



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



In the matter of: )  
)  
) ISCR Case No. 10-07725  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

09/28/2012  
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**Remand Decision**  
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RIVERA, Juan J., Administrative Judge:

Applicant, a U.S.-born citizen, requested her Mexican citizenship and passport at age 22. She was made aware that her actions indicate a preference for a foreign country over the United States. She initially was unwilling to surrender her passport (valid until 2015), or to renounce her foreign citizenship, because she wanted to work and live in Mexico along with her Mexican family members and friends. In May 2012, she stated her willingness to renounce her foreign citizenship and to surrender her foreign passport. She failed to provide evidence that she is no longer in possession of a foreign passport. Clearance is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on March 5, 2010. On October 26, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) listing security concerns under Guideline C

(Foreign Preference).<sup>1</sup> Applicant answered the SOR on March 6, 2012, and elected to have her case decided on the written record in lieu of a hearing.

A copy of the file of relevant material (FORM), dated April 19, 2012, was provided to her by transmittal letter dated April 19, 2012. Applicant acknowledged she received the FORM on April 30, 2012. She was allowed 30 days to submit any objections to the FORM and to provide material in extenuation and mitigation. The case was assigned to me on June 21, 2012.

On June 26, 2012, I denied Applicant's request for a security clearance. Applicant appealed and alleged that she submitted a document in response to the FORM that was not considered by me before my decision was issued. On August 17, 2012, the Appeal Board remanded the case to allow for an equitable resolution of this case by granting Applicant the opportunity to present the omitted document.

On August 21, 2012, Applicant emailed the missing document (a one-page statement, dated May 14, 2012, marked Appellate Exhibit 1).<sup>2</sup> Applicant's May 14, 2012 letter was fully considered by me before writing this decision.

### **Findings of Fact**

Applicant admitted all the factual allegations in the SOR. Her admissions are incorporated as findings of fact. After a thorough review of the evidence of record, including her SCA, her answers to the SOR, her April 2010 statement to a government investigator, and her May 14, 2012 written statement, I make the following additional findings of fact.

Applicant is a 24-year-old employee of a defense contractor. She has never been married, and she has no children. Applicant's mother was born in Mexico, and she is a registered alien living in the United States. Applicant's father is a U.S. citizen. Applicant was born and raised in the United States. She graduated from a U.S. high school in June 2005, and was awarded a bachelor's degree from a U.S. university in August 2009. Applicant started working for her current employer, a government contractor, in February 2010. She is an accounting technician.

In her March 2010 SCA, Applicant disclosed that she travelled to Mexico in 2006, 2007 (twice), 2008, and 2009 (twice). The first six times she used her U.S. passport to travel to Mexico. She visited family members and friends who are citizens and residents

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<sup>1</sup> DOHA acted 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* (Directive) (January 2, 1992), as amended; and the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

<sup>2</sup> Appellate Exhibit (App.E.) 1 also includes a one-page Order, dated August 21, 2012; and a two page sequence of emails between me, Department Counsel, and Applicant.

of Mexico, and toured the country. From July 2009 to January 2010, she worked in Mexico as an intern in the fashion industry. Applicant has close personal contact with nine relatives (her grandmother, an uncle, aunt, four cousins, and her godparents) who are citizens and residents of Mexico. She also has a close relationship with her boyfriend, a citizen and resident of Mexico.

On an unspecified date, Applicant applied for Mexican citizenship. In May 2009, she visited the Mexican embassy in the United States, and she was granted her Mexican citizenship. She also was issued a Mexican passport that will expire in June 2015. Applicant used her Mexican passport to travel to Mexico and live there from July 2009 until January 2010.

In April 2010, Applicant was interviewed by a government investigator about her request for Mexican citizenship, and her possession of a valid Mexican passport. Applicant explained that she was born and raised in the United States, and that her loyalty and allegiance is to the United States. She requested the Mexican passport to travel to Mexico to visit with her relatives. She also has a boyfriend who is a student in a Mexican university. She became a Mexican citizen to be able to work and live in Mexico along with her Mexican family members.

The government investigator explained to Applicant the security-related concerns raised by her having dual citizenship with the United States and Mexico, and possessing a Mexican passport. Applicant was asked whether she would be willing to renounce her Mexican citizenship and to surrender her Mexican passport. Applicant stated that she would not renounce her Mexican citizenship or surrender her Mexican passport even if she was asked to do so.

In her May 2012 answer to the FORM, Applicant explained that she solicited her Mexican citizenship and passport for convenience and as a matter of expediency. At the time, she wanted to work and establish herself as a fashion designer in Mexico. To work in Mexico, she either needed to go through a lengthy process to obtain legal residence, or bypass the lengthy process by obtaining her Mexican citizenship and passport.

After six months in Mexico, Applicant realized that her fashion design career was not viable. She returned permanently to the United States, and only travels to Mexico occasionally to visit relatives and friends. Applicant stated: "Because I hold allegiance only to the United States, I have decided to renounce Mexican citizenship and permanently surrender my Mexican passport." Applicant considers herself to be a loyal U.S. citizen, and would like the opportunity to work in support of the federal government. She provided no documentary evidence to show that she renounced her Mexican citizenship and surrendered her passport, or when she intends to do so.

## Policies

Eligibility for access to classified information may be granted “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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter 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 those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## Analysis

### Foreign Preference

AG ¶ 9 explains the security concern about foreign preference stating:

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.

AG ¶ 10 indicates four conditions that could raise a security concern and may be disqualifying in this case:

(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;

(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.

Foreign preference disqualifying conditions AG ¶¶ 10(a) and (b) are supported by the evidence. If these conditions are not mitigated they would disqualify Applicant from possessing a security clearance.

AG ¶ 11 provides six conditions that could mitigate the security concerns for foreign preference:

- (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- (b) the individual has expressed a willingness to renounce dual citizenship;
- (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;
- (d) use of a foreign passport is approved by the cognizant security authority;
- (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and
- (f) the vote in a foreign election was encouraged by the United States Government.

None of the foreign preference mitigating conditions fully apply. Applicant, a U.S. citizen with a valid U.S. passport, was 22 years old when she acquired her Mexican citizenship and passport. Her Mexican passport is valid until June 2015. Applicant initially stated that she did not want to renounce her Mexican citizenship or to surrender her Mexican passport, because she wanted to work and live in Mexico along with her Mexican family members.

AG ¶ 11(b) applies partially, but does not fully mitigate the security concern. In May 2012, Applicant stated that she had decided to renounce her Mexican citizenship and permanently surrender her Mexican passport. However, Applicant presented no evidence to show that she is no longer in possession of a valid Mexican passport.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). Applicant is a 24-year-old accounting technician working with a defense contractor since February 2010. Her mother was born in Mexico, and she is a registered alien living in the United States. Applicant's father is a U.S. citizen. Applicant was born and raised in the United States. She graduated from a U.S. high school, and was awarded a bachelor's degree from a U.S. university in 2009.

Applicant was an adult when she requested her Mexican citizenship and passport. She was made aware that her actions may indicate her preference for a

foreign country over the United States. At that time, she indicated she was unwilling to surrender her passport or to renounce her foreign citizenship. In May 2012, she stated her willingness to renounce her foreign citizenship and to surrender her foreign passport. She failed to provide evidence that she is no longer in possession of a foreign passport. Considering her prior unwillingness to renounce her foreign citizenship, I gave her current willingness to do so less weight. She has failed to mitigate the foreign preference security concerns.

### **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.b:	Against Applicant

### **Conclusion**

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

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JUAN J. RIVERA  
Administrative Judge