



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



In the matter of: )  
)  
) ISCR Case No. 09-01342  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esquire, Department Counsel

For Applicant: *Pro se*

February 25, 2010

**Decision**

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O'BRIEN, Rita C., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for foreign preference. Accordingly, her request for a security clearance is granted.

Applicant submitted a Questionnaire for Sensitive Positions, which she signed on June 26, 2008. 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<sup>1</sup> that it is clearly consistent with the national interest to grant Applicant's request.

On October 22, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive

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<sup>1</sup> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

under Guideline B (Foreign Influence) and Guideline C (Foreign Preference) of the revised Adjudicative Guidelines (AG).<sup>2</sup> Applicant signed her notarized Answer November 24, 2009, in which she admitted all the allegations in the Statement of Reasons. She also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on December 7, 2009, and the case was assigned to me on December 16, 2009. DOHA issued a Notice of Hearing on January 14, 2010, and I convened the hearing as scheduled on February 3, 2010. 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 did not offer exhibits. 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 submissions are admitted as Applicant Exhibits (AE) A and B. DOHA received the transcript (Tr.) on February 16, 2010.

### **Procedural Rulings**

Prior to the hearing, by memorandum dated December 7, 2009, the government moved to amend the SOR as follows:

Guideline B: The government withdrew the entire paragraph.

Guideline C: The government transferred allegation 2.a. from Guideline B to Guideline C. The transferred allegation becomes subparagraph 1.e. under Guideline C, reading as follows:

1.e. You have traveled to Venezuela between February 2005 and January 2008 using your Venezuelan passport to travel.

The SOR is so amended.

### **Findings of Fact**

Applicant's admissions to the SOR allegations are incorporated herein as findings of 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, 24 years old, was born in Venezuela and moved to the United States when she was six years old. Her parents currently live in the United States and are U.S. citizens. Applicant is single and has no children. Applicant was educated in the United

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<sup>2</sup> 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.

States and completed a bachelor's degree in business administration in 2007. She began working for a defense contractor after graduation, where she is currently a senior consultant. This is her first security clearance application. (GE 1; Tr. 14, 20-23)

Applicant became a naturalized U.S. citizen in August 2005, and received her U.S. passport in September 2005. As of the date of the hearing, she also held a valid Venezuelan passport, which was issued in September 2007 and will expire in September 2012. Applicant indicated in her response to the May 2009 DOHA interrogatory that she was willing to surrender, destroy or invalidate her Venezuelan passport. By letter dated May 21, 2009, Applicant's Lead Personnel Security Officer forwarded a letter to DOHA confirming that Applicant surrendered her Venezuelan passport, and that it is in the possession of the security office. Applicant signed a memorandum stating that any request for the return of her passport will be reported to the government. (GE 1, 2; AE A, B; Tr. 24-25)

Applicant's grandmother, who lived in Venezuela, became ill in 2007. Applicant and her parents decided to visit her and Applicant renewed her Venezuelan passport. Visiting her ailing grandmother was "the sole reason that my passport was renewed. It was not because I had any loyalties to the country, just to my grandmother, who has since passed away in 2008." Applicant and her parents, believing at the time that the Venezuelan government required native-born Venezuelan citizens to enter and exit Venezuela using Venezuelan passports, traveled to Venezuela in December 2007 using their Venezuelan passports. Applicant's foreign passport shows a single set of stamps, indicating entry and exit from Venezuela in 2007. Applicant did not realize her foreign passport represented a security concern until her security interview in August 2008. (GE 1, 2; AE A, B; Tr. 17-18, 42)

Applicant traveled extensively between 2001 and 2009. After she obtained her U.S. citizenship in 2005, she traveled to France, Portugal, and Italy, while studying abroad in Spain in 2006. After completing her security clearance application, she traveled to Venezuela in September 2008 for her grandmother's funeral, and again in July 2009. She used her U.S. passport for all of these trips. Her U.S. passport shows legible foreign stamps for entry and/or exit from Germany in 2006; Venezuela in September 2008 and July 2009; and a student visa for Spain in 2006. Applicant testified that she travels to Venezuela only with her parents and, "Because I have moved to the States and this is all I've known, anytime that I go back to Venezuela if I'm not with my parents, it means nothing almost. They're my, you know, only connection essentially, and their loyalties are also here." (GE 1, 2; AE B; Tr. 27-28, 32-33, 40)

Applicant voted in a Venezuelan presidential election in 2007, and in two constitutional referenda in 2006 and 2008. She testified at hearing that she did so because, "I just felt—that I disagree with the policies that are being instituted down there and it was really more of a symbolic thing." Applicant was unaware at the time she voted in Venezuelan elections that it represented a security concern. (Tr. 52-53)

She has no intent to vote in future Venezuelan elections. Applicant is a registered U.S. voter and has voted in U.S. elections. She has no financial interests in Venezuela. She does not receive benefits from the Venezuelan government, and does not own property there. Applicant is willing to renounce her Venezuelan citizenship (GE 2; Tr. 18-19, 37, 44-45, 53)

## 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 AG.<sup>3</sup> 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<sup>4</sup> 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.<sup>5</sup> A 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.<sup>6</sup>

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<sup>3</sup> Directive. 6.3.

<sup>4</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>5</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>6</sup> See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

## 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's possession of a Venezuelan passport before she became a U.S. citizen in 2005 is not disqualifying under the security clearance guidelines. However, conduct that constitutes an exercise of foreign citizenship can be disqualifying if it occurs after an applicant becomes a U.S. citizen. Applicant exercised the rights of a Venezuelan citizen by possessing a valid foreign passport after becoming a U.S. citizen in 2005, and by voting in a Venezuelan presidential election and in two constitutional referenda. Her actions occurred after she became a U.S. citizen and represent an exercise of foreign citizenship rights. AG ¶¶ 10(a)(1) and 10(a)(7) apply.

Under AG ¶ 11, I considered the six mitigating conditions, and especially the following:

(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 traveled to Venezuela three times since she became a U.S. citizen in 2005. When her grandmother became ill in 2007, she traveled to see her and used her foreign passport to enter and exit Venezuela because she mistakenly believed that she was required to do so. On both subsequent trips to Venezuela, and on all her other foreign travel since 2005, she used only her U.S. passport. Her use of her U.S. passport in all subsequent trips supports her claim that she used the foreign passport through error rather than because of a wish to hold herself out as a Venezuelan rather than a U.S. citizen. In addition, Applicant stated during her security interview, in her interrogatory response, and at the hearing that she is willing to renounce her foreign citizenship. AG ¶ 11(b) applies.

Applicant learned from the May 2009 DOHA interrogatory how to resolve the security concern about her foreign passport. Applicant provided evidence that on May 21, 2009, she surrendered her Venezuelan passport to her security officer. She signed a memorandum acknowledging that if she requests its return, her employer will notify the government. AG ¶ 11(e) applies.

### **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.

In cases where a dual citizen holds a foreign passport or exercises other rights of foreign citizenship, and also wishes to be granted a security clearance, a security concern arises and further inquiry is required. The concern can be mitigated if the foreign passport is destroyed, invalidated or surrendered to a cognizant security authority. Here, Applicant's possession and use of a foreign passport and her voting in foreign elections, raised security concerns. However, she credibly testified that her voting was a symbolic gesture to underscore her disagreement with the policies of the foreign government. She was unaware that her action would have any security significance. Moreover, she is a registered U.S. voter, and has voted in U.S. elections.

As to her use of a foreign passport to travel in 2007, it resulted from a combination of factors: the need to visit her ailing grandmother in Venezuela, and a mistaken belief that she was required to use her foreign passport. Her claim of mistake is supported by the evidence that she used the foreign passport only once, and that when she learned that she could travel to Venezuela on her U.S. passport, she used it on every subsequent visit to Venezuela, and in all her other foreign travels. The

relevant guideline also calls for valid foreign passports to be surrendered, destroyed or invalidated. Applicant took the necessary steps and has surrendered her passport to the cognizant security authority, as required.

Overall, the record evidence satisfies the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from the cited adjudicative guideline.

### **Formal Findings**

Paragraph 1, Guideline C	FOR Applicant
Subparagraph 1.a. - 1.e.	For Applicant
Paragraph 2, Guideline B	WITHDRAWN

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

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RITA C. O'BRIEN  
Administrative Judge