



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



In the matter of:)
)
-----) ISCR Case No. 08-01249
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Edmunds, Esquire, Department Counsel
For Applicant: *Pro Se*

August 20, 2008

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant has not mitigated the foreign preference concerns that exist because of her possession and/or use of two foreign passports after she became a United States citizen. Clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on June 25, 2007. On March 27, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline C that provided the basis for its action to deny her a security clearance and to refer the matter to an administrative judge. 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 as of September 1, 2006.

Applicant answered the SOR in writing on April 18, 2008, and requested a decision without a hearing. On April 28, 2008, the government submitted a File of Relevant Material (FORM) consisting of five exhibits (Items 1-5). DOHA forwarded a copy of the FORM to Applicant and instructed her to respond within 30 days of receipt. Applicant filed no response. On July 7, 2008, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Findings of Fact

DOHA alleged under Guideline C that Applicant possesses valid Brazilian (SOR ¶ 1.a) and Irish (SOR ¶ 1.b) passports. Applicant admitted the allegations in her answer to the SOR.¹ After consideration of the evidence of record, I make the following findings of fact:

Applicant is a 25-year-old human resources analyst who has worked for a defense contractor since June 2007. She seeks a security clearance for her duties.

Applicant was born in Brazil in December 1982 to a father with native Brazilian and derivative United Kingdom (UK) citizenship and a mother with native Irish citizenship. Her father acquired UK citizenship through his parents, who were British nationals. Applicant and her brother, who was born in Brazil in March 1981, acquired Brazilian citizenship based on birth and Irish citizenship through their mother. (Items 4, 5)

Applicant immigrated to the United States (US) in 1997 when she was a minor,² and she attended high school here from August 1999 to May 2001. She continued to maintain Brazilian and Irish/European Union (EU) passports³ and used the respective passports when traveling to Brazil and to Ireland to visit family members. In August 2000, Applicant was issued an Irish/EU passport based on her Irish citizenship. The passport is scheduled to expire in August 2010. (Items 4, 5)

¹In setting forth the procedural history of the case, Department Counsel correctly noted that Applicant admitted the two allegations when she answered the SOR. However, in her argument, Department Counsel indicated that Applicant admitted all SOR allegations except for ¶ 1.c. There is no ¶ 1.c in the SOR of record.

²On her e-QIP (Item 4), she indicated her brother entered the US on July 17, 1997. She also listed US addresses for herself from September 1997 on.

³Since Ireland's admission into the EU, Irish citizens are apparently issued EU passports (Item 5).

Applicant traveled to Brazil with her parents and brother for pleasure from December 2000 to January 2001.⁴ They visited members of her father's family and engaged in tourist activities. In July 2001, the summer after high school, she went to Ireland by herself. She traveled on her Irish/EU passport, which bears a US reentry stamp of August 5, 2001. While in Ireland, she visited with members of her mother's family. (Items 4, 5)

From August 2001 to May 2005, Applicant pursued her undergraduate degree in psychology at a state university. In December 2002, she traveled to Ireland with her parents for a couple of weeks to see members of her mother's family.⁵ (Items 4, 5)

Applicant became a naturalized US citizen in January 2005. She made no effort at that time to renounce either her Brazilian or Irish citizenship. There is no indication that she applied for a US passport after becoming a US citizen. Two weeks before she became a US citizen, she renewed her Brazilian passport for another five years. The passport is not scheduled to expire until January 2010. Applicant traveled to Brazil on that passport in December 2005. She accompanied her parents, her brother, and her boyfriend. During their three-week stay, they visited with her grandmother and an aunt, and went to several beach towns. (Items 4, 5)

From August 2005 to May 2007, Applicant pursued graduate study full-time in industrial psychology at a public university located in another state. After she earned her M.A. degree, Applicant began working for her present employer in June 2007. On June 25, 2007, she completed her e-QIP. She disclosed her multiple citizenships with the US, Brazil, and Ireland, her possession of current foreign passports with Brazil and Ireland, and her foreign travels to Brazil and Ireland since December 2000. Applicant indicated that her parents had been naturalized in the US in June 2004, but that they retained their foreign citizenships, her father with the UK and his native Brazil, and her mother with her native Ireland. Applicant provided the alien registration information for her brother, who had not acquired US citizenship. Applicant furnished address and citizenship information for several relatives living in Brazil or Ireland. (Item 4)

On August 6, 2007, a government investigator interviewed Applicant about her foreign citizenship, passports, travel, and contacts. The substance of the interview was reduced to writing in the form of a report from the investigator. Applicant reportedly explained in part that she had derivative Irish citizenship through her mother, that she held a current Irish passport used to travel to Ireland, that she otherwise derived no benefit from her Irish citizenship, that she was a citizen of Brazil from her birth to present because her father was born there, that she used her Brazilian passport to

⁴Apparently, she reentered the US on her EU passport as it bears a US immigration stamp showing she was admitted to the US on January 6, 2001 (Item 5). The file available for review does not include any Brazilian passports issued to her before her most recent passport, which she obtained after the trip in 2000/01.

