



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



In the matter of:)	
)	
)	ISCR Case No. 11-00029
)	
Applicant for Security Clearance)	

Appearances

For Government: Philip Katauskas, Esquire, Department Counsel
For Applicant: *Pro se*

December 7, 2011

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline C, Foreign Preference and Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On July 1, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines C and F. 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) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on July 25, 2011, and requested a hearing before an administrative judge. The case was assigned to me on October 6, 2011. DOHA

issued a Notice of Hearing on October 27, 2011. I convened the hearing as scheduled on November 21, 2011. The Government offered Exhibits (GE) 1 through 5. Applicant did not object and they were admitted into evidence. Applicant testified and offered Exhibits (AE) A through I, which were admitted into evidence without objections. DOHA received the hearing transcript (Tr.) on November 29, 2011.

Findings of Fact

Applicant denied all of the allegations in the SOR, with explanations. I have incorporated her answer into my findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 61 years old. She has worked for her present employer, a federal contractor since June 2010. She married in 1974 and divorced in 1977. She remarried in 2007. She has a grown daughter who is 35 years old.¹

Applicant was born on the island of Tobago. In 1970, she came to the United States on a visitor's visa. It was later converted to a student visa, and then to permanent resident status. In 1978, she earned a bachelor's degree. She applied to be a naturalized citizen of the United States in 1987 and was granted citizenship in 1988. Applicant returned to Tobago periodically to visit her mother. Her mother passed away in 2007, and Applicant's trips there are less frequent. She has one brother who lives there and her other three siblings live in the United States. Her daughter was born in the United States and resides here.²

In 2006, while working for a university, Applicant learned that she could become a dual-citizen of the United States and Tobago. It required that she apply for reinstatement of her Tobagonian citizenship. She believed it might help her interact culturally with some of the Caribbean students studying in the United States. Applicant went to the Tobagonian Consulate and applied for reinstatement of her citizenship. She did not receive any official documentation verifying her citizenship to Tobago was reinstated. She considered herself a dual citizen of Tobago and the United States. Applicant did not apply for a passport from Tobago. She has exclusively used her U.S. passport when traveling to Tobago. When she entered Tobago, she would go through the visitor line at the immigration entry point. She did not receive any benefits from Tobago when she requested her citizenship status be reinstated. Applicant learned later that dual citizenship status may have other implications that she was previously unaware of. She credibly stated she is willing to and intends to renounce her citizenship status with Tobago. She intends to go to the Tobago embassy and formally renounce it.³

¹ Tr. 44-46.

² Tr. 46-52, 56-57, 62-63.

³ Tr. 26-34, 52-66.

Applicant had been gainfully employed and paying her bills until June 2009, when she lost her job due to downsizing. She then began receiving unemployment benefits and was working part-time as a consultant, but she was concerned that she would have difficulty making her monthly mortgage payments. She was unemployed until June 2010. She contacted her mortgage loan company and requested her loan be modified. The mortgage loan company agreed to forbearance for part of the monthly payment. She had been paying approximately \$3,300 a month. The loan company agreed to modify the amount to \$1,800 a month and the remaining \$1,500 would be held as a debt until the final loan modification was completed. The debt in SOR ¶ 2.a (\$58,369) reflects the cumulative amount that she did not pay as part of the forbearance. Applicant and the mortgage loan company then worked to complete a final modification of the loan, which was accomplished in September 2011. The \$58,369 that was owed was rolled into the new modified loan and a new payment agreement. Applicant now pays \$1,900 a month. The interest rate was lowered and the length of the loan extended. All past due and delinquent amounts are included in the modified loan and Applicant is current in her monthly payments.⁴

Applicant has no other delinquent or past due debts. She lives within her means. She files and pays her taxes on time. Since she began work, she is able to pay all of her bills. Her husband is employed and her daughter is self-sufficient.⁵

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

⁴ Tr. 24-26, 34-44; AE D, E, F, G, H.

⁵ Tr. 66-70.

on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 and has the ultimate burden of persuasion 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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

AG ¶ 9 expresses the security concern involving foreign preference:

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 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

(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; (6) seeking or holding political office in a foreign country; (7) voting in a foreign election; and

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

In 1988, Applicant became a naturalized U.S. citizen. In 2006, Applicant applied for reinstatement of her Tobagonian citizenship. I find the above disqualifying conditions apply.

I have considered all of the mitigating conditions and the following under AG ¶ 11 are potentially applicable:

(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;

(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.

Applicant's dual citizenship is not based solely on her parents' citizenship or birth in Tobago. In 2006, after she was a naturalized U.S. citizen, she applied for reinstatement of her Tobagonian citizenship. I find AG ¶¶ 11(a) and 11(c) do not apply. Applicant is willing and intends to renounce her dual citizenship with Tobago. She never obtained a Tobagonian passport and always traveled on her U.S. passport. She did not receive any benefits from Tobago when her citizenship was reinstated. I find AG ¶¶ 11(b) applies. I find AG ¶¶ 11(e) and 11(f) do not apply because Applicant never obtained a Tobagonian passport, and she did not vote in a Tobagonian election since becoming a U.S. citizen.

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19 and especially considered:

(a) inability or unwillingness to satisfy debts.

Applicant had a delinquent debt that was associated with her mortgage and a portion of it was not paid timely. I find there is sufficient evidence to raise the above disqualifying condition.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant lost her job and was concerned about her mortgage payments. She contacted her mortgage company and they agreed to modify her loan. They modified her monthly payment and the difference between her original payment and the new payment was rolled into a new modified mortgage amount. Applicant was proactive regarding her mortgage to ensure she did not default on it. The delinquent amount alleged in the SOR is included in the modified mortgage and is not delinquent. I find AG ¶ 20(a) applies because there was only one debt and Applicant was proactive in ensuring it was paid through a modification. This situation is unlikely to recur and does not cast doubt on her current reliability, trustworthiness, and good judgment. I find AG ¶ 20(b) applies because the conditions that resulted in the forbearance and modification were largely beyond Applicant's control because she lost her job. She acted responsibly under the circumstances by contacting the loan company before her mortgage became delinquent and worked out a plan for modification. Applicant is paying the modified loan and the \$58,369 is included in it. Applicant's actions constitute a good-faith effort to ensure her creditor was paid. The problem is resolved and under control. I find AG ¶¶ 20 (c) and 20 (d) apply.

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 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 applied for reinstatement of her Tobagonian citizenship in 2006. She believed it might be helpful when interacting with Caribbean students. She never applied for a passport and never received any benefits. She was unaware of the potential impact the dual citizenship would have on her security clearance application. She is willing and intends to renounce her dual citizenship status with Tobago. Applicant was unemployed for a year. During that time she was concerned about paying the monthly mortgage payments on her house. Before she defaulted on any payments she contacted her mortgage loan company and modified the loan. Her loan was modified and the amount that was part of the forbearance was included in the new loan. She is current with her payments. I find Applicant has met her burden of persuasion and her finances are not a security concern. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the Foreign Preference and Financial Considerations guidelines.

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
Subparagraph 1.a:	For Applicant

Paragraph 2, Guideline F:

FOR APPLICANT

Subparagraph 2.a:

For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge