



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



In the matter of: )  
)  
) ISCR Case No. 07-09983  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel  
For Applicant: *Pro Se*

February 26, 2010

**Decision**

CREAN, Thomas M., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on March 2, 2006 (Gov X 4). On July 31, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns for foreign preference under Guideline C (Gov X 1). 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 August 5, 2009 (Gov X 2).

Applicant answered the SOR on August 19, 2009. He admitted one allegation, and denied the other allegation. He provided an explanation for his denial of allegation SOR 1.b. He elected to have the matter decided on the written record in lieu of a hearing (Gov X 3). Department Counsel submitted the Government's written case on October 22, 2009. Applicant received a complete file of relevant material (FORM) on

November 4, 2009, and was provided the opportunity to file objections, and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not submit additional information. The case was assigned to me on February 2, 2010. Based on a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

### **Findings of Fact**

After a thorough review of the pleadings and exhibits, I make the following findings of fact. Applicant admitted the factual allegations in SOR 1.a, and denied the factual allegation in SOR 1.b.

Applicant is a 73-year-old civil engineer who has worked for a defense contractor for over eight years. He has both a bachelor's and master's degree in engineering from Canadian universities. He is seeking a security clearance to permit him to work on United States government projects overseas. Applicant was born in Trinidad and Tobago, came to the United States in 1980, and has been a United States citizen since May 1988. Applicant received a United States passport as early as August 21, 1988 (Gov X 4). His present United States passport was issued on January 31, 2008, and expires on January 30, 2018. Applicant used his United States passport to enter Trinidad and Tobago in August 2008. At the time, Applicant also held a valid Trinidad and Tobago passport (Gov X 5).

Applicant learned of business opportunities in Trinidad and Tobago in 1996. He was encouraged by his employer to seek dual citizenship with Trinidad and Tobago to permit him to engage in business there. Trinidad and Tobago citizenship is required to be a business owner in the country. Applicant applied for and was granted Trinidad and Tobago citizenship in December 1996. He received a Trinidad and Tobago passport which was to expire in December 2006. He used the Trinidad passport to enter Granada in March 2006. He applied for and received an extension of the Trinidad and Tobago passport in September 2006, after he was interviewed by security investigators concerning his application for a security clearance. The passport expired on September 27, 2008 (Gov X. 5).

Applicant established a limited engineering company in Trinidad and Tobago in December 1996, to enable him to seek business in that country for his employer. Applicant was the principal owner of the business, and responsible for decision-making in the company. Applicant's business function was to generate business projects in Trinidad and Tobago for his employer. All work would be done by Applicant's employer. However, the business venture did not generate work in Trinidad and Tobago and made no income in that country. He and his employer bid on potential work in Trinidad and Tobago, but they were not awarded any contracts. Since there is no work in Trinidad and Tobago, there is no reason for him to continue to be a dual citizen or have a Trinidad and Tobago passport. In his response to the SOR, Applicant stated that he and his employer decided not to renew his Trinidad and Tobago passport and he established his intention to relinquish his Trinidad and Tobago citizenship. (Gov. X 3).

## **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 commonsense 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.

## **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 may be prone to provide information or make

decisions that are harmful to the interests of the United States (AG ¶ 9). Applicant was born in Trinidad and Tobago but left that country in 1961. He came to the United States in 1980 and became a United States citizen in 1988. He requested and received Trinidad and Tobago citizenship in 1996 for business purposes. He applied for and received a Trinidad and Tobago passport in 1996, and used it to enter another country in 2006. These factors raise Foreign Preference Disqualifying Condition (FP DC) AG ¶ 10(a) (exercise of any right, privilege, or obligation of foreign citizenship after becoming a United States citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport). His acquisition of Trinidad and Tobago citizenship also raises FP DC AG ¶ 10(b) (action to acquire or obtain recognition of a foreign citizenship by an American citizen).

The government produced substantial evidence through Applicant's admission and statements in response to interrogatories, and established the disqualifying condition in AG ¶ 10(a). The burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns under foreign preference. Applicant has the burden to refute an established allegation or prove a mitigating condition, and the burden to prove or disprove it never shifts to the government.

The United States Supreme Court has recognized a right under the United States Constitution for United States citizens to have dual citizenship with another country (*Afroyim v. Rusk*, 387 U.S. 253 (1967)). However, eligibility for a security clearance must be determined by application of the disqualifying conditions for foreign preference under the factual circumstances. The President in promulgating the disqualifying conditions could have specified that dual citizenship by itself was a security concern, but he did not. The rule that was promulgated raises a security concern based on an exercise of dual foreign citizenship. Applicant provided a copy of his Trinidad and Tobago passport in response to interrogatories. The passport shows it was used in August 2006 to enter another country. The passport clearly shows it was to expire in September 2006, was renewed before it expired, and expired again in September 2008. He has not renewed the passport since it expired in September 2008. Applicant does not possess a current foreign passport. Applicant's possession of an expired, not current, passport is not considered an exercise of dual citizenship under FP DC AG ¶ 10(a)(1).

Applicant sought dual citizenship with Trinidad and Tobago in 1996 even though he had become a United States citizen in 1988. The dual citizenship with Trinidad and Tobago was for business purposes and not based on a preference for Trinidad and Tobago over the United States. Since dual citizenship was obtained to facilitate business opportunities, it was not based solely on Applicant's birth in Trinidad and Tobago. Foreign Preference Mitigating Condition (FP MC) AG 11(a) (Dual citizenship is based solely on parents' citizenship or birth in a foreign country) does not apply.

Applicant established FP MC AG ¶ 11(b) (The individual has expressed a willingness to renounce dual citizenship). In response to the SOR, Applicant stated he and his employer decided there were no longer viable business opportunities in Trinidad

and Tobago. He decided not to renew his Trinidad and Tobago passport and to relinquish his dual citizenship with Trinidad and Tobago. The accumulated evidence does not show Applicant has a preference for Trinidad and Tobago over the United States. He became a dual citizen not because he had a preference for Trinidad and Tobago over the United States but for the limited purpose of doing business in that country. Applicant has mitigated security concerns for foreign preference raised by his exercise of the rights of foreign citizenship with Trinidad and Tobago by seeking citizenship and a passport from that country.

### **Whole Person Concept**

Under the whole person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An 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 a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

Applicant has been a United States citizen for over 20 years. He became a dual citizen of his country of birth, Trinidad and Tobago, for business purposes. He exercised his dual citizenship by obtaining a Trinidad and Tobago passport which is now expired. Applicant's dual citizenship with Trinidad and Tobago and his receiving a Trinidad and Tobago passport which is now expired for business purposes does not show a preference for Trinidad and Tobago over the United States. Access to classified information is granted.

### **Formal Findings**

Paragraph 1, Guideline C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	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 granted.

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THOMAS M. CREAN  
Administrative Judge