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

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| In the matter of: | ) | |
| | ) | |
| | ) | ISCR Case No. 07-18692 |
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| | ) | |
| Applicant for Security Clearance | ) | |

## Appearances

For Government: John B. Glendon, Esq., Department Counsel
For Applicant: *Pro Se*

September 17, 2008

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## Decision

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DAM, Shari, Administrative Judge:

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

## History of Case

On July 11, 2005, Applicant submitted her Security Clearance Application (e-QIP). On May 22, 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 5, 2008, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On July 17, 2008, Department Counsel prepared a File of Relevant Material (FORM), containing five Items, and mailed Applicant a complete copy on July 21, 2008. Applicant received the FORM on July 25, 2008, and had 30 days from its receipt to file objections and submit additional information. On August 18, 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 5, 2008, Applicant admitted the factual allegations contained in ¶¶ 1.a and 1.b of the SOR, with explanations.

Applicant is 33 years old and was born in the United States in 1975. Her mother (now deceased) was a U.S. citizen and her father is a Canadian citizen. In 1980, the family moved to Canada from the United States. She lived in Canada until 1994, when she returned to the United States to attend college. During the summer months, she lived with her family in Canada. After graduating from college in 1998, she returned to Canada to live and work for a Canadian company. She visited the United States frequently for work and to see friends. In July 2004, Applicant returned to the United States to live and work, permanently, while pursuing a graduate degree.

In May 2005, Applicant began a position, as a senior client manager, with her current employer, a federal contractor. In July 2005, she completed an e-QIP. Sometime in 2006, she completed her graduate program. In June 2006, she voted in a Canadian election. In her August 2008 Response to the FORM regarding her decision to vote in that election, she stated:

> At the time of the Canadian election in 2006, [I] had lived in that country for that majority of [my] life, and [my] emotional connection to Canada was strong. [My] present ties to the country are fewer, and [my] current willingness to renounce [my] Canadian citizenship in favor of sole United States citizenship demonstrate that further exercise of any right, privilege or obligation of foreign citizenship, including involvement with Canadian electoral procedures, is unlikely. (AE 1 at 2).

She further stated in the Response that she recently voted in a state primary in February 2008, and "has no intentions of voting in any future Canadian elections." (*Id.* at 3).

In January 2008, Applicant purchased a home in the United States. She has a significant relationship with a U.S. citizen, who has been a federal employee for 15 years. (*Id.* at 4). She works for a U.S. company. She has "lived in the United States for a significant part of her adult life and has planted roots here, demonstrating an intent to remain in the US and her preference for that country." (*Id.* at 6). "Since taking up

permanent residence in the US, [she] has developed stronger ties to US interests and has lost touch with many Canadian friends and associates. She now visits Canada only 1 or 2 times per year to see family." (*Id.* at 3).

Applicant obtained her first U.S. passport on December 27, 2005. Prior to that, she used a Canadian passport to travel back and forth between the countries, including trips in August 2005, October 8, 2005, October 16, 2005, and during a trip over the 2005 holidays. (Item 5 at 138). Since receiving her U.S. passport, she has not used her Canadian passport. After learning of the Government's security concerns, Applicant surrendered her Canadian passport to her Facility Security Officer, who destroyed it in February 2008. (AE 1 at 144). She did not realize that using her Canadian passport instead of her U.S. passport could be construed as an indication of one's national preference. (*Id.* at 6). She is willing to renounce her Canadian citizenship in favor of the United States. (*Id.* at 144).

Applicant's past actions, which served as the basis for the two allegations in the SOR, were not willful or negligent, but rather the result of a lack of information. She asserts that her "preference is with the United States and knowing that these actions were seen as negative is troubling and not indicative of her intentions or preference." (*Id.* at 3). She believes that the "future exercise of any right, privilege or obligation of foreign citizenship is highly unlikely." (*Id. at 6*).

## 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 two 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; and
>
> * * *

(7) voting in a foreign election.

Applicant was born in the United States in 1975. She had a Canadian passport that she used for travel between the United States and Canada until she obtained a U.S. passport at the end of December 2005. In February 2008, the Canadian passport was destroyed. In July 2004, she decided to live permanently in the United States. In June 2006, she voted in a Canadian election. Based on the evidence in the record, including Applicant's admissions, the Government produced substantial evidence of disqualifying conditions under AG ¶ 10(a)(3) and AG ¶ 10(a)(7).

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. Those with potential application in this case are:

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

Applicant's dual citizenship is based on her father's Canadian citizenship, which triggers the application of AG ¶ 11(a). After becoming aware that her Canadian passport could potentially have an adverse effect on her employment, she destroyed it in February 2008. Hence, AG ¶ 11(e) applies. In her Answer to the SOR and Response to the FORM, she emphasized that she was unaware that her actions could be interpreted as her preference for Canada over the United States, and she would willingly renounce her Canadian citizenship. In addition, she demonstrated her loyalty to the United States, based on strong connections to it, such as her intention to live here permanently, earning a graduate degree from a U.S. university, her relationship with a U.S. citizen, who works for the federal government, the purchase of property, employment with a U.S. company for four years, and voting in a recent U.S. election. As a result of her willingness to renounce her Canadian citizenship and her current ties to the United States, I conclude AG ¶ 11(b) applies.

In support of the application of AG ¶ 11(b), I cite the Appeal Board's opinion in ISCR Case No. 03-4300 at 3 (App. Bd. Feb. 16, 2006) that held the following:

> In concluding Applicant had mitigated the security concerns raised by her acts of foreign preference by application of Guideline C Mitigating Condition 4, the Administrative Judge articulated a rational explanation for her determination—basing it on such factors as the Applicants' strong ties and loyalties to the United States, the extensive effort undertaken by the

> Applicant to surrender her passport and renounce her Russian citizenship before the close of the record, and the fact that Applicant's lack of awareness concerning the requirements expressed in the ASDC3I memo and the Guideline C Mitigating Conditions may have affected the timing of her renunciation actions. There are no stated requirements in Guideline C Mitigating Condition 4 concerning when an applicant is required to comply with its provisions.[1]

**"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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense 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's conduct of potential concern under Guideline C resulted from two choices she made after she decided to permanently move to the United States in July 2004. Since learning of the significance of her past actions, she destroyed her passport in February 2008 (before the SOR issued), expressed a willingness to renounce her Canadian citizenship, and asserted her preference for the United States. She is building a future here with her employer and friends. There is no other derogatory information in the record. Based on the evidence, I do not believe she is a threat to the United States. She made two mistakes that she is unlikely to repeat.

Overall, the record evidence 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 mitigated the security concerns arising under foreign preference.

[1] Foreign Preference Mitigating Condition 4 under the previous adjudicative Guideline C, stated as follows: "Individual has expressed a willingness to renounce dual citizenship." E2.A3.1.3.4. The ASDC31 memo referenced does not have applicability to this case and pertained to the surrender of foreign passports.

## 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

Subparagraphs 1.a and 1.b: 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. Eligibility for access to classified information is granted.

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SHARI DAM
Administrative Judge