



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 09-05796
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel  
For Applicant: *Pro se*

January 12, 2011

**Decision**

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s request for eligibility for a security clearance is granted.

On March 18, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required in connection with his work for a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant interrogatories<sup>1</sup> to clarify or augment information in the background investigation. After reviewing the results of the background investigation and Applicant’s responses to the interrogatories, DOHA adjudicators were unable to make a preliminary affirmative finding<sup>2</sup> that it is clearly consistent with the national

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<sup>1</sup> Authorized by DoD Directive 5220.6 (Directive), Section E3.1.2.2.

<sup>2</sup> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

interest to allow Applicant access to classified information. On August 12, 2010, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which, if established, raise security concerns addressed in the adjudicative guidelines<sup>3</sup> (AG) under Guideline C (foreign preference).

On September 14, 2010, Applicant responded to the SOR through a notarized statement and requested a decision without a hearing. On October 26, 2010, Department Counsel issued a File of Relevant Material (FORM)<sup>4</sup> in support of the Government's preliminary decision. Applicant received the FORM on November 9, 2010, and was given 30 days to file a response to the FORM. On November 15, 2010, Applicant responded by submitting a cover letter (1 page), a copy of his job description (2 pages), and letter from his Facility Security Officer (FSO) (1 page). His submission was included in the record without objection. The case was assigned to me on December 23, 2010.

### **Findings of Fact**

Under Guideline C, the Government alleged that Applicant holds a valid Canadian passport that will expire in December 2011 (SOR 1.a); that as of November 19, 2009, he was not willing to destroy, surrender, or invalidate his Canadian passport (SOR 1.b); that he traveled on his Canadian passport (SOR 1.c); and that he has \$1,200 in a Canadian bank account (SOR 1.d). Applicant denied SOR 1.b and 1.d, but admitted SOR 1.a and 1.c. In addition to the facts established through his admissions, I have made the following findings of relevant fact.

Applicant works for a defense contractor as a resource efficiency manager, a position he has held since March 2009. Between June 2007 and March 2009, he was a graduate student seeking his master's degree in engineering at a U.S. university. Between September 2003 until June 2007, he was employed as a senior field engineer in work unrelated to the Defense Department. (FORM, Item 4)

Applicant was born in the United States in 1980. His mother is a native-born U.S. citizen, but his father is a Canadian citizen. In 1984, Applicant's father moved the family to Canada. Applicant was raised and educated in Canada until May 2003, when he graduated from a Canadian university with an engineering degree and moved to the United States to work and attend graduate school. After the family moved to Canada, Applicant's father registered Applicant as a Canadian citizen to qualify for national health and education benefits. Applicant has always had ties to the U.S. through his mother and her extended family. (FORM, Items 4 and 6)

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<sup>3</sup> The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006). Pending official revision of the Directive, they take precedence over the guidelines listed in Enclosure 2 to the Directive.

<sup>4</sup> See Directive, Enclosure 3, Section E3.1.7. The FORM included seven documents (Items 1 - 7) proffered in support of the Government's case. Item 7, a copy of the Directive, was provided for informational purposes only.

Applicant holds passports from both the United States and Canada. The record does not reflect when he first obtained either passport. His current Canadian passport was issued in December 2006 and is valid through December 2011. He has used his Canadian passport for travel to Canada, because it is convenient to do so. (Id.) When Applicant was interviewed by a Government investigator in April 2009, he stated he did not want to relinquish his Canadian passport out of respect for his father. Also, this is Applicant's first request for a security clearance or other position of trust. Until he was hired for his current job in March 2009, he had no reason to consider relinquishing his passport. (FORM, Item 6) However, in response to DOHA interrogatories, he stated that he is willing to surrender his Canadian passport and that he no longer needs it. (FORM, Item 5) In response to the FORM in November 2010, Applicant provided a letter from his FSO stating that Applicant had relinquished his Canadian passport to the FSO until he no longer requires a security clearance.

When Applicant submitted his e-QIP, he answered "yes" to Question 1 of Section 20A (Foreign Financial Interests), which asks, "Do you have or have you EVER (caps in original) had any foreign financial businesses, foreign bank accounts, or other foreign financial interests of which you have direct control or direct ownership?" He then listed a Canadian bank account with a balance of about \$1,200 (USD). However, when he was interviewed by a Government investigator in April 2009, Applicant stated that he opened the Canadian bank account when he was in high school, but closed it when he moved to the United States in 2003. (FORM, Item 6) All of Applicant's assets are now in the United States. In response to DOHA interrogatories, he estimated his net worth to be about \$225,000 (USD) (FORM, Item 5).

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>5</sup> and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they

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<sup>5</sup> Directive. 6.3.

represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under AG ¶ 9, Guideline C (Foreign Preference).

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>6</sup> for an applicant to either 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 for an applicant. Additionally, the Government must prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.<sup>7</sup>

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests 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>8</sup>

## Analysis

### Foreign Preference

Applicant admitted the allegations at SOR 1.a and 1.c. Those allegations are also supported by information presented in the Government's FORM. Applicant was issued a Canadian passport in December 2006 that is valid until December 2011. He has used that passport for travel to Canada. This information is sufficient to raise security concerns about whether Applicant may place the interests of another country ahead of those of the United States. Specifically, the security concern is stated in AG ¶ 9 (*Guideline C: Foreign Preference*) 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.

More specifically, available information requires application of the disqualifying conditions at AG ¶ 10(a) (*exercise of any right, privilege or obligation of foreign*

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<sup>6</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>7</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>8</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

*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...), and AG ¶ 10(b) (action to acquire or obtain recognition of a foreign citizenship by an American citizen). As to AG ¶ 10(b), by using his Canadian passport, Applicant seeks to obtain recognition of his status as a Canadian citizen for the ease of travel to Canada.*

Applicant denied the allegations in SOR 1.b and 1.d. Accordingly, the Government was required to prove those allegations as controverted facts.<sup>9</sup> As to SOR 1.b, the Government's own information (FORM, Item 5) showed that, in November 2009, when the Applicant responded to DOHA's interrogatories, he stated that he was willing to relinquish his passport and that he no longer needs it. This is in contrast to Applicant's stated reluctance to relinquish his foreign passport when he was interviewed by a Government investigator in April 2009. (FORM, Item 6) Applicant was concerned that doing so would be disrespectful to his Canadian father. But he also stated that, before beginning this application for a security clearance in March 2009, he never had reason to consider relinquishing his Canadian passport.

As to SOR 1.d, there is no information that shows Applicant currently still has, as alleged, a bank account or any other financial interests in Canada. When Applicant's answer to e-QIP Section 20A is viewed together with his April 2009 statement to a Government investigator, it is clear that he was disclosing that he had a Canadian bank account at one time. The Government's information (FORM, Item 5) further reflects that all of Applicant's financial assets are in the United States and that his current net worth is about \$225,000. By comparison, a bank account with \$1,200 has little or no security significance.

Based on the foregoing, SOR 1.b and 1.d are resolved for the Applicant. The only remaining issue regarding Applicant's suitability for a security clearance centers on his possession and use of a foreign passport. Applicant has relinquished the passport to his FSO and has no ongoing need for it. The mitigating condition at AG ¶ 20(e) (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*) applies. On balance, Applicant has mitigated the security concerns raised by the Government's information.

### **Whole-Person Concept**

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guideline C. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 30 years old and presumed to be a mature, responsible adult. He is a well-educated product of the Canadian education system, but received a post-graduate degree from a U.S. university. At age 4, he moved with his parents to Canada. But Applicant has always had ties to the U.S. through his U.S.-citizen mother and her extended family. All of his assets and professional interests are in the U.S. His earlier reluctance to relinquish his Canadian passport was likely due to inexperience with the security significance of his

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<sup>9</sup> See Directive, E3.1.14.

circumstances. He since has surrendered his Canadian passport. A fair and commonsense assessment<sup>10</sup> of all available information shows Applicant has mitigated the security concerns raised by the Government's information.

### **Formal Findings**

Formal findings 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 APPLICANT

Subparagraphs 1.a - 1.d:           For Applicant

### **Conclusion**

In light of all of the foregoing, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

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MATTHEW E. MALONE  
Administrative Judge

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<sup>10</sup> See footnote 5, *supra*.