



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



In the matter of:	)	
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	)	ISCR Case No. 10-00286
	)	
Applicant for Security Clearance	)	

**Appearances**

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

February 3, 2011

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On June 23, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline C for Applicant. 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) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On July 12, 2010, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge. I received the case assignment on September 24, 2010. DOHA issued a notice of hearing on October 29, 2010, and I convened the hearing as scheduled on November 17, 2010. The Government offered Exhibits 1 through 4, which were received and admitted without objection. Applicant testified on his own behalf and submitted Exhibits A through G, which were also admitted without objection. DOHA received the transcript of the hearing (Tr) on December 1, 2010. I granted Applicant's request to keep the record open until

December 8, 2010, to submit additional documents. Applicant timely submitted three additional documents, which have been identified and entered into evidence collectively as Exhibit H. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is granted.

### **Findings of Fact**

In his RSOR, Applicant admitted SOR allegations 1.a. 1) and 3), and he denied 1.a. 2). The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 25 years old. His mother was born in Mexico, and his father is from the Netherlands. Applicant's parents now reside in the United States. Applicant was born in Mexico, where he lived for a few months, when he moved to the Netherlands with his parents. After two years, Applicant moved with his parents back to Mexico. In approximately 1990, after one year in Mexico, Applicant moved with his parents to the United States, and he has lived in the U.S. since then. Applicant became a United States citizen on February 27, 2001, under the child citizen act, because his mother became a United States citizen on September 28, 1990. Applicant also been a Mexican citizen since birth. His father became a United States citizen on June 25, 2005.

Applicant has two brothers, ages 22 and 15; the older was born in Mexico and the younger was born in the United States. Both of his brothers are United States citizens and reside in the United States. Applicant is not married and has no children.

Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

### **Paragraph 1 (Guideline C - Foreign Preference)**

1.a. It is alleged in the SOR that Applicant exercised dual citizenship by:

1) Possessing a passport from the Netherlands (Dutch) that was issued in about October 2008 and will not expire until October 2013. Applicant testified that he is a Dutch citizen solely because his father is a Dutch citizen, and he first received the Dutch passport through an application by his father.

2) Possessing a passport from the Netherlands that was issued after he became a United States citizen on August 1, 2008. Applicant testified that he actually became a United States citizen on February 27, 2001, rather than August 1, 2008. The SOR was amended to reflect that Applicant became a citizen on February 27, 2001, and Applicant thereafter admitted this allegation. (Tr at 24.)

In 2008, Applicant renewed his Dutch passport because it was easier to travel in the European Union with a Dutch passport, and it also made it easier to work as an intern on scholarship in Germany with that passport. (Tr at 37-38.)

2) Using a passport from the Netherlands instead of his United States passport, after he became a United States citizen, for travel to Europe from the United States and between European countries.

Applicant testified that in May or June 2010, he contacted a representative from the Dutch embassy that he wanted to have his Dutch passport invalidated. He sent his passport to them, and holes were punched in it by the Dutch Government to invalidate it. (Tr at 39-42.) Exhibit A consists of a copy of the invalidated Dutch passport.

While it was not listed on the SOR, Applicant did previously have a Mexican passport, but he testified that it expired in 1991, and he never renewed it. The only passport he continues to maintain is the one from the United States, which does not expire until August 3, 2013. (Tr at 43-44.) Applicant indicated that he had not considered renouncing his Dutch citizenship since no mention was made in the SOR of his Dutch citizenship, but if the Government wanted him to renounce his Dutch citizenship he would be willing to do so. (Tr at 64.)

Applicant has not taken part in any Dutch elections. He does not own any property there or stand to inherit anything in the Netherlands. He also testified that he has registered with the Selective Service in the United States. (Tr at 73.)

## **Mitigation**

Applicant submitted four positive character letters in Exhibit H. The first letter was from a co-worker, who described Applicant as “very trusting, reliable, loyal, and conscientious towards his work.” A second letter was from a former high school teacher of Applicant, who has known Applicant for approximately 10 years. He wrote that Applicant “always exhibited the highest standards of integrity and moral character.” Applicant was also described in extremely laudatory terms by a former supervisor in college and by an attorney, who is a friend of Applicant’s family.

Applicant also submitted his academic transcript, confirming that he graduated Cum Laude in 2007 with a Bachelor of Science Degree in Aerospace Engineering, and in 2008 he received a Master of Science Degree in Aerospace Engineering.

## **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching 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, 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. 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 C, Foreign Preference**

Under AG ¶ 9 the security concern involving foreign preference arises, "[W]hen 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's application and receipt of a passport from the Netherlands raises foreign preference concerns under Disqualifying Condition AG ¶ 10 (a) as the "exercise of any right, privilege or obligation of foreign citizenship."

However, Applicant did invalidate his foreign passport, by delivering it to a Dutch government representative, who then invalidated it. While Applicant did not renounce his Dutch citizenship to the authorities, he did indicate that he would do so if it was requested of him. Therefore, I find that Mitigating Conditions AG ¶ 11 (b) and (e) apply to this case. After considering all of the evidence of record under Guideline C, I conclude that the mitigating evidence substantially outweighs the disqualifying evidence.

### **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 under Guideline C. Based on all of the reasons cited above as to why the Mitigating Conditions apply, considered with the very laudatory descriptions of Applicant from the writers of the submitted letters, plus his excellent college records, I find that the evidence leaves me with no significant questions or doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has mitigated the security concerns.

### **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 APPLICANT

Subparagraphs 1.a.1) - 3): For 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.

Martin H. Mogul  
Administrative Judge