



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-14008
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nichole Noel, Esquire, Department Counsel  
For Applicant: *Pro Se*

July 16, 2008

**Decision**

LAZZARO, Henry, Administrative Judge

Applicant failed to mitigate the foreign preference concerns that exist in this case due to her actively exercising her German citizenship.

On March 6, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) 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 alleges security concerns under Guideline C (foreign preference). Applicant submitted a response to the SOR that was received by DOHA on April 8, 2008. She admitted all SOR allegations and requested a hearing.

The case was assigned to me on May 8, 2008. A notice of hearing was issued on June 2, 2008, scheduling the hearing to be conducted by video tele-conference on June

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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.

12, 2008.<sup>2</sup> The hearing was conducted as scheduled. The government submitted two documentary exhibits that were marked as Government Exhibits (GE) 1 and 2. Those documents were admitted into the record without objection. Applicant testified but did not offer any other evidence. The transcript was received on June 23, 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, testimony and exhibits, I make the following findings of fact:

Applicant is a 28-year-old single woman who has been employed in Germany as an administrative assistant/office manager by a defense contractor since August 2005. Her previous employment history in Germany consisted of working as an automobile rental agent from July 2004 to August 2005, again as an automobile rental agent from July 2003 to March 2004, and as a car salesperson from September 2001 to July 2003. She was unemployed from March 2004 to July 2004. She has never possessed a security clearance.

Applicant attended school in Germany from the third grade on. Her formal education ended in August 2001 when she received the German equivalent of an associates degree in certified administration/finance liaison. She served an apprenticeship with a German automobile dealer while attending this last school. The apprenticeship was with the same employer she began working for in September 2001. The schooling and apprenticeship program allowed her to not pay anything additional other than her apprenticeship services for her advanced education.

Applicant's mother is a German citizen and resident. Her mother married her father who was an American serviceman was stationed in Germany at the time. Applicant was born in Germany and moved with her parents to the United States when her father was reassigned here. She resided with both parents in the U.S. until they divorced when Applicant was about eight years old. Applicant attended the first and second grades of elementary school in the U.S. but returned to Germany with her mother following her parents' divorce.

Applicant acquired dual U.S./German citizenship based on her parents' citizenship. Applicant's mother is a registered alien in the U.S. but has resided solely in Germany for the past twenty years. Applicant has one brother who is a dual U.S./German citizen and who resides in Germany. She has a half-sister who is solely a German citizen and who resides in Germany. Applicant has continuously resided in Germany since she was about eight years old. She has a U.S. passport that was issued in May 2003. She had a German passport that expired in April 2003 that she has not renewed.

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<sup>2</sup> Applicant was contacted by Department Counsel on or before May 14, 2008, and was notified of and agreed to the hearing date of June 12, 2008. Delay in issuance of the formal Notice of Hearing was caused by the administrative requirements of securing a video tele-conference location and connection in Germany.

Applicant votes in German elections but has never voted in a U.S. election. As required by German law, she pays taxes in Germany and contributes to German retirement and healthcare systems. She receives required medical care through the German healthcare system.

Applicant does not know where her father resides and has no contact with him. She visited the U.S. for about three weeks in 2001 with a boyfriend who was a member of the U.S. military stationed in Germany. She visited again in March 2008 with her current boyfriend who is also a member of the U.S. military stationed in Germany.

Her current boyfriend is not scheduled to return to the U.S. until 2011. They have known each other for about two years and been dating for about one year. They have discussed marriage but have not made any formal commitment. The purpose of her March 2008 visit to the U.S. was to allow her to meet his relatives. He has not decided whether or not to make the military a career. If he decides to remain in the military, she is willing to relocate from Germany with him. If he decides to leave the military, they would like to remain in Germany.

Applicant has expressed her willingness to renounce her German citizenship if it is necessary to allow her to keep her present employment. However, she believes it would be difficult for her to remain in Germany if she renounced her German citizenship. She testified she would have to obtain German work and residence permits to remain in Germany and thought she might instead be required to leave that country. (Tr. 36)

## **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>

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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).

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>

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 has continuously resided in Germany since she was eight years old. She has been educated in German schools since the third grade. She has worked exclusively in Germany. She votes in German elections, pays German taxes, and contributes to German retirement and healthcare systems. She receives all medical care through the German healthcare system. All her immediate relatives, with the exception of her father whose place of residence is unknown, are either sole or dual citizens of Germany. All her immediate relatives, again with the apparent exception of her father, are residents of Germany.

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: . . . (3) accepting educational, medical,*

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<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.

<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.

*retirement, social welfare, or other such benefits from a foreign country . . . (7) voting in a foreign election apply.*

Applicant's German citizenship is based upon her mother's citizenship. Applicant was an eight-year-old child when her mother decided to return to and reside in Germany with Applicant and her brother following her divorce from Applicant's father. Mitigating Condition (MC) 11(a): *dual citizenship is based solely on parent's citizenship or birth in a foreign country* applies. Additionally, although conditionally and somewhat reluctantly, Applicant has expressed a willingness to renounce her German citizenship. Accordingly, she is entitled to some limited application of MC 11(b): *the individual has expressed a willingness to renounce dual citizenship*. The remaining mitigating conditions have no applicability to the facts of this case.

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 no reason to doubt that Applicant is a loyal American citizen nor to question the sincerity of her expressions of undivided loyalty to the United States.

However, weighing against Applicant's unquestioned loyalty to the United States are her overwhelming connections to Germany. She has resided in Germany for the past 20 years. She has been educated and worked in Germany since she was eight years old. All her immediate relatives, with the exception of her father whose whereabouts are unknown, are residents of Germany and either sole or dual citizens of Germany. Applicant's only contact with the United States over the past twenty years has been the acquisition of a U.S. passport and two visits of about three weeks duration to the U.S. with American servicemen who she met while they were stationed in Germany. While she testified she is willing to relocate anywhere her current boyfriend wants or needs to go if they marry, she also testified their joint desire is to reside in Germany if he decides to leave military service.

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.

Considering all relevant and material facts and circumstances present in this case, including the whole person concept, the factors listed in ¶ 6.3.1 through ¶6.3.6 of the Directive, the applicable disqualifying and mitigating conditions, Applicant's strong and long-standing ties to Germany, her minimal ties to the U.S., and her expressed preference to continue her German residence, I find Applicant has failed to mitigate the foreign preference security concern that exists in this case. She has failed to overcome the case against her 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-1.c:           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