



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



In the matter of:

ISCR Case No. 09-03264

Applicant for Security Clearance

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel

For Applicant: *Pro se*

July 22, 2010

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guidelines B, Foreign Influence, and C, Foreign Preference. Applicant's eligibility for a security clearance is granted.

On January 26, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and 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) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on March 18, 2010, and requested a hearing before an administrative judge. The Government amended the SOR on April 26, 2010. Applicant answered the amended SOR on May 25, 2010. The case was assigned

to me on May 11, 2010. DOHA issued a Notice of Hearing on May 19, 2010. I convened the hearing as scheduled on June 9, 2010. The Government offered Exhibits (GE) 1 through 3. Applicant did not object and they were admitted. Applicant testified and offered Exhibits (AE) A through D, which were admitted without objection. DOHA received the hearing transcript (Tr.) on June 17, 2010.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.d, and ¶¶ 2.a through 2.c. He denied ¶¶ 1.e and 2.d. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 32 years old. He was born in Denmark. His father is an American citizen and his mother was a Danish citizen. His father maintains his U.S. citizenship and lives in Denmark. His mother passed away in 2002. Applicant is not married. He has one sister who lives in the United States.<sup>1</sup>

Applicant's parents met while they were in Africa and his father was in the Peace Corps. Applicant spent his time while growing up in the United States and Denmark. He attended an international school in Denmark, sanctioned by the U.S. Department of State. The children of U.S. embassy personnel also attended this school. He graduated in 1996, and was accepted into a prestigious university in the United States. He would return to Denmark for vacations during college. He then attended a prestigious university in England, receiving a master's degree, and later attended a university in the U.S. and obtained a second master's degree. While attending a graduate school, he studied under a sponsored program in Italy. After completing college, Applicant worked for a U.S. company in Australia. He currently works in a job promoting the United States and its humanitarian projects.<sup>2</sup>

Applicant received grants from Denmark to finance his higher education. He is not required to repay the grant money. He also received loans from Denmark to pursue his graduate education. Applicant also has student loans he received from the United States. The majority of his student loans are from the United States. Applicant has two foreign bank accounts with small balances. One is a Danish account and the other is an account he held in the United Kingdom. They were overdrawn, but the accounts now show positive balances.<sup>3</sup> Applicant does not have many assets as he is repaying his student loans. He does have a modest 401(K) retirement account in the United States.<sup>4</sup>

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<sup>1</sup> Tr. 18.

<sup>2</sup> Tr. 17-20, 50-53, 69-70.

<sup>3</sup> Answer to SOR. His accounts show positive balances.

<sup>4</sup> Tr. 27, 58-60, 70-72.

Applicant maintained his Danish citizenship because his father lives there. He wanted to be able to address any future medical needs of his father should he become ill or incapacitated. He thought it would be easier if he maintained his citizenship. However, he has stated that he is willing to renounce his Danish citizenship. He has relinquished his Danish passport to the facilities security officer (FSO). He also relinquished a Danish health insurance card to the FSO. He has traveled in the past through Europe on his Danish passport because of convenience. He stated he was unaware it would have security clearance implications. He does not believe it in any way negates his loyalty to the United States. He registered for the selective service as required in the United States. He stated he has not and will not exercise Danish rights and responsibilities while maintaining his U.S. citizenship. Applicant last used his Danish passport when he visited the Dominican Republic in March 2009. His U.S. passport was to expire in less than six months and he was concerned he may have trouble entering the Dominican Republic due to requirements that the U.S. passport be valid for more than six months before the expiration date. He has always used his U.S. passport when entering and exiting the United States. Applicant intends on living in the United States. He obtains all of his medical services in the United States. He credibly testified that he does not have a preference for Denmark and his allegiance is to the United States.<sup>5</sup>

Applicant voted in past Danish elections in 2001, 2005, and 2007. He also voted in all U.S. elections. He stated he will not vote in any future Danish elections.<sup>6</sup>

Applicant's father is a U.S. citizen and a permanent resident of Denmark. Since 1983 he has taught at the international school where Applicant attended. He has his own health insurance card and obtains medical care in Denmark. He owns a home and has his investments there. He pays taxes in Denmark. His mother also taught there until she passed away. Applicant has regular contact with his father via telephone and email. He visits his father approximately twice a year. His father returns to the United States in the summer and spends about six weeks at the family summer home. Applicant's sister is also a dual citizen of the United States and Denmark. She resides full time in the United States. Applicant has frequent contact with his sister.<sup>7</sup>

Applicant's father's family lives in the United States. Applicant maintains contact with his American relatives. He will usually see his American relatives during the summer months at the family's summer home and other times of the year.<sup>8</sup>

Applicant has two aunts, an uncle, and three cousins on his mother's side of the family who are citizens and residents of Denmark. One aunt is a retired nurse with whom he has contact approximately every three months. The other aunt is a retired

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<sup>5</sup> Tr. 17, 21-32, 53-58, 61-67, 72-76.

<sup>6</sup> Tr. 60.

<sup>7</sup> Tr. 17, 20, 25, 33-38, 45-46.

<sup>8</sup> Tr. 46-47.

teacher. His uncle is a retired surgeon. He sees them if he is in Denmark, but does not maintain regular contact. Applicant believes, but does not know for certain, that they all receive some type of government pension, similar to social security benefits, due to the nature of their work. One cousin is a self-employed mechanical engineer. He has contact with him about every three months. He likely sees him once a year when he is in Denmark. Another cousin is a public health nurse and the third cousin is an executive at a consulting firm. He does not maintain telephone or email contact with these cousins, and sometimes may see them over the holidays if he is in Denmark, but not always.<sup>9</sup>

I have considered all of the character letters included in the record. Applicant's regional coordinator stated his contribution to her team and the office as a whole, and by extension the U.S. Government is tremendous. She stated:

Beyond his subject matter knowledge and technical skills, he is a dependable colleague who can be counted on to complete any task flawlessly, quickly, and with great humor. [Applicant] has proven to be trustworthy, diplomatic, and a great emissary for the humanitarian spirit of the U.S. Government. We have been so fortunate to have benefitted from [Applicant's] service to the work of [the organization] for these past years, and are counting on his continued collaboration for many years to come.<sup>10</sup>

A coworker provided a statement on behalf of Applicant. He has worked with him for the past two years. He is considered a valued team member. He has no reservations about Applicant's judgment and commitment to his job. He is highly efficient and dependable. He is a highly effective representative of the organization. He has shown he is trustworthy, very diplomatic, and devoted to the organization. His performance is excellent.<sup>11</sup>

Another coworker commented on the fast paced and short fused issues he and Applicant were confronted with daily. Applicant would be at work at 4:00 a.m. to read over the newest information and put together a coherent report. This allowed senior officials in the organization to keep abreast of changing conditions and make informed decisions. Applicant willingly goes on short-notice trips and the work he produces is consistently top-notch, timely, and thorough. He is consistently reliable, professional, and analytical. He willingly goes the extra mile and is a value to the organization. Applicant was part of a team that won a superior honor award for his organization, in which he was instrumental.<sup>12</sup>

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<sup>9</sup> Tr. 22, 38-45.

<sup>10</sup> AE A.

<sup>11</sup> *Id.*

<sup>12</sup> AE A, B.

Applicant's immediate supervisor since September 2008, commented that Applicant is a stellar member of the unit and does excellent work. He is one of the strongest members of the unit, a gifted writer, and a meticulous editor. He is well liked by his colleagues and consistently volunteers for assignments, serves in less-than-favorable assignments such as night shifts without complaining, has served as an official mentor for a new hire, and is a solid role model for more junior members of the unit. He supervisor went on to say:

As his manager, I trust him to carry out his responsibilities quickly, professionally, and to the highest standard. More importantly, during the time that he has served in the [organization], he has demonstrated loyalty to the U.S. Government through all aspects of his job. In all of the information products he produced as a member of the [organization], he has demonstrated support for the U.S. Government policies and procedures. Moreover, he has demonstrated loyalty toward the U.S. Government in writing about politically sensitive matters surrounding [issues] to foreign countries.<sup>13</sup>

Applicant's most recent performance evaluations rate him as outstanding, which is the highest level.<sup>14</sup>

## **Denmark<sup>15</sup>**

Denmark is a constitutional monarchy which has largely ceremonial functions, except for the right to appoint the prime minister and cabinet ministers, who are responsible for the administration of the government. The constitution established a unicameral parliament. The members are elected by a system of proportional representation. The regions and municipalities are led by councils that are elected every four years. Political life in Denmark is orderly and democratic. Political changes occur gradually through a process of consensus, and political methods and attitudes are generally moderate. Denmark is a highly developed, stable democracy with a modern economy.

Denmark's industrialized market economy depends on imported raw materials and foreign trade. Within the European Union it advocates a liberal trade policy. Its standard of living is among the highest in the world. The United States is Denmark's largest non-European trade partner.

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<sup>13</sup> AE A.

<sup>14</sup> AE C.

<sup>15</sup> U.S. Department of State Background Note: Denmark, dated June 3, 2010; U.S. State Department Country Specific Information: Denmark, Greenland and the Faeroe Islands, dated February 3, 2010.

Denmark has been a member of the North Atlantic Treaty Organization (NATO) since its founding in 1949. It has been active in international efforts to integrate the countries of Central and Eastern Europe into the West.

