DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 07-08831
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Alison O'Connell, Esquire, Department Counsel
For Applicant: *Pro Se*

March 14, 2008

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted her security clearance application (e-QIP) on March 19, 2006. On October 24, 2007, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline C. 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 answered the SOR in writing on November 1, 2007, and requested a hearing before an administrative judge. On January 30, 2008, Department Counsel indicated the government was prepared to proceed. On February 1, 2008, I received the case assignment and scheduled a hearing for February 28, 2008.

The hearing was convened as scheduled. Two government exhibits (Ex. 1-2) and three Applicant exhibits (Ex. A-C) were admitted without any objections. Applicant and her supervisor testified, as reflected in a transcript (Tr.) received by DOHA on March 10, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

DOHA alleged under Guideline C, foreign preference, that Applicant maintains Canadian and Israeli citizenship since birth, although she has only a U.S. passport (SOR ¶ 1.a), is eligible for social security and other benefits from Canada when she retires (SOR ¶ 1.b), voted in 1995 or 1996 when residing in Canada (SOR ¶ 1.c), and if she had to choose between U.S. and Canada, Canada holds her loyalty because she was raised there and that is where her heart lies (SOR ¶ 1.d). Applicant admitted the allegations with explanation, including that she was born in Israel to an American mother and Canadian father who both registered her as a citizen born abroad. She indicated she saw no need to renounce dual citizenship. While she is eligible for benefits from her "nonprofessional and poorly paid" jobs in Canada before she moved to the U.S., she intends to complete her professional career in the U.S. She indicated that she had voted by absentee ballot in the Quebec referendum in October 1995 after moving to the U.S. for graduate study in September 1995, but had since voted only in local and national elections in the U.S. As far as her expression of choice for Canada, Applicant admitted that she dearly loves Canada but would not violate the trust of a security clearance which she had held for almost 11 years. After consideration of the evidence of record, I make the following findings of fact.

Applicant is a 48-year-old head archivist of classified and sensitive proprietary documents who has been employed by a university-affiliated, federally-funded research laboratory since mid-December 1996. She was granted a secret-level security clearance in about March 1997, and has since accessed classified material on a daily basis without any violations. She is seeking to retain her secret clearance. (Answer, Ex. 1, Ex. A, Ex. B, Ex. C, Tr. 18-19, 42-43)

Applicant was born in November 1959 in Israel to a U.S. native citizen mother and a Canadian native citizen father (Ex. 2). Her mother registered her as a U.S. citizen born abroad, and her father registered her birth with Canada. At about age three, Applicant moved with her family to Canada, where she was raised with her sister, who was born in Canada in January 1963. (Answer, Ex. 1, Ex. 2, Tr. 18-19, 38-40) Applicant spent from January 1978 to sometime that summer in Israel but she has not been back since (Tr. 43).

Applicant began working in Canada as a teen, and over the years she held poorly paid, non professional jobs as a library clerk or shelver (Answer). She attended college in Canada, benefitting from the lower tuition rates available to Canadians (Tr. 40-41). While pursuing a master of fine arts, Applicant taught a couple of introductory

art classes at a college in Quebec. For three years, she worked as a librarian at a not-for-profit center (Answer).

In September 1995, Applicant came to the U.S. to pursue graduate study in library science (Answer, Tr. 19). She chose to attend a U.S. college because she had never previously lived in the U.S. and wanted a new experience (Tr. 41-42). In about October or November 2005, she voted by absentee ballot in a Quebec referendum on whether to separate from the rest of Canada (Answer, Ex. 2, Tr. 49, 56).

Applicant had initially intended to return to Canada when she finished her master's degree (Ex. 2, Tr. 46). Yet, after earning her degree in August 1996 (Ex. 1, Tr. 40), she pursued job opportunities in both Canada and the U.S. (Tr. 46). One of her first job offers was from her present employer. She had student loans to repay and friends here, so she accepted the offer (Ex. 2, Tr. 47). After receiving a secret-level security clearance, Applicant began to handle U.S. classified material and sensitive proprietary information on a daily basis (Ex. A, Tr. 42-43). She proved to be a reliable custodian of both classified and unclassified archival material (Ex. A, Ex. B).

