



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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SSN: -----) ISCR Case No. 09-01082
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Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro Se*

December 11, 2009

Decision

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings, exhibits and testimony, Applicant's request for eligibility for a security clearance is denied.

On September 12, 2006, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required in connection with her work for a defense contractor. However, in early 2007, she was let go from that job only to be rehired in late 2008. At that time, her e-QIP was resubmitted and a background investigation completed. After reviewing the results of that investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a set of interrogatories¹ to obtain clarification of, and/or additional information about potentially disqualifying information in her background. After reviewing the results of the background investigation, including her response to the interrogatories, DOHA

¹ Authorized by DoD Directive 5220.6 (Directive), Section E3.1.2.2.

adjudicators were unable to make a preliminary affirmative finding² that it is clearly consistent with the national interest to allow Applicant access to classified information. On April 30, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which, if established, raise security concerns addressed in the revised Adjudicative Guidelines³ under Guideline C (foreign preference).

On May 19, 2009, Applicant responded to the SOR and requested a hearing. The case was assigned to me on July 24, 2009, and I convened a hearing on August 26, 2009. The parties appeared as scheduled. The government presented two exhibits, which were admitted without objection as Government Exhibits (Gx.) 1 and 2. Applicant presented one exhibit, which was admitted without objection as Applicant's Exhibit (Ax.) A. I also left the record open after the hearing to give Applicant time to submit additional relevant information. On August 28, 2009, I received Applicant's timely submission of one additional exhibit. It has been admitted into the record without objection as Ax. B. DOHA received the transcript of hearing (Tr.) on September 3, 2009.

Findings of Fact

Under Guideline C, the government alleged that Applicant applied for and received a Panamanian identification card (SOR ¶ 1.a); that, as of the date of the SOR, she possessed a valid Panamanian passport (SOR ¶ 1.b); that, in July 2002, she used her Panamanian passport to leave Panama (SOR ¶ 1.c); that, in March 2009, she was not willing to relinquish her Panamanian passport (SOR ¶ 1.d); that, in March 2009, she was considering retiring to Panama and that her Panamanian citizenship would allow her to live legally in that country when she retires (SOR ¶ 1.e); and that, in March 2009, she was seeking employment in Panama and Spain, and that her Panamanian citizenship would facilitate obtaining "working papers" in Spain (SOR ¶ 1.f). Applicant admitted with explanation each of these allegations. In addition to the facts established through her admissions, I have made the following findings of relevant fact.

Applicant is 51 years old and is seeking a security clearance in connection with her employment by a defense contractor. Applicant's father is a retired U.S. Army senior enlisted member living in Panama. Applicant was born in the United States, but was raised through her high school years in U.S. territory abroad (the Panama Canal Zone), which was where her father was stationed for most of his Army career. He was assigned to special forces and spent much of his career conducting jungle combat training for personnel heading to the Vietnam War. Applicant was educated in U.S. schools in Panama. (Tr. 20 - 21)

Applicant's mother was Panamanian. Applicant's father was born in the United States, but raised in Panama. Applicant's paternal grandfather was a Filipino-American,

² Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

³ Adjudication of this case is controlled by the revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, the revised Adjudicative Guidelines take precedence over the guidelines listed in Enclosure 2 to the Directive.

and her paternal grandmother was Panamanian. Applicant has Panamanian citizenship through her mother and not her father, because Applicant's mother registered Applicant and her siblings, all of whom live in the U.S., with the Panamanian government as Panamanian citizens born abroad. Applicant's father is a U.S. citizen only, because he was never registered as a Panamanian citizen born abroad as was Applicant. He is retired and living in Panama on his U.S. military retirement. (Answer; Gx. 2; Tr. 39 - 41)

Applicant's father suffers from Alzheimer's disease and requires some assistance in managing his personal, financial, and medical affairs. He is receiving medical and living assistance in Panama, which is paid for and managed through his TriCare benefits. Currently, among her siblings in the U.S. and other family in Panama, Applicant is the principal person responsible for family monitoring of her father's affairs. Financially, it is much more efficient for Applicant's father to live and receive care in Panama. He is also more comfortable there. When he travels to live with Applicant or her siblings in the U.S., he has trouble adjusting and becomes disoriented and, at times, aggressive. (Answer; Gx. 2; Tr. 25 - 29, 37 - 39, 41 - 43)

Applicant was married from 1993 until 2000. At some point, she and her ex-husband considered buying a vacation home or property in Panama. In 1998, she obtained a Panamanian passport. She has renewed it twice since then. Her current Panamanian passport is valid through January 2014. She also has a valid U.S. passport that she last renewed in May 2003. (Tr. 25, 32; Gx. 1; Gx. 2; Ax. B)

In 2002, Applicant obtained a Panamanian "cedula," which is a government-issued identification card. It entitles Applicant to vote in Panama, which Applicant has not done. Panamanian citizens are often asked to present their cedula when conducting business with Panamanian officials and when obtaining benefits of Panamanian citizenship. (Tr. 36 - 38) As a United States citizen, she does not need a cedula, and she can travel to and from Panama on her U.S. passport. She has used her Panamanian passport instead of her U.S. passport several times, but only to enter Panama. She does so because it gets her through inspection lines faster and because she does not have to pay entry fees. In 2002, Applicant also used her Panamanian passport to leave Panama. (Answer; Gx. 2; Ax. B)

Applicant claims that the primary reason she needs a Panamanian passport and cedula is to manage her father's affairs. Her position is that the passport and cedula facilitate her interaction with Panamanian officials, but she acknowledged at hearing that she would be able to assist her father without those documents. For example, his money is in a U.S.-based federal credit union to which Applicant has access without traveling to Panama. (Answer; Gx. 2; Tr. 44 - 46)

In about 1994, Applicant had to travel to Beirut, Lebanon, in connection with her ex-husband's employment. She obtained a single-use passport from the U.S. State Department for that purpose, and her travel to Lebanon, which at the time was in the midst of a civil war, was sanctioned by the U.S. government. (Answer; Tr. 22 - 23, 51)

Applicant does not want to relinquish her Panamanian passport. (Answer; Gx. 2) Applicant is multi-lingual, has a master's degree in international transactions, and has

experience working in international businesses. She has been generally unemployed since about June 2008, and has been seeking employment opportunities in the U.S., as well as in Panama and Spain, where Panamanian citizenship can increase her employment prospects. (Gx. 2; Tr. 47) Her former employer testified that she is highly reliable, trustworthy, and professional. He will rehire her if she is approved for a security clearance. (Tr. 54 - 58)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁴ and consideration of the pertinent criteria and adjudication policy in the revised Adjudicative Guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole person” concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under AG ¶ 9, Guideline C (Foreign Preference).

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁵ for an applicant to either 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 for an applicant. Additionally, the government must prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁶

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.

A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Thus, the government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests 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

Foreign Preference.

The government presented sufficient information to support the facts alleged in SOR ¶ 1. Those allegations, which Applicant admits, raise security concerns about whether Applicant may place the interests of another country ahead of those of the United States. Specifically, the security concern stated in AG ¶ 9 (*Guideline C: Foreign Preference*) is that, “[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.” The facts established show, as alleged in SOR ¶¶ 1.a - 1.c, that Applicant derived Panamanian citizenship from her mother and decided to exercise that citizenship beginning around 1998, when she obtained a Panamanian passport. She has used that passport, at times, in preference to a U.S. passport she has held since at least 2003. Further, she obtained a Panamanian identification card in 2002. These facts require application of the disqualifying conditions listed under AG ¶ 10(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...*).

By contrast, the record does not support any of the mitigating factors under AG ¶ 11. Applicant derived her foreign citizenship from her mother. However, she has actively exercised her foreign citizenship since at least 1998 through the acquisition, use, and ongoing possession of a Panamanian passport and cedula. Thus, the mitigating condition at AG ¶ 11(a) (*dual citizenship is based solely on parents’ citizenship or birth in a foreign country*) may not be applied here. Further, she has not expressed a willingness to renounce her foreign citizenship,⁸ and has specifically stated that she is unwilling to relinquish her Panamanian passport. Therefore, the mitigating condition at AG ¶ 11(e) (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*) does not apply. Because she was born a U.S. citizen, and because she exercised her foreign citizenship as an adult, the mitigating condition at AG ¶ 11(c) (*exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual*

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

⁸ While the government does not require renunciation of one’s foreign citizenship, an expressed willingness to do so would benefit her through application of AG ¶ 11(b) (*the individual has expressed a willingness to renounce dual citizenship*).

was a minor) is not applicable. Finally, the mitigating condition at AG ¶ 11(d) (*use of a foreign passport is approved by the cognizant security authority*) does not apply. Applicant's possession of a Panamanian passport was not sanctioned by the U.S. government, and she did not get permission to have a foreign passport, despite her experience in getting State Department permission for travel to Lebanon in the 1990s.

Applicant's possession of a foreign passport allows her to travel unhindered by the legitimate need for the U.S. government to manage information about travel in and out of the country. More broadly, and despite her sincere expressions of preference for U.S. interests, Applicant's actions in furtherance of her Panamanian citizenship raise legitimate security concerns expressed through Guideline C about her willingness or ability to protect U.S. interests in preference to all others. The allegations in SOR ¶¶ 1.c - 1.f are supported by the government's information and by Applicant's admissions. By themselves, they are not disqualifying. However, these allegations establish that Applicant will continue to use her foreign citizenship, at times for personal gain, in preference to her U.S. citizenship. As such, SOR ¶¶ 1.c - 1.f legitimately establish facts which undermine her claims that she would not place the interests of a foreign nation ahead of U.S. interests. On balance, Applicant has failed to mitigate the security concerns raised by the government's information.

Whole Person Concept.

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guideline C. I have also reviewed the record before me in the context of the whole person factors listed in AG ¶ 2(a). Applicant is 51 years old and presumed to be a mature, responsible adult. Indeed, she is well-educated, multi-lingual and multi-cultural, all of which gives her a solid background in international business. As the eldest child in her immediate family, she is almost single-mindedly devoted to the care of her elderly and ailing father. Her use of her Panamanian citizenship to facilitate the care of her father, to expand her employment prospects, and to plan for her retirement are understandable. Certainly, there has been no misconduct here. However, in the context of deciding whether to allow her access to classified information, the totality of Applicant's circumstances place on her the heavy burden of demonstrating, which she has not done, that she would not be compromised by conflicting interests. Because it is unlikely that Applicant's circumstances will change in the foreseeable future, a fair and commonsense assessment⁹ of all available information shows Applicant has not overcome the doubts about her suitability under these circumstances. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the government.¹⁰

⁹ See footnote 4, *supra*.

¹⁰ See footnote 7, *supra*.

Formal Findings

Formal findings 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: AGAINST APPLICANT

Subparagraphs 1.a - 1.f: Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge