



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



In the matter of:)
)
) ISCR Case No. 07-17215
)
)
Applicant for Security Clearance)

Appearances

For Government: Emilio Jaksetic, Esq., Department Counsel
For Applicant: *Pro Se*

December 30, 2008

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the government's security concerns under Guideline B, Foreign Influence and Guideline C, Foreign Preference. Applicant's eligibility for a security clearance is granted.

On October 7, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) 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 October 22, 2008, and requested a hearing before an administrative judge. The case was assigned to me on November 10, 2008. DOHA issued a notice of hearing on November 12, 2008, scheduling the hearing for November 24, 2008, at the request of Applicant. On November 18, 2008, Applicant

requested a continuance, which was unopposed by Department Counsel and the request was granted. An amended Notice of Hearing was issued on November 19, 2008. I convened the hearing as scheduled on December 15, 2008. The government offered Exhibits (GE) 1 through 3. Applicant did not object and they were admitted. Applicant and three witnesses testified. Applicant submitted Exhibits (AE) A-O. Department Counsel did not object and they were admitted. DOHA received the transcript of the hearing (Tr.) on December 22, 2008.

Findings of Fact

Applicant admitted all of the allegations in the SOR and provided explanations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 26 years old and has worked for a federal contractor since November 2006. He is also a full-time doctorate student in American History. He has held an interim security clearance since his employment in 2006 until it was revoked.

Applicant was born in Abu Dhabi, United Arab Emirates (UAE) to parents of Indian nationality. His parents were working in the UAE before they immigrated to Canada in 1988. They had hoped to immigrate to the United States, but the wait for permanent residency was approximately eight years and the wait in Canada was very short. Applicant's father works as a manager in the hotel industry and his mother is a small business owner. Both parents became Canadian citizens and renounced their Indian citizenship in 1993. As a minor, Applicant also became a Canadian citizen. In 1994, his parents applied for permanent residency in the U.S. In 1996, they were granted permanent residency in the U.S., as was Applicant. Applicant and his parents became naturalized U.S. citizens in July 2002. They retained their dual citizenship status with Canada. Applicant's mother lives in Canada and his father lives in the U.S. where he continues to work in the hotel industry.¹

Applicant graduated from high school in Canada in 1999 and attended college for one year there. After his first year of college, during the summer, he worked as a paid intern for one of the local offices of a Canadian ministry. He then attended a prestigious U.S. university where he graduated in 2003. During the 2000-2001 academic year Applicant applied for an academic internship through his university at a prestigious school of economics in the United Kingdom (UK). This internship was coordinated through his college and the British institution. He was assigned as an unpaid intern to the office of a minister in the British government. This internship occurred before Applicant was a U.S. citizen. From January 2002 to June 2002, Applicant was a visiting student at another prestigious British university. He received a scholarship from his U.S. university to participate in the study abroad program. During his vacations from school and over the summer he would return to his mother's home in Canada to visit her. After he graduated from college he attended an intensive language program at a U.S.

¹ Tr. 38-44, 63-64.

college. Applicant was accepted into a two-year master's program at Oxford University in Britain for the academic year beginning in the fall of 2004. While waiting to attend school Applicant could not find a job in the U.S. so he returned to Canada where he lived with his mother and saved on living expenses. He had hoped to work in the U.S for a Congressman, but because he did not have a connection to any district he could not get an appointment. From October 2003 to January 2004 he worked the night shift at a convenience store; from April 2004 to July 2004 he worked as a tutor for the Salvation Army, and he worked one week for the local state assemblyman in his town. He left the local assemblyman's employment after a week when he realized the job was clerical work. He had hoped it would be more of a learning position, but it was not.²

Applicant's masters program was unfunded so he needed to find a job to pay his expenses. While studying at Oxford, during vacations the students are not permitted to stay on campus. Applicant needed to also find a place to stay and pay for his expenses. He attended a political dinner and met a person who was running a government minister's reelection campaign. He was offered a job with the minister's campaign reelection team. He worked about a month on the campaign. He credibly testified that he did not work for the British government as there is a strict separation between government employees working on political campaign. He did work for the minister's reelection campaign and the minister is obviously part of the British government. In the spring of 2005, Applicant returned to vacation in Canada with his mother. The second year of his master's studies required extensive research which he conducted in the U.S. at different academic and historical venues. He then returned to Canada to complete the writing of his thesis. In January 2006, Applicant returned to Oxford and completed his master's degree in July 2006.³

While at Oxford Applicant become friends with a British citizen (Citizen P) whose mother is a Russian citizen and father a British citizen. Citizen P completed his undergraduate degree in Russia and was doing his graduate work at Oxford. In 2006 Applicant visited Russia for ten days. The purpose of the trip was for sightseeing and also to see if he could gain access to Russian archives to do research on a project. When Applicant traveled to Russia, he used his American passport. Applicant stayed at the Russia family home of Citizen P. The Russian government denied Applicant access to their archives.⁴

Applicant has maintained some contact with Citizen P through emails since completing his studies abroad. Their primary relationship is based on their mutual academic interests. Citizen P is an accomplished scholar who is working on his doctorate and Applicant is hoping that Citizen P will be invited by his university to

² Tr. 44-57; 71-73, 97-104, 113-115; AE N.

³ Tr. 90-97.

⁴ Tr. 57-60, 74-76, 104-110.

present his research at an academic gathering. Applicant provided all of his email correspondence with Citizen P since he left the university.⁵

After completing his masters degree Applicant returned to Canada to visit his mother, before moving to the U.S. where he was accepted into a doctoral program at another prestigious university. Through his contacts at the university he was offered a job as a contractor with the Department of State. He accepted the job in November 2006 and has been employed with the contractor since then. He is a full-time student, teaching assistant, and a part-time contractual employee. He has completed about one half of his studies. His job has inhibited him devoting all of his time to working on his Ph.D.⁶

Applicant applied for a visa through Canada in 2004 to attend school in Britain. He was not aware that this would have an impact on his future ability to obtain a security clearance. He was living in Canada with his mother waiting to attend school and applied through Canada out of convenience. He did not have an address in the U.S. and it would have required him to travel to the U.S. and mail the application from there, return to Canada and wait for the application to be returned to an address in the U.S. He decided it was less complicated to apply for it under his Canadian citizenship.⁷

While living in Canada from 2003 to 2004 and working at the convenience store Applicant fortuitously met a former high school friend. They reacquainted and his friend works as a chef locally in Applicant's home city. His friend is Canadian. When Applicant visits the city he and his friend will occasionally get together.⁸

Applicant voted in a Canadian national election in 2006 and a local election in 2005. He has not voted in Canada since because he does not have ties with the country. He did not know or understand the security clearance implications when he voted. He has also voted in U.S. elections.⁹

Applicant was unaware of the security implication created by retaining his Canadian citizenship. He credibly testified that since becoming a U.S citizen he has always been totally loyal to only the U.S. It was always his intention to live permanently in the U.S. He chose to remain in the U.S. to study for his Ph.D even though it would take him a longer period of time. His mother has remained in Canada because she

⁵ Tr. 104-110; AE I.

⁶ Tr.59-62, 80-81.

⁷ Tr. 58-59, 79, 120.

⁸ Tr. 76-78.

⁹ Tr. 68-69, 88; AE K.

wanted to maintain a stable home because his father is in a job that changes locations often. She did not want to live in hotel rooms, so she stayed in Canada.¹⁰

Applicant let his Canadian passport expire and formally renounced his Canadian citizenship. He credibly stated that he was never asked to relinquish his Canadian citizenship. Had he been asked he would have willingly done so. He believed that his sole willingness to renounce his Canadian citizenship was sufficient and did not believe a formal renunciation was necessary. He has since formally, unconditionally, and without reservation renounced his Canadian citizenship.¹¹ His only ties to Canada are his mother and his younger brother who live there. His brother hopes to move to the U.S. in the future.¹²

Appellant has approximately \$40,000 in assets all located in the U.S. He has no assets in any other country.¹³

