



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-05158
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esquire
For Applicant: *Pro se*

August 31, 2010

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the security concerns generated by his possession of a foreign passport. Clearance is denied.

Statement of the Case

On April 14, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines 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).

Applicant answered the SOR on April 22, 2010. He admitted all the SOR allegations and requested a hearing. I was assigned the case on May 28, 2010. On June 3, 2010, DOHA issued a notice of hearing for June 30, 2010. I held the hearing as

scheduled. At the hearing, I received three government exhibits and Applicant's testimony. The transcript (Tr.) was received on July 9, 2010.

Findings of Fact

Applicant is a 39-year-old married man with one child, age four. He is an architect. Since 2009, he has worked for a company that, among other things, designs and builds embassies. (Tr. 14) He earned a bachelor of architecture degree in 1994. (Tr. 13)

Applicant was born and raised in the United States (U.S.). While in college, Applicant spent a semester in 1994 studying in Italy. While there, he met and married his wife, an Italian citizen. (Tr. 21) Applicant then applied for and received an Italian work visa, and he relocated to Italy where he lived with his wife for the next five years. (Tr. 19) During this time, Applicant worked for an Italian architecture firm. (Tr. 33)

Applicant returned to the U.S. with his wife in 1999. Subsequently, she became a naturalized U.S. citizen. Applicant and his wife have been living in the U.S. since relocating in 1999.

In early 2005, Applicant's daughter was born. (GE 1 at 34) Shortly before she was born, Applicant and his wife went to the Italian consulate to "ask what [they] needed to do to register the child's birth with the Italian government to make sure that she acquired her Italian citizenship" upon her birth. (Tr. 37-38) An official at the consulate advised them that their daughter would automatically have Italian citizenship through her mother, who had retained her Italian citizenship when she became a naturalized U.S. citizen. Also, the official told them that Applicant could experience difficulties leaving Italy if he ever travelled there with his child, but without his wife. (Tr. 37) Specifically, his use of a U.S. passport to exit Italy with a child who is an Italian citizen could raise "all kinds of questions that have to do with international child trafficking." (Tr. 37)

To avoid this potential problem, Applicant applied for Italian citizenship along with an Italian passport. (GE 2 at 1) His application was approved in 2006. Since obtaining an Italian passport, Applicant has used it to travel to Italy three to four times. (Tr. 24) He does not want to surrender his passport because it would "place limitations on [his] ability to freely travel with [his] child in/out of Italy . . . and would hamper eventual efforts to obtain employment in Italy and throughout the European Union." (GE 3 at 2) He has no current plans of moving to Italy. (Tr. 32)

Applicant has voted in Italian elections "once [or] possibly twice." (Tr. 29) He did so because he believes "it's [his] obligation to protect [his] family's future. . ." (Tr. 32)

Applicant has never accepted any unemployment or welfare benefits from Italy. Once while studying in Italy, he received free medical care under Italy's national health care system after breaking his arm. (Tr. 31)

While working in Italy during the 1990s, Applicant paid taxes into a national pension fund. (Tr. 32) When he returned to the U.S., he requested and received a refund of his income that had accrued in the fund. (Tr. 33)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process.

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. According to AG ¶ 2(c), the entire process is a 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, 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 for obtaining a favorable security decision.

Analysis

Guideline C, Foreign Preference

"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 ¶ 9). Applicant applied for and was granted Italian citizenship. He then applied for and received an Italian passport, and has voted in Italian elections. The following disqualifying conditions under AG ¶ 10 apply:

- (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 [including] but . . . not limited to:

- (1) possession of a current foreign passport;
 - (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
 - (7) voting in a foreign election; and
- (b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

There is no record evidence of any enmity between the Italian and U.S. governments, nor any record evidence that the Italian government engages in espionage against the U.S. Applicant maintains the Italian passport primarily to facilitate travel there with his child. This possession of a foreign passport, alone, is significant enough, however, to generate a security concern, because it raises the possibility that its holder may engage in foreign travel that the U.S. would not be able to verify. Moreover, the negative security significance of possessing a foreign passport “is not negated or diminished because an applicant engages in these acts for personal reasons or for personal convenience” (ISCR Case No. 99-0424 (App. Bd. (February 8, 2001))). Applicant’s acquisition of Italian citizenship to obtain an Italian passport compounds the negative security implications of his current possession of the passport.

I have considered the mitigating conditions and conclude none apply. Applicant has not mitigated the foreign preference security concern.

Whole-Person Concept

Under 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 whole-person factors in the Foreign Preference section of the Decision, above. Upon considering the applicable disqualifying and mitigating conditions together with the whole-person factors, I conclude that it is not clearly consistent with the national interest to grant Applicant access to classified information. Clearance is denied.

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: AGAINST APPLICANT

Subparagraphs 1.a - 1.b: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY
Administrative Judge