



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



In the matter of:)	
)	
)	ISCR Case No. 08-00092
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: David L. Evans, Esquire

October 15, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), on February 23, 2006. On May 16, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B, Foreign Influence, and Guideline C, Foreign Preference, for Applicant. 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 and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on July 3, 2008. The case was assigned to me on August 1, 2008. On August 13, 2008, a Notice of Hearing was issued scheduling the hearing for September 9, 2008. The hearing was held as scheduled. The Government offered Government Exhibits (Gov) 1 - 2, which were admitted without objection. The Government requested that administrative notice be taken of one document with 7 attachments. The document was marked as Hearing

Exhibit 1 (Hearing Ex 1) without objection. Applicant testified and submitted eight exhibits which were admitted as Applicant Exhibits (AE) A – H without objection. Applicant also called three witnesses on her behalf. DOHA received the transcript of hearing on September 18, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Administrative Notice

Cuba is a totalitarian state led by acting president Raul Castor, Fidel Castro's brother. Cuba's totalitarian regime controls all aspects of life through the communist party and its affiliated mass organizations, the government bureaucracy, and the Ministry of the Interior. The government continues to commit serious human rights abuses and denies citizens the right to change their government.

The U.S. and Cuba have a strained relationship and the U.S. does not have full diplomatic relations with Cuba. The U.S. has a broad trade embargo against Cuba. Americans traveling to Cuba must first obtain a license to engage in any travel-related transactions related to travel to, from, and within Cuba. While the U.S. maintains sanctions against Cuba, it also supports the Cuban people through humanitarian efforts and continues to work for a "Free Cuba."

Cuba has been on the U.S. State Department's list of State Sponsors of Terrorism since 1982. Cuba publically opposed the U.S.'s global war on terrorism and has not undertaken any counterterrorism efforts. Cuba maintains a close relationship with Iran and Syria, and has offered safe havens for members of terrorist organizations.

The Castro regime has long targeted the United States for intensive espionage activities. Since the 1980's there have been numerous reported cases of Cuban government sanctioned and supported espionage against the United States.

(All sources for the above information are contained in Hearing Exhibit 1.)

Findings of Fact

In her Answer to the SOR, dated June 9, 2008, Applicant denies SOR allegation 1.a and admits to all remaining SOR allegations.

Applicant is a 30-year-old senior mechanical engineer employed with a Department of Defense contractor. She has worked for her current employer since December 2005. She has a Bachelor of Science degree in physics, a Masters degree in optics, a PhD in Materials Science, and a PhD in Optics. She recently married in May 2008 and has no children. The SOR was amended to reflect her married name. This is her first time applying for a security clearance. (Tr at 54, 60-63; Gov 1; AE E.)

Applicant was born and raised in Cuba. When she lived in Cuba, she resided with her step-grandfather, her maternal grandmother, and her parents. Her parents

divorced when she was nine, and her father moved out of the house. Applicant has a half brother from her mother's subsequent relationship. (Tr at 54, 56; Gov 2; Answer to SOR.)

Applicant's step-grandfather was a freedom fighter. He was sentenced to nine years in jail in 1961. He served seven and half years in prison. In the early 1990s, her step-grandfather sought political asylum from the U.S. In 1992, his application for political asylum was granted. Her step-grandfather and the family members living in his household were allowed to immigrate to the U.S. In 1995, the family moved to the U.S. The household included Applicant, her mother, her step-grandfather, her maternal grandmother, her uncle, and her half brother. (Tr at 55-59; Answer to SOR; Gov 2.)

Applicant was 16 when she moved to the U.S. She attended high school and graduated as the class valedictorian. She completed undergraduate and graduate degrees at U.S. universities. One of her PhD's was awarded from a French university but she studied for it in conjunction with her PhD that was awarded from a U.S. university. (Tr at 54, 61-62; Gov 2; AE E.)

On November 10, 2004, Applicant became a U.S. citizen. She applied for citizenship as soon as she had the opportunity. She was very proud to be given the opportunity to be granted the rights and privileges of a U.S. citizen. She does not consider herself to be a dual citizen of the U.S. and Cuba. She owns no property and has no benefits from Cuba. Her mother, half brother, and uncle have become U.S. citizens. (Tr at 64-66, 81; Gov 2.)

Applicant's father, paternal grandmother, half-sister, and one-month old half brother are citizens of and reside in Cuba. Her father is a sales representative for a German construction equipment company. Her grand-mother is retired. Her half-sister is a high school student. She telephones her father and/or grandmother on a monthly basis. She also has several extended family members (aunts, uncles, cousins) who reside in Cuba. None of her family members are associated with the Cuban government. (Tr at 68-69; 82; Gov 2.)

Applicant visited family members in Cuba in 1999, 2000, 2002 and 2004. All of the trips were authorized by the Office of Foreign Assets Control, U.S. Department of the Treasury. She traveled with her maternal grandmother to visit family members. The duration of each visit was approximately two weeks. She was a Cuban citizen when she traveled to Cuba and used her Cuban passport. (Tr at 66, 77-78; Gov 2; Answer to SOR.)

After she completed her PhD studies in 2005, her mother offered to pay for Applicant to visit family members in Cuba as a graduation present. In August 2005, Applicant renewed her Cuban passport in anticipation of this trip. The Cuban government requires Cuban citizens, including Cuban citizens who have immigrated to other countries, to use a Cuban passport when traveling to Cuba. She never pursued the trip after she accepted the job with a defense contractor. She never used the

renewed Cuban passport. She has not traveled to Cuba since becoming a U.S. citizen. She does not intend to travel back to Cuba but will if relations between the U.S. and Cuba become normalized and Cuba becomes a non-restricted country. (Answer to SOR.)

Applicant was not aware of the concerns raised by possessing a foreign passport while holding a security clearance. Once she discovered the concern, she invalidated the passport in front of her Facility Security Officer. She presented the destroyed passport during the hearing. She is aware that invalidating the Cuban passport might result in her never seeing her family members residing in Cuba again. She has never told her Cuban relatives about the nature of her work or her place of employment. (Tr at 67-69, 76; Answer to SOR.)

Applicant's new husband is a citizen of France. They met while studying for their doctorates at a U.S. university. He has lived in the U.S. since 2001. He currently works as an optical engineer for a U.S. company. He currently has an H1B work visa and is in the process of applying for permanent residence (i.e. green card.) (Tr at 82; Answer to SOR.)

Several superiors and co-workers from Applicant's company testified on her behalf. She has impressed her superiors with her knowledge and strong work ethic. The Vice President of Science and Technology of the company has worked in the defense and aerospace industry for 30 years. He is also a Brigadier General in the United States Air Force Reserves. Prior to being recently promoted to headquarters, he was the former Director of Sensor Technology at the location where Applicant is employed. He was in charge of the programs Applicant worked on. Applicant worked with him for two and half years. They traveled together on business trips and had many conversations together. He states Applicant is very honest and adheres to the strict rules pertaining to international traffic and arms regulation as well following the procedures to protect the sensitive technology of the company. (Tr at 46-52.)

The technical director and missionary at Applicant's company testified. He has worked in the defense industry since 1968. Applicant works in the research area. He is familiar with her work and has no cause to question her honesty. He notes she is very professional. Her papers, proposals and interaction with others are outstanding. He has a lot of confidence in Applicant. (Tr at 39-45.)

An electro optics engineer who works in another branch of research department met Applicant in undergraduate physics class in 1999. They have been friends for nine years. She came to work for the company before Applicant. When an opening came up in the company she recommended Applicant for the position because she was aware of her educational background and intelligence. While working at the company, they have worked together on various projects but do not work in the same office. She states that Applicant is "impeccably honest and very committed." She socializes with Applicant and her family. She estimated she socializes with Applicant about four times a year. It used to be more often but their lives are much busier. Applicant has spoken to her about her

family members in Cuba a minimal amount. She is aware that Applicant's father is remarried and that her stepsister is a teenager. She does not know their names. She has never heard Applicant express any concern for their well-being in Cuba. (Tr at 30-38.)

Applicant's contribution to the company was recently featured in the company magazine. (AE F.) Her curriculum vitae reveals that she has received several honors and awards, has authored numerous articles, and has had her research referenced in numerous journals and proceedings. (AE E.)

Applicant's family was treated harshly by the Cuban government. After her grandfather applied for political asylum, her mother was fired from her job as a math teacher. Her family is strongly against Castro's regime. Her mother and grandfather sacrificed a lot so that she and her half-brother could have a future in the U.S. She would never dishonor them. She loves the U.S. and feels blessed to have the opportunity to come to the U.S. If granted a security clearance, she will never violate the trust the U.S. government has placed in her. (Tr at 56-59, 69-70.)

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.

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

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

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.

The guideline notes several disqualifying conditions that could raise security concerns. Foreign Preference Disqualifying Condition (FP DC)10(a) (*exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport*); and FP DC ¶ 10(b) (*action to acquire or obtain recognition of a foreign citizenship by an American citizen*) apply. Applicant renewed her Cuban passport after becoming a U.S. citizen. The passport was renewed on August 30, 2005 and did not expire until August 29, 2011. She renewed her Cuban passport in order to visit family members in Cuba. Renewing a foreign passport after becoming a U.S. citizen is considered an exercise of foreign citizenship.

The guideline also includes examples of conditions that could mitigate security concerns arising from Foreign Influence. The following Foreign Influence Mitigating Conditions (FI MC) apply:

FP MC ¶ 11(e) (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*) applies. Applicant was unaware that possessing a foreign passport would be an issue related to her security clearance. She renewed her Cuban passport because the government of Cuba requires all of its citizens, including those who have immigrated to other countries, to use Cuban passports while traveling to Cuba. Applicant destroyed her Cuban passport in front of her Facility Security Officer and presented the destroyed passport during the hearing. FP MC ¶ 11(e) applies. It is noted that Applicant never traveled to Cuba after renewing her Cuban passport. She understands that by destroying her Cuban passport she may never see her family members living in Cuba again.

Applicant has mitigated the Foreign Preference concerns. Guideline C is found for Applicant.

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶6:

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.

The guideline notes several disqualifying conditions that could raise security concerns. Of the Foreign Influence Disqualifying Conditions (FI DC), the following apply to Applicant's case.

FI DC ¶ 7(c) (*contact with a 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*) applies because Applicant's father, paternal grandmother, half-sister and half-brother are citizens of and reside in Cuba.

FI DC ¶ 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*) applies for the same reason. Applicant's relationship with her family members in Cuba create a potential conflict of interest

between her obligation to protect sensitive information or technology and her desire to help her family members residing in Cuba.

The guideline also includes examples of conditions that could mitigate security concerns arising from Foreign Influence. The following Foreign Influence Mitigating Conditions (FI MC) apply to Applicant's case.

FI MC ¶ 8(b) (*there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, or 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*) applies. While Applicant has a relationship with her relatives who reside in Cuba, she is closest to the family members who reside in the U.S. She grew up in her maternal grandparents' home. Her father moved out of the house after her parents divorced when she was nine-years-old. She immigrated to the U.S. in 1995. She completed her high school education in the U.S. She graduated from U.S. universities. She works for a U.S. company. Her significant personal and professional associates are located in the U.S. She owns no property in Cuba.

Although Applicant traveled to Cuba to visit family members prior to becoming a U.S. citizen, she has not traveled to Cuba since becoming a U.S. citizen in November 2004. Upon destroying her passport, she accepts the possibility that she may never see her relatives who reside in Cuba again. Her closest family members, her mother, brother, uncle, step-father and maternal grandparents reside in the U.S. Applicant has resided in the U.S. for 13 years. She became a U.S. citizen four years ago. She is proud of her U.S. citizenship and the opportunities that she has been given. She does not take for granted the rights she has as a U.S. citizen.

Applicant's close family ties, professional ties, and her future are located in the U.S. After weighing all of the evidence, considering Applicant's testimony, and observing her demeanor at hearing, I am convinced that she would resolve any conflict in favor of the U.S.

For these reasons, I conclude Applicant mitigated the concerns raised under Foreign Influence.

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 mature, well-educated, and intelligent woman who has a promising career ahead of her. She has been awarded her undergraduate, Masters and one PhD degree from U.S. universities. She has developed strong bonds in the U.S. The intensity of those bonds was apparent during the hearing based on the number of individuals who attended the hearing to show their support. While she has ties of affection to her paternal grandmother, father, and half-sister, and infant half-brother, who remain in Cuba, her closest family members reside in the U.S. Her presence and demeanor at hearing revealed that she takes her security responsibilities seriously. After evaluating all of the evidence in the context of the whole person, I conclude Applicant has carried her burden of mitigating the concerns raised under foreign influence and 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
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.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. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge