



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



In the matter of:)	
)	
)	ISCR Case No. 07-14151
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer I. Goldstein, Esq., Department Counsel
For Applicant: *Pro Se*

May 30, 2008

Decision

LAZZARO, Henry, Administrative Judge

Applicant mitigated the foreign preference security concern that existed in this case.

On February 29, 2008, 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.¹ 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 March 14, 2008, 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 April 9, 2008, that was mailed to Applicant on April 14, 2008, and received by her on April 16, 2008. Applicant was informed she had 30 days from receipt of the FORM to submit her

¹ 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.

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 May 27, 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, I make the following findings of fact:

Applicant is a 45-year-old woman who has been employed by a defense contractor since January 2002, currently as a property management administrator. She was previously employed in private industry as an electronic inspector from February 1998 to December 2001, as a quality inspector for the same company through a temporary agency from January 1998 to February 1998, and as a quality clerk by a different company from May 1994 to January 1998.

Applicant is a U.S. citizen by birth, having been born in a city very near her current residence in January 1963. Applicant's mother was born in Mexico and either became a U.S. citizen in August 1984 or obtained resident alien status at that time.² Her mother resides in the United States near where Applicant lives.

Applicant possesses a U.S. passport that was last issued in June 2001. She has resided in the same residence since January 1994. She attended a vocational school from January 2005 to October 2005, and a real estate school from December 2006 to February 2007, in order to obtain a real estate license. She currently has a conditional real estate license and is required to successfully complete two additional classes to obtain a full license.

Applicant was first married in January 1979. That marriage ended in divorce in October 2000. Her husband was born in Mexico, but at some undisclosed time became a U.S. citizen. Applicant has a 26-year-old son, a 25-year-old son, and a 22-year-old daughter who were born during this marriage. Applicant's daughter resides with her. Her younger son lives nearby, while her oldest son is serving on active duty with the U.S. Army and living in another state.

Applicant has been remarried since October 2003. Her husband was born in Mexico in 1952, but became a U.S. citizen in November 1977. His father was a citizen of Mexico but is now deceased. His mother became a U.S. citizen in September 1996, and currently lives near Applicant's place of residence.

² A questionnaire for sensitive positions submitted by Applicant in March 2007 (Ex. 4), lists Applicant's mother's citizenship as being Mexican, but also includes the date of 08/27/1984 as the citizenship date, provides a citizenship certificate number, and then goes on to describe the document as alien registration.

Applicant visited Mexico for approximately three days in March 1999, and for about one week in October 2003. She lives a short distance from the U.S. - Mexican border and reports she has made many one-day trips to Mexico during the past seven years.

Sometime in approximately 2001, Applicant applied for Mexican citizenship by submitting an application at the Mexican consulate near her US. residence. She did so solely because she was required to be a citizen of Mexico in order to purchase real estate in Mexico and she and her husband were contemplating buying property in Mexico on which they could build a vacation home. Her application for Mexican citizenship was approved about two months after she applied.

In April 2003, Applicant and her husband paid \$7,000 for a vacant parcel of land in Mexico. She estimates it is now valued at \$15,000. She and her husband hope to eventually build a vacation home on this parcel of land but currently use it as a place to park a recreational vehicle when on vacation. They used money from their savings to pay for the land and do not rely on the land for income. Applicant applied for voting rights in Mexico to secure her ownership of the land and to obtain some kind of identification card to prove her Mexican citizenship. She has not actually voted in any Mexican election.

Applicant has not otherwise exercised any right of Mexican citizenship. She does not have any relatives living in Mexico and does not have any contact with foreign nationals other than when she vacations in Mexico. She asserts her sole loyalty is to the United States and she is willing to renounce her Mexican citizenship if it is a condition of her obtaining a security clearance.

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.³ The government has the burden of proving controverted facts.⁴ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁵

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

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

⁵ *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.⁶ “Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.”⁷ 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.⁸ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁹

No one has a right to a security clearance¹⁰ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹¹ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹² _____

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 applied for and received Mexican citizenship and the right to vote in Mexican elections. She applied for that citizenship and the right to vote so she could purchase vacation property in Mexico and to obtain identification that would identify her as a Mexican citizen. Additionally, she has purchased and presently owns a parcel of vacant land in Mexico that is valued at about \$15,000. Disqualifying Conditions (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, retirement, social welfare, or other such benefits from a foreign country; . . . (5) using foreign citizenship to protect financial or business interests in another country; and 10(b): action to acquire or obtain recognition of a foreign citizenship by an American citizen apply.*

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

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

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

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

¹⁰ *Egan*, 484 U.S. at 528, 531.

¹¹ *Id* at 531.

¹² *Egan*, Executive Order 10865, and the Directive.

Applicant's sole reason for obtaining Mexican citizenship and securing a right to vote in Mexican elections was to facilitate the purchase of a small parcel of land on which she and her husband hope to eventually build a vacation home. She has resided in the U.S. her entire life and lived in the same residence for the past 14 years. Applicant raised three children in this country who are all U.S. citizens and residents. Her oldest son is serving in the armed forces of the United States. All of her relatives are U.S. citizens and/or residents. She has no other contact with foreign nationals or Mexico other than as a vacation site. She has attended formal schooling in her state of residence to obtain a real estate license in that state.

There is no record evidence to indicate Applicant has a "preference" for Mexico over the United States or that she has any interest in Mexico other than as a personally desirable vacation spot. That vacation interest is one she shares with thousands if not millions of her fellow U.S. citizens. Applicant did not obtain Mexican citizenship as a display of preference for that country but rather to facilitate long-term vacation plans for her and her husband. She clearly demonstrated her allegiance to the U.S., and her lack of interest in Mexico as anything other than a vacation site, by expressing her willingness to renounce her Mexican citizenship. Mitigating Condition (MC) 11(b) *the individual has expressed a willingness to renounce dual citizenship* applies.

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 factors listed in ¶ 6.3.1 through ¶6.3.6 of the Directive, those facts discussed above, and the applicable disqualifying and mitigating conditions, Applicant has mitigated the foreign preference security concern that existed in this case. She has overcome the case against her and satisfied her ultimate burden of persuasion. Guideline C is decided for Applicant. It is clearly consistent with the national interest to grant Applicant a security clearance.

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
Subparagraphs 1.a-c:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Henry Lazzaro
Administrative Judge