

KEYWORD: Foreign Preference

DIGEST: Applicant exercises dual citizenship with Poland and the United States. He possesses an active Polish passport with an expiration date of 2012, and he used his Polish passport to enter Poland after becoming a U.S. citizen in 2005. Applicant and his wife own an apartment in Poland, and he receives monthly retirement benefits from the Polish government. Applicant failed to mitigate security concerns under Guideline C, Foreign Preference. Clearance is denied.

CASENO: 06-24355.h1

DATE: 04/24/2007

DATE: April 24, 2007

In Re:)	
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SSN: -----)	ISCR Case No. 06-24355
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
JOAN CATON ANTHONY**

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant exercises dual citizenship with Poland and the United States. He possesses an active Polish passport with an expiration date of 2012, and he used his Polish passport to enter Poland after becoming a U.S. citizen in 2005. Applicant and his wife own an apartment in Poland, and he receives monthly retirement benefits from the Polish government. Applicant failed to mitigate security concerns under Guideline C, Foreign Preference. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On December 11, 2006, under the applicable Executive Order¹ and Department of Defense Directive,² DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision—security concerns raised under Adjudicative Guideline C (Foreign Preference), promulgated December 29, 2005, and applicable in DoD adjudications of SORs issued as of September 1, 2006, and thereafter. With the SOR, DOHA provided Applicant with a copy of the Directive and the applicable Adjudicative Guideline. Applicant executed a written response to the SOR on January 3, 2007. He requested his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on February 8, 2007. The FORM contained documents identified as Items 1 through 4.

An undated copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the FORM on February 22, 2007. He submitted a four-page response to the FORM. Applicant's response consisted of a three-page letter, dated March 23, 2007, which addressed specific information in the FORM and offered clarifying and mitigating information. Applicant's response also included a photocopy of the first page of his Polish passport, issued December 2002, with an expiration date in December 2012. The Government did not object to Applicant's submissions. On April 2, 2007, the case was assigned to me for a decision. After carefully reviewing the FORM and Applicant's submissions in response to the FORM, I marked the submissions as Applicant's Exhibits (Ex.) A and B and admitted them to the record of this case.

FINDINGS OF FACT

Applicant, who is currently 62 years old, is employed as a security officer by a defense contractor. He was born, raised, and educated in Poland. Applicant and his wife were married in Poland in 1972, and they are the parents of two grown daughters. Applicant immigrated to the U.S. from Poland in June 1997, and he became a naturalized U.S. citizen in October 2004. He acquired a U.S. passport on January 7, 2005. Applicant's wife and daughters are also naturalized U.S. citizens.

¹Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.

²Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.

Applicant, his wife, and their daughters claim dual citizenship with Poland and the U.S. (Item 3; Item 4; Applicant's Answer to SOR at 2.)

Applicant holds a bachelor of arts diploma from a teacher's college in Poland, and he holds a Master of Arts degree from a Polish university. He worked for 31 years as a teacher in Poland, and during that time, money was deducted from his salary for participation in the government retirement system. Applicant now receives a retirement pension from the government of Poland. Each month, the Polish government subtracts taxes due and then deposits approximately 1,142.34 PLN (Polish Zloty) in Applicant's bank account in Poland. Applicant estimates his monthly pension equals about \$393.62 (USD)³.

During his time as a teacher in Poland, Applicant and his wife lived as tenants in special state-subsidized housing for teachers. In about 2000 or 2001, they purchased the apartment they had been occupying from the Polish government for about \$2,000. Applicant's wife is identified as the record owner of the apartment, although Applicant also acknowledges ownership. Applicant and his wife stay in the apartment when they travel to Poland to visit relatives. They are considering selling the apartment since they do not intend to live in Poland anymore. (Item 3; Item 4 at 6; Answer to FORM at 2.)

In 2002, Applicant was a permanent U.S. resident living in the U.S. He acquired a Polish passport and used it to travel to Poland. In May 2005, after becoming a U.S. citizen and acquiring a U.S. passport, Applicant used his Polish passport to enter Poland. He stated he relied on official information from the U.S. Department of State and from the government of Poland which stated that individuals exercising dual citizenship with Poland and the U.S. must enter and depart Poland with a Polish passport and enter and depart the U.S. on a U.S. passport. (See Applicant's attachments to Item 3: <http://warsaw.usembassy.gov/poland/dualnationality-408cda12d248a.html>; Polish Business Directory USA 2006, at 61-62.) The record fails to show that Applicant has expressed a willingness to renounce dual citizenship. The Government did not submit any official U.S. documents containing facts about Poland for administrative notice.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968,

³ As an attachment to his Answer to the SOR, Applicant supplied two pages of an untranslated Polish document, dated March 1, 2006, which he annotated in English, showing the amount of his monthly retirement allotment, before and after deductions for taxes to the Polish government.

Access to Classified Information § 3.1(b) (Aug. 2, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

By Memorandum dated August 30, 2006, the Under Secretary of Defense directed implementation of revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG), promulgated December 29, 2005, and effective September 1, 2006, as modified. The revised Adjudicative Guidelines (AG) replaced the guidelines published in Enclosure 2 to DoD Directive 5220.6 and Appendix 8 to DoD 5200.2-R, and they apply to all adjudications and other determinations in which a SOR had not been issued by September 1, 2006. Accordingly, since the SOR in this case was issued December 11, 2006, the revised AG apply.

The revised AG set forth personal security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a security clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

Guideline C - Foreign Preference

In the SOR, DOHA alleged, and Applicant admitted, that he exercised dual citizenship with Poland and the United States (¶ 1.a.); that he had an active Polish passport renewed in approximately 2004 (¶ 1.b.)⁴; that he receives a monthly pension from the Polish government, which is deposited into

⁴DOHA alleged that Applicant's Polish passport will not expire until "approximately 2014." Applicant provided a photocopy of the first page of his current Polish passport showing its expiration date as "December 13, 2012." (Ex. B.)

his Polish bank account (§ 1.c.)⁵; that, in about 2000 or 2001, he purchased an apartment in Poland, subsidized by the Polish government, for approximately \$2,000 (§ 1.d.); and that he used his Polish passport to enter Poland in about May 2005, despite having an active U.S. passport issued to him in January 2005 (§ 1.e.).

A Guideline C security concern exists when an individual's conduct indicates a preference for a foreign country over the United States. A preference for another country could lead a person to provide information or make decisions that are harmful to the interests of the United States. (AG C, § 9.)

Under AG C, a disqualifying security concern may be raised when an individual exercises any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. (AG C, § 10(a).) A potentially disqualifying security concern is also raised under AG C, § 10(b) when an American citizen takes action to acquire or obtain recognition of a foreign citizenship. The facts of this case raise four potentially disqualifying conditions of security concern: possession of a current foreign passport; accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country; using foreign citizenship to protect financial or business interests in another country; and action to acquire or obtain recognition of a foreign citizenship by an American citizen. (AG C, §§ 10(a)(1), 10(a)(3), 10(a)(5), and 10(b).)

Applicant claims and exercises dual citizenship with Poland and the United States. He possesses a current Polish passport, which he used, in preference to the active U.S. passport he also possesses, to enter and exit Poland in May 2005. His possession and use of his Polish passport involves the exercise of rights and privileges of foreign citizenship, which raises a potentially disqualifying security concern under AG C, § 10(a) and § 10(a)(1). *See* ISCR Case No. 00-0489 at 11-12 (App. Bd. Jan. 10, 2002). In 2005, he presented his Polish passport upon entry to Poland in compliance with Polish law relating to dual citizenship, raising a potentially disqualifying security concern under AG C § 10(b). Applicant also accepts retirement benefits, deposited into his bank account in Poland, from the government of Poland, and he owns an apartment he acquired for about \$2,000 by reason of his former status as a teacher in Poland, raising a potentially disqualifying security concern under AG C, § 10(a)(3). The record is silent regarding Applicant's eligibility for his pension and his eligibility to retain the apartment should he not claim dual citizenship with Poland, and there are insufficient facts in the record to conclude Applicant is using his foreign citizenship to protect financial or business interests in Poland. (*See* AG C, § 10(a)(5).)

There are several applicable conditions that could mitigate the security concerns identified and discussed above. Applicant could mitigate security concerns about his dual citizenship if his dual citizenship is based solely on his parents' citizenship or on his birth in a foreign country and if he has expressed a willingness to renounce his dual citizenship. (Guideline C, §§ 11(a) and 11(b).) The record shows Applicant's dual citizenship is based on his birth in a foreign country. Thus, mitigating

⁵DOHA alleged Applicant's monthly pension was worth approximately \$200 USD. Applicant provided a untranslated document in Polish which he said calculated his most current monthly pension amount in Polish zloty. Using current information on the exchange rate for zloty and US dollars, Applicant stated his monthly pension, paid to him in zloty, equals \$393.62 USD. (Item 3.)

condition AG C¶ 11(a) applies. Because Applicant has not expressed a willingness to renounce his dual citizenship, mitigating condition AG C¶ 11(b) does not apply.

An applicant might mitigate the 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 if the right, privilege or obligation of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor. (AG C, ¶ 11(c). Applicant used his Polish passport to enter Poland after becoming a U.S. citizen and while in possession of a valid U.S. passport. In doing so, he exercised a right or privilege or obligation of foreign citizenship after becoming a U.S. citizen. The possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount, and it could also facilitate foreign travel unverifiable by the United States. Nothing in the record indicates Applicant has received approval from a cognizant U.S. security authority for the use of his foreign passport. Nothing in the record supports a conclusion that Applicant's passport has been destroyed, surrendered to the cognizant U.S. security authority, or has been otherwise invalidated. Accordingly, I conclude that the mitigating conditions at AG C, ¶¶ 11(c), 11(d) and 11(e) are inapplicable.

The record is unclear whether Applicant received retirement benefits from the Polish government before becoming a U.S. citizen. However, as a U.S. citizen, he currently receives them monthly from the Polish government, and his dependency upon a foreign government for distribution of benefits earned could create a security concern and remains unmitigated. Additionally, his ownership of property in Poland as an individual actively exercising dual citizenship also remains unmitigated.

Whole Person Analysis

The Directive requires that the adjudicative process in a security clearance case not only assess conduct under the adjudicative guidelines, but it must also reflect a careful weighing of a number of variables known as the whole person concept. The factors to be considered in a whole person analysis include the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the extent to which participation is voluntary; the presence or absence of rehabilitation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and, the likelihood for continuation or recurrence.

Applicant is a mature adult who presents a record of industriousness and hard work. Nothing in the record suggests he is not a loyal American citizen. However, his possession of an active Polish passport and his exercise of dual citizenship with Poland and the U.S. raise doubts and serious security concerns because Applicant's choices could indicate a preference for Poland over the United States. An individual entrusted with a security clearance must unequivocally put the interests of the U.S. before those of any other country. By exercising a preference for Poland, Applicant might be disposed to provide information or to make decisions that are harmful to the U.S. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2.

In all security clearance adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude Applicant should not be entrusted with a security clearance. In reaching my decision, I have considered the evidence as a whole, including the appropriate factors and guidelines in Department of Defense Directive, 5220.6., as amended. Accordingly, allegations 1.a. through 1.e. are concluded against Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1.: Guideline C: AGAINST APPLICANT

Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	Against Applicant

DECISION

In light of all of 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.

Joan Caton Anthony
Administrative Judge