



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



In the matter of:)	
)	
)	ISCR Case No. 11-00749
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

November 30, 2011

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing, (e-QIP), on June 3, 2010. On July 8, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline C, Foreign Preference, 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) effective within the Department of Defense for SORs issued after September 1, 2006.

On July 27, 2011, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 17, 2011. The case was assigned to another administrative judge on August 26, 2011. The case was transferred to me on October 25, 2011. On October 25, 2011, a Notice of Hearing was issued scheduling the hearing for November 15, 2011. The hearing was held on that date. The Government offered Government Exhibits (Gov) 1 - 4, which were admitted without objection. The Government requested that administrative notice be taken of Gov 3 and 4. The documents were noted as administrative notice documents rather than exhibits. Applicant testified and submitted nine exhibits which

were admitted as Applicant Exhibits (AE) A - I without objection. DOHA received the transcript (Tr.) of hearing on November 23, 2011. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Administrative Notice

Canada

Canada is a constitutional monarchy with a federal system, a parliamentary government, and a democratic tradition dating from the late 18th century. The relationship between the United States and Canada is among the closest and most extensive in the world. It is reflected in the volume of bilateral trade – the equivalent of \$1.6 billion a day in goods – as well as in people to people contact. About 300,000 people cross the border every day. (Gov 3)

U.S. defense arrangements with Canada are more extensive than any other country. The Permanent Joint Board on Defense, established in 1940, provides policy-level consultation on bilateral defense matters and the United States and Canada share North Atlantic Treaty Organization (NATO) mutual security commitments. In addition, U.S. and Canadian forces have cooperated since 1958 on continental air defense within the framework of the North American Aerospace Defense Command (NORAD). The military response to the September 11, 2001 terrorist attacks in the United States both tested and strengthened military cooperation between the United States and Canada. (Gov 3)

United Kingdom

The United Kingdom is a constitutional monarchy. The United Kingdom is a founding member of NATO. The United Kingdom is one of the United States' closest allies, and British foreign policy emphasizes close coordination with the United States. Bilateral cooperation reflects the common language, ideals, and democratic practices of the two nations. Relations were strengthened by the United Kingdom's alliance with the United States during both World Wars, in the Korean conflict, in the Persian Gulf War, in Operation Iraqi Freedom, and in Afghanistan, as well as its role as a founding member of NATO. The United Kingdom and the United States continually consult on foreign policy issues and global problems and share major foreign and security policy objectives. (Gov 4)

Findings of Fact

In her Answer to the SOR, Applicant admits all the SOR allegations.

Applicant is a 35-year-old export trade officer employed with a Department of Defense contractor. She has worked for the same employer since October 2006. She

has a bachelor's degree in Business Administration. This is her first time applying for a security clearance. She is single and has no children. (Tr. 11-12, 27, 37; Gov 1)

Applicant was born and raised in Canada. She is also a citizen of the United Kingdom based on the fact that her mother was born in the United Kingdom and is a citizen of the United Kingdom. She and her mother immigrated to the United States in 1993 when she was 16. She attended high school and college in the United States. She became a U.S. citizen in September 2008. She was issued a U.S. passport on November 19, 2008. Applicant disclosed that she held valid Canadian and United Kingdom passports in response to section 20B on her e-QIP application, dated June 3, 2010. Her Canadian passport was issued on July 31, 2007, and has an expiration date of July 31, 2012. Her United Kingdom passport was issued on November 17, 2004 and has an expiration date of November 17, 2014. (Tr. 11, 27-28, 31; Gov 1; Gov 2; AE I)

In response to interrogatories, dated April 28, 2011, Applicant indicated that she has several relatives in the United Kingdom and that she may one day wish to retire there. In a letter dated October 27, 2010, Applicant sent a letter to the Defense Industrial Security Clearance Office (DISCO) in response to the denial of her interim security clearance. She indicated that she did not understand why DISCO was asking her to destroy her Canadian and United Kingdom passports. She did not want to do this because each passport is the property of the respective governments and she was concerned that she would break the law by destroying the passport. She also did not understand the need to destroy the Canadian passport since Canada was a strong ally and immediate neighbor of the United States. (Gov 2)

During the hearing, Applicant explained that she was unaware and confused regarding the policy prohibiting a person from holding a valid foreign passport while being granted access to classified information. Once she became informed on the policy, she was willing to surrender her foreign passports. On November 14, 2011, she surrendered her Canadian and United Kingdom passports to her Facility Security Officer (FSO). The FSO provided a letter verifying that Applicant surrendered her Canadian and United Kingdom passports to her office. (Tr. 13, 34-35; AE A)

Applicant considers herself an American. While she has relatives in both Canada and the United Kingdom, she has no allegiance to either country. She has never voted in either country. She owns no property in either country. She has no financial accounts in either country. She loves living in the United States. (Tr. 29, 33, 36)

After becoming a U.S. citizen in 2008, Applicant has not traveled using the Canadian or United Kingdom passports. In September 2011, she traveled to Ireland using her U.S. passport. She does not intend to move back to Canada or to retire in Canada. She has no plans to move to the United Kingdom. While, she has considered retiring in the United Kingdom, she changed her mind because of the high cost of living in the United Kingdom. (Tr. 27, 30-32; AE I)

Applicant understands the importance of safekeeping national secrets. She considers herself to be honest, reliable, and law abiding. (Tr. 26) In 2007, she received her company's President's Award for outstanding performance and customer satisfaction. On January 21, 2010, she received her green belt certification from her company's Value Based Six Sigma program. (AE G; AE H)

Applicant's immediate supervisor states that Applicant is a valued asset within her team. She has brilliant leadership skills. They would like to involve Applicant in more complicated defense programs. Applicant has been instrumental in setting and leading various programs and executes her job responsibilities with commitment, honesty, and flair. She highly recommends her for a security clearance. (AE B) Other employees also attest to Applicant's honesty, integrity, and dependability. (AE C – AE F)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be used when 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant 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

The security concern relating to the guideline for Foreign Preference is set out in AG ¶9:

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.

The guideline notes several disqualifying conditions that could raise security concerns. In Applicant’s case, AG ¶10(a)(1) (*exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport*) applies. Applicant possessed a valid Canadian and a valid United Kingdom passport.

The guideline also includes examples of conditions that could mitigate security concerns arising from Foreign Preference. The following Foreign Preference Mitigating Conditions apply to Applicant’s case:

AG ¶ 11(a) (*dual citizenship is based solely on parents’ citizenship or birth in a foreign country*); and

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

Applicant mitigated the Foreign Preference concerns. She was born in Canada and gained citizenship by virtue of her birth in that country. Her United Kingdom citizenship was acquired from her mother who is a citizen of the United Kingdom. Once she learned of the security significance of possessing valid foreign passports, she surrendered both passports to her FSO. She never traveled on either passport after becoming a U.S. citizen in 2008. Applicant mitigated concerns under Guideline C.

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. I considered that Applicant is well respected at her place of employment. I found her to be sincere, conscientious, and trustworthy during the hearing. She surrendered her Canadian and United Kingdom passports to her FSO. I considered that Applicant has lived in the U.S. since she was 16 years old. She attended high school and college in the United States. She did not use either her Canadian or United Kingdom passports after becoming a U.S. citizen. She does not vote in either country, owns no foreign property, and has no foreign bank accounts. While she has relatives in Canada and the United Kingdom, the majority of her ties are in the United States where she has lived for the past 18 years. Canada and the United Kingdom are close allies of the United States. Overall, the record evidence leaves no questions or doubts about Applicant's eligibility and suitability for a security clearance. Foreign preference security concerns are mitigated.

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
Subparagraph 1.b:	For Applicant

Conclusion

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

ERIN C. HOGAN
Administrative Judge