



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-11502
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Thomas Coale, Esq., Department Counsel
For Applicant: *Pro se*

August 24, 2009

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline C (Foreign Preference). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on June 25, 2008. On May 21, 2009, 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 Guideline C. 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 answered the SOR in an undated document and requested a hearing before an administrative judge. DOHA received the request on June 8, 2009. Department Counsel was ready to proceed on June 30, 2009, and the case was

assigned to me on July 9, 2009. DOHA issued a notice of hearing on July 14, 2009, scheduling the hearing for July 31, 2009. I convened the hearing as scheduled. Government Exhibits (GX) 1 and 2 were admitted in evidence without objection. Applicant testified on her own behalf. The record closed upon adjournment of the hearing. DOHA received the transcript (Tr.) on August 5, 2009.

Findings of Fact

In her answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.b and 1.c. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 24-year-old employee of a federal contractor. She graduated from college in August 2006, attended graduate school from August 2007 to May 2008, and began employment with her current employer in June 2008. Her current job is her first job after college (Tr. 56). She has never held a security clearance.

Applicant was born in Italy while her father, a U.S. Air Force officer, was stationed there. Her mother is a native of Italy who became a U.S. citizen in June 1999. Her father was reassigned to the U.S. when she was about one year old, and they lived in the U.S. for two years. Her father was again assigned to Italy when she was three years old. She attended an Italian school because there were no U.S. schools near her father's duty station. When she was eight years old, her father returned to the U.S. because the Air Force Base where he worked was closed. Applicant and her mother remained in Italy so that she could finish elementary school. In 1995, when Applicant was ten years old, she and her mother returned to the U.S., where she has lived continuously until the present (Tr. 30-31).

Applicant's mother registered her with the Italian "Registry of Citizens Living Abroad" in 1995, when they returned to the U.S. (Tr. 32). At the hearing, Applicant was asked if she still felt an obligation to update the registry, and she responded: "I guess so. I mean, I'm not sure what – what happens if I don't." (Tr. 49.)

Applicant's mother obtained an Italian passport for her in May 1999, when she was 14 years old, and she used it when she and her mother traveled to Italy. Her mother obtained the Italian passport because she did not want them to be separated when traveling through customs and immigration (GX 2 at 17). The passport expired in May 2004. Applicant has not destroyed or surrendered it, but she has not renewed it. She obtained a U.S. passport in September 2007.

Applicant has not voted in any Italian elections and does not intend to (Tr. 32). She does not intend to return to Italy, except to visit relatives, and she intends to live and work in the U.S.

During an interview with a security investigator on October 20, 2008, Applicant made several statements that raised security concerns. According to the investigator's

summary of the interview, she intended to renew her Italian passport and hold citizenship in both countries, she felt allegiance to both countries, she did not know where her allegiance lies and did not know if she could pick a side, her allegiance or obligation was fifty percent to Italy and fifty percent to the U.S., and she would not relinquish her Italian passport (GX 2 at 16-17).

Applicant testified she found the security investigator “a little bit intimidating” and she believes she misunderstood some of his questions (Tr. 33). The investigator was older, about the age of her father. She testified he was appropriately dressed and acted professionally (Tr. 54-55).

Applicant admitted telling the investigator she planned to renew her Italian passport. She changed her mind after being advised that possession of two passports would be an impediment to having a clearance (Tr. 43). She used her U.S. passport when she traveled to Italy to visit family members from July 16 through July 24, 2009, a week before the hearing (Tr. 39).

Regarding the statement in the interview summary that she feels allegiance to both countries, she testified, “I’m not sure if I actually said I don’t know where my allegiance lies, but I did say I identify with both countries, so maybe that’s what started this misunderstanding.” She explained that her heritage is from Italy as well as the U.S. (Tr. 43-44).

Regarding the statement that she does not know if she could pick a side, she testified the investigator was pushy, trying to prompt her, and asking, “Which one would you pick, which one would you pick,” and she responded that she did not know. She testified she “didn’t understand what he meant allegiance-wise, which side would you pick, because he just said which side would you pick.” She testified, “I want to clarify that my allegiance is with the United States.” She stated: “I don’t really have any allegiance ties to Italy. It’s just – it’s my culture, so it’s my heritage, but as far as allegiance, it would be with the United States, because I spent much more time here than Italy.” She testified she does not intend to move back to Italy (Tr. 44-46). She denied saying that her allegiance to the two countries was fifty percent to Italy and fifty percent to the U.S. (Tr. 47).

Applicant admitted telling the security investigator she was not willing to renounce her Italian citizenship (Tr. 50). She explained that she had just started her new job and was unfamiliar with the requirements for obtaining a security clearance. She testified, “If it’s something that I absolutely have to do, then I’ll definitely think about that.”

On further questioning about her willingness to renounce her Italian citizenship, Applicant testified: “I think if I had to, then I would do it. I’ve been – it’s something that I’ve been thinking about ever since this happened, because I was not aware of citizenship and passport requirements for a security clearance when the interview with

the investigator took place.” (Tr. 56.) In her closing statement she said, “I believe that if I had to renounce my Italian citizenship that I would do so.” (Tr. 68.)

In response to DOHA interrogatories on March 9, 2009, Applicant stated she had not made a decision on renewing her Italian passport and she had received conflicting information from a website and a DOHA personnel security specialist about the implications of having an Italian passport (GX 2 at 2). She also stated she was not willing to perform military service or bear arms for Italy (GX 2 at 10).

In the same set of interrogatories, Applicant authenticated the personnel subject interview summary prepared by the security investigator who interviewed her in October 2008. She made several corrections, but none of them pertained to the comments about her allegiance to the U.S. and Italy (GX 2 at 13).

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 overarching adjudicative goal is a fair, impartial, and commonsense 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 made “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 alleges Applicant told an investigator she was unsure of where her allegiance lies, she did not know if she could pick a side between Italy and the U.S., and she had family in both countries and identified with both countries (SOR ¶ 1.a). It also alleges she received an Italian passport in 1999 that expired in 2004, and she used it in June 1999 (SOR ¶ 1.b). It further alleges that she registered as an Italian citizen with the Italian Registry of Citizens Living Abroad (SOR ¶ 1.c).

The concern under Guideline C 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).

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).

A disqualifying condition under this guideline may arise from “exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen.” AG ¶ 10(a). This disqualifying condition includes but is not limited to “possession of a current foreign passport” and “accepting education, medical, retirement, social welfare, or other such benefits from a foreign country.” AG ¶¶ 10(a)(1) and (3). Although not an enumerated disqualifying condition, AG ¶ 10(a) would encompass Applicant’s compliance with the obligation of registering as an Italian citizen living abroad and updating that registry. A disqualifying condition also may arise from “any statement or action that shows allegiance to a country other than the United States.” AG ¶ 10(d).

AG ¶ 10(a)(1) is not raised because Applicant’s Italian passport is expired, but her use of her Italian passport in June 1999 raises the general disqualifying condition in AG ¶ 10(a). Her acceptance of Italian educational benefits raises AG ¶ 10(a)(3). Her statements to the security investigator in October 2008 raise AG ¶ 10(d).

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 10(a) and (d), the burden shifted to Applicant 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 under this guideline may be mitigated by evidence that “dual citizenship is based solely on parents’ citizenship or birth in a foreign country.” AG ¶ 11(a). This mitigating condition is applicable, because Applicant’s Italian citizenship is based on the citizenship of her mother and her birth in Italy.

Security concerns under this guideline also may be mitigated if “the individual has expressed a willingness to renounce dual citizenship.” AG ¶ 11(b). Applicant’s attitude toward renouncing her Italian citizenship has changed as she has learned more about the security implications of dual citizenship. In October 2008, she told an investigator she was unwilling to relinquish her Italian citizenship and intended to renew her Italian passport. In March 2009, she answered DOHA interrogatories by stating she had not decided whether to renew her Italian passport. In July 2009, a week before the hearing, she traveled to Italy using her U.S. passport, having not renewed her Italian passport. At the hearing, she testified she was not aware of the implications of her dual citizenship during earlier inquiries, but she would renounce her Italian citizenship if it was necessary. I conclude this mitigating condition is applicable.

Security concerns may be mitigated by showing that “exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor.” AG ¶ 11(c). This mitigating condition is established because Applicant obtained and used her Italian passport when she was 14 years old. Her mother registered her as an Italian citizen living abroad when she was 10

years old. As of the date of the hearing, Applicant had never updated the registry and she was uncertain of the legal implications of not updating it. In this respect, she appeared to be the product of a military family, with a strong sense of duty to obey the rules. Her testimony about the registry also reflects her unfamiliarity with the security implications of dual citizenship.

Finally, 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). This mitigating condition is established because Applicant’s passport has expired and is invalid.

There are no enumerated mitigating conditions applicable to Applicant’s interview by a security investigator in October 2008. There are, however, several relevant considerations. The government exhibit is the investigator’s summary. It does not reflect the questions that were asked or how suggestive those questions were regarding the desired answer; it only reflects Applicant’s responses. Applicant authenticated the interview summary when she responded to DOHA interrogatories in March 2009, but it is apparent she did not appreciate the security significance of the statements attributed to her. Even at the hearing, she did not dispute the statements attributed to her (except for the “50 percent loyalty” statement), but instead she testified she misunderstood the concept of allegiance and was really talking about her heritage. To the extent that there are differences between the personal interview summary and her testimony at the hearing, I am satisfied that her testimony is a more reliable indicator of her allegiance to the U.S.

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 commonsense judgment based upon careful consideration of the guidelines and the whole person concept. I have incorporated my comments under Guideline C in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is young and inexperienced. She did not understand the implications of her dual citizenship until the late stages of the security clearance process. She was very sincere and candid at the hearing. She grew up in a military family and is accustomed to following rules and regulations. Even though there are differences between her statement to a security investigator and her testimony at the hearing, she chose not to repudiate her statements to the investigator, but instead chose to explain why her answers did not reflect a preference for Italy. I do not believe she was adjusting her answers at the hearing to be more politically correct. I am satisfied her hearing testimony was intended to more accurately explain her attachments to the U.S. and Italy. Based on her testimony and demeanor at the hearing, I am satisfied that Italy is a significant part of her heritage, but that her allegiance is to the U.S.

After weighing the disqualifying and mitigating conditions under Guideline C, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign preference. Accordingly, I conclude she has 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 for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25:

Paragraph 1, Guideline C, Foreign Preference:	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge