



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-17689
SSN:-----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ray T. Blank, Jr., Esq., Department Counsel  
For Applicant: *Pro Se*

September 24, 2008

**Decision**

HOWE, Philip, Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

**History of Case**

On November 7, 2005, Applicant submitted her Security Clearance Application (e-QIP). On May 9, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline C, Foreign Preference. 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.

On June 9, 2008, Applicant answered the SOR in writing and declined a hearing before an administrative judge. On June 30, 2008, Department Counsel prepared a File of Relevant Material (FORM), containing five Items, and mailed Applicant a complete copy on July 3, 2008. Applicant received the FORM on July 14, 2008, and had 30 days from its receipt to file objections and submit additional information. On July 29, 2008, DOHA received additional information from Applicant. Department Counsel had no objection to the materials. On August 22, 2008, I was assigned the case. I marked Applicant's submission as Exhibit (AE) 1.

### **Findings of Fact**

In her Answer to the SOR, dated June 9, 2008, Applicant admitted the factual allegations contained in ¶¶ 1.a, 1.b, and 1.c. of the SOR, with explanations.

Applicant is 24 years old, unmarried, and was born in Canada in 1983. Applicant attended high school in the United States, graduating in 2001. She graduated from a U.S. college in 2005. Applicant worked in the United States continuously since 2005, and is pursuing a graduate degree. Applicant did not disclose when she moved to the United States with her parents. Applicant became a naturalized U.S. citizen in August 1998. She retained her Canadian citizenship. She obtained her first U.S. passport on September 20, 1999. In October 2005, Applicant began a position, as a software engineer, with her current employer, a federal contractor. In November 2005, she completed an e-QIP. (Item 4)

Applicant's mother and father were born in Hong Kong. Her mother has dual U.S. and Canadian citizenship. Her mother became a naturalized U.S. citizen in 1993. Her father is a Canadian citizen. He is a registered alien living in the United States with his wife and son. Applicant's parents live in the United States. Applicant has a 19-year old brother who was born in the United States, and lives in the United States with his parents. (Item 4)

Since receiving her U.S. passport, Applicant has used her Canadian passport. She traveled outside the United States for pleasure trips in 2001, 2003, and 2004. She stated in her e-QIP that "I have an active passport/citizenship from Canada because I was born there." After learning of the Government's security concerns, Applicant refused to surrender her Canadian passport to her Facility Security Officer. She understands "that any further processing of her security clearance will be discontinued." (Items 4 and 5)

### **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 commonsense 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 and 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**

AG ¶ 9 sets forth the security concern involving foreign preference that 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 four conditions that could raise a security concern and may be disqualifying in this case. Department Counsel argued that the evidence in this case established one of them:

(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;

Applicant was born in Canada in 1983. She has a Canadian passport that she uses for travel. Applicant stated in writing she refuses to surrender her Canadian passport. Based on the evidence in the record, including Applicant's admissions, the Government produced substantial evidence of disqualifying conditions under AG ¶ 10(a)(1).

After the Government produced substantial evidence of those conditions, the burden shifted to Applicant to produce evidence and prove mitigation of the resulting security concerns. AG ¶ 11 provides eleven conditions that could mitigate security concerns, one of which could have potential application in this case:

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

In her Answer to the SOR and Response to the FORM, she admitted possessing the Canadian passport. After becoming aware that her Canadian passport could potentially have an adverse effect on her employment, she refused to surrender or destroy it. Hence, AG ¶ 11(e) does not apply. No other mitigating conditions 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) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation

