

KEYWORD: Foreign Preference, Foreign Influence

DIGEST: Applicant failed to mitigate security concerns over foreign preference as she has maintained her dual citizenship with Italy, continues to vote and own property in Italy, continues to use her Italian passport, and recently chose to renew her Italian passport which will not expire until 2015. According to the August 2000 Department of Defense (DoD) security policy, one must surrender any foreign passport to be granted a security clearance. On the other hand, she has mitigated foreign influence concerns over her ties to her mother and sister who are citizens of and reside in Italy. Applicant has limited contact with them with only annual visits to Italy. Clearance is denied.

CASENO: 05-01358.h1

DATE: 04/28/2006

DATE: April 28, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-01358

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate security concerns over foreign preference as she has maintained her dual citizenship with Italy, continues to vote and own property in Italy, continues to use her Italian passport, and recently chose to renew her Italian passport which will not expire until 2015. According to the August 2000 Department of Defense (DoD) security policy, one must surrender any foreign passport to be granted a security clearance. On the other hand, she has mitigated foreign influence concerns over her ties to her mother and sister who are citizens of and reside in Italy. Applicant has limited contact with them with only annual visits to Italy. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR)⁽¹⁾ to the Applicant on August 25, 2005. The SOR detailed reasons why the Government could not find that it is clearly consistent with the national interest to grant her access to classified information. The SOR alleges specific concerns over foreign preference (Guideline C) in paragraph 1 and over foreign influence (Guideline B) in paragraph 2. A copy of the Money Memorandum⁽²⁾ was provided to her. (Item 1) Applicant replied to the SOR allegations in an Answer notarized on September 12, 2005, where she requested a decision without a hearing. (Item 3)

Department Counsel prepared the File of Relevant Material (FORM) on December 14, 2005, On December 16, 2005, the documents were forwarded to the Applicant who was advised she had thirty days from receipt of the FORM to submit any additional information. She received the FORM on December 22, 2005; she submitted an additional letter on January 11, 2006. The Department Counsel indicated he had no objection; the document was admitted into evidence as exhibit A. Subsequently, on January 30, 2006, the FORM was assigned to me. The government offered 8 items (Items 1-8) which were admitted into evidence without objection.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant, 47 years old, has worked for a defense contractor (Employer #1) in State #1 since April 2003. In June 2003 she completed a Security Clearance Application (Standard Form 86). Previously, Applicant had been unemployed from 1998 to April 2003. She worked for another agency in Italy from 1993 to 1998. She was granted a Defense Department clearance in January 1997. (Answer; Item 4) She also had a NATO secret clearance. (Exhibit A)

Applicant was born in Italy and lived there from 1958 to 1998. Her father, a citizen of Italy, had worked as a civilian for the U.S. Army in Italy for 34 years. In June 1997 Applicant married a U.S. citizen. She and her husband traveled from Italy and Germany, where he had been assigned, to the U.S. in September 1998. She has a child born in January 2000. In February 2003 she became a naturalized U.S. citizen. (Answer; Items 4, 5, 6, and 8; Exhibit A)

Foreign Preference

Applicant was a citizen of Italy when she traveled to the U.S. on her Italian passport. She continued to maintain and use her foreign passport even after she became a naturalized U.S. citizen in 2003. She received her U.S. passport in 2003, but continues to use both her U.S. passport and Italian passport for her foreign travel. She admits she maintains and exercises dual citizenship with Italy and the U.S. She continues to vote in Italy. Recently she renewed her Italian passport which was issued on July 26, 2005; and it is in effect until 2015. (Answer, Items 4, 5, 6, 7, and 8)

When interviewed by the Defense Security Service (DSS) in June and July 2004, Applicant stated that she had her Italian passport before she was issued a U.S. passport; she had not taken any steps to relinquish her Italian passport and was not willing to give up her dual citizenship as she had the legal right to be a dual citizen. She always uses both passports when she travels. She has maintained her Italian passport for sentimental reasons. (Items 5, 6)

Foreign Influence

Applicant's mother was born in Italy in 1927 and remains a citizen and resident of Italy; she now lives in a nursing

home. Her sister was born in Italy in 1963 and remains a citizen and resident of Italy where she lives in the family home. Her sister works at a U.S. military base. Applicant is a co-owner of that property in Italy where her share is worth \$250,000. Applicant pays taxes in Italy. Applicant has traveled to Italy annually to visit her sister and her mother in 2000, 2001, 2002, 2003, 2004, and in July 2005. She intends to continue to visit her mother once a year. (Answer; Items 4, 5, 6; Exhibit A)

Given Applicant's extensive ties to the U.S. where she lives with her husband and child, I conclude it is unlikely she would succumb if any of these relatives were pressured by the government of Italy. She credibly established that she would choose her loyalty to the United States over loyalty to her mother or her sibling in Italy. Her father work for the U.S. Army for 30 years. Applicant also worked for the U.S. Army in Italy for 16 years. Her sister continues to work as a civilian for the U.S. Army where she has worked since 1987. Applicant declared, "All of our family had considered the United States as part of our life." (Answer)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below:

Guideline C - Foreign Preference

E2.A3.1.1. 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 she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Guideline B - Foreign Influence

E2.A2.1.1. The concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or

financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Foreign Preference

The Government established a security concern over Applicant's acts which indicate a preference for a foreign country over the United States as she may be prone to provide information or make decisions that are harmful to the interests of the United States as Applicant exercises her Italian citizenship and continues to possess and use her foreign passport after she became a naturalized U.S. citizen. She has renewed her foreign passport which will continue in effect until 2015. Conditions that could raise a security concern and may be disqualifying include: E2.A3.1.2.1. The exercise of dual citizenship; and E2.A3.1.2.2. Possession and/or use⁽³⁾ of a foreign passport. Under DC 1 and DC 2 this disqualifying conduct advances a security concern over her possible preference for her status as a Italian citizen over her status as an U.S. citizen. The possession of a foreign passport could allow Applicant to travel without accountability and outside the ambit of U.S. immigration controls which raises concerns when someone has access to U.S. classified information.

Applicant has taken no steps to mitigate⁽⁴⁾ these security concerns. While it may be legal to be a dual citizen, Applicant was provided a copy of the Money memorandum of August 16, 2000, which established a different guideline for those who seek access to classified information. While she may not have understood the need to comply with the security requirements of the guidance, she had a duty to seek clarification and to comply in order to be granted a security clearance. Applicant has demonstrated no understanding of the U.S. security concerns over her retaining her foreign citizenship. Neither has she expressed any willingness to surrender her passport nor taken any formal steps to renounce her Italian citizenship. Thus, none of the mitigating conditions apply. As required by the Money Memorandum of August 16, 2000, her retaining a foreign passport excludes her from being granted access to classified information as it is a *per se* rule.

Having weighed the record evidence as a whole under the other factors outlined in Directive, I conclude Applicant's disqualifying conduct establishes her preference for a foreign country over the U.S. Her statements alone are insufficient evidence of her absolute preference for the U.S. over any other foreign nation. Therefore, I conclude Guideline C against Applicant. Thus, unfavorable findings are warranted with respect to subparagraphs 1.a. through 1.c. of the SOR.

Foreign Influence

Because of Applicant's family ties in Italy, the government raised foreign influence concerns under disqualifying conditions (DC): E2.A2.1.2. 1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country; and E2.A2.1.2.6. Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government. Applicant's mother and sister are citizens of Italy and reside there. Applicant also co-owns property with her sister in Italy which she estimates is worth \$250,000.

While I have seriously considered these security concerns, I note that no documents were submitted for administrative notice to raise security concerns over any ties to Italy. I conclude Applicant has presented sufficient evidence to meet the burden these circumstances present. Applicant mitigated⁽⁵⁾

the Government's security concerns over possible foreign influence under E2.A2.1.3 .5., as her foreign financial interests are minimal and not sufficient to affect her security responsibilities. Also, I have evaluated the relevance of her conduct and considered the following factors:

E.2.21.1. The nature, extent, and seriousness of the conduct; E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation; E2.2.1.3. The frequency and recency of the conduct; E2.2.1.4. The individual's age and maturity at the time of the conduct; E2.2.1.5. The voluntariness of the participation; E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes; E2.2.1.7. The motivation for the conduct; E2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and E2.2.1.9. The likelihood of continuation or recurrence. (E.2.2. Adjudication Process)

Looking at all of these factors, I conclude Applicant has overcome foreign influence security concerns. Given her strong ties to the U.S. and her limited contact with Italy since she became a U.S. naturalized citizen, there is limited potential for coercion, exploitation or duress. (E.2.2.1.8. The potential for pressure, coercion, exploitation, or duress.) Her husband and child are in the U.S., and Applicant has been a naturalized U.S. citizen since 2003. While she has visited her sister and mother, she does so only once a year. Given her history with her employer since April 2003 and the ties with her nuclear family in the U.S., it is unlikely that she could be exploited by coercive or non-coercive means by the government in Italy in a way that could force Applicant to choose between loyalty to her mother and her sibling and her loyalty to the United States. Her family in Italy has long had ties to the U.S.: her father worked for the U.S. Army for over thirty years and her sister now works for the U.S. Army. Any risk of either coercive or non-coercive foreign duress

or influence on Applicant and/or her immediate family in Italy would appear to be slight and clearly manageable. Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives.

After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude these family ties in Italy are not of such a nature as to create any tangible risks of undue pressure on Applicant, so foreign influence security concerns are mitigated. Thus, I resolve SOR paragraph 2 and subparagraphs 2.a. through 2.c. in Applicant's favor.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline C AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Paragraph 2. Guideline B FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For 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 the Applicant. Clearance is denied.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by DoD Directive 5200.6, dated January 2, 1992 (Directive).

2. In August 2000 DoD issued Guidance in a Policy Clarification Memorandum signed by Arthur L. Money ("Money Memorandum") to illuminate Guideline C. It required that "any clearance [must] be denied or revoked unless the applicant surrenders the foreign passport" The Memorandum stated: "The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigation factor addresses the official approval of the United States Government for the possession or use. **** Therefore, consistent application of the guideline 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 State Government." (Item 1)

3. DoD policy clarification of Guideline C issued in August 2000.

4. E2.A3.1.3. Conditions that could mitigate security concerns include: E2.A3.1.3.1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country; E2.A3.1.3.2. Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship; E2.A3.1.3.3. Activity is sanctioned by the United States; E2.A3.1.4.4. Individual has expressed a willingness to renounce dual citizenship.

5. E2.A2.1.3 Conditions that could mitigate security concerns include: E2.A2.1.3.1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States; E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent; E2.A2.1.3 .5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.