



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



In the matter of:)
)
) ISCR Case No. 10-03923
)
Applicant for Security Clearance)

Appearances

For Government: Marc G. Laverdiere, Esquire, Department Counsel
For Applicant: *Pro se*

04/13/2012

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the record, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline C, Foreign Preference. His eligibility for a security clearance is denied.

Statement of Case

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) on December 30, 2009. On October 26, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline C, Foreign Preference. DOHA acted 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) effective within the Department of Defense for SORs issued after September 1, 2006.

On November 16, 2011, Applicant answered the SOR in writing and requested that his case be determined on the record in lieu of a hearing. The Government

compiled its File of Relevant Material (FORM) on December 5, 2011. The FORM contained documents identified as Items 1 through 8. On December 6, 2011, the Government mailed the FORM to Applicant with instructions to submit any additional information or objections within 30 days of receipt. Applicant received the FORM on December 14, 2011. His response was due on January 13, 2012. Applicant timely submitted additional information. Department Counsel did not object to Applicant's submission. On February 7, 2012, the case was assigned to me for a decision. I marked Applicant's submission as Item A and entered it in the record.

Findings of Fact

The SOR contains four allegations that raise security concerns under Guideline C, Foreign Preference (SOR ¶¶ 1.a. through 1.d.). In his Answer to the SOR, Applicant admitted the four Guideline C allegations. In his response to the FORM, Applicant denied SOR allegation 1.d. and provided additional information. His admissions of the SOR allegations at ¶¶ 1.a., 1.b., and 1.c. are admitted as findings of fact.

Applicant, who was born in Ireland to Irish citizens, is 58 years old, divorced, and the father of two children.¹ He is employed as a program manager, and he has worked for his present employer, a government contractor, for 26 years. He was first awarded a security clearance in March of 1997. (Item 5.)

Applicant immigrated to the United States with his family in 1964. He became a U.S. citizen in 1972. On his December 2009 e-QIP, Applicant identified himself as a dual citizen of Ireland and the United States. In response to DOHA interrogatories, he reported that his five brothers and two sisters are all "citizens of Ireland and currently reside in the U.S."² Applicant also reported that he is in frequent weekly contact with his siblings. (Item 5; Item 6.)

In March 1995, Applicant acquired an Irish passport because his employer assigned him to travel to a Middle Eastern country on business. Applicant was concerned because U.S. citizens traveling to the Middle East were sometimes singled out and targeted by terrorists. He chose to acquire and use an Irish passport in his travels to the Middle Eastern country to increase his personal safety and to minimize his vulnerability to possible acts of terrorism against U.S. citizens. At airports, he also found that the custom and immigration lines were shorter for Irish citizens than they were for American citizens. (Item 6.)

In response to DOHA interrogatories, Applicant reported using his Irish passport for travel to the Middle Eastern country in March, April, August, and November of 1995

¹ Applicant did not list his children on his December 2009 e-QIP. (Item 5.)

² On his e-QIP, Applicant listed and identified four of his five brothers. He further stated those four brothers and his two sisters were dual citizens of the United States and Ireland. (Item 5.)

and in August of 1997.³ Applicant's Irish passport expired in 2005. He did not immediately renew his Irish passport because he was not assigned during 2005 and 2006 to travel and work in the Middle East. In September 2007, Applicant again acquired an Irish passport, in anticipation of a work assignment to another Middle Eastern country. His 2007 Irish passport will expire in September 2017. (Item 6; Item 7.)

In his response to the FORM, Applicant discussed why he acquired Irish passports when traveling overseas to Middle Eastern countries to carry out his work as a government contractor:

The concern for personal safety was the motivation, not the foreign preference asserted in the subject file, that caused me to acquire the [1995 Irish] passport. I believe the credibility of my explanation is further substantiated by the fact that I let the Irish [p]assport lapse for two years in 2005 until it became apparent in 2007 that I would again be traveling to the Middle East on work-related matters. I realize that this explanation is not explicitly identified . . . as a mitigating circumstance[,] but I believe that my motivation and state of mind, which was void of any foreign preference, is relevant. (Item A at 2.)

Applicant traveled to Ireland in April 2005 and in June 2007. In his answer to the SOR, he admitted using his Irish passport for the two trips to Ireland. However, in response to the FORM, Applicant provided photocopies of his U.S. passport, issued June 1, 1999, and his U.S. passport, issued May 17, 2009. Applicant's 1999 U.S. passport establishes that he used his U.S. passport and not his Irish passport for his trips to Ireland in April 2005 and June 2007. (Item 6; Item A.)

The security director for Applicant's employer provided a letter, dated November 16, 2011, stating that Applicant had surrendered his 2007 Irish passport to him for safekeeping. He further stated: "There are no stamps or entries made in the passport and it appears unused." In his answer to the SOR, Applicant stated that he was willing to renounce his Irish citizenship. In response to DOHA interrogatories, Applicant stated that he preferred to surrender his Irish passport to his facility security officer, but he would destroy it, if required, to maintain his security clearance. He further stated: "Maintaining my security clearance for employment is my priority." (Item 4; Item 6; Item A.)

Applicant used his U.S. passport, issued in 1999, for a business trip to a Middle Eastern country in January 2008. He also used his U.S. passport, issued in 2009, for a business trip to a Middle Eastern country in October 2010. (Item A.)

³ Facts in the record support a conclusion that Applicant possessed a security clearance in 1997 when he used his Irish passport to travel as a U.S. government contractor to the Middle Eastern country. (Item 5; Item 6.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching 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.

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 in seeking to obtain 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.” Such an individual “may be prone to provide information or make decisions that are harmful to the interests of the United States.”

AG ¶ 10 describes several conditions that could raise a security concern and may be disqualifying. These disqualifying conditions are as follows:

(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;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country; and,
- (7) voting in a foreign election;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

Applicant, a naturalized U.S. citizen who was born in Ireland, claims dual citizenship with Ireland. In 1995 and in 2007, Applicant took action to obtain recognition of his Irish citizenship by acquiring and possessing an Irish passport. His current valid Irish passport will not expire until September 2017. Applicant's conduct raises potentially disqualifying security concerns under AG ¶ 10(a)(1) and AG ¶ 10(b).

Under AG ¶ 11 (a), dual citizenship might be mitigated if "it is based solely on [an applicant's] parents' citizenship or birth in a foreign country." Under AG ¶ 11(b), an individual's dual citizenship might be mitigated if he or she "has expressed a willingness to renounce dual citizenship." Under AG ¶ 11(c), an individual's "exercise of the rights, privileges, or obligations of foreign citizenship might be mitigated if it occurred before becoming a U.S. citizen or when the individual was a minor." Under AG ¶ 11(d), an individual's use of a foreign passport might be mitigated if it were "approved by the cognizant security authority." Under AG ¶ 11(e), an individual's use of a foreign passport might be mitigated if he or she presents credible evidence that "the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated."

Applicant's dual citizenship with Ireland arose from his birth in Ireland in 1953. However, he chose to exercise the rights and privileges of Irish citizenship after he became a U.S. citizen and when he was a mature adult. In 1995, Applicant actively sought an Irish passport, 23 years after attaining U.S. citizenship, when he was approximately 42 years old. In 2007, he again actively sought an Irish passport when he was approximately 54 years old. Four times in 1995 and once in 1997, Applicant, a naturalized U.S. citizen, used his Irish passport to travel to a Middle Eastern country to carry out work assigned to him by his employer, a government contractor. There is no evidence in the record that Applicant's use of his Irish passport in his official business travel in 1995 and 1997 was "approved by the cognizant security authority."

In his response to the FORM, Applicant provided photocopies of his U.S. passports, issued in June 1999 and May 2009. These documents contradicted Applicant's earlier admissions that he had used his Irish passports to travel to Ireland in 2005 and 2007, and they corroborated his assertions in his response to the FORM that he used his U.S. passports for the 2005 and 2007 trips to Ireland. In his answer to the SOR, Applicant stated that he was willing to renounce his Irish citizenship. In his response to the FORM, Applicant also provided credible evidence that his current valid Irish passport has "been destroyed, surrendered to the cognizant security authority, or

otherwise invalidated.” Accordingly, I conclude that AG ¶¶ 11(b), 11(d), and 11(e) apply in mitigation to the facts of Applicant’s case.

However, Applicant’s foreign preference remains a concern. In 1995, as a mature adult, he exercised his Irish citizenship and acquired an Irish passport to use when he feared his U.S. citizenship might cause him to be singled out and exposed to danger by terrorists when he traveled to the Middle East on business. Twelve years later, in 2007, he again acquired an Irish passport, although, according to his facility security officer, the passport appeared unused when it was surrendered in November 2011, after Applicant received the SOR.

In his response to the FORM, Applicant denied that his decision, as a U.S. citizen, to use a foreign passport to assert Irish nationality to increase his safety when traveling on business to the Middle East reflected foreign preference. For a U.S. citizen to voluntarily use a foreign passport to present himself as a citizen of another country is an act of foreign preference when he expects that, as a result of this act, he will be accorded protection and safety which would be denied him as a U.S. citizen.

While Applicant said maintaining his U.S. security clearance was his top priority, he failed to provide sufficient evidence to persuasively demonstrate that he would not exercise rights or privileges of Irish citizenship at some future time when his self-interest might require it. I conclude that AG ¶¶ 11(a) and 11(c) do not apply fully in mitigation in this case.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of an applicant’s conduct and all relevant 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. Applicant is a mature adult who has

twice exercised his dual citizenship with Ireland, after becoming a U.S. citizen, by acquiring Irish passports. His first acquisition of an Irish passport occurred in 1995, when he was assigned by his employer, a government contractor, to travel overseas on business. Applicant used his Irish passport to obscure his identity as a U.S. citizen in the hope that it might shield him from potential anti-American terrorists. However, in doing so, Applicant acted in a way that indicated a preference for Ireland over the United States, leading to a concern that he might also make decisions that are harmful to the interests of the United States. After Applicant received the SOR and notice that his foreign preference raised security concerns, he surrendered his Irish passport to his facility security officer and stated that he was willing to renounce his dual citizenship with Ireland. However, he failed to meet his burden of persuasion and to provide sufficient evidence to demonstrate that he would not, under similar circumstances, again indicate a preference for Ireland over the United States.

Overall, the record evidence leaves me with questions and doubts at the present time about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate security concerns under Guideline C, Foreign Preference.

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:	AGAINST APPLICANT
Subparagraphs 1.a. - 1.c.:	Against Applicant
Subparagraph 1.d.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Joan Caton Anthony
Administrative Judge