



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



In the matter of:)
)
) ISCR Case No. 09-07820
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

September 29, 2010

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ Applicant's clearance is denied.

On 27 May 2010 the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline C, Foreign Preference.² Applicant timely answered, and requested a decision without hearing. The record in this case closed 18 August 2010, when Applicant's response to the Government's File of Relevant Material was due. She submitted no response. DOHA assigned the case to me 21 September 2010.

¹Consisting of Items 1-4 of the File of Relevant Material (FORM).

²DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

Findings of Fact

Applicant admitted the Guideline C allegations. She is a 23-year-old administrative assistant employed by a defense contractor since June 2009. She has not previously held a security clearance. She graduated from college in May 2009.

Applicant is a dual citizen of the United States (U.S.) and the United Kingdom (U.K.), having acquired U.S. citizenship by birth and U.K. citizenship derivatively through her mother (Item 3). Her mother is a naturalized U.S. citizen, born in the U.K.—which recognizes dual citizenship. Her father is a naturalized U.S. citizen, born in the People's Republic of China (PRC)—which does not recognize dual citizenship. However, it was not alleged and does not appear that she derived PRC citizenship from her father.

Applicant grew up in the U.S. and was educated here. However, in January 2006, she sought to have her U.K. citizenship recognized by applying for, and obtaining, a U.K. passport. Her U.K. passport was issued on 13 January 2007 and expires 12 January 2017. Her most recent U.S. passport was issued 26 July 2007 and expires 25 July 2017.

During an August 2009 subject interview (Item 4), Applicant stated that she obtained her U.K. passport to make travel and possible employment in the U.K. and the European Union (E.U.) easier. Indeed, between March 2008 and November 2009, she used her U.K. passport to travel to the U.K. and the E.U. numerous times to visit family, vacation, attend classes, and look for employment. She planned to go to the U.K. in July 2010 for a family wedding, and planned to continue to use her U.K. passport for E.U. travel. She also uses her U.K. passport when she travels because she believes Europeans treat Europeans more civilly than they do U.S. citizens.

During her subject interview, Applicant expressed a willingness to renounce her U.K. citizenship to preserve her job and obtain her clearance. She similarly expressed a willingness to surrender her U.K. passport to keep her job. However, in response to DOHA interrogatories in March 2010, she stated her intent to retain her U.K. passport.

Policies

The adjudicative guidelines (AG) list factors to be used to evaluate an applicant's suitability for a security clearance. Administrative judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline C (Foreign Preference).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.³

Analysis

The Government established a case for disqualification under Guideline C by showing that Applicant reasserted her U.K. citizenship in January 2006, and obtained, used, and continues to use, a U.K. passport that will not expire until January 2017.⁴ Applicant has not mitigated the Guideline C security concerns. Although U.S. law recognizes dual citizenship, it does not encourage it—for a variety of practical reasons. Furthermore, while Applicant's U.K. citizenship arose by operation of U.K. law, and thus she was born a dual citizen, she actively reasserted her foreign citizenship by obtaining a foreign passport in January 2007. Her conduct raises security concerns under the adjudication guideline for foreign preference, perhaps more accurately described as divided preference.

For Applicant's conduct to fall within the security concerns of Guideline C, she must have acted in a way to indicate a preference for a foreign nation over the United States. However, inimical intent or detrimental impact on the interests of the United States is not required before the government can seek to deny access under Guideline C.

The Government has a compelling interest in ensuring those given security clearances will make decisions free of concerns for the foreign country of which they may also be a citizen. Applicant acquired U.K. citizenship by birth, but reasserted that citizenship by obtaining and using a U.K. passport. Her reasons for doing so are legal, perhaps even sensible. However, she fails to see how her divided preference puts her

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴AG ¶ 10(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; . . . (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country; (b) action to acquire or obtain recognition of a foreign citizenship by an American citizen; . . .

in an untenable position for holding a U.S. security clearance. The U.S. and the U.K. share a wide variety of common interests. They do not share a unity of interests.

Applicant meets none of the mitigating conditions (MC) for foreign preference. Her dual citizenship is based on her actively reasserting the U.K. citizenship she acquired at birth.⁵ She intends to retain her U.K. passport and citizenship.⁶ All exercise of dual citizenship occurred while she was an adult.⁷ Applicant's use of her U.K. passport has not been sanctioned by the U.S.⁸ She stated no willingness to invalidate her passport.⁹ While Applicant has a legal right to maintain her dual citizenship with its attendant benefits and responsibilities, those benefits and responsibilities create an irreconcilable conflict with her responsibilities to the United States. I resolve Guideline C against Applicant.

Formal Findings

Paragraph 1. Guideline C: AGAINST APPLICANT

Subparagraphs a-b: Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

JOHN GRATTAN METZ, JR
Administrative Judge

⁵AG ¶ 11(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

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

⁷¶ 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;

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

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