



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



In the matter of:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-09033

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel

For Applicant: Jeffrey Christianson, Esquire

July 25, 2008

Decision

WHITE, David M., Administrative Judge:

Applicant was born in the United Kingdom and moved to the U.S. in 1995. He has been very successful in business. He and his wife intend to live here permanently, and became citizens in 2004. He used his U.K. passport once in 2005 due to mistaken travel arrangements by his staff. He has since surrendered it. He has close family and substantial property in the U.K., but deeper and more substantial ties to the U.S. Based upon thorough review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Applicant submitted his Security Clearance Application (SF 86), on September 10, 2007. On January 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines C and B. 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 (DoD) for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on February 18, 2008. He answered the SOR in writing (Answer) on March 5, 2008, and requested a hearing before an administrative judge. DOHA received the request on March 7, 2008. Department Counsel was prepared to proceed on April 10, 2008, and DOHA assigned the case to me on April 16, 2008.

DOHA issued a Notice of Hearing on May 13, 2008, and I convened the hearing as scheduled on June 25, 2008. During scheduling discussions, Applicant's Counsel requested delay until that date to accommodate Applicant's schedule. The Government offered exhibits (GE) 1 through 5, which were admitted without objection. Department Counsel did not submit any request for administrative notice, but Applicant's Counsel did introduce the U.S. State Department Background Note on the United Kingdom. Applicant testified on his own behalf, as did two other witnesses, and submitted Applicant's Exhibits (AE) A through J, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on July 7, 2008.

Findings of Fact

Applicant is a 57-year-old president and chief executive officer of a defense subcontractor who applied for a security clearance in connection with his company's filing for a facility clearance. He admitted, with explanations, the truth of each factual allegation in the SOR. He was born and raised in the United Kingdom (U.K.). He moved to the United States (U.S.) in a business relocation in 1995. He and his wife both became naturalized U.S. citizens in 2004, because they had become very successful here and wanted to be U.S. citizens. They also retain their U.K. citizenship, but intend to reside in the U.S. for the rest of their lives. (GE 1 at §§ 2, 3, 8, 13; AE A; Tr. at 20, 75, 87-88, 127.)

Applicant's two grown daughters, one of whom is married with four children, and his sister are all citizens and residents of the U.K. None are now, or have ever been affiliated with or employed by the U.K. government. Applicant owns four residential properties in the U.K., one that he uses when he visits and his daughters both use, one that one of his daughters lives in, and two that are rental properties. The value of these four properties is approximately \$14 million. He also has two U.K. bank accounts holding a total of about \$100 thousand, for use in property management and during visits there. Applicant and his wife also own two homes in the U.S. worth a total of about \$4 million, one of which is his primary residence. His company has been very successful, and his recent annual compensation is about \$1 million in cash and \$4 million in stock options. He owns about \$12 million in his company's stock, and valued his total net worth at between \$40 and \$50 million. About 70% of his assets are in the U.S. His U.S.-based estate planning attorney recommended maintaining some assets in the U.K. to hedge against currency fluctuations, since his two daughters are his sole heirs and they intend to remain living in the U.K. (GE 2 at 4-6; Tr. at 91-100, 110-113, 120-121.)

Applicant travels frequently around the world. His company's European operations are headquartered in London, and more than 90% of his regular visits there involve both business and some time visiting family. He and his family are very close. Since obtaining it, he has only used his U.S. passport when entering and leaving the U.K. During a visit to the U.K. in 2006, he and his wife renewed their U.K. passports that were due to expire in 2007. He never used this renewed passport, and on advice of his company's general counsel and Facility Security Officer (FSO), has surrendered it into the FSO's custody because, with exceptions noted below, he has always traveled on his U.S. passport since obtaining citizenship, and intends to do so in the future. Any return of the passport to Applicant while he holds a security clearance will be documented by the FSO in the JPAS system. His surrender of possession of his U.K. passport was conditioned on his receipt of, and continuing need for, a U.S. security clearance. However, since he will maintain dual citizenship, this is no different than having the passport physically destroyed since he could apply for a new one after his need for a clearance ends. He will not be able to use that passport for undocumented travel or otherwise evidence a preference for U.K. citizenship. He testified, credibly, that his preference is for his U.S. citizenship. He is sincerely grateful for the financial and professional successes afforded him by the U.S., and believes that being in the U.S. made the life-saving difference for his wife, who was successfully treated for cancer here. He testified very credibly that he would never do anything in his personal or professional life that in any respect could be contrary to the national interest of the U.S. Neither he nor his wife has voted in the U.K. since moving to the U.S. They receive no financial or other benefits from the U.K. government, and have no political ties or other affiliation with it. (AE H; Exhibits 2-4 to Answer; Tr. at 88-90, 102-104, 109, 113-118, 122-124, 127-128.)

In preparation for one business trip to Australia in 2005, Applicant's secretary and travel agent inadvertently, and without his knowledge, used his now-expired U.K. passport to obtain the electronic visa from Australia. He discovered this on the day he traveled, and accordingly had to use his U.K. passport for that visit. This was done without his knowledge, and it had been his intention to use his U.S. passport, as he regularly did after obtaining it. He did use his U.S. passport on his subsequent trip to Australia in 2007. He has also stated that he had used his U.K. passport on rare occasions to access shorter immigration lines within the European Community, but not because of any preference for U.K. citizenship. (Answer at 2 and Exhibits 1, 2 at 7, 29, 41, and 4 at 21; Tr. at 100-102, 128-129.)

Applicant presented evidence, including testimony from one of his major account managers involved with the contracts requiring access to classified information, to demonstrate that he would not personally be dealing with classified information and was seeking a clearance only because he needed it for the company to be granted the facility clearance being sought to better serve defense-related customers. The requirement that principal officers of a company seeking a facility clearance be eligible for access to classified information is a policy determination that does not alter the eligibility criteria set forth in the Directive. Accordingly, this evidence is not considered material to determining Applicant's eligibility for a clearance.

The chairman of Applicant's board of directors testified very credibly to Applicant's integrity, responsibility, trustworthiness, good character and loyalty as a U.S. citizen. He had extensive experience with classified information and procedures, both as a former military officer and in subsequent business ventures. He expressed supreme confidence in Applicant's dedication to safeguarding sensitive and protected information of all types. (Tr. at 55-63, 67-71.)

The United Kingdom is a constitutional monarchy with a democratically elected government. It is "one of the United States' closest allies and British foreign policy emphasizes close coordination with the United States. Bilateral cooperation reflects the common language, ideals, and democratic practices of the two nations." (AE C at 1, 7.) Department Counsel represented that the Government was not asserting any heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion in this case, based on the nature of the U.K. and its relationship with the U.S. (Tr. at 133-134, 139-142.)

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 used to evaluate 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 over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides that "Any determination under this order adverse to

an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline C, Foreign Preference

Under AG ¶ 9 security concerns involving foreign preference arise because, “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 ¶ 10 describes conditions that could raise a security concern and may be disqualifying. The potentially disqualifying condition asserted by the Government in this case is:

(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;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial. or business interests in another country;
- (6) seeking or holding political office in a foreign country; and
- (7) voting in a foreign election.

As alleged in SOR ¶ 1.a, Applicant did obtain a renewed U.K. passport in 2006. This occurred before his company's need for a facility clearance arose, at a time when there was no reason for him not to do so. He is a dual citizen by virtue of his birth in the U.K. and his decision, with his wife, to become U.S. citizens in 2004 because they intend to reside in the U.S. as Americans for the rest of their lives. He travels frequently and he obtained the U.K. passport as a matter of potential convenience due to shorter lines at European Community immigration stations.

Except for one inadvertent incident in 2005, as correctly alleged in SOR ¶ 1.b, Applicant has traveled exclusively using his U.S. passport since he obtained it, even when going to and from the U.K. His 2005 use of his U.K. passport in Australia occurred due to a clerical error and was not an indication of preference for U.K. citizenship. He had intended to use his U.S. passport for that trip, as he has done on all other travel since. His 2006 renewal of the passport evidences his desire to retain his dual citizenship, but is only minimally indicative of any preference for the U.K. over the U.S. Dual citizenship, in and of itself, is not a disqualifying condition.

The evidence does not support any of the concerns listed in ¶ 10(a)(2) through (7), or in ¶ 10(b) through (d). As ¶ 1.c of the SOR correctly alleged at the time it was issued, Applicant did own three properties in the U.K. worth more than \$10.6 million. He has subsequently purchased another property in London for one of his daughters to live in, bringing his total real estate holdings there to about \$14 million. His citizenship status has no bearing on his ability to buy or own these properties. His two daughters are his sole heirs, and both are U.K. citizens and residents. His investment in these properties was pursuant to his attorney's estate planning advice to diversify his holdings into both British pounds and dollars, and ease their inheritance of assets. He still holds about 70% of his net worth in the U.S., so even this substantial investment is not indicative of any preference on his part for the U.K. over the U.S. Rather, it reflects sound financial management. His overall financial situation reflects his preference for the U.S. and his citizenship here. I do not consider his renewal of his U.K. passport to be an action to obtain recognition of foreign citizenship under ¶ 10(b), since he already had a valid U.K. passport at the time, and his U.K. citizenship had been continuous since birth.

AG ¶ 11 provides conditions that could mitigate security concerns. Those applicable to Applicant's situation include: "(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;" and "(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated." He was born a citizen of the U.K. and came to the U.S. to work. After about nine years, and purely because they wanted to live the rest of their lives as U.S. citizens, he and his wife became naturalized citizens. When its possession became an issue of potential concern, and since he was not using it anyway, Applicant surrendered his U.K. passport to his FSO where it will remain for as long as Applicant has any need for a security clearance.

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. Department Counsel argued that the evidence in this case established two of them: ¶ 7(b), “connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information;” and ¶ 7(e), “a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.” Department Counsel specifically stated the Government’s position was that ¶ 7(a), “contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion,” did not apply. Based on review of the record evidence, and considering the foreign country involved, I concur with that position. As explained by Department Counsel, the Government’s concern is not that the U.K. would attempt to exploit or coerce Applicant to disclose protected information based on his family or property there, but that the presence of his close family members and substantial property in the U.K. could create some influence to assist the U.K. and a conflict of interest between his obligation to protect sensitive information and desire to help the U.K. It is undisputed that his daughters and grandchildren reside in the U.K., and he owns substantial property there. There is no evidence that the U.K. targets U.S. citizens to obtain protected information or is associated with a risk of terrorism, and I can discern no plausible scenario in which Applicant’s illicit provision of protected information would be considered beneficial by U.K. authorities. Thus, minimal security concerns are raised under these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. Those with potential application in this case are:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those

persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.; and

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

Applicant's relationships with his family in the U.K. are close and important to him. He has made substantial financial investments there for the benefit of his daughters. None of his family members have any government connection, or are in any position to benefit from his compromise of protected information. To the contrary, such conduct would put his substantial assets and freedom to visit with them at substantial risk for no apparent gain. Particularly since the U.K. is a close ally that does not target U.S. citizens for protected information, it is highly unlikely that Applicant would be put in a position of having to choose between any foreign interests and those of the U.S. Although his investments in the U.K. are very substantial by almost any standards, they still represent less than 30% of his net worth, the remainder of which he holds in the U.S. He and his wife chose to become U.S. citizens, entirely independent of any security clearance considerations, because this is their new home and they intend to live here permanently. To the extent any minimal conflict of interest may be generated by some desire to help the U.K. because he has family and property there, his professional, financial, and family ties in the U.S. are deeper and sufficiently longstanding that he can be expected to resolve any conflict in favor of the U.S. interest.

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 common sense 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. There is no misconduct alleged by the government. The single use of his U.K. passport three years ago, after becoming a U.S. citizen, was not a serious indication of foreign preference and was entirely an inadvertent incident that he did not intend to occur. Applicant is a fully mature, trustworthy and successful executive who has been very successful in exercising significant responsibility over people and resources. His integrity is beyond reproach, and his loyalty to the U.S. is established by the record evidence. As Department Counsel expressed, there is no concern over pressure, coercion, exploitation or duress based on his family or property in the U.K. He has surrendered his U.K. passport, so it's possession will not continue.

On balance, Applicant presented sufficient evidence to fully mitigate reliability and trustworthiness security concerns arising from the citizenship status and residence of his family in the U.K., ownership of property there, and the circumstances surrounding his U.K. passport. Overall, the record evidence leaves no doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has fully mitigated the security concerns arising under Guidelines C and B.

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
Paragraph 2, Guideline B:	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 interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

DAVID M. WHITE
Administrative Judge