



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-10602
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Francisco Mendez, Esq., Department Counsel  
For Applicant: *Pro Se*

March 28, 2008

**Decision**

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LAZZARO, Henry, Administrative Judge

Applicant failed to mitigate the foreign preference security concerns that exist in this case.

On October 15, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.<sup>1</sup> The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline C (foreign preference). Applicant submitted a response to the SOR, signed by her on November 23, 2007, in which she admitted all SOR allegations and requested a clearance decision based on the written record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on December 6, 2007, which was mailed to Applicant on December 11, 2007, and received by her on

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<sup>1</sup> This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive), and revised adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

December 14, 2007. Applicant was informed she had 30 days from receipt of the FORM to submit her objections to information contained in the FORM or submit any material she wished to be considered. Applicant did not submit a response to the FORM or object to anything contained in the FORM within the time allowed her. The case was assigned to me on March 13, 2008.

### **Findings of Fact**

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough review of the pleadings and exhibits,<sup>2</sup> I make the following findings of fact:

Applicant is a 42-year-old woman who had been employed by a defense contractor for about six years at the time she submitted a security clearance application (SF 86) in December 2004. She was born in Kenya, is a citizen of the United Kingdom, and became a naturalized United States citizen in November 2004. She did not possess a U.S. passport at the time she submitted the SF 86.

Applicant possesses a U.K. passport that was issued in October 2001, and which does not expire until October 2011. In her August 2007 response to interrogatories, Applicant provided the following reason why she was unwilling to destroy, surrender, or invalidate her U.K. passport:

"I wish to keep my British citizenship current until my daughters are adults and are able to decided at that time if they wish to retain or renounce their British citizenship." (FORM Item 6)

The FORM does not disclose when Applicant immigrated to the U.K. from Kenya. However, she attended a technical college in the U.K. from September 1984 until May 1986, and thereafter worked for the British government as an administrative assistant from May 1987 until July 1998. Applicant's mother was born in Kenya, resides in the U.S., and is a dual U.S. and U.K. citizen. Applicant's father was born in India but is now a resident and citizen of the U.K.

Applicant was married in the U.K. in September 1997. Her husband was born in Kenya, resides with her in the U.S., and is a U.K. She has a 17-year-old daughter who born in the U.K., resides with her, and is a U.K. citizen. Applicant also has an eight-year-old daughter who was born in the U.S., resides with her, and is a dual U.S. and U.K. citizen.

Applicant's mother-in-law and father-in-law were born in India but are now residents and citizens of the U.K. She has three sisters who were born in Kenya. Two of her sisters

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<sup>2</sup> In addition to the pleadings, the FORM consists of a security clearance application (SF 86) executed by Applicant on December 20, 2004, brief responses to interrogatories executed by Applicant on August 29, 2007, and a copy of her United Kingdom passport. Thus, very little is known about Applicant and what is known is based on information that is over three years old and which may or may not still be accurate. However, because neither side requested a hearing, my findings in this case must be based on the meager and stale information contained in the FORM.

live in the U.S. One of those two sisters is a U.K. citizen with registered alien status in the U.S. The other sister is a dual U.S. and U.K. citizen. Applicant's third sister is a U.K. citizen but resides in Qatar.

Applicant owns a house in the U.K. that was her marital residence before she relocated to the U.S. She rents the house, valued at approximately \$250,000, to tenants. Applicant visited the U.K. for about two weeks in 2003. She used her U.K. passport for that travel.

## POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying conditions and mitigating conditions for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline C (foreign preference), with its disqualifying and mitigating conditions, is most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>3</sup> The government has the burden of proving controverted facts.<sup>4</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence,<sup>5</sup> although the government is required to present substantial evidence to meet its burden of proof.<sup>6</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>7</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>8</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>9</sup>

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<sup>3</sup> ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

<sup>4</sup> ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

<sup>5</sup> *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

<sup>6</sup> ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

<sup>7</sup> ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

<sup>8</sup> ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

<sup>9</sup> ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

No one has a right to a security clearance<sup>10</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>11</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>12</sup> \_\_\_\_\_

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## Analysis

### Guideline C, Foreign Preference

Foreign preference is a concern 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.

Applicant possesses a current U.K. passport which she is unwilling to relinquish or otherwise invalidate because she wants to make certain her daughters can assert their British citizenship, if they so choose, when they become adults. Disqualifying Condition (DC) 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 applies.*

The FORM is devoid of any information about why Applicant decided to immigrate to the U.S., or when or why her family emigrated from Kenya to the U.K. There is no information available about her future residency plans. Little is known about her husband, children, parents, siblings, and in-laws. With the exception of her youngest daughter, Applicant’s relatives all have ties to one or more foreign countries. For unknown reasons, one of her sisters resides in Qatar, and what she and her husband, if she is married, do there is also unknown. Applicant previously worked for the British government and she has chosen to retain ownership of her former marital residence located in the U.K., again for unknown reasons. She has recently and very clearly indicated she wants to leave open the opportunity for her children to avail themselves of the rights of British citizenship when they become adults.

Because neither party chose to request a hearing in this case, little, if any, current information is available upon which a decision can be based and a finding made that Applicant has refuted, extenuated, or mitigated the foreign preference concerns alleged by the Government. Thus, I am compelled to find no mitigating condition exists and that Applicant has failed to mitigate the foreign preference security concern.

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<sup>10</sup> *Egan*, 484 U.S. at 528, 531.

<sup>11</sup> *Id* at 531.

<sup>12</sup> *Egan*, Executive Order 10865, and the Directive.

The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. 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." There is absolutely no reason to doubt that Applicant is a loyal American citizen or suspect she would ever consider doing harm to the interests of the United States.

Considering all relevant and material facts and circumstances present in this case, the very little information available upon which to base a whole person analysis, the factors listed in ¶ 6.3.1 through ¶6.3.6 of the Directive, and the applicable disqualifying condition, Applicant has failed to mitigate the foreign preference security concern that exists in this case. She has failed to overcome the case against her in this regard or satisfy her ultimate burden of persuasion. Guideline C is decided against Applicant. It is not clearly consistent with the national interest to grant Applicant a security clearance.

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### **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
Subparagraphs 1.a-e:	Against Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

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Henry Lazzaro  
Administrative Judge