



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



In the matter of: )  
 )  
----- ) ISCR Case No. 07-05354  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Carolyn H. Jeffreys, Esquire, Department Counsel  
For Applicant: James W. Green, Esquire

February 26, 2008

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**Decision**

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HOWE, Philip S., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on March 1, 2006. On August 31, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline C (Foreign Preference) 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on September 5, 2007. She answered the SOR in writing on October 16, 2007, and requested a hearing before an Administrative Judge. DOHA received the request on October 19, 2007. Department Counsel was prepared to proceed on November 7, 2007, and I received the case assignment on November 13, 2007. I granted Applicant's request for a delay until January 17, 2008, in order for her counsel to be available. DOHA issued a notice of hearing on December 19, 2007, and I convened the hearing as scheduled on January 17, 2008. The government offered Exhibits (Ex.) 1 through 3, which were received

without objection. Applicant testified on her own behalf and submitted Exhibits A through W, AA and BB, without objection. DOHA received the transcript of the hearing (Tr.) on January 29, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In her Answer to the SOR, dated October 16, 2007, Applicant admitted all the factual allegations in the SOR, except Subparagraph 1.d which she denied, with her explanations. Her counsel submitted a denial of all allegations on October 30, 2007, along with his request for a hearing and a notice of representation. She also provided additional information to support her request for eligibility for a security clearance.

Applicant is 47 years old, unmarried, and employed as a manager for a defense contractor. She has had a security clearance since 1984. She was born in the United States. Her parents were born in Latvia (in the Baltic Sea region) before World War II and immigrated to the United States after the war. They became naturalized U.S. citizens. Latvia was part of the Soviet Union after the war. It regained its independence in the 1990s. Applicant has one sister who was born and lives in the United States. (Tr. 30-32; Exhibits 1, 3)

On June 27, 1995, Applicant applied for Latvian citizenship. She read in a Latvian community publication in her hometown that the opportunity for dual citizenship with Latvia existed, and she took advantage of the opportunity. She informed her employer about her application. A Government investigator interviewed her about the application, and she retained her security clearance thereafter. Applicant applied for and received a Latvian passport on March 11, 1996. It expired on March 10, 2006, and Applicant received another Latvian passport effective on March 24, 2006, which expires on March 23, 2016. Applicant retains this passport currently and has not destroyed or surrendered it. She also has a U.S. passport, which she uses for traveling outside the United States for business and pleasure. Applicant applied for Latvian citizenship, she claims, for the purpose of inheriting land in Latvia, or its equivalent value, owned before World War II by her father's family. Applicant claims Latvian citizenship is required for inheriting under Latvian law. Applicant's sister has not obtained dual citizenship. (Tr. 34-50, 58, 61, 62; Exhibits 1-3, T-W)

Applicant traveled to Latvia in May 1997, and again five times between April 2003 and November 2004. She traveled there again in March 2006. During some of these trips in 2003 and 2004, she spoke with a person about the value of her father's family's property. Her father intends for Applicant to inherit any land in Latvia deeded to him as part of this compensation package from the Latvian government. She is the only family member to receive this property after her father. Applicant has an emotional attachment to the land, and intends to build a summer home there someday in the future. (Tr. 43, 48-55, 61-63, 78; Exhibits 2, 3)

Applicant would surrender her dual citizenship if it were a condition to retaining her security clearance. She also would be willing to destroy her Latvian passport conditioned on the renewal of her security clearance. She has not destroyed her Latvian passport yet. (Tr. 44, 56, 57, 64)

Applicant is highly regarded in her company for her technical competency and work ethic. She submitted numerous character statements. Two character witnesses testified on her behalf about their interaction and work experience with Applicant. (Tr. 12-29; Exhibits A-S, AA, BB)

### **Policies**

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of

the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline C, Foreign Preference**

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

Guideline C: 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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 10(a)1, “the possession of a current foreign passport,” and ¶ 10(a)5, “using foreign citizenship to protect financial or business interests in another country.” The evidence, including Applicant’s admissions, is sufficient to raise these potentially disqualifying conditions. In 1995, Applicant applied for and received Latvian citizenship for the purpose of inheriting land in Latvia. In 1996, she applied for a Latvian passport, which she renewed in 2006. It does not expire until 2016.

The guideline also includes examples of conditions that could mitigate security concerns arising under the Foreign Influence guideline. The burden shifted to Applicant to rebut or mitigate the allegations. Under AG ¶ 11, there are six potential Mitigating Conditions (MC). There are only two that are possibly applicable. ¶ 11(b), “the individual has expressed a willingness to renounce dual citizenship,” and ¶ 11 (e), “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.” While Applicant testified she would renounce her dual citizenship, it was only as a condition for retaining her security clearance. She has the willingness to renounce, but it is contingent on the Government’s favorable action on her security clearance. More determinative, however, is the fact that she retains a current Latvian passport, and has not destroyed it. She would only destroy it if the Government first granted her a security clearance renewal. However, the MC requires the passport be destroyed or invalidated before the Government considers granting the security clearance.

## **Whole Person Concept**

Under the whole person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(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 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." Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In the present case, there is much information about positive attributes of Applicant's life and work history. However, they are insufficient to outweigh the fact Applicant refuses to destroy or invalidate her Latvian passport. Consequently, Applicant did not provide sufficient evidence to mitigate the security concerns raised under foreign preference. Accordingly, Guideline C is decided against her.

## **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
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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PHILIP S. HOWE  
Administrative Judge