



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



In the matter of:

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) ISCR Case No. 08-07476
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Applicant for Security Clearance

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro Se*

March 11, 2009

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on February 29, 2008 (Item 5). On November 14, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) for Applicant detailing security concerns for foreign preference under Guideline C (Item 1). 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 acknowledged receipt of the SOR on November 24, 2008 (Item 3).

Applicant answered the SOR in an undated written response admitting all of the factual allegations (Item 4). She elected to have the matter decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on January 9, 2009. Applicant received a complete file of relevant material (FORM) on January 26, 2009, and was provided the opportunity to file objections, and

submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely submitted additional information for consideration on February 3, 2009. On February 17, 2009, Department Counsel noted he had no objection to consideration of the additional material. The case was assigned to me on February 20, 2009. Based on a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

After a thorough review of the pleadings and exhibits, I make the following essential findings of fact. Applicant admitted the factual allegations in the SOR with explanation.

Applicant is a 42 year old independent translator and interpreter. She is seeking a security clearance to serve as a translator and interpreter of Greek. She is a native born United States citizen. She married a Greek citizen in 1986, but the marriage did not last long. She married a dual United States and Greece citizen in 2001 and that marriage is now terminated. She is a single parent. Her mother is deceased but was a citizen of Greece. Her father is a citizen and resident of Greece. Her former in-laws were born in Greece but are now citizens and residents of the United States. Her brother is a citizen of the United States on United States military assignment in Greece (Item 5).

Applicant admits that she sought and received Greek citizenship in 1992 thus becoming a dual citizen of the United States and Greece. She obtained Greek citizenship so she did not have to apply for resident and work permits yearly. At the time, she wanted to live and work in Greece. She considers herself a dual Greece and United States citizen but she does not possess a Greek passport (Item 4).

Applicant admits she has a Greek identification card which is needed to conduct ordinary business in Greece. She must use the card to transact banking business, as well as pay bills and taxes. The card is similar to a driver's license identification in the United States. Applicant also voted in Greek elections which is mandatory for Greek citizens. Greek citizens must have voting stamps in their voting booklet to pay taxes and receive other governmental services (Item 4).

Applicant admits that she was a resident of Greece for periods of time. She specifically admits she resided and worked in Greece from June 1988 until 2001 after her own and her parent's divorces. She also worked and resided in Greece from November 2002 until June 2003. She admits she received Greek health benefits during her lengthy stay working there. Like all other people working in Greece, health premiums were withheld from her salary while she was employed in Greece. She admits traveling to Greece to visit her father and her brother in 2004, 2005, 2006, and 2007. At the time, her brother was stationed in Greece for the United States military. Applicant also owns with her second husband an apartment in Greece worth

approximately \$90,000. She has a Greek bank account to be able to conduct business related to the apartment (Item 4).

Applicant stated that her best interests are with the United States. She moved to Greece at age 20 after an abusive marriage wanting to start a new life. She applied for Greek citizenship through her grandfather's status as a Greek citizen to avoid obtaining annual work and residence permits when she was living and working in Greece. She obtained an identification card issued to all Greek citizens and voted in Greek elections which is mandatory for Greek citizens. She does not follow Greek politics. She returned to the United States in 2001 when she remarried. She is now a single parent working as a translator interpreter. Her only loyalties are to the United States. She plans to remain in the United States (Answer to FORM, dated February 3, 2009).

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. 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.

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 she may be prone to provide information or make decisions that are harmful to the interests of the United States (AG ¶ 9). Applicant requested and received Greek citizenship even though she was a native born United States citizen. She considers herself a dual citizen of Greece and the United States. She has a Greek identification card and voted in Greek elections which are mandatory for Greek citizens. She lived extensively in Greece and travels there frequently. She received health benefits from Greece when she lived there. Her father resides in Greece and her brother is in Greece on United States military orders. These factors raise Foreign Preference Disqualifying Conditions (FP DC) AG ¶ 10(a) "Exercise of any right, privilege, or obligation of foreign citizenship after becoming a United States citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport; (3) accepting educational, medical, retirement, social welfare, or other benefits from a foreign country; and (7) voting in a foreign election." Her requesting and receiving Greek citizenship also raises FP DC AG ¶ 10(b) "action to acquire or obtain recognition of a foreign citizenship by an American citizen."

Applicant sought dual citizenship with Greece even though she was a native born United States citizen. Foreign Preference Mitigating Condition (FP MC) AG 11(a) "Dual citizenship is based solely on parents' citizenship or birth in a foreign country" does not apply. The United States Supreme Court has recognized a right under the United States Constitution for United States citizens to have dual citizenship with another country (*Afroyim v. Rusk*, 387 U.S. 253 (1967)). However, eligibility for a security clearance must be determined by application of the disqualifying conditions for foreign preference under the factual circumstances. The President in promulgating the disqualifying conditions could have specified that dual citizenship by itself was a security concern, but he did not. The rule that was promulgated raises a security concern based on an exercise of dual citizenship. Applicant has exercised her dual citizenship. She moved to Greece and stayed there for many years. It is recognized that she moved there after an abusive marriage. Her moving to Greece after an abusive marriage shows an affinity for that country in times of trouble over her native country of the United States. She remained in Greece until she married again to a dual Greek and United States citizen. Applicant did not have to obtain a Greek identification card but did so

only to ease her ability to remain and work in Greece. This also required her to vote in Greek elections which are mandatory for Greek citizens. However, the only reason Applicant exercised her dual citizenship to vote was because she voluntarily chose to obtain Greek citizenship with the requirement to exercise her rights of citizenship by voting. While voting is mandatory for Greek citizens, her voluntarily seeking Greek citizenship is the action that required her to exercise her dual citizenship rights and obligations. Applicant also maintains an apartment and bank account in Greece to ease her visits and stays in Greece. She traveled to Greece many times. Her father is a resident of Greece. Applicant has extensive family and filial ties to Greece. She received health benefits from Greece even though the premiums were withheld from her salary. She did not present facts to raise FP MC AG ¶ 11(b) "The individual has expressed a willingness to renounce dual citizenship." This accumulated evidence shows that Applicant has a preference for Greece over the United States. She has not presented sufficient evidence to establish she does not have such a preference. Applicant's statement that she is a United States citizen and she does not have a preference for Greece over the United States is not sufficient to overcome the government's evidence of a foreign preference for Greece raised by Applicant's actions. Applicant has not mitigated security concerns for foreign preference raised by her exercise of the rights of foreign citizenship in Greece.

“Whole Person” Analysis

Under the whole person concept, the administrative judge must evaluate an applicant's security eligibility 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 a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

Applicant is a native born United States citizen who sought and received Greek citizenship while a United States citizen. She spent extensive time living and working in Greece. She exercised her dual citizenship with Greece by obtaining a Greek identification card which, as a citizen, required her to again exercise a right of citizenship by voting in Greek elections. She received health benefits from Greece. She purchased and owns property in Greece and has a bank account in a Greek bank.

Applicant exercised her rights of dual citizenship with Greece because it made living in and visiting Greece easier for her. She has a preference for Greece over the United States and has not established that her preference is for the United States. Access to classified information is denied.

Formal Findings

Paragraph 1, Guideline C: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: 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.

THOMAS M. CREAN
Administrative Judge