

DATE: December 20, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 07-03446

**DECISION OF ADMINISTRATIVE JUDGE
LEROY F. FOREMAN**

APPEARANCES

FOR GOVERNMENT

Emilio Jaksetic, Esq., Department Counsel

FOR APPLICANT

David Kasanow, Esq.

SYNOPSIS

Applicant was born in the U.K. and came to the U.S. with her family in 1972. She renewed her U.K. passport in June 2004. She became a U.S. citizen in June 2005, but she used her U.K. passport for a family trip to the U.K. in March 2006, because processing of her application for a U.S. passport was delayed. She returned from the trip on an emergency U.S. passport. When she learned her U.K. passport was an impediment to obtaining a clearance, she destroyed it. Security concerns based on foreign preference are mitigated. Clearance is granted.

STATEMENT OF THE CASE

On April 16, 2006, Applicant applied for a security clearance. On August 8, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny her a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive); and the revised adjudicative guidelines (AG) approved by the President on December 29, 2005, and implemented effective September 1, 2006. The SOR alleges security concerns under Guideline C, Foreign Preference.

Applicant answered the SOR in an undated document, admitted the factual allegations, and requested a hearing. The case was assigned to me on October 17, 2007, and heard on November 13, 2007, as scheduled. DOHA received the transcript (Tr.) on November 20, 2007.

FINDINGS OF FACT

Applicant's admissions in her answer to the SOR and at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant is a 44-year-old president and chief operating officer of a subsidiary of a federal contractor providing transportation services to various agencies of the U.S. government. She has worked for her current employer since December 1986. She began as a customer service representative and worked her way up to her current position, becoming president in June 2007. She has never held a security clearance.

Applicant was born in the England and lived there until she came to the U.S. with her family in 1972, when her father was offered a job in the U.S. Her parents, sister, and two brothers all live in the U.S. and do not intend to return to England. (Tr. 30, 32-33.) Applicant has three aunts living in England. Her uncle living in England passed away two weeks before the hearing (Tr. 34). She has several cousins in England but has contact with only one. (Tr. 34.)

Applicant was educated in the U.S., obtaining a bachelor's degree in education in August 1985, and a master's degree in business administration in December 1995. She became a U.S. citizen in June 2005. (Tr. 36.) She married a U.S. citizen in October 1996, and they have a nine-year-old son and seven-year-old daughter, both native-born U.S. citizens. Applicant is active in community affairs, currently serving as vice-president of the local Boys & Girls Clubs, a member of the board of directors for the local zoo, and a board member of the local chamber of commerce. (Tr. 51-52.)

Applicant's predecessor as president and chief operating officer has known her for about 20 years. He described her as "smart, hardworking and an excellent leader" who is a "stickler for quality and ethics." He stated she has embraced the "American dream" and takes great pride in being a naturalized U.S. citizen. (Applicant's Exhibit (AX) A.)

The president and chief operating officer of another subsidiary company, who has known Applicant since the early 1990s, stated she has “an extremely strong reputation, well-established credibility with [their] customers, and is highly ethical.” In his view, her performance and demonstrated personal character “are nothing short of phenomenal.” (AX B.)

Applicant’s financial advisor, who has known her and her husband since 2000, described her as extremely hardworking, honest, and trustworthy. He stated Applicant “thinks of the United States as her home country.” (AX C.)

A government affairs representative of Applicant’s employer has known Applicant for at least ten years. He stated she takes her company’s compliance with the myriad of government regulations very seriously, and he believes “she could be expected to approach any obligations associated with holding a security clearance with the same degree of personal commitment and gravity.” (AX D.)

Applicant’s facility security officer has known her for 16 years. She regards Applicant as smart, capable, an excellent leader, extremely conscientious, and a loyal American. (AX E.)

Applicant renewed her U.K. passport in June 2004. She became a U.S. citizen in June 2005, the first in her family to apply for U.S. citizenship. Her decision to become a U.S. citizen was based on three factors.

The first factor was her family situation. She was married to a U.S. citizen. Her children were U.S. citizens. She had lived most of her life in the U.S. and was educated in the U.S. She realized, “I’m more of a U.S. citizen certainly than I am a U.K. citizen.” (Tr. 37.)

The second factor was her career. When she learned she was likely to become president of the company, she knew that it did a lot of government business, it would be difficult to run the company without a clearance, and she could not obtain a clearance without being a citizen. (Tr. 37-38.)

