



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



In the matter of:)
)
) ISCR Case No. 10-05973
)
)
Applicant for Security Clearance)

Appearances

For Government: Gina Marine, Esquire, Department Counsel
For Applicant: *Pro se*

April 29, 2011

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, I deny Applicant's eligibility for access to classified information.

Statement of the Case

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) version of a security clearance application (SF-86) on April 12, 2010. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on December 6, 2010, detailing security concerns under Guideline C, Foreign Preference, and Guideline B, Foreign Influence, that provided the basis for its preliminary decision to deny her a security clearance. 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 For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR on December 13, 2010. She submitted a notarized, written response to the SOR allegations, which DOHA received on January 10, 2011. She requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and mailed Applicant a complete copy on February 11, 2011. Applicant received the FORM in February 2011. She had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She did not submit a response. DOHA assigned this case to me on April 26, 2011. The Government submitted five exhibits, which have been marked as Items 1-5 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 3, and the SOR has been marked as Item 1.

Findings of Fact

In her Answer to the SOR, Applicant admitted all the factual allegations in the SOR. Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 27 years old, works as a travel assistant for a Department of Defense contractor. She started her current employment in March 2010. Applicant graduated from high school and attended college. She has not graduated from college.¹

Applicant's mother and father emigrated from Poland to the United States in 1981. Applicant and her sister were born in the United States and are citizens of the United States by birth. Applicant's mother became a United States citizen in 1991. Her father is a permanent resident of the United States. Her parents reside in the United States, as does her sister. Applicant has a half-brother, who is a citizen and resident of the United States.²

In June 2004, Applicant traveled to Poland to attend a wedding. She met a young man at the wedding. They corresponded and visited with each other for nearly two years. Applicant moved to Poland in May 2006 and married her boyfriend in June 2006 in Poland. She continued to live in Poland until March 2010. She returned to the United States in March 2010 to work.³

¹Item 4.

²*Id.*; Item 5.

³Item 5.

Shortly after she married, in July 2006, Applicant actively sought Polish citizenship to be able to live and work in Poland or the United States. She considers the United States home. During the nearly four years she lived in Poland, Applicant voted in a Polish gubernatorial election and worked for an American company, receiving a lump sum social security retirement benefit of \$600 to \$700 from Poland. She has no other financial interests in Poland. She holds only a U.S. passport and travels on her U.S. passport. She intends to retain her Polish citizenship.⁴

Applicant's husband was born in Poland. He is a citizen and current resident of Poland. He came with her to the United States in March 2010 through a visitor visa, but has since returned to Poland temporarily. He is a lawyer and wants to work in the United States. Applicant's father-in-law died in 2009. Her mother-in-law is a citizen and resident of Poland. Since her return from Poland, Applicant speaks with her mother-in-law infrequently. Applicant talks with a close friend in Poland at least once a month.⁵

Poland⁶

I take administrative notice of the following facts about Poland. At the end of World War I, Poland became an independent country. In 1939, Germany and the Union of Socialist Soviet Republics (the Soviet Union) invaded Poland. Following World War II, the Soviet Union's communist party solidified its control of Poland. During the 1980s, the Polish people sought democratic reforms. In May 1990, the first free local elections occurred. By December 1990, Poland had elected its first popular President.

The Republic of Poland has a constitution and a democratic form of government. The current government structure consists of a council of ministers led by a Prime Minister, typically chosen from the majority coalition in the bicameral legislature's lower house (Sejm). The president, elected every five years for no more than two terms, is the head of state and commander-in-chief of the armed forces. The judicial branch plays a minor role in decision-making.

Poland successfully transformed its farm economy to market principles following the end of communism, but has now entered a period of greater state control of the market due to its membership in the European Union. Poland's agricultural policy is dominated by the EU's Common Agricultural Policy and by its open borders with the other 26 EU members.

Poland, a member of the World Trade Organization (WTO) and the European Union, applies the EU's common external tariff to goods from other countries--including

⁴*Id.*

⁵Item 4; Item 5.

⁶The source of the facts on Poland is the U.S. Department of State, Bureau of European and Eurasian Affairs February 18, 2011, "Background Note: Poland," available at <http://www.state.gov> See Exhibit 1.

the United States. While foreign trade is an important part of the Polish economy, Poland remains much less trade dependent than its Central European neighbors. Poland became an associate member of the EU and its defensive arm, the Western European Union, in 1994. In a June 2003 national referendum, the Polish people approved EU accession by an overwhelming margin, and Poland gained full membership in May 2004.

Changes since 1989 have redrawn the map of Central Europe, and Poland has had to forge relationships with seven new neighbors. Poland has actively pursued good relations, signing friendship treaties replacing links severed by the collapse of the Warsaw Pact. The Poles have forged special relationships with Eastern neighbors, particularly Ukraine and Georgia, in an effort to firmly anchor these states to the West.

Poland became a full member of the North Atlantic Treaty Organization (NATO) in March 1999 as part of the first wave of enlargement outlined at the July 1997 NATO Summit in Madrid. Poland's top national security goal is to further integrate with NATO and other West European defense, economic, and political institutions while modernizing and reorganizing its military. Polish military doctrine reflects the same defense posture as its Alliance partners. Poland continues to be a regional leader in support and participation in the NATO Partnership for Peace Program and has actively engaged most of its neighbors and other regional actors to build stable foundations for future European security arrangements. Poland has recently focused its participation in international security missions on those managed by NATO and the EU, and it continues to maintain a battalion in NATO's Kosovo Force (KFOR). Poland is a leading contributor to NATO's International Security Assistance Force (ISAF) in Afghanistan. Polish military forces also served in Operation Enduring Freedom in Afghanistan and Operation Iraqi Freedom and continue to serve in the NATO Training Mission in Iraq.

The United States and Poland have enjoyed warm bilateral relations since 1989. Every post-1989 Polish government has been a strong supporter of continued American military and economic presence in Europe. In addition to supporting international counterterrorism efforts and NATO's ISAF mission in Afghanistan, Poland cooperates closely with the United States on such issues as democratization, nuclear nonproliferation, human rights, regional cooperation in Central and Eastern Europe, and UN reform.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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, these guidelines are applied 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, 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. . . ." An applicant has the ultimate burden of persuasion for 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 an 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."

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying:

(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:

(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; and

(7) voting in a foreign election;

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

Applicant decided to become a Polish citizen in 2006. After becoming a Polish citizen, she voted in a gubernatorial election and received social security retirement benefits from the Polish government because she worked in Poland. The Government has established a *prima facie* case under the above disqualifying conditions.

Applicant can mitigate security concerns arising under Guideline C by showing that her dual citizenship was due solely on her parents' citizenship or birth in a foreign country (AG ¶ 11(a)); by expressing a willingness to renounce dual citizenship (AG ¶ 11(b)); the exercise of any rights of citizenship occurred before Applicant became a United States citizen (AG ¶ 11(c)); use of a foreign passport is approved by the cognizant security authority (AG ¶ 11(d)); the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated (AG ¶ 11(e)); or the vote in a foreign election was encouraged by the United States Government (AG ¶ 11(f)).

I have reviewed the facts of this case under the above mitigating conditions. I find that none apply. Applicant has not mitigated the security concerns raised under Guideline C, which is found against her.

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such

considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Under the potential disqualifying conditions described in AG ¶ 7, the following conditions could raise a security concern and may be disqualifying in this case:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant's mother, sister, and half-brother, are U.S. citizens, and her father is a permanent U.S. resident. All reside in the United States. Applicant's husband is a Polish citizen, currently residing in Poland as he is not a permanent U.S. resident. Her mother-in-law is a citizen and resident of Poland. Applicant has a close relationship with her husband and maintains a normal familial relationship with her mother-in-law. There is no evidence Applicant provides financial support to her family in Poland. Applicant moved to Poland in May 2006 to marry her husband and lived in Poland continuously until March 2010, when she returned to the United States. Her family relationships are not *per se* a reason to deny Applicant a security clearance, but her contacts with her family members must be considered in deciding whether to grant Applicant a clearance. The Government must establish that these family relationships create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion by the Polish Government or would create a potential conflict of interest between her obligations to protect sensitive information and her desire to help her family members.

In determining if a heightened risk exists, I must look at Applicant's relationship and contacts with family members as well as the activities of the Government of Poland. The risk that an applicant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. Applicant's relationship and contacts with her husband and mother-in-law in Poland does not raise a heightened risk of security concerns because the information of record fails to show that the Polish Government engages in espionage activities in the United States or that it targets U.S. citizens in the United States or Poland by exploiting, manipulating, pressuring, or coercing them to obtain protected information. Poland supports the counterterrorism

efforts of the United States and Europe. The record does not contain any information about terrorist activities in Poland. Guideline B is found in favor of Applicant.

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 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's parents immigrated to the United States before she was born. Applicant was born and raised in the United States. Because her parents were born and raised in Poland, she periodically visited family in Poland. In a 2004 trip to Poland, she met her future husband, a citizen and resident of Poland. Two years later, she moved to Poland, married in Poland, lived in Poland for four years, and worked in Poland, earning Polish retirement benefits. Immediately after her marriage, she actively sought and attained Polish citizenship, which she is not willing to renounce. She did not give up her U.S. citizenship and travels on her U.S. passport. After becoming a Polish citizen, she voted in a local gubernatorial race. Because he is not a permanent resident of the United States, her husband is currently residing in Poland. Her mother-in-law is a Polish citizen, living in Poland. She does not have plans to move to the United States.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I

conclude Applicant mitigated the security concerns arising under Guideline B, but she has not mitigated the security concerns under Guideline C.

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.d:	Against Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	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.

MARY E. HENRY
Administrative Judge