



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-13931
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Nichole Noel, Esquire
For Applicant: *Pro se*

June 30, 2008

Decision

CURRY, Marc E., Administrative Judge:

On March 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its denial of Applicant's request for a security clearance. Specifically, it alleged facts which raise concerns under Guidelines C, Foreign Preference. 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 on April 10, 2008, and requested a hearing. I was assigned the case on April 29, 2008. On May 6, 2008, the hearing was scheduled for May 7, 2008. At the hearing, I received three government exhibits and the testimony of two Applicant witnesses. The transcript (Tr.) was received on June 11, 2008. Upon reviewing the record evidence, I conclude that Applicant's application for eligibility to hold a security clearance is denied.

Findings of Fact

Applicant is a 35-year-old single woman from Brazil, who emigrated to the United States in 1992. She attended both college and graduate school in the U.S., earning degrees in business administration and computer science, respectively. She became a naturalized citizen in 1999. Her mother and sister are also naturalized U.S. citizens. All reside in the U.S.

For the past four years, Applicant has worked as a computer manager tasked with installing educational software onto hard drives located on a military base (Tr. 12). Both her supervisors and her clients are pleased with the quality of her work (Tr. 23).

At the time Applicant became a naturalized U.S. citizen, she worked for a company that required her to travel to Brazil on short notice (Tr. 14). Because she could travel there quicker with a Brazilian passport than with a U.S. one, Applicant applied for, and received a Brazilian passport (Answer). Since leaving this job in 2004, she has retained and renewed her Brazilian passport. She needs it to expedite her travel to Brazil in case of a family emergency.¹ When Applicant's Brazilian passport expires in 2009, she plans on renewing it (Tr. 19).

Applicant has no Brazilian property or public welfare interests. She has not voted in a Brazilian election since emigrating to the U.S.

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 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

¹Applicant's father and grandparents are Brazilian citizens and residents. Some of her grandparents have experienced serious health problems over the years (Tr. 15).

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.

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). Here, Applicant’s possession of a Brazilian passport triggers the application of 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.”

Absent any foreign influence security concerns, the fact that Applicant traveled to Brazil on several occasions over the years, as alleged in SOR subparagraph 1.e, does not generate a security risk. I resolve SOR subparagraph 1.e in Applicant’s favor.

There is no record evidence of any enmity between the Brazilian and U.S. governments, nor any record evidence that the Brazilian government engages in espionage against the U.S. Since emigrating to the U.S., Applicant has assimilated into U.S. society, earning two advanced degrees, and becoming engaged to a U.S. citizen who is a member of the armed services.

The possession of a foreign passport, alone, is significant enough, however, to generate a security risk, because it raises the possibility that its holder may engage in foreign travel that the U.S. would not be able to verify. Applicant maintains the Brazilian passport solely in the event she needed to travel there quickly during a family emergency. The negative security significance of possessing a foreign passport “is not negated or diminished because an applicant engages in these acts for personal reasons or for personal convenience” (ISCR Case No. 99-0424(App. Bd. (February 8, 2001))).

I have considered the mitigating conditions and conclude none apply. Applicant has not mitigated the foreign preference security concern.

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.

I considered the whole person factors in the Foreign Preference section of the Decision, above. Upon considering the applicable disqualifying and mitigating conditions together with the whole person factors, I conclude that it is not clearly consistent with the national interest to grant Applicant access to classified information. Clearance is denied.

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 - 1.d:	Against Applicant
Subparagraphs 1.e:	For Applicant
Subparagraphs 1.f:	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.

MARC E. CURRY
Administrative Judge