The third factor dealt with estate planning. About two years ago, the family’s financial planner informed them that the family estate would be more difficult to handle if her husband predeceased her and she was not a U.S. citizen. (Tr. 39, 61.) The convergence of these three factors convinced Applicant that the time had come to apply for U.S. citizenship.

When Applicant became a U.S. citizen, her immediate family members also began thinking about becoming U.S. citizens. Her sister is now a U.S. citizen, and one of her two brothers has applied for U.S. citizenship. (Tr. 33.)

At some time in 2004 or 2005, Applicant attempted to obtain U.K. passports for her two children because of their heritage. The application was returned because the children did not have U.S. passports. Applicant did not pursue the issue further. (Tr. 71-72.)

Applicant applied for a U.S. passport in early 2006 in preparation for a family trip to England scheduled for March 2006. This trip was her first return to England since she came to the U.S. in 1972. (Tr. 39-40.) Her passport application was sent to the passport office in New Orleans, which

was still recovering from Hurricane Katrina. (AX W.) In spite of numerous telephone inquiries, Applicant had not received her passport by their scheduled departure date.

Applicant had organized the trip, paid for it in full, and felt responsible for it. She decided to use her U.K. passport to travel to England and use her U.S. passport, when it arrived, to return to the U.S. She gave her administrative assistant a Federal Express envelope addressed to her uncle in the U.K., and her assistant continued to pursue the passport application. After two weeks, as Applicant was preparing to return to the U.S., she still had no U.S. passport. She was informed by an airline representative that re-entering the U.S. on her U.K. passport was illegal, and she was advised to obtain an emergency passport from the U.S. embassy. Her family returned to the U.S. without her, she obtained her emergency U.S. passport, and she used it to return to the U.S. (Tr. 40-44, 67.)

When an investigator came to her office around December 2006 and asked her if she would surrender her passport, she responded, "Well, no, you know, it's kind of my heritage and I would like to hold onto it." (Tr. 45, 70) When Applicant responded to DOHA interrogatories in April 2007, she was asked why she had a U.K. passport. She responded: "I was born in England and lived there until I was 9. I feel that this is my heritage and I want to feel a part of it. I am as American as my peers, but feel this is a small way to hang onto my past." (GX 2 at 2). Applicant did not realize at the time that the passport was a major obstacle to obtaining a clearance. After talking with the corporation legal counsel, she realized she had obligations to her family and her company in the U.S. and should not allow her attachment to the symbol of her heritage stand in the way. On November 7, 2007, Applicant destroyed her passport by shredding it in the presence of her facility security officer. (AX E; Tr. 45.)

Applicant continues to be a dual U.S.-U.K citizen. When asked at the hearing if she would be willing to renounce her U.K. citizenship, she responded, "Yes I would. I mean, if that's what it takes, absolutely." (Tr. 48.) She explained: "I think, you know, when I look at it and I say, you know, I've got a great job. I've lived in this country for as long as I have. Certainly, you know, that's my heritage and it's a nice thing to hang onto that heritage if you will, but my home is in the United States." (Tr. 48-49.)

Applicant and her husband have all their assets in the U.S. (AX F-K.) They are financially secure and have established college funds for their two children. (AX L and M.) They own a home worth about \$300,000, with a mortgage debt of about \$149,000. (AX H; Tr. 49.) Applicant's pay package, including bonuses and stock options, ranges from about \$400,000 to \$550,000 per year. (Tr. 87.) Her husband is not employed outside the home. (Tr. 88.)

About two weeks before the hearing, Applicant's uncle in the U.K. passed away, and Applicant learned that she and her three siblings would inherit his estate. (Tr. 52-53.) There is no real estate involved, but she will share about 250,000 British pounds with her three siblings. (Tr. 84.) Applicant intends to hand over whatever she inherits to her financial advisor to be invested for herself, her husband, and her children. (Tr. 85.)

The U.S. and the U.K. are close allies, with a long history of bilateral cooperation. Their relationship reflects their common language, ideals, and democratic practices. (AX V at 6.)

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the Guidelines. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, the disqualifying conditions and mitigating conditions under each specific guideline, and the factors listed in AG ¶¶ 2(a)(1)-(9).

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in persons with access to classified information. However, 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The Guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein 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. *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 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

CONCLUSIONS

The SOR ¶ 1.a alleges that Applicant exercises dual citizenship with the U.K. and the U.S. SOR ¶ 1.b alleges her possession of a current U.K. passport. Applicant admitted both allegations.

When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant’s favor. *See* ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). In this case, SOR ¶ 1.a alleges Applicant’s

exercise of dual citizenship and SOR ¶ 1.b alleges the manner in which she exercised dual citizenship. SOR ¶ 1.b merely describes the evidence supporting ¶ 1.a, and, as such, it duplicates ¶ 1.a. Accordingly, I resolve SOR ¶ 1.b. in Applicant's favor.

The concern under this guideline is as follows: "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. Dual citizenship standing alone is not sufficient to warrant an adverse security clearance decision. ISCR Case No. 99-0454 at 5, 2000 WL 1805219 (App. Bd. Oct. 17, 2000). Under Guideline C, "the issue is not whether an applicant is a dual national, but rather whether an applicant shows a preference for a foreign country through actions." ISCR Case No. 98-0252 at 5 (App. Bd. Sep 15, 1999).

A disqualifying condition may arise from "exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen," including but not limited to "possession of a current foreign passport." AG ¶ 10(a)(1). Applicant's possession of a U.K. passport and her use of that passport in March 2006, after becoming a U.S. citizen in June 2005, raises AG ¶ 10(a)(1).

Applicant's inheritance from her uncle in the U.K. does not raise any enumerated disqualifying conditions under Guideline C. However, I have considered it as part of the whole person analysis required by the AG ¶ 2.

Since the government produced substantial evidence to raise the disqualifying condition in AG ¶ 10(a)(1), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. Applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns under this guideline may be mitigated by evidence that "dual citizenship is based solely on parents' citizenship or birth in a foreign country." AG ¶ 11(a). Applicant was born of English parents in England. She took no affirmative action to acquire English citizenship. This mitigating condition is established.

Security concerns under this guideline also may be mitigated by if "the individual has expressed a willingness to renounce dual citizenship." AG ¶ 11(b). Applicant testified unequivocally that she would renounce her English citizenship if it was required. This mitigating condition is established.

Finally, security concerns based on possession or use of a foreign passport may be mitigated if "the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated." AG ¶ 11(e). This mitigating condition was established when Applicant destroyed her U.K. passport in the presence of her facility security officer on November 7, 2007.

In addition to considering the specific disqualifying and mitigating conditions under each guideline, I have also considered: (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 applicant'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. AG ¶¶ 2(a)(1)-(9).

Applicant is a mature, well-educated, very articulate, highly intelligent woman. She entered the U.S. as a child. She was not a refugee from a repressive regime, but an immigrant from a friendly country with rich traditions similar to and compatible with those of the U.S. Her attachment to her English heritage and her reluctance to give up the indicia of that heritage are understandable. The U.S. is a nation of immigrants, replete with celebrations of the heritage and cultural traditions of other countries, such as the parades on Saint Patrick's Day, the celebrations of Bastille Day, the celebrations of the lunar New Year, and numerous local ethnic celebrations throughout the country. By and large, these celebrations do not reflect a preference for the "old country." Instead, they are merely ways for U.S. citizens to stay connected with their heritage.

As Applicant's career progressed and various family-related and professional factors converged, she realized she could no longer keep one foot in England, and she needed to make a choice. With no hesitation, she became a U.S. citizen. Some of her immediate family members followed her lead. She kept her U.K. passport as a connection to her heritage, and briefly explored obtaining U.K. passports for her children for the same reason. However, when it came time to travel overseas, she applied for a U.S. passport, evidencing her preference to travel as a U.S. citizen. In March 2006, she was faced with the choice of canceling a long-awaited prepaid family trip to England or using her U.K. passport. She used her U.K. passport and continued her efforts to obtain her U.S. passport. This use of her passport was not a reflection of preference for the U.K., but was an expedient measure to avoid canceling the trip and disappointing her family. When her family returned to the U.S., she remained behind to obtain an emergency U.S. passport.

When Applicant was advised by her corporate counsel that her U.K. passport was an impediment to a security clearance, she destroyed it, even though it was an indicium of her heritage. She testified without hesitation or equivocation that she was willing to renounce her U.K. citizenship if it was necessary. Her testimony at the hearing was plausible, credible, and very sincere.

Applicant's inheritance from an uncle in the U.K. raises no issues of foreign preference. Applicant will not travel to the U.K. during the probate of her uncle's estate, and her share of the inheritance will be invested by her financial advisor in the U.S.

Applicant family and future are in the U.S. She is professionally successful, devoted to her family, and deeply involved in her community. She has demonstrated by her conduct that she regards the U.S. as her home.

After weighing the disqualifying and mitigating conditions under Guideline C, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign preference. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to grant her a security clearance.

FORMAL FINDINGS

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

Paragraph 1. Guideline C (Foreign Preference): FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

LeRoy F. Foreman
Administrative Judge