



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-15554
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Tom Coale, Department Counsel
For Applicant: *Pro Se*

August 8, 2008

Decision

TESTAN, Joseph, Administrative Judge:

On February 25, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant detailing the security concerns under Guidelines B and C. 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 in writing on March 13, 2008, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on April 17, 2008. Applicant did not file a response to the FORM. The case was assigned to me on June 24, 2008. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 39 year old employee of a defense contractor.

Applicant was born and raised in the United States. In 1994, she married a citizen of the Netherlands. She applied for, and in October 2005 received, Netherlands citizenship. In her SOR response, she explained why she applied for Netherlands citizenship:

[T]his was applied for and granted merely as a practical, administrative solution to Dutch immigration and naturalization laws. It is to prevent me from being forced having to enter the costly and extensive immigration process in the Netherlands, every time upon the return of me and my family to the Netherlands. Since my husband is employed by [the Netherlands government], and as such is sometimes stationed in different countries, this holds especially true.

Applicant's three children are dual citizens of the Netherlands and the United States. Two of the children were born in the United States and obtained their citizenship from the Netherlands based on applicant's husband's rights as a citizen of the Netherlands.

Applicant obtained a passport from the Netherlands in 2005. She has used this passport, instead of her United States passport, to travel from the Netherlands to a third country and on a trip to the Netherlands from the United States.

In her SOR response, applicant stated she will not renounce her Netherlands citizenship "solely for the purpose of receiving security clearance." She will, however, renounce it if her United States citizenship "comes in danger." She further stated her "loyalties lie with United States."

Applicant and/or her husband file tax returns with the Netherlands. Applicant has significant assets in the Netherlands, and also has "built a pension in the Netherlands due to a mandatory contribution to a pension fund while working."¹

A number of applicant's friends are citizens and employees of the Netherlands government.

Policies

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information." (*Department of the Navy v. Egan*, 484 U.S. 518,527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), the President set out

¹SOR Response, page 2.

guidelines and procedures for safeguarding classified information within the executive branch. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (Exec. Ord. 10865, Section 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, Paragraph E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, Paragraph E3. 1.15.) An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).) “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (Directive, Paragraph E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, Section 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

Analysis

Guideline B, Foreign Influence

The security concern relating to the Foreign Influence guideline is set forth in Paragraph 6 of the AG, and is as follows:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Paragraph 7 describes conditions that could raise a security concern and may be disqualifying. Under Paragraph 7.a., “contact with a foreign family member, business or

professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion” may be disqualifying. Under Paragraph 7.b., “connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information” may be disqualifying. Under Paragraph 7.e., “a substantial business, financial, or property interest in a foreign country . . . which could subject the individual to heightened risk of foreign influence or exploitation” may be disqualifying. Lastly, under Paragraph 7.i., “conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country” may be disqualifying.

Applicant’s marriage to a citizen and employee of the Netherlands raises obvious concerns under Paragraphs 7.a. and 7.b. Applicant’s large financial interests in the Netherlands raises concerns under Paragraph 7.e. And, the time applicant spends in the Netherlands leaves her vulnerable to exploitation, pressure and coercion, which raises concerns under Paragraph 7.i.

Paragraph 8 sets forth conditions that could mitigate security concerns. Under Paragraph 8.a., it is potentially mitigating if an applicant can demonstrate that “the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.” Under Paragraph 8.b., it is potentially mitigating if an applicant can demonstrate “there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.” Lastly, under Paragraph 8.c., it is potentially mitigating if an applicant can demonstrate that the “contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.”

None of the foregoing mitigating conditions is applicable. Applicant’s relationship with her husband, standing alone, creates a risk for foreign influence or exploitation. Applicant provided insufficient credible evidence that it is unlikely she would be placed in a position of having to choose between the interests of the Netherlands and the interests of the United States, or that she is not vulnerable to a conflict of interest.

Guideline C, Foreign Preference

The security concern relating to the Foreign Preference guideline is set forth in Paragraph 9 of the AG, and is as follows:

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.

Paragraph 10 describes conditions that could raise a security concern and may be disqualifying. Under Paragraph 10 a.1., exercising any right or privilege of foreign citizenship after becoming a United States citizen or through the foreign citizenship of a family member, such as possession of a current foreign passport, may be disqualifying. Applicant possessed and used a Netherlands passport after becoming a United States citizen. Accordingly, this disqualifying condition applies. Under Paragraph 10.b., “action to acquire or obtain recognition of a foreign citizenship by an American citizen” may be disqualifying. This disqualifying condition obviously applies.

Paragraph 11 describes potentially mitigating conditions. I have considered them and conclude none apply.

“Whole Person” Analysis

Under the whole person concept, the AJ must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the circumstances. An AJ should consider the nine adjudicative process factors listed at AG Paragraph 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 Paragraph 2c, the ultimate determination of whether to grant a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature woman who voluntarily applied for and received Netherlands citizenship and a Netherlands passport after marrying a citizen of the Netherlands. Since then she has used the Netherlands passport instead of her United States passport to travel overseas on at least two occasions. Although two of her three children were born in the United States, she and her husband obtained Netherlands citizenship for them. Because of her husband’s employment with the Netherlands government, applicant and her family have lived in the Netherlands, and there is no reason to believe she will not move back to the Netherlands, perhaps permanently. She has significant assets in the Netherlands, including pension rights. Applicant’s marriage to a foreign citizen and her other significant ties to the Netherlands creates a heightened risk of pressure, coercion, exploitation and duress.

Although I have considered the fact the Netherlands and the United States are close allies, this fact is not determinative. It is a known fact that friendly nations and allies have engaged in espionage against the United States.

I have carefully reviewed the administrative record, applicant's submissions, and the allegations in the SOR. I have weighed the disqualifying and mitigating conditions of Guidelines B and C, and I have evaluated applicant's conduct in light of the whole person concept identified at Paragraph E2.2. of Enclosure 2 of the Directive. After doing so, I conclude that applicant failed to rebut the Government's case under Guidelines B and C.

There is nothing in the record that suggests applicant is anything but a loyal American citizen. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance 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." Therefore, nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied concern as to applicant's allegiance, loyalty, or patriotism.

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:

Guideline B: AGAINST APPLICANT

Guideline C: 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.

JOSEPH TESTAN
Administrative Judge