



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-17068
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace Le'i, Esquire, Department Counsel

For Applicant: *Pro Se*

September 22, 2008

**Decision**

ABLARD, Charles D., Administrative Judge:

Applicant mitigated security concerns regarding Guideline C (Foreign Preference). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted his Security Clearance Application (e-QIP), on January 5, 2007. On February 27, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns for Applicant under Guideline 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 24, 2008 and requested a decision without a hearing. DOHA converted the matter to a hearing before an administrative judge. In his answer he admitted two allegations (SOR ¶¶ 1.a.,and b.) and denied the other two (SOR ¶¶ 1.c.,and d.) . Department Counsel was prepared to proceed on April 15, 2008. I received the case assignment on June 10, 2008. DOHA issued a notice of hearing on June 13, 2008, for a hearing on July 24, 2008. I convened the hearing as scheduled.

At the hearing, the government offered two exhibits (Exhs 1 and 2) that were admitted in evidence without objection. Applicant submitted seven exhibits (Exhs. A-G) which were admitted without objection. He testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on August 1, 2008.

### **Procedural Rulings**

#### **SOR Amendment**

The government moved to amend SOR ¶ 1.c. to conform to the evidence and show that a loan was not from a Danish company but from the Government of Denmark. No objection was made to the amendment, and the motion was granted.

### **Findings of Fact**

Applicant is a 28-year-old who has worked as an engineer for two defense contractors since February 2004 He has held an interim security clearance since his work for the first company and he is now applying for a higher level of clearance.

Applicant was born in the U.S. to a Danish mother in 1979 and thereby acquired Danish citizenship. In 1992, he and his mother moved to Denmark to care for his grandfather who died the next year. They stayed until 1999 to help care for his grandmother during which time he attended an international high school and one year at a university (Tr. 24) (SOR ¶ 1.b.). He wanted to continue his education in the U.S. so he and his mother returned to the U.S. He enrolled in a U.S. university which he attended between 2000 and 2005. In 2004, he was granted a degree in computer sciences, and a second degree in psychology in 2005.

During the period Applicant lived in Denmark, he applied for and received a Danish passport in 1998 when he became 18-years-old because he could no longer travel on his mother's passport (SOR ¶ 1.a.). The passport expired in 2002, and it was never used (Tr. 22-24). He lost it in a recent move. He will surrender it if it is found.

When Applicant was attending university in Denmark he obtained a student loan for \$50,000 (Tr. 25) (SOR ¶ 1.c.) from the Danish government that was available to any Danish citizen studying there. He is still regarded as a citizen of Denmark but would revoke his citizenship but for the fact that, if he did so, he would be required to pay the loan in full within eight days. He is not able financially to do so. He would borrow funds

to do so on his home to do so but does not yet have enough equity in it to be able to do so. He also has a U.S. student loan for approximately \$17,000. Both student loans are in deferment (Tr. 37).

Applicant also has a Master Card credit card from a Danish bank on which he owes \$5,000. This card is no different from those issued from U.S. banks. He is paying on the card, and it is in good standing . He recently bought his own home in the U.S. for \$265,000 on which he has a significant mortgage.

In his security interview in March 13, 2007, Applicant stated that, because of his friends and family in Denmark, he would be reluctant to take up arms against Denmark should that ever be required. He stated at the hearing that he is willing to bear arms for the United States.

The government did not offer any documents for administrative notice in Applicant's hearing, relating to Denmark, the country at issue, as is often done in cases involving either of the foreign guidelines (B and C). However, a recent Department of Defense web page notes that Denmark recently joined the Joint Strike Fighter program to which they will make a significant financial contribution, that President Bush expressed thanks to Denmark for its increased troop contributions in Iraq, and praised Denmark for its cooperation in the War on Terrorism.

Applicant is highly regarded for his skills, work ethic and loyalty to the U.S. by the senior corporate officers of his current employer (Exhs. A and B), a family friend who has known him since birth (Exh. D), his university professor with whom he has a close professional and personal relationship (Exh. E), and two colleagues from his present and former employment (Exhs. F and G).

Applicant also submitted a letter from his mother (Exh. C) which details some of the facts concerning the Danish passport, the student loan, and her likely inheritance from her 92-year-old mother in Denmark which will be used to pay the student loan should it not be settled before her death. Applicant has some responsibility for his mother who lives with him and works as a legal secretary.

### **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 over arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶

2(c), the entire process is a conscientious 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 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 transcends normal duty hours and endures throughout off duty hours. 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.

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.” See also EO 12968, Section 3.1(b) listing multiple prerequisites for access to classified or sensitive information.

## **Analysis**

### **Guideline C, Foreign Preference**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR:

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

“[W]hen 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 ¶ 10 describes conditions that could raise a security concern and may be disqualifying:

(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:

(1) possession of a current foreign passport;

(2) military service or a willingness to bear arms for a foreign country;

(3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;

(4) residence in a foreign country to meet citizenship requirements;

(5) using foreign citizenship to protect financial. or business interests in another country;

(6) seeking or holding political office in a foreign country; and,

(7) voting in a foreign election;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and,

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

The debt owed to the Government of Denmark for a student loan to study in the U.S. has raised security concerns under Sec. (a) (3). of the guideline. The other actions alleged in the SOR do not raise such concerns since he no longer has a passport and has not indicated any desire to bear arms for a foreign country. I do not interpret his statement about family and friends in Denmark as sufficient to raise serious security concerns.

AG ¶ 11 provides conditions that could mitigate security concerns:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship;

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) use of a foreign passport is approved by the cognizant security authority.

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and,

(f) the vote in a foreign election was encouraged by the United States Government.

I conclude that security concerns have been mitigated by Sections, a., b., and e since his dual citizenship is based solely on his mother's citizenship, he has expressed a willingness to renounce dual citizenship but cannot at the present time because of the financial situation, and the passport is expired and lost.

### **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) the 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 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. The security concerns do not arise because of any misconduct by Applicant but solely because of his having been born to a Danish mother and obtained a loan to start his higher education in Denmark while living abroad with his family. Denmark is a staunch ally of the U.S. and presents no security issues that give me concern. Applicant is a well-educated citizen of the U.S. who is making a significant contribution to the national defense and U.S. interests.

I conclude that Applicant has mitigated the security concerns arising from the issues of foreign preference.

### **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

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Access to classified information is granted.

CHARLES D. ABLARD  
Administrative Judge