



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 07-14916
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: John Bayard Glendon, Esquire, Department Counsel
For Applicant: *Pro se*

November 13, 2008

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA, Item 4), on November 29, 2006. On June 3, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under foreign preference (Guideline C). The action was taken pursuant to 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 adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and made effective within the Department of Defense for SORs issued on or after September 1, 2006. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted his answer to the SOR on June 22, 2008, and notarized on June 23, 2008. He requested a decision be made on the record in lieu of a hearing. A copy of the Government's File of Relevant Material (FORM, the government's evidence in support of the allegations of the SOR) was sent to Applicant on August 8, 2008. Applicant received the FORM on August 13, 2008. His response was due September

12, 2008. No response was received by DOHA. The case file was assigned to me on October 10, 2008.

Findings of Fact

The SOR contains two allegations under the foreign preference guideline. Applicant denied SOR 1.a. and admitted SOR 1.b. Applicant explained his denial of the first allegation is based on his belief he has no preference, and the government's claim he has a preference is sheer speculation. In his explanation for his admission to SOR 1.b., Applicant preferred not to destroy his Swedish passport because it facilitated travel to Sweden and throughout the European continent. Applicant mentioned several estate properties he owns in the United States (U.S.). In his closing statements within the attachment to his answer to the SOR, Applicant noted that the security investigation should include an evaluation of the country involved. He also opined that Sweden does not hold any animus toward the U.S.

Applicant is 37 years old and married. He has been employed as a systems engineer since February 2001. This is the first time Applicant has applied for a security clearance.

Applicant was born in Sweden in August 1970. In August 1991, he began his college education in the U.S., and received his Bachelor's degree in May 1994. He married a U.S. citizen in March 1995 and divorced her in May 2005. He married his second wife, a citizen of France, in April 2006.

In November 2006, Applicant admitted having a Swedish passport (Item 4, Section 17.d.) In March 2007 (Item 6), Applicant told an investigator for the government that he was willing to relinquish his Swedish passport if it was a requirement to hold a security clearance. In his answers to interrogatories dated December 12, 2007, Applicant stated, "I would greatly appreciate not having to surrender my Swedish passport, and given the country in question as well as the circumstances." As noted at the beginning of this section, on June 22, 2008, Applicant told the government in his answer that he wanted to keep his Swedish passport for convenience purposes. Since March 2003, Applicant has traveled to Sweden or France nine times. (Item 4)

SOR 1.a. Applicant obtained a Swedish passport on November 29, 2000, and the passport expires on November 29, 2010, after becoming a U.S. citizen on March 31, 2003. Item 4 shows that Applicant received his U.S. citizenship on March 26, 2003.

SOR 1.b. Applicant exercised his dual citizenship (which he wants to retain at least conditionally) by using his Swedish passport in place of his U.S. passport for ease of travel in Europe, and as proof of identification in Sweden. See Answer to SOR.

Applicant provided no independent evidence regarding his job performance or his contention that retention and use of his Swedish passport does not constitute evidence of foreign preference.

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 flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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. Reasonable 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 is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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

Foreign Preference (FP)

The Concern. “When a person demonstrates by his actions that he prefers a foreign country over the U.S., then he may be prone to provide information or make decisions that are harmful the U.S.” ¶ 9

Foreign preference (Guideline C) is based on an individual’s actions that show a preference for one country over the U.S. Applicant’s possession and/or use of a Swedish passport after receiving his U.S. citizenship in March 2003 establishes a foreign preference and invokes FP 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*) and 10.a.(1) (*possession of a current passport*). Possession, renewal and/or use of the foreign passport after being naturalized as a U.S. citizen constitutes the exercise of a privilege of Applicant’s Swedish citizenship he is no longer entitled to, particularly after expressing his sole allegiance to the U.S. during his naturalization ceremony in March 2003.

Applicant’s dual citizenship is based on more than his birth in a foreign country. Hence, FP MC 11.a. (*dual citizenship is based solely on parents’ citizenship or birth in a foreign country*) is not applicable. FP MC 11.b. (*the individual has expressed a willingness to renounce dual citizenship*) is not applicable as Applicant has stated several times he does not want to relinquish his dual citizenship.

FP MC 11.c. (*exercise of rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor*) does not apply because Applicant has chosen to maintain his Swedish citizenship after being naturalized a U.S. citizen. Applicant’s retention and use of his foreign passport has not been approved by any authorized security organization. FP MC 11.d. (*use of the passport is approved by the cognizant security authority*) is inapplicable.

The only mitigating condition that may apply but does not is FP MC 11.e. (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*)¹ Applicant has not complied with FP MC 11.e. Hence, he has not mitigated the security concerns associated with his current possession of a foreign passport. Applicant should have realized during his security investigation his Swedish passport could hinder his chances of obtaining a security clearance. The combination of the security investigation and receiving DoD Directive 5220.6 at same time he received his SOR in August 2008, containing the adjudicative guidelines and disqualifying and mitigating conditions, should have alerted Applicant to the adverse consequences of retaining his Swedish passport. The FC guideline is resolved against Applicant.

¹ FC MC 11.f. (*the vote in a foreign election was encourage by the U.S. Government*) is inapplicable to this case.

Whole Person Concept (WPC)

My finding against Applicant under the FP guideline must still be considered in the context of nine variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following WPC factors: (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 the participation was 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.

Applicant was born in Sweden and is 37 years old. Item 4 reflects that he has traveled back to Sweden several times since he received his U.S. citizenship. His statements during the 18-month security investigation indicate he wants to keep his Swedish passport (and Swedish citizenship) to facilitate his travel in and out of Sweden and other locations in Europe. However, by keeping his Swedish passport, an indicator of Swedish citizenship, Applicant is demonstrating his loyalties are divided between the U.S. and Sweden. When Applicant took his oath for U.S. citizenship during the naturalization ceremony in March 2003, he swore his allegiance to the U.S. and no other country. The combination of the security investigation and his receipt of the Directive placed him on adequate notice that he should surrender his Swedish passport. He decided not to relinquish the document. His decision exposes him to coercion and pressure by other governments seeking information from U.S. citizens. The FP guideline is found against him.

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 (Foreign Preference, Guideline C):	AGAINST APPLICANT
Subparagraph 1.a.	Against Applicant
Subparagraph b.	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.

Paul J. Mason
Administrative Judge