At the request of her employer, Applicant gave up her Canadian passport in about 1998 (Answer, Ex. A, Tr. 19, 56). She acquired her first U.S. passport after moving to the U.S. in 1995 (Tr. 59), and has since renewed it. Her current U.S. passport expires in either 2011 or 2012 (Tr. 59).[1]

Applicant applied for renewal of her security clearance, completing an electronic questionnaire for investigations processing on March 19, 2006. She disclosed her multiple citizenship with the U.S., Canada, and Israel from birth, and her possession of a valid U.S. passport. She also listed her mother's U.S. citizenship but Canadian residency, her father's Israeli and Canadian citizenship and Canadian residency, and her sister's U.S. and Canadian citizenship and Canadian residency. (Ex. 1)

On May 8, 2007, Applicant was interviewed by an authorized investigator for the Department of Defense. Applicant explained she retained her citizenship with Israel and Canada because all the countries with which she has citizenship are part of who she is. She indicated she would not renounce her citizenship with Canada or Israel if necessary as a condition of access, and expressed her loyalty to Canada. Asked hypothetically to choose between Canada and the U.S., she indicated she would choose Canada because that is where she was raised and where her heart is. Applicant also averred that she is serious about her job with the federal contractor and she had not experienced any conflict with her obligations to the U.S. (Ex. 2).

Applicant travels to Canada once or twice a year to visit family and friends (Tr. 50). Her parents, sister, and closest friend reside in Canada (Tr. 47-48), although her parents also own a condominium in a retirement community in Florida where they spend

[1]Applicant's e-QIP lists a July 26, 2005, issuance date (Ex. 1). Applicant testified that the date is incorrect but she was unable to explain the origin of that date (Tr. 59).

three to four months every year (Tr. 55). Before he retired, Applicant's father worked in Canada selling or renting office trailers for construction sites (Ex. 2). Applicant's sister is employed as a junior accounts manager at a fiber optics company in Quebec (Ex. 2). Applicant calls her parents weekly and her sister monthly (Ex. 2).

Applicant intends to complete her career in the U.S., and then retire to Canada some 15 years from now (Answer, Tr. 47). She expects to receive Canadian social insurance benefits akin to U.S. social security when she retires because of her prior work history in Canada (Answer, Ex. 2, Tr. 45).

Applicant does not own any property in Canada, have any bank accounts in Canada, or pay taxes to Canada (Ex. 2, Tr. 51). Since about April 1999, she has had a cohabitant personal relationship with a U.S. citizen (Ex. 1, Tr. 42), and they bought their home in the U.S. in May 2002 (Answer, Ex. 1).

Applicant has not voted in any foreign elections since the 1995 independence referendum in Quebec (Answer, Tr. 49, 56). She has voted in U.S. national elections in 1996, 2000, and 2004, as well as in several local elections in the U.S. since 1995 (Answer). She traveled to France in September 2004 and to Italy in September 2005 for pleasure, using her U.S. passport. She has never held an Israeli passport (Tr. 57) and did not renew her Canadian passport at her employer's request (Answer).

Applicant is now willing to unconditionally renounce her Israeli citizenship immediately if asked to do so (Tr. 19, 44). She has not taken any steps to do so (Tr. 45). She would not consider renouncing her Canadian citizenship because it is part of her identity, but she also loves the U.S.:

> I grew up in Canada, I have relatives and close friends there and I love that country dearly but, having said this, I also emphasize that I am an American citizen by birth, that I love this country, and that I've chosen to spend my life here (Tr. 19).

She denies she would ever violate the obligations of her clearance ("under no circumstance would I betray the trust associated with the clearance, I take this trust bestowed upon me with the utmost gravity") (Tr. 20, 53, 54).

Applicant's direct supervisor has had the opportunity to observe her handling of classified and sensitive proprietary material for more than 10 years. She has found Applicant to be reliable in her custodianship and fastidious in protecting classified and restricted material. Ten years ago, Applicant was promoted to a supervisory position herself, and she has "instilled the same dedication in the 5 employees whom she supervises, and has acted quickly to report problems and implement additional safeguards when necessary." This supervisor is aware of Applicant's multiple citizenship status, and of Applicant's plan to retire to Canada, but she also considers her "a loyal citizen of the United States with unquestioned allegiance." She recommends continuation of Applicant's clearance without reservation (Ex. A, Tr. 63-71).

Another coworker who is familiar with Applicant's work since late 1996, both in his former capacity as assistant to the laboratory's director and executive officer and currently as Director's Staff for Special Projects, has found Applicant to be very diligent and responsible in protecting national defense technical information. He has observed nothing that would indicate to him that she holds any loyalty higher than that to the U.S. and its security. He also has no reservations in recommending her for a clearance (Ex. B).

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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching 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

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) Applicant has been a citizen of the U.S., Canada, and Israel from birth, but she was raised in Canada, where she was exposed to, and influenced by, Canadian values and culture. Her citizenship with both Israel and the U.S. was for all practical purposes in name only. When she came to the U.S. in September 1995, she had only a Canadian passport and intended to return to Canada after finishing her master's degree in library science. Within a month or two of her arrival, she voted by absentee ballot in a Quebec referendum. Possession of a foreign passport and voting in a foreign election constitute the active exercise of a foreign citizenship under AG ¶ 10(a) ("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. This includes but is not limited to: (1) possession of a current foreign passport . . . (7) voting in a foreign election"). Mitigating condition AG ¶ 11(c) ("exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor") is unavailable to her because she acquired derivative U.S. citizenship at birth. However, there are noted similarities to the situation of a naturalized U.S. citizen who exercises the foreign citizenship he or she had known (*i.e.*, experienced) since the age of reason before acquiring U.S. citizenship.

Mitigating condition AG ¶ 11(a) ("dual citizenship is based solely on parents' citizenship or birth in a foreign country") applies, but only to her Israeli citizenship which has not been exercised since 1978, if at all.[2] She is now willing to unconditionally renounce her Israeli citizenship, implicating AG ¶ 11(b) ("the individual has expressed a willingness to renounce dual citizenship"), but is not willing to renounce her Canadian citizenship. While the U.S. government does not encourage its citizens to remain dual nationals because of the complications that might ensue from obligations owed to the country of second (or in Applicant's case third) nationality, the Department of Defense does not require the renunciation of foreign citizenship in order to gain access. Yet there

[2]Applicant spent several months in Israel in 1978. It is not clear whether she obtained any benefit or privilege available only to Israeli citizens during her stay.

must be adequate assurances that a dual citizen will not actively exercise or seek rights, benefits, or privileges of that foreign citizenship.

Applicant has established significant ties consistent with her U.S. citizenship since 1995/96. She applied for her U.S. passport shortly after her arrival in the U.S. About a year into her job, she willingly surrendered her Canadian passport at the request of her employer and has made no attempt to renew it (*see* AG ¶ 11(e) ("the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated")). In April 1999, she met her current partner, who is a U.S. citizen, and they bought a home together in the U.S. in May 2002. She has voted in federal and local elections in the U.S. Recent ties to Canada are limited to visits with family members once or twice a year and telephone calls. Applicant has no bank accounts in Canada, and while she plans to retire to Canada and is eligible for social insurance benefits there on her retirement, she is not now accepting any benefits from Canada. A future benefit that may or may not come to pass is too speculative an interest to raise current foreign preference concerns. Applicant denied, and there is no evidence to the contrary, that she desires to retain her Canadian citizenship to protect any present or future benefit.

Nonetheless, when asked by a government investigator in May 2007 which of the U.S. or Canada she would choose if she had to, Applicant indicated she would choose Canada. While any statement or action that shows allegiance to a country other than the United States bears serious foreign preference implications (*see* AG ¶ 10(d) ("any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship")), the statement must be viewed in context of the hypothetical nature of the inquiry and her expressed contemporaneous recognition of the seriousness of her obligation to protect U.S. interests. Applicant showed no guile in explaining that she loves Canada (including admitting that is where her heart lies) but that she would not betray the trust associated with her clearance. At her hearing, she expressed her affinity for the U.S. as well as Canada ("I also want to emphasize that I am an American citizen by birth, that I love this country, and that I've chosen to spend my life here." Tr. 19). Applicant has handled classified material on a daily basis with due diligence for more than ten years and her concrete actions are entitled to substantial weight in assessing the risk of foreign preference. Her ties to the U.S. have only strengthened since she was granted her clearance, and she intends to reside and work here for the next 15 years. She is not likely to act in preference for Canada or any other foreign country over the U.S.

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) 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.

The salient issue in the security clearance determination is not in terms of loyalty or allegiance, but rather what is clearly consistent with the national interest. *See* Executive Order 10865, Section 7. The coworkers who know Applicant through daily interaction with her for more than 10 years have no reservations about recommending continuation of her security clearance. She has shown herself to be forthright with the government about her strong sentimental bonds to Canada, and at the same time very capable of fulfilling her obligations of a clearance and U.S. citizenship. Based on the evidence before me, I conclude it is clearly consistent with the national interest to continue the clearance she has held and actively exercised without any violations since 1997.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is continued.

ELIZABETH M. MATCHINSKI
Administrative Judge