A government employee who has worked with Applicant and is the "Top Secret Control and Alternate Unit Security Officer" testified on behalf of Applicant. He considers Applicant to be one of the most honest employees he has worked with. He is more conscientious than any one of his other employees and during the two years Applicant held an interim security clearance he adopted every security practice and scrupulously maintained "a need to know" protection of classified information. Applicant has a strong code of ethics and is the least likely person he knows who would succumb to social pressures. He is meticulous in the quality of his work and his complete loyalty to the U.S. is unquestioned. If he was to choose his own successor to maintain the protection of classified information, he would choose Applicant.¹⁴

Applicant's direct supervisor, a State Department employee testified on behalf of Applicant. He deals with classified information on a daily basis. He met Applicant in November 2006 and Applicant has worked directly for him since April 2007. He believes Applicant has consistently demonstrated that he is trustworthy and honest. Applicant is a role model in handling classified information. He believes Applicant's loyalty is to the U.S.¹⁵

A coworker who has worked with Applicant on a project since April 2007 testified on behalf of Applicant. He stated Applicant always followed all of the security rules and

¹⁰ Tr. 80.

¹¹ AE A, B, C, D, E, F, G.

¹² Tr. 65-68, 118-119.

¹³ Tr. 80-82; AE J.

¹⁴ Tr. 135-142.

¹⁵ Tr. 144-151.

is one of the hardest workers he knows. He implicitly trusts him and respects and knows Applicant was very proud when he became a U.S. citizen.¹⁶

At his present job Applicant coauthored an article for the Agency's magazine. It references him as a Ph.D student and noted his commitment to a nationally important and prestigious project he has been working on.¹⁷

Canada¹⁸

"The relationship between the United States and Canada is the closest and most extensive in the world." There is a staggering volume of trade and people to people contact with over 300,000 people crossing the border daily. The two countries work closely in a vast number of fields ranging from law enforcement to environmental protection and on multiple government levels from federal to local. Canada considers its good relations with the U.S. critical to a wide range of interests and often looks to the U.S. as a common cause partner, promoting democracy around the world. The U.S. defense arrangements with Canada are more extensive than with any other country. The two military forces have cooperated since 1958 on continental air defense within the North American Aerospace Defense Command. The U.S. and Canada enjoy an economic partnership unique in the world. The two nations share the world's largest and most comprehensive trading relationship. The U.S. is Canada's leading agricultural market. The two countries enjoy the largest energy trade relationship and one of the largest investment relationships in the world.

United Kingdom¹⁹

The United Kingdom is one of the United States' closest allies. British foreign policy is closely coordinated with the U.S. Their bilateral cooperation is reflected in their common language, ideals, and democratic practices. The two countries' alliances were strengthened during both World Wars and as founding members of NATO, the Korean conflict, in the Persian Gulf War and Operation Iraqi Freedom. The two countries continually consult on major issues, such as foreign policy, global problems, and security policy objectives. The United Kingdom is the fifth largest market for U.S. goods exports and the sixth largest supplier of U.S. imports. It is also a large source for U.S. tourists and visa-versa. The two countries share the world's largest foreign direct investment partnership.

¹⁶ Tr.124-132.

¹⁷ AE O.

¹⁸ AE M: U.S. Department of State: Background Note: Canada, November 2008. All of the information about Canada is taken from this document.

¹⁹ AE L: U.S. Department of State: Background Note: United Kingdom, July 2008.

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

Under AG ¶ 9 the security concern involving foreign preference arises: “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.”

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying: I have specifically considered AG ¶ 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, including but not limited to (1) possession of a current foreign passport... (7) voting in a foreign election”); (b) (“action to acquire or obtain recognition of a foreign citizenship by an American citizen”) and (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 interests”). Applicant was a dual citizen of Canada and United States. He used his Canadian passport when applying for a student visa to attend school in the United Kingdom. He voted in a Canadian election after he was a U.S. citizen. He worked for a week for a Canadian ministry office and served as an intern and campaign worker for a member of the British ministry. I find the above disqualifying conditions apply.

I have considered all the mitigating conditions applicable to this guideline. Specifically I have considered AG ¶ 11 (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”); (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”). Applicant became a citizen of Canada when he was a minor and through his parents. He later became a naturalized citizen of the U.S. along with his parents. He was unaware that to extinguish any security clearance implications he needed to express a willingness to renounce his dual citizenship with Canada. Since becoming aware he has formally renounced his citizenship ties with Canada. His Canadian passport is no longer valid. Applicant did use it as a matter of convenience when he was applying for visa. Applicant is a loyal U.S. citizen who was a young college student when he used his passport. He also voted in a Canadian election not truly understanding the significance or impact it would have on him applying for a security clearance. He credibly testified that he is loyal to only one country and that is the U.S. His unpaid internship with a British minister was an educational opportunity that is encouraged by colleges and universities. In addition, I find Applicant’s employment working for a British minister’s campaign was a means of employment so Applicant could pay his expense. It was quite simply a job and an educational experience and not a political statement. Applicant needed to make money to support himself and found an interesting educational job. While living in Canada

waiting to attend Oxford he worked for one week for a local minister's office. Applicant's jobs in the United Kingdom and Canada were means to make money and not a reflection of his loyalty to another country. He worked in Canada because he could not find a job in the U.S. He was able to live with his mother and save money. I do not find based on these contacts and actions that he would be prone to make decisions that are harmful to the interest of the U.S. because of his ties to Canada or the United Kingdom, clearly two of the U.S. strongest allies.

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence: "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."

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. The SOR alleged under this guideline that Applicant's mother, father, and brother are dual citizens of Canada and the U.S. It also alleged that after becoming a U.S. citizen he lived in Canada primarily when he was not attending school in the U.S. or United Kingdom and he held jobs in Canada during some of that time. He also exchanged emails with a British citizen who is studying in the United Kingdom but has family in Russia. Applicant also visits with a high school friend when Applicant is in Canada. The friend is Canadian and lives in Canada. I have considered all of the disqualifying conditions under AG ¶ 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"); (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 desires to help a foreign person, group, or country by providing that information"); (d) ("sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure or coercion") and (e) ("a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation"). I have carefully reviewed all of the allegations and the facts of this case. The countries of interest are Canada and the United Kingdom, two of the United States' strongest and most loyal allies, not countries that are known to target U.S. citizens. Applicant's contacts with dual citizens of Canada and the U.S. do not create a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion. The time Applicant lived and worked in Canada and lived, worked and studied in the United Kingdom also does not create a

security concern. Applicant does not have divided loyalties and credibly testified that he is loyal to only the U.S. All of Applicant's financial interests are in the U.S. I do not find exchanging emails with a citizen of the United Kingdom who has family ties in Russia or visiting a Canadian citizen when he is in Canada creates a security concern. After careful consideration of all of the above facts and even taking the most expansive interpretation of the disqualifying conditions I find none of them apply.

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) 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. Applicant is a young man who immigrated with his parents to Canada first because they could obtain permanent residency quicker than in the U.S. Once eligible they became U.S. citizens. He was a college student in the U.S. and was offered the opportunity to study abroad in the United Kingdom. He was also offered an educational opportunity to intern with the British government. Later to earn money he was a paid campaign worker. His work was to earn money not promote a political cause. Applicant would return to his mother's home in Canada during vacation periods and summer recess. He was unaware of the security ramifications in retaining his Canadian passport and has renounced his Canadian citizenship and his passport has expired. He did vote in a Canadian election in 2006. Applicant is earning his doctorate degree in American History. He has worked for the past two years with an interim clearance and his supervisors and coworker are confident that his loyalty is only to the U.S. and he is vigilant in his security awareness. Based on all of the evidence and my analysis above, the record leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from Foreign Preference and Foreign Influence.

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-1.h:	For Applicant
Paragraph 2, Guideline B:	For APPLICANT
Subparagraphs 2.a-2.g:	For Applicant

Conclusion

In light of all of the circumstances it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge