DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 08-10467
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel

For Applicant: *Pro se*

November 18, 2009

Decision

O'BRIEN, Rita C., Administrative Judge*:*

Based on a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the security concerns raised under the guideline for foreign preference. Accordingly, her request for a security clearance is denied.

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), which she signed on September 7, 2007. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding[1] that it is clearly consistent with the national interest to grant Applicant's request.

On June 30, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive

[1] Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

under Guideline C (Foreign Preference) of the Revised Adjudicative Guidelines (AG).[2] Applicant received the SOR on July 20, 2009. She signed her notarized Answer on July 21, 2009, in which she admitted to all the allegations in the Statement of Reasons. She also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on August 31, 2009, and the case was assigned to me on the same day. DOHA issued a Notice of Hearing on October 5, 2009, and I convened the hearing as scheduled on October 27, 2009. During the hearing, Department Counsel offered two exhibits, which were marked as Government Exhibits (GE) 1 and 2, and admitted without objection. Applicant testified and offered one exhibit, Applicant Exhibit (AE) A, which also was admitted without objection. I held the record open to allow Applicant to submit additional documentation, which was timely received and forwarded without objection by Department Counsel. Applicant's three additional documents are admitted as AE B through D. DOHA received the transcript (Tr.) on November 4, 2009.

Findings of Fact

Applicant's admissions to the SOR allegations are admitted as fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant, 53 years old, is an interpreter and translator. She was born in France, but received Italian citizenship by virtue of her parents' citizenship. Her parents currently live in Italy (GE 1, 2; Tr. 24). She has had strong attachments to the United States since childhood. Her father aided the British Army during World War II by gathering information from Italian locals regarding enemy weapon caches. He worked for the Italian Ministry of Foreign Affairs and was a diplomat in the United States in the 1960s. His contributions were recognized through a U.S. congressional resolution in the early 1980s. Applicant lived and attended school in the United States as a child when her father was stationed in the United States. Another relative, in her grandparents' generation, was a war hero who fought against Mussolini during World War II (GE 2; Tr. 17-19).

In 1982, Applicant earned the equivalent of a Bachelor's degree in interpreting and translating at an Italian university (Tr. 29-30). She was employed at the U.S. embassy in Italy from approximately 1982 until 1994 (AE A). Applicant was certified by a U.S. national translators' association in 1997 (Tr. 31). She worked as a staff assistant for an international banking agency from 1997 to 2001 (GE 2). She then worked as a freelance translator and interpreter for U.S. agencies.

[2] Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005. The Revised Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

From 1985 to 1993, Applicant was married to an Italian citizen. She has one 21-year-old son from this marriage. She came to the United States in 1994, at the age of 38. She married a U.S. citizen at that time, and they divorced in 1999. Applicant has been married to her current husband, a U.S. citizen, since 2006. Her son is currently a dual citizen; he was solely an Italian citizen until December 2008, when he attained U.S. citizenship. He attends college in the United States (GE 1, 2; Tr. 24-29, 44-46).

Applicant became a U.S. citizen in December 2003, and received her U.S. passport in January 2005. As of the date of the hearing, she also held a valid Italian passport, which was issued in June 2003 and will expire in June 2013.[3] She noted in her Interrogatory response that she possesses the passport because she holds Italian citizenship (GE 1, 2).

Since becoming a United States citizen, Applicant has traveled to Italy once or twice per year (GE 1; Tr. 35, 47). She uses her Italian passport when traveling overseas because the airport lines are shorter for citizens of the European Union than for citizens of other countries (Tr. 35). Applicant is certain she used her Italian passport to enter Italy (Tr. 37). However, she was uncertain which other countries she entered or exited using her Italian passport. She traveled in 2007 to the United Kingdom (U.K.) (GE 2), but was unsure if she used her Italian or U.S. passport for that trip. In 2006, she visited Germany and the Czech Republic. She does not think she needed a passport to enter Germany, but may have used her Italian passport to enter the Czech Republic on that trip. (Tr**.** 35-37).

Applicant's statements in her Interrogatory response of 2008 were more certain: she stated that she traveled to the U.K., Germany, Italy and the Czech Republic using her Italian passport (GE 2; Tr. 35). She submitted a copy of her Italian passport, but the country stamps are barely legible (AE B). It shows at least two trips: one is an entry into the United States in August 2003, before she attained U.S. citizenship. The other entry appears to be dated August 2004, but the country cannot be deciphered. In her post-hearing submission, Applicant states she is "pretty sure" she used her U.S. passport to enter the Czech Republic, but the stamp is faded (GE 2; Tr. 36).

Applicant's U.S. passport shows multiple trips abroad from 2005 through 2009. Most stamps indicate entry into the United States. The legible foreign stamps indicate (1) entry or exit from Germany in July 2006; (2) entry or exit from Italy in November 2007; (3) entry or exit from Italy in September 2008; and (4) entry or exit from Germany in March 2009. (AE C).

The DOHA interrogatory Applicant received in December 2008 asked if she is willing to surrender, destroy or invalidate her Italian passport. It also provided directions on how to surrender her foreign passport to a cognizant security officer, such as a

[3] Applicant's foreign passport is a European Union passport; however, it will be identified in this decision as an Italian passport to ensure clarity as to the specific European country involved.

company Facility Security Officer (FSO), and how to document these actions. Applicant responded that she was not willing to do so because, "due to the extremely good relations between Italy & United States, I see no reason for destroying, surrendering or invalidating passport." (GE 2). At the hearing, she again testified that she is not willing to surrender, destroy or invalidate it, and reiterated that Italy and the United States have good relations (GE 2; Tr. 38, 40-41). Appellant also testified that she is not willing to renounce her Italian citizenship (Tr. 40).

