. Thus, even Applicant's limited exercise of dual citizenship is sufficient under the facts to invoke this FP DC.

Foreign Preference Mitigating Condition (FP MC) E2.A3.1.3.1. (*Dual citizenship is based solely on parents' citizenship or birth in a foreign country*) applies in this case. Applicant was born in US.

FP MC E2.A3.1.3.4. (*Individual has expressed a willingness to renounce dual citizenship*)

does not apply. Applicant was clear in her answers to the SOR and additional statement that while she considers herself loyal to the U.S. and does not maintain a preference for a foreign country, she is not willing to renounce her dual citizenship as a condition for security clearance access.

On August 16, 2000, the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence ("Money Memorandum") issued a memorandum to clarify the application of Guideline C., Foreign Preference, to cases involving possession and/or use of a foreign passport. In pertinent part, the Money Memorandum "requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States."⁽¹⁴⁾

The issuance of Applicant's passport was due to her dual-citizenship and the use of such passport is not approved by any agency of the United States government. While Applicant states she has not used her foreign passport and does not intend to, possession, regardless of use, of a valid foreign passport bars Applicant from security clearance eligibility under the Money Memorandum. Applicant has been a dual citizen of England and the United States her entire life. Applicant is proud of her U.S. citizenship. While she does not prefer the UK over the U.S., she is barred from a clearance by the Money Memo. A detrimental impact on the interests of the United States is not required before the Government may deny access under Guideline C. Applicant has not mitigated the security concerns under Foreign Preference in this case.

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

DECISION

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

Noreen A. Lynch

Administrative Judge

1. The government submitted seven items in support of its contentions.
2. Item 3 (Applicant's Answer, dated December 30, 2005) at 1-2.
3. Item 4 (Security Clearance Application (SF 86), dated January 20, 2004) at 3.
4. *Id.*
5. *Id.* at 2.
6. *Id.*
7. Item 7 (Applicant's Response to Interrogatories), dated October 12, 2005.
8. *Id.*
9. *Id.*
10. *Department of Navy v. Egan*, 484 U.S. 518, 517 (1988).
11. Executive Order 10865, § 7.
12. ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).
13. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
14. Item 6 (Money Memorandum) dated August 16, 2000.