Denmark and the United States have enjoyed a long, close, and mutually beneficial relationship. They both consult closely on European and other regional political and security matters and cooperate extensively to promote peace and stability beyond Europe's borders. Denmark largely shares the United States views on the positive ramifications of NATO enlargement. Danish troops support the stabilization efforts in Afghanistan.

Denmark remains largely free of terrorist incidents. However, it shares with the rest of Western Europe, an increased threat of terrorism. In particular, the 2005 publishing of cartoons of the Prophet Muhammad continues to impact Denmark's relations with the Muslim world and draws attention of extremists to Denmark.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered when 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.

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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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. 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.

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 B, Foreign Influence**

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and especially considered the following:

- (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant's father is a U.S. citizen living in Denmark. Applicant's father teaches at an international school in Denmark where many of the U.S. embassy's personnel's children attend. His father worked in the Peace Corps and met Applicant's mother. They settled in Denmark. He returns to the United States regularly staying in the family summer home and visiting relatives. There is nothing to indicate that Applicant's father's residence in Denmark creates a heightened risk for foreign exploitation, inducement, manipulation, pressure or coercion. Denmark is a close ally of the United States cooperating on many global and international issues. There is no indication that Denmark exploits its citizens or residents to obtain information.

Applicant has two aunts, an uncle, and three cousins who are citizens and residents of Denmark. The aunts and uncle are all retired. Applicant does not maintain regular contact, but may visit them when he is in Denmark. There is no indication that they have close contact with the Danish government. Applicant is uncertain as to what type of pensions they have, but believes they likely receive something from the government. He has contact about four times a year with a cousin who is a self-employed engineer. He sees him about once a year. He has two other cousins in Denmark, one a public health nurse, the other a consultant. He does not maintain regular contact, however, he may see them when he is in Denmark, but not always. There is no indication that Applicant's contact with family members living in Denmark creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. There is no indication that Applicant's connection to his family or to the country of Denmark creates a conflict of interest between his obligation to protect sensitive information or technology and the individual's desire to help a foreign person or country by providing information. Applicant is a loyal American citizen, who has relatives in a country that is a strong ally with the United States. He has strong family ties to the United States. Applicant has minimal financial interests in Denmark and they do not rise to the level of creating a heightened risk of foreign influence or exploitation. I have considered all of the above disqualifying conditions and conclude none apply.

### **Guideline C, Foreign Preference**

Under AG ¶ 9, the security concern involving foreign preference 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 ¶ 10 describes conditions that could raise a security concern and may be disqualifying. I have specifically considered the following:



(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; (2) military service or a willingness to bear arms for 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) voting in a foreign election; and

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

Applicant used his Danish passport to enter and exit foreign countries. He accepted educational grants and loans from Denmark. Applicant voted in Danish elections. I find the above disqualifying conditions apply.

I have considered all of the mitigating conditions under AG ¶ 11 and especially considered:

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

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

(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;

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

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

Applicant's dual citizenship is not based solely on his parents' citizenship or birth in Denmark. He used his foreign passport to travel for convenience. He also obtained educational loans and grants from Denmark. Applicant exercised rights and privileges of a Danish citizen while he was also a U.S. citizen. He was not a minor at the time. I find AG ¶¶ 11 (a) and (c) do not apply. Applicant is willing to renounce his dual citizenship with Denmark. He has surrendered his Danish passport and health card to his security manager. I find AG ¶¶ 11(b) and 11(d) apply. Applicant voted in Danish elections. His actions do not fall within the parameters of AG ¶ 11(f).

## 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. Applicant is a 32-year-old professional who is trusted and admired by his coworkers and superiors. He is an American citizen. He exercised dual citizenship before he expressed his willingness to renounce his Danish citizenship. Applicant was unaware of the security clearance ramifications of exercising dual citizenship. He surrendered his Danish passport and health card to his security manager. Applicant's loyalty is to the United States. He accepted benefits from Denmark and the United States while he was a student. He is repaying both his American and Danish student loans. He also voted in past Danish elections. I have considered the totality of Applicant's connections and foreign preference allegations and find they do not rise to the level of creating a security risk. I am convinced that Applicant's past actions do not make him prone to make decisions that would be harmful to the interests of the United States. Most of the conduct that relates to the foreign preference allegations was while he was a student. Applicant's father is a U.S. citizen and his residence in Denmark does not create a security concern. His foreign aunts, uncle, and cousins are citizens and residents of Denmark, a country that is a strong ally of the United States. I do not find his contact with them creates a security concern. Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the guidelines for Foreign Influence and Foreign Preference.

### **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 B:	FOR APPLICANT
Subparagraphs 1.a-1.e:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a-2.e:	For Applicant

### **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge