



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-05892
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

March 30, 2009

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines C (Foreign Preference) and B (Foreign Influence), based on Applicant's possession of an Italian passport, voting in Italian elections, and family connections in Italy. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on January 29, 2008. On December 5, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny her application, citing security concerns under Guidelines C and B. 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 adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

Applicant received the SOR on December 12, 2008; answered it on answered in on December 16, 2008; and requested an administrative determination on the record without a hearing before an administrative judge. DOHA received the request on December 18, 2008. Department Counsel requested a hearing on January 13, 2009 (Hearing Exhibit (HX) I), and was ready to proceed on February 2, 2009. The case was assigned to an administrative judge on February 3, 2009, and reassigned to me on February 12, 2009, based on workload. DOHA issued a notice of hearing on February 18, 2009, scheduling the hearing for March 5, 2009. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified on her own behalf and submitted Applicant's Exhibits (AX) A through D, which were admitted without objection.

I directed Department Counsel to submit documentary evidence to support my taking of administrative notice of relevant facts about Italy not later than March 13, 2009, and I permitted Applicant to submit additional documentary evidence during that same period (Tr. 94-98). Department Counsel submitted a request to take administrative notice, along with supporting materials, on March 9, 2009 (HX II). It is discussed below. Applicant timely submitted AX E through G, which were admitted without objection (HX III). The record closed on March 13, 2009. DOHA received the transcript (Tr.) on March 23, 2009.

## **Procedural and Evidentiary Rulings**

### **Administrative Notice**

Department Counsel requested that I take administrative notice of relevant facts about Italy. The request and the documents attached as enclosures were not admitted in evidence but are attached to the record as HX II. The facts administratively noticed are set out below in my findings of fact.

### **Amendment of the SOR**

After Applicant testified, Department Counsel moved to amend the SOR ¶ 1.a by adding an allegation that Applicant exercised dual U.S.-Italian citizenship by voting in at least two Italian elections (Tr. 100-04). The motion was based on Applicant's testimony, and she did not object to the amendment. I granted the motion and made a handwritten notation on the SOR reflecting the amendment.

### **Request to Withdraw Security Clearance Application**

After the hearing, Applicant sent me a request to withdraw her application for a security clearance (AX E). Notwithstanding her request, I have continued processing this case in accordance with the Directive ¶ 4.41, which provides that, "Actions pursuant to this Directive shall cease upon termination of the applicant's need for access to classified information except in those cases in which . . . [a] hearing has commenced."

## Findings of Fact

In her answer to the SOR, Applicant admitted the factual allegations in SOR, but she denied having a preference for a foreign country or being vulnerable to pressure or coercion by any foreign interest. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 59-year-old Italian linguist, working for a company that provides translators for the U.S. government. She has worked for her current employer since January 2008. She has never held a security clearance.

Applicant received a degree in philosophy in Rome, Italy, in 1974. She came to the U.S. in 1977 as a member of a religious organization, but she left the organization in 1988 because of philosophical and theological differences (Tr. 50-51). She decided to stay in the U.S. because of the open-minded atmosphere she found in the U.S. (Tr. 88-89). She obtained a master's degree in theology from a U.S. university in August 1990. She married a native-born U.S. citizen in August 1993, and she became a U.S. citizen in May 1999.

Applicant held an Italian passport that was issued in December 1997, and it expired in December 2002. She renewed her Italian passport in October 2003. It will expire in October 2013. She is unwilling to relinquish her Italian passport because she wants to preserve her Italian citizenship, especially if her husband predeceases her and she wishes to return to Italy. She is unwilling to renounce her Italian citizenship because she might not be able to regain it if there were future changes in the geopolitical situation (GX 3 at 2). She is unwilling to relinquish her passport because it is her only proof of Italian citizenship; and it allows her to open a bank account, buy property, and live in Italy part-time if she desires (GX 2 at 4; Tr. 79-80). Since becoming a U.S. citizen, she has voted in Italian elections on three or four occasions, because she wants to participate in the Italian political process (Tr. 75-77, 91). She does not own any property or have any bank accounts in Italy (Tr. 75). She admitted at the hearing that she has "one foot in each country." (Tr. 91-92.)

Applicant's father, mother, two brothers, and two sisters are citizens and residents of Italy. She visits her family annually, accompanied by her husband, and she usually stays three or four weeks (GX 3 at 1). Applicant usually uses her U.S. passport when she travels to Italy, but she has used her Italian passport two or three times (Tr. 72-73). She talks to her parents by telephone about twice a week, her brothers four or five times a year, one sister three or four times a year, and the other sister about once a year (GX 3 at 2).

Applicant's father and mother are both retired employees of the Italian government, and they both receive pensions from the Italian government. Her mother worked as a switchboard operator, and her father was in charge of the archives of the Italian Treasury Department (Tr. 54-55). One of her brothers works for a private insurance company, and his wife works for a municipal housing department (Tr. 57-58).

Her other brother works for a telephone company, and his wife is a stay-at-home housewife (Tr. 60). One of her sisters is a public school teacher who is married to a retired bank employee (Tr. 62). Her other sister works for a regional government in Italy, and her husband recently retired from a senior position in the regional government (AX E, F 2, and G). Applicant knows little about this sister and her family because their relationship is strained (Tr. 64-66).

One of Applicant's co-workers who has known her for more than 12 years submitted a letter on her behalf describing her as a perfectionist, a person of high integrity, and a polite and calm person with an engaging personality (AX B). A member of her church considers her deeply religious, heavily involved in church activity, and a kind and courteous person (AX C). A U.S. government employee, who has known Applicant for 17 years, describes her as very conscientious, diligent, an "unfailingly polite hostess," and a person of deep moral convictions (AX D).

I have taken administrative notice that Italy has been a constitutional republic since 1948, with a bicameral legislature, a multiparty political system, and an independent judiciary. The U.S. and Italy are NATO allies, and they enjoy warm and friendly relations and cooperate on major economic and trade issues. Under longstanding bilateral agreements, Italy hosts about 13,000 U.S. military personnel at various military installations in Italy. Italy was a founding member of the European Union, firmly supports the United Nations, and is a leading partner of the U.S. in the war against terrorism. The administrative notice documents submitted by Department Counsel reflect no evidence that Italy conducts intelligence operations against the U.S. Italy has a generally good human rights record. Although there have been occasional episodes of politically-motivated violence, attributed to organized crime and anarchist movements, Italy remains largely free of terrorist incidents.

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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.

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Guideline C, Foreign Preference**

The SOR, as amended, alleges Applicant exercised dual citizenship with Italy by obtaining an Italian passport and by voting in at least two Italian elections (SOR ¶ 1.a). It also alleges she traveled to Italy in June 2007, June 2006, May 2005, November 2003, May 2002, and September 2000 (SOR ¶ 1.b). The security concern under this guideline is as follows: “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.

Dual citizenship standing alone is not sufficient to warrant an adverse security clearance decision. ISCR Case No. 99-0454 at 5, 2000 WL 1805219 (App. Bd. Oct. 17, 2000). Under Guideline C, “the issue is not whether an applicant is a dual national, but rather whether an applicant shows a preference for a foreign country through actions.” ISCR Case No. 98-0252 at 5 (App. Bd. Sep 15, 1999). A disqualifying condition may arise from “exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen,” including but not limited to “possession of a current foreign passport” or “voting in a foreign election.” AG ¶ 10(a)(1) and (7).

The security concern under this guideline is not limited to countries hostile to the U.S. “Under the facts of a given case, an applicant’s preference, explicit or implied, even for a nation with which the U.S. has enjoyed long and peaceful relations, might pose a challenge to U.S. interests.” ADP Case No. 07-14939 at 4 (App. Bd. Mar. 11, 2009).

Foreign travel is not an enumerated disqualifying condition, and it usually has no independent security significance when the travel is solely to visit relatives in the country at issue. See ISCR Case No. 02-26978 at 6 (App. Bd. Sep 21, 2005). In this case, however, Applicant’s frequent travel to Italy is evidence of her strong affinity for the country, independent of her bonds of affection for her family.

I conclude the evidence is sufficient to raise AG ¶ 10(a)(1) and (7), shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns arising from foreign preference may be mitigated if “the individual has expressed a willingness to renounce dual citizenship.” AG ¶ 11(b). Security concerns based on possession or use of a foreign passport may be mitigated if “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.” AG ¶ 11(e). Applicant intends to retain her dual citizenship and is unwilling to relinquish her Italian passport. Thus, AG ¶¶ 11(b) and (e) are not established. No other enumerated mitigating conditions are established.

## **Guideline B, Foreign Influence**

The SOR alleges Applicant’s father, mother, two brothers, and two sisters are citizens and residents of Italy (SOR ¶¶ 2.a and 2.b). The security concern under this guideline is set out in AG ¶ 6 as follows:

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.

Two disqualifying conditions under this guideline are relevant. First, a disqualifying condition may be raised by “contact with a foreign 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.” AG ¶ 7(a). Second, a disqualifying condition may be raised by “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.” AG ¶ 7(b). The totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation’s government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

AG ¶ 7(a) requires substantial evidence of a “heightened risk.” The “heightened risk” required to raise this disqualifying condition is relatively low. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. Italy is an ally and close friend of the U.S., with a generally good human rights record. There is no evidence that Italy conducts intelligence operations against the U.S. Although Italy, like the U.S., has occasional episodes of

violence that is politically motivated or attributable to organized crime, it remains largely free of terrorist incidents. I conclude the presence of Applicant's family members in Italy does not create a "heightened risk" of foreign influence. Thus, I conclude AG ¶ 7(a) is not raised by the evidence.

On the other hand, Applicant's close affinity for Italy and her close familial connections in Italy raise the possibility of a conflict of interest. Thus, I conclude AG ¶ 7(b) is raised.

Security concerns under this guideline can be mitigated by showing that "the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S." AG ¶ 8(a). Applicant's family members currently employed in governmental positions are not involved in making political or military decisions and are not involved in intelligence or military activity. The current relationship between the U.S. and Italy makes it unlikely that Applicant will find herself with a conflict of interest. I conclude AG ¶ 8(a) is established.

Security concerns under this guideline also can be mitigated by showing "there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, 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." AG ¶ 8(b). Applicant's affinity for and familial connections to Italy are strong. Although the likelihood of a conflict of interest is low, I am not satisfied that Applicant would resolve any conflict of interest in favor of the U.S. Thus, I conclude that AG ¶ 8(b) is not established. No other enumerated mitigating conditions are relevant.

### **Whole Person Concept**

Under the whole person concept, an 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. An 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 common sense judgment based upon careful consideration of the guidelines and the whole person concept. I have incorporated my comments under Guidelines C and B in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant presented herself as a very thoughtful, intelligent, independent-minded person. Although she is close to her family members in Italy, she is not easily swayed or intimidated. She was very candid and sincere at the hearing. She readily admitted she has one foot in the U.S. and one foot in Italy. She desires to keep open the possibility of returning to Italy and living there. Her unwillingness to relinquish her Italian passport, her regular travel to Italy, and her concession that she might retire in Italy all raise security concerns based on foreign preference.

After weighing the disqualifying and mitigating conditions under Guideline C and B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign influence, but she has not mitigated the security concerns based on foreign preference. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25:

Paragraph 1, Guideline C (Foreign Preference):	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Paragraph 2, Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraphs 2.a-2.b:	For 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.

LeRoy F. Foreman  
Administrative Judge