



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)

ISCR Case No. 10-06218

Appearances

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

February 29, 2012

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire For Investigations Processing on April 13, 2010. (Government Exhibit 1.) On August 9, 2011, 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 after September 1, 2006.

The Applicant responded to the SOR on September 13, 2011, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on November 30, 2011. A notice of hearing was issued on December 7, 2011, scheduling the hearing for January 19, 2012. At the hearing the Government presented four exhibits, referred to Government Exhibits 1 through 4 that were admitted without objection. The Applicant presented four exhibits, referred to as Applicant's Exhibits A through D that were admitted without objection. He also testified on his own behalf. The record remained open until close of business on February 2, 2012, to allow the Applicant the opportunity to submit additional documentation. The Applicant

submitted one exhibit, referred to as Applicant's Post-Hearing Exhibit A that was admitted without objection. The official transcript (Tr.) was received on January 27, 2012. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 57 years of age and has completed two years of community college. He is employed as a Machinist/Programmer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant admitted each of the allegations set forth under this guideline. (See Applicant's Answer to SOR.) He began working for a defense contractor in July 2009.

The Applicant was born in the United Kingdom and is the only child of British parents. He moved to the United States in 1982, and has lived here since then. In 1989, he got his green card. He became a naturalized citizen of the United States in 2008, and renewed his British passport in 2011. He is a dual citizen of the United Kingdom. He is married with two adult children.

His parents, who reside in the United Kingdom, are now 86 and 91 years old. (Tr. p. 40.) His father's health is going downhill rapidly. The Applicant is expecting to go back to the United Kingdom this year in regards to his father. At that point, his mother, whose health is also not good, may need him to take care of her. The Applicant may need to live in the United Kingdom for three to six months should something happen to one of his parents. The Applicant will need to work to support himself and therefore he will need his British citizenship. He explained that his parents in the United Kingdom own a house worth about \$220,000 that he will ultimately inherit. Given his circumstances, the Applicant clearly indicates that he is not willing to renounce his British citizenship.

The Applicant has a valid British passport that is good from 2011 to 2021. (Applicant's Exhibit D.) He also has a current United States passport that was issued in November 2008. (Applicant's Exhibit C.) The Applicant indicates that he is willing to give his passport to his security office for safekeeping that will be returned to him upon termination of his employment. (Applicant's Exhibit A.) Applicant's Post-Hearing Exhibit A, indicates that the Applicant's British passport was received by the Applicant's company corporate office on January 31, 2012, and is being stored in the safe and will be returned to the Applicant upon termination of his employment.

The Applicant has resided in the United States for almost thirty years. His net worth in the United States is close to one million dollars. (Tr. p. 41.) He has no financial assets in the United Kingdom. When he has traveled to the United Kingdom in the past, he has always used his United States passport. (Tr. p. 44 - 45.)

As an example to convince the court that he can be trusted, the Applicant stated that in the 70's, he worked for two and a half years for the Israeli Defense Department and has never told anyone what he did on that job. (Tr. p. 43.)

A letter dated January 18, 2012, from the Applicant's superintendent whom he reports to on a daily basis indicates that the Applicant's work performance is flawless, highly specialized and valuable to the company. (Applicant's Exhibit B.)

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern, which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Preference

9. *The Concern.* 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.

Condition that could raise a security concern:

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.

Condition that could mitigate security concerns:

11(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct and surrounding circumstances;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which the participation was voluntary;
- f. The presence or absence of rehabilitation and other permanent behavioral changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct, which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence, which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guidelines C (Foreign Preference) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's conduct and his

ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the situation has been resolved and that the Applicant presently qualifies for a security clearance.

An individual who has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSION

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

Under Foreign Preference, Disqualifying Condition 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 applies.* However, Mitigating Conditions 11(b) *the individual has expressed a willingness to renounce dual citizenship,* and 11(e) *the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated* also applies.

The evidence shows that the Applicant exercised dual citizenship after becoming a citizen of the United States by possessing a valid passport from the United Kingdom. When he learned of the Government's concern, he turned over his foreign passport to his corporate office that will be returned to him only upon termination of his employment. He credibly testified that he would never jeopardize the national security of the United States under any circumstances. The Applicant has lived in the United States for almost thirty years. He is married and has two adult children. His net worth in the United States is about one million dollars. He has no financial assets in the United Kingdom at this time. When he does inherit his parent's house its value is far less than his assets in the United States. He has demonstrated that there is no situation that could potentially cause the Applicant to become subject to foreign exploitation, inducement, manipulation, pressure, or coercion against the interests of the United States. Therefore, there is no possibility of foreign influence that exists that could create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is not vulnerable to foreign preference. Accordingly, I find for the Applicant under Guideline C (Foreign Preference).

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. The Applicant is a 57 year old Machinist/Programmer who has lived the American Dream. He is an immigrant from another country who has made the United States his own. Under the particular facts of

this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole-person assessment of good judgment, trustworthiness, reliability, candor, a willingness to comply with rules and regulations, and/or other characteristics indicating that the person may properly safeguard classified information.

This Applicant has demonstrated that he is sufficiently trustworthy, and that he clearly meets the eligibility requirements for access to classified information. Accordingly, I find for the Applicant under Guideline C (Foreign Preference).

On balance, it is concluded that the Applicant has overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the SOR.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.
Subpara. 1.a.: For the Applicant
Subpara. 1.b.: For the Applicant
Subpara. 1.c.: For the Applicant
Subpara. 1.d.: For the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge

