



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-01766
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro se*

August 29, 2008

Decision

CURRY, Marc E., Administrative Judge:

On December 11, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing 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.

Applicant answered the SOR on May 8, 2008, and requested an administrative determination. On June 17, 2008, department counsel prepared a File of Relevant Material (FORM). Applicant received it on June 25, 2008, and did not reply. I have reviewed the FORM and have concluded that eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 42-year-old married man with three children, ages 17, 11, and nine. He earned an associate's degree in electronics technology in 1989. Since 2000, he has worked for a defense contractor as an information technology security auditor (Item 5 at 6). He has held a security clearance since 1990 (Item 5 at 34).

Applicant was born in Mexico. He became a naturalized U.S. citizen in 1989 (Item 5 at 2). There is no record evidence documenting when he emigrated to the U.S. Under Mexican law, Applicant's Mexican citizenship lapsed when he became a naturalized U.S. citizen (Item 10).

In 2000, Applicant's wife's grandfather died, and her family offered to sell him his house located in Mexico. Applicant accepted the offer, but was initially unable to purchase it because Mexican law limits property ownership to Mexican citizens (Item 6 at 10). He then re-applied for Mexican citizenship through the consulate in the United States, and purchased the property, after the Mexican government approved his application.

The house is worth approximately \$60,000 (Item 6 at 8). Applicant maintains a bank account in Mexico to pay the house's utility bills (Item 6 at 8). When he travels to Mexico to visit relatives, he stays at the house (Item 6 at 11). The visits last approximately three days. He has visited Mexico approximately 16 times in the last 10 years. Under Mexican law, dual nationals entering or departing Mexico must identify themselves as Mexican (Item 8 at 2).

Applicant voted in the 2006 Mexican presidential election. He viewed the exercise of his Mexican voting rights as "an opportunity to influence a positive outcome on the presidential race" (Item 6 at 6) by voting for the party "that aligns more closely with the interest of the USA" (Answer at 2). Applicant is willing to renounce his Mexican citizenship, if required, to receive his security clearance (Item 6 at 10).

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, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a 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. 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.

Analysis

Guideline C, Foreign Influence

“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 ¶ 9). Preference for a country need not be motivated by political or ideological reasons to have negative security implications (ISCR Case No. 98-0476 (App. Bd. December 14, 1999) at 5). Here, Applicant re-applied for Mexican citizenship, 15 years after becoming a naturalized U.S. citizen. He did so in order to exercise the privilege, limited to Mexican citizens, of purchasing property in Mexico. He pays the utility bills for the property using a Mexican bank account, and he voted in the 2006 Mexican presidential election. 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,” 10(a)(7), “voting in a foreign election,” and 10(b), “action to acquire or obtain recognition of a foreign citizenship by an American citizen,” apply.

Applicant’s willingness to renounce his dual citizenship triggers the application of AG ¶ 11(b).¹ His willingness to renounce his Mexican citizenship was only conditional. Absent any evidence of steps taken to renounce dual citizenship, the applicability of this mitigating condition has minimal probative value.

Applicant’s vote in the 2006 Mexican presidential election was motivated by his desire for Mexico to re-elect a pro-American president. Although his motive was admirable, it does not trigger the applicability of any of the mitigating conditions. The most relevant mitigating condition, AG ¶ 11(f), requires the vote in a foreign election to be encouraged by the U.S. government. Applicant did not provide evidence of any such encouragement.

Applicant has failed to mitigate the foreign preference security concern.

¹The individual has expressed a willingness to renounce dual citizenship.

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."

Upon considering the whole person factors, I conclude it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Clearance is denied.

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
Subparagraphs 1.a - 1.e:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, 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.

MARC E. CURRY
Administrative Judge