



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 11-00334
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel
For Applicant: *Pro se*

01/29/2013

Decision

MALONE, Matthew E., Administrative Judge:

Applicant, a U.S. citizen, mitigated the security concerns about her exercise of Dutch citizenship she acquired when she married a Dutch citizen. Clearance is granted.

Statement of the Case

On July 1, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for her work as a contractor for the Department of Defense (DOD). Based on the results of the ensuing background investigation, DOD adjudicators issued Applicant interrogatories to clarify or augment information obtained by investigators.¹ After reviewing her answers to interrogatories along with the results of the background investigation, adjudicators were

¹ Authorized by DoD Directive 5220.6 (Directive), Section E3.1.2.2.

unable to find that it is clearly consistent with the national interest for Applicant to have access to classified information.² On July 3, 2012, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guidelines³ under Guideline C (foreign preference).

On July 26, 2012, Applicant responded to the SOR (Answer) and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on October 12, 2012, and I convened a hearing on November 15, 2012. DOHA received the hearing transcript (Tr.) on November 27, 2012.

Department Counsel presented Government Exhibits (Gx.) 1 - 5, which were admitted without objection. Applicant and one witness testified, and Applicant presented 11 exhibits admitted without objection as Applicant's Exhibits (Ax.) A - K. (Tr. 36 - 55) Also, I left the record open to receive from Applicant additional relevant information. (Tr. 106 - 107) The record closed on December 7, 2012, when I received Applicant's timely post-hearing submission. It has been admitted without objection as Ax. L. Department Counsel's memorandum forwarding Ax. L is included as Hearing Exhibit (Hx.) I.

Findings of Fact⁴

Under Guideline C, the Government alleged that Applicant's husband is a citizen of the Netherlands residing in the United States (SOR 1.a); that Applicant is a dual citizen of the United States and the Netherlands (SOR 1.b); that as of the date the SOR was issued, Applicant had not surrendered her Dutch passport (SOR 1.c); that Applicant obtains healthcare coverage or medical benefits through her Dutch citizenship (SOR 1.d); that Applicant has bank accounts and financial interest in the Netherlands, including "putative survivor benefits" from her husband's foreign military retirement pension (SOR 1.e); and that, since 2006, Applicant and her husband have owned property in the Netherlands (SOR 1.f).

Applicant denied the allegations at SOR 1.a, 1.c, and 1.d. She admitted SOR 1.b and 1.f. She admitted, in part, and denied, in part, SOR 1.e. Applicant provided explanations with all of her responsive pleadings. (Answer). Applicant's admissions are incorporated in my findings of fact. Having reviewed the pleadings, transcript, and exhibits, I make the following additional findings of fact.

² Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

³ The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

⁴ I have avoided going into detail about certain aspects of Applicant's background to ensure that personally identifiable information (PII) is not disclosed.

Applicant is a 65-year-old naturalized U.S. citizen. She was born in Germany and immigrated to the United States with her family when she was three years old. She and her family became U.S. citizens on the same day in 1950. Applicant's U.S. education includes elementary school, high school, college, a master's degree in sociology, and a law degree. (Answer; Gx. 1; Tr. 59)

Applicant's marriage to a U.S. citizen in 1972 ended by divorce in 1998. They had no children. She married her current husband in 1999. He is a 60-year-old native of the Netherlands who retired as an officer in the Royal Dutch Air Force in 2006 after more than 20 years of service. Applicant's husband was naturalized as a U.S. citizen in 2010. (Answer; Gx. 1; Ax. E; Tr. 61)

Applicant worked for the United Nations (UN) from 1995 until 2006. Her duties were performed largely overseas in areas where the U.N. had established peacekeeping force operations and long-term diplomatic efforts. She has worked with several foreign governments in their efforts to establish judicial organizations patterned after western democratic principles. Applicant's work in this regard, and in other academic and private consulting jobs, has been uniformly praised by senior U.N. and U.S. officials. (Gx. 1; Gx. 3; Ax. J; Ax. K; Tr. 34, 47 - 54, 60 - 61)

Applicant met her current husband while she was working in the Netherlands. They lived together in the Netherlands from 1997 until 2006, when they both moved to the U.S. and Applicant sponsored her husband's application for U.S. citizenship. When Applicant first moved to the Netherlands, she was required to register with that country's immigration ministry. In 2002, after satisfying a five-year residency requirement, and because of her marriage to a Dutch citizen, Applicant was offered Dutch citizenship. She accepted it only after being assured by the U.S. Department of State that doing so would not adversely affect her U.S. citizenship. (Answer; Gx. 1; Gx. 3; Gx. 4; Tr. 30, 105)

In 2002, Applicant also obtained a Dutch passport, which she found useful as she traveled throughout Europe for her work. Use of a European Union (EU) country passport allowed Applicant to travel throughout the EU and in some former Soviet countries who are signatories to the 1985 Shengen Agreement more easily than on a U.S. passport. Applicant renewed her Dutch passport in 2010. It is valid until 2015; however, she has never used it. In April, 2012, she relinquished her Dutch passport to a facility security officer (FSO) for the defense contractor sponsoring her request for a security clearance. (Answer; Gx. 1; Gx. 3; Gx. 4; Ax. C; Tr. 30 - 31, 69 - 73)

Applicant has maintained a permanent residence in the U.S. all her life. When she left her U.N. job and moved back to the United States with her husband, they moved into a house she had built in 1995. In 2009, she bought a smaller residence, also in the U.S., as their permanent residence. Since 2006, Applicant and her husband have run a small consulting business that has worked on numerous contracts in support of foreign and domestic military and diplomatic initiatives. Applicant's present request for a

security clearance is made pursuant to similar consulting opportunities with at least two U.S. defense contractors. (Answer; Gx. 1; Ax. A; Ax. K; Ax. L; Tr. 92 - 95)

Applicant's husband is divorced from a previous marriage, which produced two children, now adults. As a military retiree, he is receiving 70 percent of his total retirement and will receive full retirement benefits at age 65. However, his ex-wife receives 40 percent of any military retirement benefits to which he is or will be entitled. If Applicant's husband dies first, Applicant will be entitled to a survivor's share of his retirement not already assigned to his ex-wife. (Answer; Gx. 1; Gx. 3; Gx. 4; Tr. 61 - 62, 88)

Applicant and her husband jointly own a home they purchased in the Netherlands in 2006. They lived there briefly, and it was occupied from 2006 until May 2012 by one of his children while training to be a merchant marine officer. The home was purchased for about \$400,000, with a balance owed on the mortgage of about \$275,000. She also is a joint holder of a Dutch bank account her husband maintains there to receive his military retirement, pay alimony to his ex-wife, and to pay miscellaneous bills associated with their house in the Netherlands. The average balance of the account is usually less than \$10,000. Dutch citizenship is not a prerequisite of Applicant's joint ownership of real property or bank assets in the Netherlands. Nor is it required for her to receive military retirement survivor benefits if her husband predeceases her. (Answer; Gx. 1; Gx. 2; Gx. 3; Gx. 4; Gx. 5; Ax. D; Ax. G. Ax. H; Ax. I; Tr. 34 - 41, 84 - 85)

Aside from the house and bank accounts in the Netherlands, all of Applicant's financial assets (e.g., bank accounts, real estate, retirement savings, etc.) are in the United States. She estimates the current net worth of her U.S. assets and liabilities is about \$1,005,090. Applicant and her husband executed a pre-nuptial agreement that keeps her assets separate from her husband. (Answer; Gx. 1; Gx. 3; Gx. 4; Gx. 5; Tr. 32, 39, 64 - 66, 80)

In 2003, during a routine medical examination in the United States, Applicant was diagnosed with cancer. She was treated at U.S. medical facilities using domestic medical benefits provided as part of her employment by the UN. Her ongoing treatment requires her to take medications that are very expensive if not at least partially covered by a medical benefit plan. After leaving the UN and permanently relocating to the United States in 2006, Applicant found that medical care for someone with her pre-existing conditions was prohibitively expensive. She and her husband used medical benefits available to her as a Dutch citizen to reduce costs until she turned 65 in 2012. Since then, she has obtained health care in the United States through Medicare and other medical benefits available to those 65 and older. (Answer; Gx. 2; Gx. 3; Ax. B; Tr. 32 - 34, 74 - 77, 89 - 90)

In 2010, during Applicant's background investigation, Appellant was asked if she would be willing to relinquish her Dutch passport. At the time, she was reluctant to do so because she mistakenly thought she needed it to show her entitlement to Dutch medical benefits. As already discussed, she has relinquished her Dutch passport. She is also

willing to renounce her Dutch citizenship. (Answer; Gx. 2; Gx. 3; Gx. 5; Ax. C; Tr. 71 - 74, 96)

Applicant and her husband intend to remain in the United States to work and retire. Applicant has been able to re-connect with her siblings, all of whom are older than Applicant and live in the United States. One is disabled and Applicant wishes to be of more assistance, which requires her continued presence in this country. Applicant has never voted in any foreign election. She has never held office in a foreign country, served in a foreign military, or been employed by a foreign government. (Answer; Gx. 3; Gx. 4; Gx. 5; Tr. 62 - 63, 97 - 98)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole person” concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁶ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case.

⁵ See Directive. 6.3.

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁷

A person who has access to classified information enters 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 one who will protect the national interests as his or her 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.⁸

Analysis

Foreign Preference

Available information supports the factual allegations at SOR 1.b, 1.c, and 1.d. In 2002, Applicant obtained Dutch citizenship and received a Dutch passport despite being a U.S. citizen and having a U.S. passport at the time. From 2006 until 2012, she received medical benefits from the Netherlands despite having moved back to the United States.

Available information also supports the factual allegations at SOR 1.a, 1.e, and 1.f. As to SOR 1.a, Applicant admitted that her husband is a citizen of the Netherlands; however, this fact is not addressed by any of the Guideline C disqualifying conditions. As to SOR 1.e and 1.f, Applicant and her husband have financial interests and own real estate in the Netherlands. However, it was not established that Applicant is using her foreign citizenship to protect those interests. It was also established that having bank accounts or owning real estate in the Netherlands is not predicated on having Dutch citizenship. Also, as to SOR 1.e, Applicant is not required to be a Dutch citizen to receive survivor benefits from her husband’s military retirement. More important, however, that part of SOR 1.e addresses a future interest that may or may not occur. It is speculative, at best, of whether Applicant’s husband, who is five years younger, will predecease Applicant. Thus, her husband’s foreign retirement pay cannot be raised as a potentially disqualifying foreign financial interest. While they are facts relevant to an overall assessment of her suitability for clearance, the allegations at SOR 1.a, 1.e, and 1.f are resolved for the Applicant as not disqualifying under this guideline.

Nonetheless, the facts established under SOR 1.b, 1.c, and 1.d are sufficient to raise a security concern about foreign preference. That concern is expressed at AG ¶ 9, as follows:

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; AG ¶ 2(b).

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.

More specifically, available information requires application of the following AG ¶ 10 disqualifying conditions:

(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;

(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; and

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

Applicant's decision to stay in the Netherlands for at least five years, starting in 1997, met the requirements for citizenship there. She also obtained a Dutch passport in 2002, which she renewed in 2010. After she moved back to the United States in 2006, she no longer had the medical insurance she received from her UN employment. She decided to use her Dutch citizenship to obtain that country's medical benefits to help defray the high cost of her medical needs for her pre-existing conditions. Applicant initially thought she needed her Dutch passport as proof of her eligibility for medical benefits. Thus, her retention of her foreign passport until 2012 constituted use of foreign citizenship to protect a financial interest, albeit a modest one, in that country.

In response, Applicant established that she has relinquished her Dutch passport, and that she is willing to relinquish her Dutch citizenship. She also no longer needs, and is not likely to use, her foreign medical benefits because she now qualifies for U.S. Medicare benefits. This information supports application of the following AG ¶ 11 mitigating conditions:

(b) the individual has expressed a willingness to renounce dual citizenship;
and

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

Applicant no longer needs her Dutch passport, and she and her husband are not likely to leave the United States now that they have established a permanent residence and business interests here. All of Applicant's financial and personal interests are in the United States. Her co-ownership of real estate and bank assets in the Netherlands is not predicated on her foreign citizenship and is a small fraction of her overall net worth. In summary, there is no indication that Applicant prefers the interests of the Netherlands over those of the United States, or that she will again exercise her foreign citizenship in preference to her U.S. citizenship. The security concerns about foreign preference are mitigated.

Whole-Person Concept

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guideline C. I have also reviewed the record in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is a mature, responsible adult who has a superlative record of accomplishments in international affairs and related consulting work. Despite developing ties and interests abroad, she has always maintained more significant financial and personal interests in the United States. Available information leaves little doubt that she will not exercise her status as a foreign citizen in preference to her U.S. citizenship. A fair and commonsense assessment of this record shows that Applicant has satisfied the doubts about her clearance suitability.

Formal Findings

Formal findings 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
Subparagraphs 1.a - 1.f:	For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge