



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 09-02656 |
| SSN: |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Candace Garcia, Esquire, Department Counsel
For Applicant: Francis J. Flanagan, Esq.

December 6, 2010

Decision

HOGAN, Erin C., Administrative Judge:

On April 14, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) 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 adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

On April 29, 2010, Applicant answered the SOR and requested that the case be decided on the written record. On May 13, 2010, the Government timely requested a hearing in accordance with paragraph E3.1.7 of the Directive. On June 16, 2010, the Government amended the Statement of Reasons. Applicant responded to the Amendment to the Statement of Reasons on July 2, 2010. Department Counsel was ready to proceed on July 7, 2010. The case was assigned to me on July 23, 2010. On August 13, 2010, a Notice of Hearing was issued scheduling the hearing for September 14, 2010. On September 13, 2010, the hearing was cancelled due to unforeseen circumstances. The hearing was rescheduled for October 27, 2010, and was held on

that date. The Government offered Government Exhibits (Gov) 1 - 4, which were admitted without objection. Applicant testified and submitted nine exhibits which were admitted as Applicant Exhibits (AE) A - I without objection. DOHA received the transcript (Tr.) of hearing on November 4, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In her Answer to the Amendment to the SOR, Applicant denied the allegation in SOR ¶ 1.a, but admitted the remaining SOR allegations.

Applicant is a 50-year-old woman who is the Secretary for the Board of Directors of a family-run corporation which was started by her grandfather. Her position on the Board is a nonvoting position. The corporation is a Department of Defense contractor. She seeks a security clearance in order to be allowed to assume a voting position on the Board. This is her first time applying for a security clearance. She is married and has three sons, 12-year-old twins, and a nine-year-old. (Tr. 38; Gov 1; Gov 3 at 5; AE B)

Applicant was born in Detroit, Michigan. She holds dual United States and Canadian citizenship because her father is a Canadian citizen. Her mother is a U.S. citizen. Her father was a professional hockey player and a coach. Applicant's father met her mother when she was a professional figure skater. She retired from professional figure skating when she married. The family lived in various locations in the United States and Canada pursuant to her father's professional hockey and coaching career. Her father was also a member of the Canadian parliament from 1962 to 1965. He has not been involved in Canadian politics since that time. (Tr. 36, 59, 67; Gov 3 at 5; AE A)

In 1973, the family moved to a city in Canada (which is close to the U.S. border) when her father became coach of a Canadian hockey team. Applicant has lived in Canada since she was 17 years old. She considers herself an American citizen. Her mother's side of the family owns considerable real estate holdings in the United States. Her grandparents owned a home in the United States which is located near an internationally recognized figure skating club. Applicant's family has had a life-long involvement with the figure skating club. Until she was 19, Applicant spent the summers with her grandparents in the United States and trained at the figure skating club. (Tr. 37, 48; Gov 3 at 5-6; AE E)

When she was 17, Applicant applied for and received a Canadian passport. She had the opportunity to take a language course in a European country. She was accepted at the last minute. She needed a passport for travel. She researched obtaining a Canadian and a U.S. passport. It would have taken too long to obtain a U.S. passport so she applied for a Canadian passport in order to travel to the European country to take the course. She lived in Canada at the time. She obtained a U.S. passport when she was 20. She has continually renewed both her Canadian and U.S. passports, and has traveled on both passports. (Tr. 49-52, 73; Gov 3 at 6-7)

Applicant maintained her Canadian passport for convenience. Her husband was born in the United Kingdom. He moved to Canada on a two-year work exchange program and decided to stay. Her husband and three children are citizens of Canada and the United Kingdom. If she wants to travel with her three children alone, she would need a notarized document from her husband verifying that she is allowed to take the children out of the country. Her children are not U.S. citizens, but she intends to have her children apply for U.S. citizenship in the future. (Tr. 52-53, 74-75; Gov 3 at 6-7)

Applicant travels to the United States about three to six times a year. She and her family take a two to three week vacation in the United States in conjunction with the July 4th holiday. (Tr. 46-47)

Applicant was initially reluctant to surrender her Canadian passport for convenience reasons. In fact, she renewed her Canadian passport after her background investigation interview which took place on October 11, 2006. She previously served as a Canadian figure skating judge and would use her Canadian passport when traveling to various skating competitions out of the country. She also heard that it was safer to travel on a Canadian passport rather than a U.S. passport. She has not served as a Canadian figure skating judge for five years. She has also served as a figure skating judge in the United States. After Applicant received the SOR, she surrendered her passport to her Facility Security Officer (FSO) on April 26, 2010. The FSO keeps the passport in a locked safe in her office. (Tr. 48; 78-79; Gov 2; Gov 4 at 3; see *also* Attachment to Applicant's Response to the Amended SOR, Letter from FSO, dated April 26, 2010)

From 1980 to 1998, Applicant was employed by a company that was a Canadian subsidiary of the family run corporation where she currently is a board member. Her father was in charge of the company. Applicant negotiated contracts on behalf of the company with the Canadian government. None of the work that she performed was classified. She did not hold a Canadian security clearance. The company was sold in December 1998. Her father retired and Applicant became a stay-at-home mother with the exception of her position as a board member with the family run corporation. (Tr. 37-38, 65-66; Gov 3 at 8)

Applicant and her husband own a home in Canada. Her husband works for a private company. They have a joint Canadian bank account. Applicant also has a U.S. bank account that is in her name. They plan to retire in the United States. Applicant's mother's family has extensive real estate investments in the United States. Applicant has an interest in those properties. When her mother passes away, it is likely that she and her siblings will inherit her mother's interest in the properties. Her interest in the U.S. properties are at least equal to if not greater than her interests in Canada. (Tr. 54, 57, 80 – 91, 97 – 99; Gov 3 at 5; see AE H; AE I)

Applicant home schools her children. She uses a curriculum from a U.S. home schooling company. She believes it is important that her children learn U.S. history and this is included in the course materials. (Tr. 39-44; AE C; AE D) While growing up, her

mother taught American values to Applicant and she wants to teach the same values to her children. (Tr. 108-109)

Applicant has three siblings who are also dual citizens of Canada and the United States. All of her siblings live in the United States. Her mother and two brothers have held U.S. security clearances for years. (Tr. 46; Gov 3 at 7-8)

Applicant's father has significant health problems. Applicant resides in Canada because she is married to a Canadian citizen and in order to help her mother with her father's care. (Her parents also own home near the skating club located in the United States and often spend time there.) She considers herself an American and is proud of her American heritage. She pays taxes in both the United States and Canada. She has voted in Canadian municipal elections in the past, but has not voted in the past five years. She has never voted in a U.S. election. She has never served in the Canadian military. As a Canadian citizen, she qualifies for Canadian health benefits. She is willing to renounce her Canadian citizenship, but admits it would be difficult. (Tr. 57, 61-62, 76-77, 93, 97)

A close friend of Applicant's mother testified. She met Applicant's mother through figure skating when they were children. They have been life-long friends. Both are American citizens who married Canadian citizens. They both live in the same Canadian city which is near the United States border. She has known Applicant all of her life. Their families celebrate American Thanksgiving together. She and Applicant's mother thought it best to celebrate American holidays with their children. She considers Applicant to be a loyal American. (Tr. 103-110)

The FSO of the corporation testified. She has worked for the corporation for 33 years. She has been the FSO since 1979. She has known Applicant since she was 17. She is close to Applicant's family. She has visited Applicant at her house in Canada. Applicant attends board meetings at the corporation. Applicant's mother is in charge of the corporation. Applicant would like to take a more active role in the corporation and needs a security clearance. Applicant forwarded her Canadian passport to the FSO in April 2010 and she locked it in a safe in her office. She followed the same procedure for other employees of the company who possessed foreign passports. She does not question Applicant's loyalty to the U.S. government. Applicant's mother has had a U.S. Top Secret security clearance since 1988. She is aware that Applicant and her family reside in Canada and does not believe it to be an issue. She has no concerns about Applicant being granted a security clearance. (Tr. 112 – 122)

The Vice President and Comptroller of the corporation testified. He has worked at the corporation for 29 years. He has worked with Applicant for 19 years after he became the Comptroller. He believes Applicant is a loyal American. He is aware that she lives in Canada and owns a home in Canada. This does not change his opinion of Applicant. He has no reservations about Applicant holding a security clearance. He interacts with Applicant about two to three times a year when Applicant visits the corporation to attend board meetings. (Tr. 128 – 133)

Several family friends provided letters on Applicant's behalf. The letters attest to her good character as well as her significant contacts within the United States. Two of the family friends also represent the family interests in the United States and summarized the family holdings in the United States. (AE F; AE G; AE H; AE I)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be used when 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense 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.

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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 disqualifying conditions that could raise security concerns.

AG ¶ 10(a) *exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through foreign citizenship of a family member. This includes but is not limited to:*

- (1) possession of a current foreign passport;*
- (2) military service or willingness to bear arms in a foreign country;*
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;*
- (4) residence in a foreign country to meet citizenship requirements;*
- (5) using foreign citizenship to protect financial or business interests in another country;*
- (6) seeking or holding political office in a foreign country;*
- (7) voting in a foreign election;*

AG ¶ 10(b) *action to acquire or obtain recognition of a foreign citizenship by an American citizen;*

AG ¶ 10(c) *performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, or organization, or government in conflict with the national security interest; and*

AG ¶ 10(d) any statement or action that shows allegiance to a country other than the United States; for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

Applicant has significant roots both in the United States and Canada. She exercises citizenship with both countries. She spent a large part of her childhood in the United States. Her principal residence has been in Canada since she was 17-years-old. She maintained and possessed a Canadian passport until she became aware that there were issues with her security clearance. Her husband and children are citizens of and reside in Canada. (They are also citizens of the United Kingdom.) Applicant is eligible for medical benefits under the Canadian health system by virtue of her Canadian citizenship. She has voted in Canadian municipal elections in the past. AG ¶¶ 10(a)(1), 10(a)(3), and 10(a)(7) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from Foreign Preference. The Foreign Preference Mitigating Conditions include:

AG ¶ 11(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

AG ¶ 11(b) the individual has expressed a willingness to renounce dual citizenship;

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 was a minor;

AG ¶ 11(d) use of a foreign passport is approved by the cognizant security authority;

AG ¶ 11(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and

AG ¶ 11(f) the vote in a foreign election was encouraged by the United States Government.

AG ¶ 11(a) applies because Applicant acquired dual citizenship by virtue of her father's Canadian citizenship. AG ¶ 11(b) applies because Applicant expressed a willingness to renounce her Canadian citizenship.

AG ¶ 11(c) does not apply because Applicant has exercised her rights as a Canadian citizen throughout her adult life. She has lived in Canada since the age of 17. She attended school in Canada. She worked for the family business in Canada for 18 years before it was sold. She married a fellow Canadian citizen and is raising her children in Canada.

AG ¶ 11(d) does not apply because the use of her Canadian passport has not been approved by the cognizant security authority.

AG ¶ 11(e) applies because Applicant surrendered her valid Canadian passport to her FSO. The Canadian passport is being kept in a locked safe at the FSO's office.

AG ¶ 11(f) does not apply because there is no evidence that Applicant was encouraged to vote in the Canadian municipal elections by the U.S. government. It is noted that Applicant has not voted in Canadian elections for several years.

While several Foreign Preference mitigating concerns apply, Applicant still remains a dual citizen of the United States and Canada. For all intensive purposes, she exercises dual citizenship with both countries. Even though she has significant contacts in Canada, it is unlikely that she is prone to provide information or make decisions that are harmful to the interests of the United States.

Applicant spends a significant amount of time each year in the United States. With the exception of her parents, all of her siblings and their families live in the United States. She holds a significant interest in assets located in the United States. Although Department Counsel offered no documents requesting administrative notice on the nature of the Canadian Government, it is common knowledge that the Canada is one of the closest allies of the United States. The countries share a common heritage. Applicant clearly has an interest in educating her children about U.S. history. Applicant surrendered her valid Canadian passport to her FSO and intends to travel on her U.S. passport in the future.

Although Applicant's Canadian citizenship raised concerns under the Foreign Preference guideline, the bottom line to consider is whether Applicant is a security risk. I find that she is not. Applicant mitigated the Foreign Preference concerns. Guideline C is found for Applicant.

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 commonsense 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. I considered the totality of Applicant's family ties to Canada, a country that is one of the United States' closest allies, as well as her ties to the United States. I considered the Applicant's favorable character references. While Applicant lives in Canada with her husband and children, her significant ties to the United States outweigh the potential security threat that Applicant would be prone to provide information or make a decision that are harmful to the interests of the United States. Overall, the record evidence leaves no questions or doubts about Applicant's eligibility and suitability for a security clearance. Foreign Preference security concerns are mitigated.

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:

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| Paragraph 1, Guideline C: | FOR APPLICANT |
| Subparagraph 1.a: | For Applicant |
| Subparagraph 1.b: | For Applicant |
| Subparagraph 1.c: | For Applicant |
| Subparagraph 1.d: | For Applicant |

Conclusion

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

ERIN C. HOGAN
Administrative Judge