



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



In the matter of:)	
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SSN: -----)	ISCR Case No. 10-00405
)	
Applicant for Security Clearance)	

Appearances

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

October 27, 2010

Decision

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings, exhibits and testimony, Applicant's request for eligibility for a security clearance is denied.

On July 16, 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 two sets of interrogatories¹ to obtain clarification of, and/or additional information about potentially disqualifying information in his background. After reviewing the results of the background investigation, including Applicant's responses to the interrogatories, DOHA adjudicators were unable to make a preliminary affirmative

¹ Authorized by DoD Directive 5220.6 (Directive), Section E3.1.2.2.

finding² that it is clearly consistent with the national interest to allow Applicant access to classified information. On June 3, 2010, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which, if established, raise security concerns addressed in the Adjudicative Guidelines³ (AG) under Guideline C (foreign preference).

On June 21, 2010, Applicant responded to the SOR through a notarized statement and requested a decision without a hearing. On August 4, 2010, Department Counsel prepared a File of Relevant Material (FORM)⁴ in support of the Government's preliminary decision. Applicant received the FORM on August 9, 2010, and was given 30 days to file a response to the FORM. Applicant did not respond to the FORM, and the case was assigned to me on October 4, 2010.

Findings of Fact

Under Guideline C, the Government alleged that Applicant is a dual citizen of the United States and the United Kingdom (Great Britain), where he was born, and that he actively exercises his dual citizenship through ongoing possession and use of a British passport (SOR 1.a); that in 2007, he obtained a British passport subsequent to his 2000 naturalization as a citizen of the United States (SOR 1.b); that after becoming a U.S. citizen, he has used his British passport for foreign travel (SOR 1.c); and that he intends to renew his British passport in the future (SOR 1.d). Applicant admitted each of these allegations. In addition to the facts established through his admissions, I have made the following findings of relevant fact.

Applicant is a British citizen by virtue of his birth in the United Kingdom in October 1963. His parents are also natural-born British citizens. He is seeking a security clearance in connection with his employment by a defense contractor, where he has worked since April 2009. He moved to the United States as a teenager with his family in 1980. He was naturalized as a U.S. citizen on November 11, 2000, completed his high school and college education here, and in December 1989, earned a master's degree from a nationally-known American university. Applicant has worked for U.S. companies in the semi-conductor, information technology, and solar energy fields since at least 2001. He lives in the United States with his wife of 20 years and their 12-year-old U.S.-born child. (FORM, Items 2 and 4)

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

³ 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.

⁴ 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 has held a British passport since before he was naturalized. He received a U.S. passport on January 5, 2001. He renewed his British passport on March 22, 2007, for a period of ten years. It is still active and in his possession.

Applicant travels abroad extensively for both business and personal reasons. He has used his British passport for travel back to Great Britain, but uses his U.S. passport for travel to other countries. In a September 29, 2009, subject interview with a Government investigator, Applicant explained that he uses his British passport when traveling to Great Britain because he is able to bypass long immigration lines at the point of entry. In response to the SOR, Applicant further stated that he also has used his British passport for travel to European Union countries for the same reason. (FORM, Items 3 and 5)

During Applicant's subject interview, he stated that he would be willing to renounce his foreign citizenship and relinquish his foreign passport if it were a condition of receiving a security clearance. However, when the summary of that interview was sent to him for verification and adoption, he recanted that position. Applicant stated in response to the Government's interrogatories that he wants to retain his British passport, both for the convenience and flexibility it offers, and because it may help him access future job opportunities in the U.S. and abroad. He reiterated his position when he responded to the SOR. (*Id.*)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ 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 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

⁵ Directive. 6.3.

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 interest⁶ 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.⁷

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.⁸

Analysis

Foreign Preference

The Government presented sufficient information to support the facts alleged in the SOR. Those allegations, which Applicant admits, 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.

The facts established show, as alleged in SOR 1.a - 1.d, that Applicant is a British citizen by birth; that he immigrated to the United States in 1980; that he was naturalized as a U.S. citizen in 2000; that he had a British passport before he was naturalized, and he renewed that passport in 2007; that he still carries and uses his British passport in preference to a still-valid U.S. passport he received in 2001; and that he does not intend to relinquish his British passport as it affords him certain conveniences when traveling

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

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

and certain employment-related opportunities and advantages. These facts require application of the disqualifying conditions listed under AG ¶ 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...*), 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 British passport, Applicant seeks to obtain recognition of his status as a British citizen for the ease of travel in certain places that status affords.

By contrast, the record does not support any of the mitigating factors under AG ¶ 11. Applicant derived his foreign citizenship by birth. However, he has actively exercised his foreign citizenship since at least 2001 through the acquisition, use, and ongoing possession of a British passport. Thus, the mitigating condition at AG ¶ 11(a) (*dual citizenship is based solely on parents' citizenship or birth in a foreign country*) may not be applied here. Further, he has not expressed a willingness to renounce his foreign citizenship,⁹ and has specifically stated that he is unwilling to relinquish his British passport. Therefore, the mitigating condition at AG ¶ 11(e) (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*) does not apply. Because he exercised his foreign citizenship as an adult, and after becoming a naturalized U.S. citizen in 2000, the mitigating condition at AG ¶ 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*) is not applicable. Finally, the mitigating condition at AG ¶ 11(d) (*use of a foreign passport is approved by the cognizant security authority*) does not apply. Applicant presented no information to show that his possession and use of a British passport was sanctioned by the U.S. Government, or that he obtained permission to have a foreign passport.

Applicant's possession of a foreign passport allows him to travel unhindered by the legitimate need for the U.S. Government to manage information about travel in and out of the country. More broadly, Applicant's actions in furtherance of his British citizenship raise legitimate security concerns expressed through Guideline C about his willingness or ability to protect U.S. interests in preference to all others. The allegations in SOR 1.b - 1.d are supported by the government's information and by Applicant's admissions. By themselves, they are not disqualifying. However, these allegations establish that Applicant will continue to use his foreign citizenship, at times for personal gain, in preference to her U.S. citizenship. As such, SOR 1.b - 1.d legitimately establish facts which undermine his assurances that he would not place the interests of a foreign nation ahead of U.S. interests. On balance, Applicant has failed to mitigate 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

⁹ While the Government does not require renunciation of one's foreign citizenship, an expressed willingness to do so would benefit Applicant through application of AG ¶ 11(b) (*the individual has expressed a willingness to renounce dual citizenship*).

context of the whole-person factors listed in AG ¶ 2(a). Applicant is 47 years old and presumed to be a mature, responsible adult. He is a well-educated product of U.S. universities, and his employment record indicates that he is a highly skilled technical and management resource for his employer. He has lived and worked in the U.S. since he was a teenager, has been married for twenty years, and has no apparent financial or property interests outside the United States. Certainly, there has been no misconduct here. However, the Government policy regarding possession and use of a foreign passport in preference to a valid U.S. passport is straightforward. There is a compelling national interest in being able to trust that a person with access to classified information will not be subject to conflicting foreign interests or will not attempt to circumvent U.S. procedures for monitoring travel of someone with such access. Guideline C also provides clear indications of how one in Applicant's situation can mitigate the security concerns about his foreign passport. He has definitively chosen not to avail himself of those mitigation options. Because it is unlikely that Applicant's circumstances will change in the foreseeable future, a fair and commonsense assessment¹⁰ of all available information shows Applicant has not overcome the doubts about his suitability for a security clearance. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the Government.¹¹

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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.d:	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge

¹⁰ See footnote 5, *supra*.

¹¹ See footnote 8, *supra*.