



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 09-02951  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel

For Applicant: *Pro se*

August 3, 2010

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**Decision**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigation Processing (e-QIP), on December 10, 2008 (Government Exhibit 1). On July 13, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing 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) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on September 11, 2009. I received the case assignment on September 16, 2009. DOHA issued a notice of hearing on September 28, 2009, and I convened the hearing as scheduled on October 30, 2009. The Government offered Government Exhibits 1 through 4, which were

received without objection. Applicant testified on his own behalf, and submitted Applicant Exhibit A, which was also admitted without objection. DOHA received the transcript of the hearing, and the record closed, on November 12, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

Applicant is 28 and single. He is employed by a defense contractor, and seeks a security clearance in connection with his employment in the defense industry. Applicant admitted the allegations in the SOR.<sup>1</sup> Those admissions are hereby deemed findings of fact. He also provided additional information to support his request for eligibility for a security clearance.

#### **Guideline C - Foreign Preference**

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in a way that shows a preference for another country over the United States.

Applicant was born in Hong Kong. In 1999, he moved to the United States with his family. After high school, he attended a junior college and eventually a university, from which he received a bachelor's degree in 2009. (Transcript at 5.) Applicant became an American citizen in September 2005. (Government Exhibit 1 at Section 8; Transcript at 23.) He obtained a United States passport in October 2005 and has used it for all of his foreign travel. (Government Exhibit 4.)

Applicant is a British subject by birth, but feels no loyalty for Great Britain, Hong Kong, or China. (Government Exhibit 2 at 4.) Applicant states that his sole loyalty is to the United States. He evinced a credible intent to revoke his British citizenship. (Transcript at 43-45.) His parents and a brother and sister are all American citizens. Two other sisters are native born Canadian citizens. (Government Exhibit 1 at Section 14/15.)

Applicant was issued a British passport in 2003. He has not used this passport since becoming an American citizen in 2005. This passport was destroyed by the Applicant, as witnessed by the DOHA Western Office security officer. I personally saw the destroyed passport. (Applicant Exhibit A; Transcript at 39-42.)

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<sup>1</sup>Allegation 1.b. in the SOR was amended to state, "You possess a current United Kingdom Passport that will expire in June 2013." (Transcript at 25-27.)

## Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used as appropriate in 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. In addition, the administrative judge may also rely on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining 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. Security clearance decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order . . . shall be a determination 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**

The Government must present substantial evidence to support the finding of a nexus, or rational connection, between the applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the applicant to go forward with evidence in rebuttal, explanation, or mitigation, which is sufficient to overcome or outweigh the Government's case. The applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant a security clearance.

#### **Guideline C - Foreign Preference**

In this case the Government has met its initial burden of proving by substantial evidence that Applicant is a dual citizen of the United Kingdom and the United States, and that he had a valid British passport.

The concern is stated thus under this Guideline, *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.*

Applicant continued to hold a valid British passport after becoming an American citizen. Accordingly, Disqualifying Condition 10 applies to the facts of this case: *Conditions that could raise a security concern and may be disqualifying include: (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.*

The Applicant has expressed a credible intent to renounce his British citizenship, and compellingly stated that his loyalty is only to the United States. Mitigating Condition 11(b) applies to this case: *the individual has expressed a willingness to renounce dual citizenship.*

The Applicant's British passport has *been destroyed, surrendered to the cognizant security authority, or otherwise invalidated* as required by Mitigating Condition 11(e). Applicant has mitigated the Government's concerns about his dual citizenship with the United Kingdom, and his possession of a British passport after becoming an American citizen. Guideline C is found for the 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. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. My Guideline C analysis is applicable to the whole-person analysis as well. The evidence shows that the Applicant is a patriotic American citizen. He was born in Hong Kong, but the majority of his family lives in the United States as American citizens, and he received his higher education here. The Applicant is proud to be an American citizen and a member of the defense industry. I find that there is little or no "potential for pressure, coercion, exploitation, or duress" as set forth in AG ¶ 2(a)(8). Using the whole-person standard, the Applicant has mitigated the security significance of his alleged foreign preference and is eligible for a security clearance.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

### **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:

Paragraph 1, Guideline C:

FOR THE APPLICANT

Subparagraphs 1.a and 1.b.:

For the 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.

WILFORD H. ROSS  
Administrative Judge