Applicant voted once in an Italian election in 2005. In her Interrogatory response, she noted that she voted because "it is legal." She testified at hearing that she did so because the Italian embassy now offers the option of voting by mail. (GE 2; Tr. 41-42). Other elections have been held since 2005, but she has not voted because she understood that it would be an issue for her security clearance processing (Tr. 42). She has no intent to vote in future Italian elections. Applicant also holds an Italian driver's license (Tr. 47). As of December 2008, she had a bank account in Italy valued at approximately $900. Applicant does not receive income from this account, and she does not own property in Italy. (GE 2; Tr. 46).

Policies

Each security clearance decision must be a fair, impartial, and common-sense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines (AG).[4] Decisions must also reflect consideration of the "whole person" factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of disqualifying or mitigating conditions does not determine a conclusion for or against an Applicant. However, specific applicable guidelines should be followed when a case can be so measured, as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest[5] for an Applicant to receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it falls to Applicants to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, Applicants bear a heavy burden of persuasion.[6] A

[4] Directive. 6.3.

[5] *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).

[6] *See Egan,* 484 U.S. at 528, 531.

person who has access to classified information enters a fiduciary relationship based on trust and confidence. The government has a compelling interest in ensuring that Applicants possess the requisite judgment, reliability, and trustworthiness to protect the national interest as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access to classified information in favor of the government.[7]

Analysis

Guideline C, Foreign Preference

> The security concern involving foreign preference arises
>
> [W]hen 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)
>
> Under AG ¶ 10, the following disqualifying condition is relevant:
>
> (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;… (7) voting in a foreign election…

Applicant is a dual citizen of Italy and the United States. Dual citizenship, in and of itself, is not disqualifying;[8] nor is Applicant's acquisition of an Italian passport in 2003, before she became a U.S. citizen. However, conduct that constitutes an *exercise* of foreign citizenship, after becoming a U.S. citizen, is disqualifying. Applicant continues to exercise the right of an Italian citizen by possessing a valid foreign passport after becoming a U.S. citizen in 2003. AG ¶ 10(a)(1) applies.

Applicant also exercised her rights as an Italian citizen by voting in the Italian presidential election of 2005. She has no intent to do so in the future, a decision that is based on the effect it could have on her security clearance eligibility. Applicant's vote in a foreign election occurred after she became a U.S. citizen. AG ¶ 10(a)(7) applies.

I considered the following relevant mitigating conditions under AG ¶ 11:

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[7] *See Egan;* Revised Adjudicative Guidelines, ¶ 2(b).

[8] ISCR Case No. 99-0454 at 5 (App. Bd. Oct 17, 2000).

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a United States citizen or when the individual was a minor;

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

Applicant travels to Italy several times per year. She uses her foreign passport during these trips to enter and/or exit Italy because of the convenience of using the shorter lines reserved for European Union citizens. The Appeal Board has held that personal convenience does not constitute a mitigating factor when evaluating the security significance of use of a foreign passport.[9] Applicant's exercise of her Italian citizenship by using her foreign passport occurred numerous times since she attained U.S. citizenship in 2003. AG ¶ 11(c) cannot be applied.

Applicant was on notice that her valid foreign passport represented a security concern from at least December 2008, when she received the DOHA Interrogatory. It indicated the accepted methods that she could use to render her foreign passport unusable: destruction, invalidation, or surrender to a cognizant security authority. Applicant declined to exercise any of the options at that time. She reiterated at the hearing that she would not do so. AG ¶ 11(e) does not apply.

Whole Person Analysis

Under the whole person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the relevant 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.

AG ¶ 2(c) requires that 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. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

[9] ISCR Case No. 98-0252 at 7-8 (App. Bd. Sep 15, 1999).

Dual citizenship that is passively acquired through birth in a foreign country or an applicant's parents' citizenship is not disqualifying under the Department of Defense regulation that governs security clearance adjudications. However, if a dual citizen holds a passport issued by a foreign country, and also wishes to obtain a security clearance, then a security concern arises and further inquiry is required *(see* AG ¶ 10(a)(1)). In such situations, the concern can be mitigated if the foreign passport is destroyed, invalidated or surrendered to a cognizant security authority. Here, Applicant's Italian citizenship, which arose passively through her parents' citizenship, is not the security concern, but her desire to both possess a valid foreign passport and a security clearance. Applicant indicated when she answered the interrogatories, and again at the hearing, that she was unwilling to destroy, invalidate or surrender her foreign passport.

Finally, it should be noted that Applicant's loyalty to the United States is not at issue. The Directive is clear: a security clearance determination is not a determination as to an applicant's loyalty (*see* Department of Defense Directive 5220.6, §7*)*. Applicant credibly testified to her loyalty to the United States, and her employment at a United States embassy for more than a decade without incident supports her statement. However, the relevant guideline in this case calls for certain steps to be taken to resolve the security concern. Applicant declined to do so, and therefore, she cannot be granted a security clearance.

Overall, the record evidence fails to satisfy the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from the cited adjudicative guideline.

Formal Findings

Paragraph 1, Guideline C	AGAINST Applicant
Subparagraph 1.a. - 1.c.	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge