



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



In the matter of:)	
)	
-----)	ISCR Case No. 10-01469
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Francisco Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

November 4, 2010

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On August 12, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline C (Foreign Preference) and Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), 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 September 1, 2006.

In her May 26, 2010, response to the SOR, Applicant admitted all allegations raised, provided written explanations, and requested a hearing before an administrative judge. The case was assigned to me on September 27, 2010. Department Counsel and Applicant agreed to an October 20, 2010, hearing date. A Notice of Hearing was issued by DOHA on October 8, 2010, setting the hearing for that date.

The hearing took place as scheduled. The Government did not request administrative notice of any specific facts or materials related to the country at issue,

Canada, a parliamentary democracy. Department Counsel withdrew all allegations set forth in the SOR under paragraph 2 (Guideline B). Department Counsel submitted three exhibits (Ex.) which were accepted into the record as Exs. 1-3 without objection. Applicant gave testimony and offered two documents, accepted into the record without objection as Exs. A-B. The transcript (Tr.) was received on October 28, 2010, and the record was closed. Based upon a review of the case file, exhibits, and testimony, security clearance is granted.

Findings of Fact

Applicant is a 43-year-old research specialist and consultant who has worked for the same defense contractor for over 15 years. An expert in international relations and areas related to managerial oversight, she has earned a bachelor's degree, a master's degree, and a doctorate in related disciplines. She is married and has two minor children.

Several years ago, Applicant was approached by the military to employ her expertise on projects being conducted domestically and abroad.¹ Her success led to related projects in countries such as Iraq and Afghanistan. She continues to work on such projects today through her employer.² The military requested that she seek a security clearance in order to better utilize her skills and experience.³

At issue are five allegations under Guideline C. In 1989, Applicant married a Canadian citizen. They considered the option of living in Canada. In 1990, Applicant applied for and was granted Canadian citizenship, even though she was born and educated in the United States. The couple divorced in 1994. Applicant abandoned any plans to live in Canada.

In 1999, Applicant remarried. The couple eventually had two children. Applicant began working on the aforementioned projects for the military and related work for non-governmental organizations (NGO).⁴ All of her work is sponsored by her employer and none of it is sponsored by a foreign country.⁵ In 2005, she was scheduled to work on a project in Iraq. Around that time, a group of American and Canadian citizens had been taken hostage in Iraq. Of that group, the American hostages were killed, while the

¹ See Tr. 13-16.

² Tr. 15.

³ Tr. 15-16; Ex. A (Letter, dated Oct. 14, 2010).

⁴ Tr. 22. Applicant's work generally involves projects in which the military and NGOs work in concert.

⁵ In one instance, Applicant was the recipient of a grant from a Canadian NGO that, in turn, had received a grant from the Canadian government. Her grant paid only for her travel, not her salary. Applicant never had direct contact with the Canadian government. See Tr. 21.

Canadian hostages were released.⁶ Applicant also learned of difficulty she might endure in fulfilling her work in certain countries who find those who have visited certain other countries as suspect.⁷ In light of these considerations, Applicant concluded it would be best for her to conduct her business travel to certain middle eastern countries on a Canadian passport.⁸ The idea was solely her own.⁹ She applied for and was granted a Canadian passport shortly before her trip to Iraq. Applicant subsequently used the Canadian passport for work related travel to Lebanon, Iraq, Jordan, Indonesia, Singapore, Sri Lanka, Phillipines, and Afghanistan, as well as during connecting flights through Switzerland and Germany.¹⁰

Applicant's Canadian passport expired in August 2010. She has given the expired document to her security officer.¹¹ She has no future plans to use her Canadian passport.¹² At the hearing, she noted that she has not attempted to renew her Canadian passport, and she expressed no immediate plans to renew that document.¹³

The transcript and record indicate that Applicant's work is highly valued by the U.S. military and NGOs. Department Counsel noted that her work is highly valued by the DOD and the U.S. military.¹⁴ The DOD is aware of the facts in this matter. The U.S. military considers her work and her access to classified information to be "critical to the contribution she could potentially make to [its] programs."¹⁵ Applicant stresses that it was not her idea to pursue a security clearance. While she is happy to be of service to

⁶ Applicant has not exercised any other rights or privileges of Canadian citizenship. She has not voted in any Canadian elections, received benefits from the country, and has neither a preference for, nor an allegiance to, Canada. See Tr. 9.

⁷ Tr. 9-10.

⁸ Tr. 17.

⁹ Tr. 25.

¹⁰ Tr. 18-19. Applicant noted that had she been on trips or taken vacations solely to European countries, she would have used her United States passport. She reserved her use of the Canadian passport for business trips to countries where her presence might raise a "red flag" or cause concerns about her personal safety.

¹¹ Tr. 10, 24; Ex. B (Letter, dated Oct. 19, 2010).

¹² Tr. 10.

¹³ *Id.*

¹⁴ Tr. 21-23.

¹⁵ Ex. A, *supra*, note 3.

the U.S. military, she is not seeking either the work or a security clearance for personal or financial benefit.¹⁶

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." All available, reliable information about the person, past and present, favorable and unfavorable, must be and were considered 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 my decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence submitted.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ¹⁷ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.¹⁸

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 an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

¹⁶ Tr. 16.

¹⁷ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

¹⁸ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁰ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.²¹ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence and after the withdrawal of SOR paragraph 2, I find Guideline C (Foreign Preference) to be the most pertinent to the case. Conditions pertaining to this AG that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are discussed below.

Analysis

Guideline C – Foreign Preference

The concern regarding foreign preference is that when an individual acts in such a way as to indicate a preference for a foreign country over the U.S., then she may be prone to provide information or make decisions that are harmful to the interests of the U.S.²² Conditions that could raise a security concern and may be disqualifying include 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.²³

The SOR contains five allegations. First, Applicant sought and was granted Canadian citizenship in 1990. Second, she applied for and received a Canadian passport in 2005 that expired in August 2010. Third, she used her Canadian passport for business travel to or through 10 foreign countries. Fourth, Applicant had expressed an intent to renew her Canadian passport. Fifth, she traveled abroad for a work project and a foreign agency funded by the Canadian government paid for her travel expenses.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Executive Order 10865 § 7.

²² AG ¶ 9.

²³ AG ¶ 10(a).

Applicant substantially admitted these allegations. Foreign Preference Disqualifying Conditions 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). With foreign preference disqualifying conditions raised, the burden shifts to Applicant to mitigate security concerns.

Applicant fully admitted that she sought Canadian citizenship 20 years ago, when she was married to her ex-husband, a Canadian, and that the newlyweds contemplated living in Canada. After their divorce, Applicant expressed no interest in maintaining a Canadian residence and exercised no rights or privileges of Canadian citizenship until 2005. By that time, she was working on projects with the U.S. military and significant NGOs involved in projects in the Middle East. She acquired a Canadian passport to better facilitate her safe passage to certain countries. As well, an alternative to her U.S. passport would obviate potential difficulties in visiting some countries to which prior travel to other countries was prohibited or deemed suspect. All of the travel at issue has been for work projects related to her efforts with the U.S. military and specified NGOs. Consequently, it may be assumed that such travel was at least tacitly approved by the U.S. Government. Moreover, the U.S. military has encouraged Applicant to pursue a security clearance to benefit the United States, not the Applicant. Her continued and enhanced participation in its projects is deemed critical.

Applicant has voluntarily tendered her expired Canadian passport to her security officer. This fact is sufficient to raise AG ¶ 11(e) (the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated).²⁴

Applicant's distinct knowledge and experience is of importance to the U.S. military and the DOD. She is a valuable asset to current efforts domestically and internationally. Her maintenance of a Canadian passport was not covert, and her international travel was known to the U.S. Government and her employer. She has since tendered her Canadian passport to her security officer. Given these unique facts, foreign preference security concerns are mitigated.

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

²⁴ Foreign Preference Mitigating Conditions AG ¶ 11(a) (dual citizenship is based solely on parents' citizenship or birth in a foreign country), AG ¶ 11(b) (the individual has expressed a willingness to renounce dual citizenship), 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), and AG ¶ 11(f) (the vote in a foreign election was encouraged by the United States Government) do not apply.

consider the nine adjudicative process factors listed at AG ¶ 2(a). 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, as well as the nine “whole-person” factors listed at AG ¶ 2(a). Applicant is a highly credible and mature individual. She is well-educated and a leader in her field. Her notoriety brought her to the attention of the U.S. military; she did not seek additional work from it. Applicant’s efforts for the U.S. Government and significant NGOs has been lauded. Her continued work efforts are deemed critical to important U.S. projects. She has conducted her business efforts with transparency.

While Applicant has proven herself to be a valued asset to the U.S. Government, she is neither a governmental employee nor a member of the armed services. A civilian, Applicant balances her work responsibilities with her domestic obligations. Her personal safety is an understandable concern. In traveling abroad independently into areas posing significant risks and with conflicting rules regarding travelers, she chose to utilize her Canadian citizenship to acquire a Canadian passport that would facilitate safer passage through regions posing genuine concern. She did so on numerous international trips for the U.S. military and designated NGOs without incident or reprimand. Her Canadian passport has since expired. She has tendered it to her security officer for safekeeping. She has no immediate plans to use a foreign passport in her travels. Given her work, these unique facts, the country at issue, and the record as a whole, Applicant mitigated foreign preference security concerns. Clearance granted.

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)-1.a(5): For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance granted.

ARTHUR E. MARSHALL, JR.
Administrative Judge