⁵Applicant listed on her e-QIP a trip to Ireland in December 2003 (Item 4). Her EU passport does not bear any visa stamps for 2003, but it does contain a stamp from US immigration showing she was admitted to the US on December 29, 2002. It is likely the trip was in December 2002 rather than 2003.

travel there in 2000/01, that she otherwise derived no benefit from her Brazilian citizenship, and that she was willing to renounce her foreign citizenship and passports, if required to do so, because the US held her ultimate loyalty. (Item 5)

DOHA sent interrogatories to Applicant inquiring about her possession and use of her foreign passports, about any foreign military service, any receipt of benefits from a foreign country, any foreign political activity, any foreign financial interests, and any foreign obligations or responsibilities. Applicant was also asked to respond to foreign influence inquiries, including contacts with foreign nationals and any foreign travel within the past two years. Applicant was sent a copy of the investigator's report of her August 2007 interview, and she was asked to verify the information therein.

Applicant responded on March 14, 2008. She furnished copies of her current Brazilian passport issued on January 4, 2005, and of her current Irish/EU passport issued on August 7, 2000. She reported no recent travel to Brazil or Ireland after she had completed her e-QIP. Applicant responded "Yes" to whether she intended to renew the foreign passports and "No" to whether she would be willing to destroy, surrender, or invalidate the foreign passports. She stated her belief that her possession of the Brazilian and Irish passports did not pose a threat to national security because her travel was to visit family members only. Applicant asserted her loyalty was to the US. Applicant indicated that the investigator's report of her interview was inaccurate in several aspects, including that it reflected travel to Ireland on her Irish passport in 2001 and 2003 rather than 2001 and 2002 and that her Brazilian citizenship was derivative based on her father's birth rather than on her own birth in Brazil. Applicant denied she had expressed a willingness to give up her foreign citizenship and passports. Instead, Applicant recollected she had told the investigator she was willing to consider renouncing her foreign citizenship and passports. (Item 5)

As of April 18, 2008, Applicant possessed Brazilian and Irish/EU passports valid for foreign travel (see Item 3). There is no indication that she had made any effort to surrender them.

Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the 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 overarching 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

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 United States. (AG ¶ 9). Applicant had dual citizenship with Ireland and Brazil when she immigrated to the US in or before 1997. About two weeks before she took the oath of naturalization to become a US citizen in January 2005, she renewed her Brazilian passport for another five years. She traveled on that foreign passport to visit family members in Brazil in December 2005. There is no indication that she used her Irish/EU passport after she became a US citizen, but her continued possession of that current foreign passport also raises foreign preference concerns. 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. This

includes but is not limited to: (1) possession of a current foreign passport”) is clearly implicated.

Although Applicant’s Brazilian citizenship is based on her birth in that country, and her Irish citizenship is based on her mother’s citizenship, AG ¶ 11(a) (“dual citizenship is based solely on parents’ citizenship or birth in a foreign country”) does not mitigate the risk of unverifiable travel presented by use of a foreign passport. A willingness to renounce dual citizenship is potentially mitigating under AG ¶ 11(b). While Applicant told a government investigator in August 2007 that she would consider renouncing her Brazilian and Irish citizenships if required, she told DOHA in March 2008 that she intends to renew her foreign passports, so AG ¶ 11(b) does not apply. There is no indication that her use of a foreign passport as a US citizen was approved by the cognizant security authority, so AG ¶ 11(d) cannot be considered. She does not see a problem with her possession and/or use of her Brazilian and Irish/EU passports because she intends to use them only to visit family members. A substantial risk persists that she will use a foreign passport so that she can visit her relatives in Brazil and/or Ireland.

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 commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

Despite her clear desire to retain her foreign citizenships and her foreign passports, Applicant asserts an ultimate loyalty to the US where she has lived for at least the last 11 years. The salient issue in the security clearance determination is not in terms of loyalty, but rather what is clearly consistent with the national interest. See Executive Order 10865, Section 7. She traveled abroad at least once after she acquired her US citizenship, to Brazil in December 2005 using a foreign passport. Having been advised that her active exercise of foreign citizenship is of concern to the US government, Applicant has chosen to retain the right/privilege to travel as a citizen of

Brazil at times, and as a citizen of Ireland at others. Although the US maintains good relations with Ireland and Brazil, their interests are not always completely aligned. There is no indication that she had acquired a US passport as of her June 2007 e-QIP, even though US citizens, including dual nationals, are required by law to use a US passport to enter and leave the US.⁶ Doubts persist about whether she can be counted on to act solely with regard to what is in the best interest of the US.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ELIZABETH M. MATCHINSKI
Administrative Judge

⁶Section 1185(b) of the US Immigration and Nationality Act (8 USC § 1185(b)) provides:

Except as otherwise provided by the President and subject to such limitations and exceptions as the President may authorize and prescribe, it shall be unlawful for any citizen of the United States to depart from or enter, or attempt to depart from or enter, the United States unless he bears a valid United States passport.

Exceptions for travel in the Western Hemisphere, between the US and Canada, Mexico, Bermuda, and the Caribbean, do not apply to travel to Brazil.