



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



In the matter of:)	
)	
)	ISCR Case No. 08-09905
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tom Coale, Esq., Department Counsel
For Applicant: *Pro Se*

June 22, 2009

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has mitigated the Foreign Preference security concerns. Eligibility for access to classified information is granted.

On March 17, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the 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 in writing on April 8, 2009, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on May 4, 2009. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns.

Applicant received the FORM on May 12, 2009. He responded with a letter dated May 28, 2009, and an attached letter from his facility security officer (FSO). Department Counsel did not object to his response. The letter from the FSO is marked Applicant Exhibit (AE) A and admitted. The case was assigned to me on June 17, 2009.

Findings of Fact

Applicant is a 47-year-old employee of a defense contractor. He was born in Canada. He came to the United States in 1984 to attend school and never moved back to Canada. He has a Master of Science degree in engineering awarded by an American university in 1988. He became a U.S. citizen in September 2007. He has never been married and has no children.¹

Applicant had a Canadian passport that was issued in August 2004, and is due to expire in August 2009. He retained the passport after he became a U.S. citizen for ease of travel to Canada. His mother, two siblings, and other extended family members still live in Canada. The Canadian passport made it easier to enter Canada, and he wanted to keep it so that he would not have any difficulties entering the country in case of an emergency. He used the Canadian passport to travel to Canada after he became a U.S. citizen.²

Applicant acknowledged that he was a dual citizen and that he had a Canadian passport when he applied for his security clearance in June 2008. When he was interviewed for his background investigation in July 2008, he told the investigator that he was reluctant to renounce his dual citizenship with Canada. He stated that he planned on renewing his Canadian passport when it expired. Applicant responded to DOHA interrogatories in December 2008. He stated, "I am not willing to destroy or surrender this [Canadian] passport at this time."³ When he responded to the SOR in April 2009, Applicant wrote:

I am willing to destroy the Canadian passport I currently possess and not renew it and provide any necessary documentation or actions in support of that if its possession by me precludes obtaining the Defense Personnel Security Clearance my employer is seeking.⁴

Applicant stated in his response to the FORM that he destroyed his Canadian passport in front of his facility security officer. He stated that he would not renew or

¹ Item 5. Information in this paragraph was obtained from Applicant's Questionnaire for National Security Positions (SF 86) dated June 25, 2008.

² Items 3-6.

³ *Id.*

⁴ Item 3.

apply for another Canadian passport and he was willing to renounce his Canadian citizenship. His FSO certified that the passport was destroyed.⁵

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 to be used 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, administrative judges apply the guidelines 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 the 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.

⁵ AE A.

Section 7 of Executive Order 10865 provides that adverse 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 conditions that could raise security concerns under AG ¶ 10. One is potentially applicable in this case:

(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.

Applicant possessed and used a Canadian passport while a U.S. citizen. AG ¶ 10(a) is applicable.

Conditions that could mitigate Foreign Preference security concerns are provided under AG ¶ 11. Three are potentially applicable:

(a) dual citizenship is based solely on parents’ citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship; and

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant maintained and used his Canadian passport after becoming a U.S. citizen. Because he chose to actively exercise his rights and privileges as a Canadian citizen, his dual citizenship was not based solely on his parents’ citizenship or birth in Canada. AG ¶ 11(a) is not applicable. He was initially reluctant to give up his Canadian passport because he wanted the flexibility it provided to visit his family. It took some time, but when Applicant finally realized that possession of a foreign passport could be

a concern, he destroyed the passport. He stated that he would not renew or apply for another Canadian passport and he was willing to renounce his Canadian citizenship. AG ¶¶ 11(b) and (e) are applicable.

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 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 was born in Canada. He came to the United States in 1984 as a young man to pursue his education and remained. He became a U.S. citizen in September 2007. He maintained his Canadian citizenship and passport for ease of travel to Canada to visit his family. When he realized that could be a concern, he destroyed the passport and stated that he would not renew or apply for another Canadian passport. He is willing to renounce his Canadian citizenship. There are no other issues of concern.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Foreign Preference security concerns.

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
Subparagraphs 1.a-1.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interest of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge