



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



In the matter of:)
)
) ISCR Case No. 11-05267
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

January 24, 2012

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the record, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline C, Foreign Preference. His eligibility for a security clearance is denied.

Statement of Case

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) on November 12, 2010. On July 28, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline C, Foreign Preference. DOHA acted 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 August 18, 2011, Applicant answered the SOR in writing and requested that his case be determined on the record in lieu of a hearing. The Government compiled its

File of Relevant Material (FORM) on September 6, 2011. The FORM contained documents identified as Items 1 through 6. On September 7, 2011, the Government mailed the FORM to Applicant with instructions to submit any additional information or objections within 30 days of receipt. Applicant received the FORM on September 16, 2011. His response was due on October 16, 2011. He did not submit any information or raise any objections within the required time period. On November 29, 2011, the case was assigned to me for a decision.

Findings of Fact

The SOR contains one allegation that raises a security concern under Guideline C, Foreign Preference (SOR ¶ 1.a.). In his Answer to the SOR, Applicant admitted the Guideline C allegation. His admission is admitted as a finding of fact.

Applicant is 69 years old, never married, and has been employed as a merchant seaman since 1969. In his current position with a government contractor, he works as a deck officer and has applied for a security clearance. (Item 5.)

Applicant served in the U.S. military from 1964 to 1966. He was honorably discharged at the end of his military service. In 2000, he earned an associate's degree. Applicant thinks he may have been awarded a security clearance during his military service. (Item 5.)

Applicant, a U.S. citizen, is one of six children born in the United States to U.S. citizens of Irish descent. Two of Applicant's siblings, a brother (now deceased) and his only sister acquired dual citizenship with Ireland. (Item 5.)

Between 2001 and 2005, Applicant contemplated also applying for dual citizenship with Ireland. He was eligible for Irish citizenship as the grandchild of an Irish citizen. In January 2005, Applicant acquired Irish citizenship, and in December 2005, he acquired an Irish passport, valid until December 2015.¹ Applicant stated that he acquired Irish citizenship to increase his connection with the land of his ancestors. (Item 5; Item 6.)

Applicant listed his dual citizenship with Ireland on his e-QIP. DOHA sent Applicant an interrogatory requesting that he provide evidence that he had "destroyed, surrendered to the cognizant security authority, or otherwise invalidated your Ireland passport," and referenced DoD Directive 5220.6, Enclosure 2, Guideline C, Foreign Preference. On June 15, as a part of his response to the interrogatory, Applicant provided a photocopy of all the pages in his Irish passport, which showed that he had not used the document for travel. (Item 6.)

¹ The record does not specify but the facts support a conclusion that Applicant and his siblings acquired dual citizenship with the Republic of Ireland.

Additionally, as a part of the interrogatory, DOHA sent Applicant the following information:

Destruction of your foreign passport must be witnessed by the Facility Security Officer (FSO) of your employer and a destruction record must be notarized by the FSO and submitted to DOHA with your response to this interrogatory.

If you surrender your foreign passport to your Facility Security Officer, an acceptance document must be notarized by the FSO and forwarded to DOHA with your response to this interrogatory. The acceptance document must state that your employer accepts responsibility for the foreign passport and that your employer's records will be annotated with a requirement to notify DOHA immediately if the foreign passport is ever returned to you. Please remember that any security clearance issued to you by the Department of Defense may be adversely affected if the passport is returned to you.

(Item 6 at 3.)

DOHA then asked Applicant to describe actions that he had taken regarding his Irish passport. Applicant responded, "Nothing." Applicant's response to the interrogatory was dated June 15, 2011. (Item 6 at 3.)

In his answer to the SOR, dated August 18, 2011, Applicant affirmed his allegiance to the United States and stated that he had not destroyed his Irish passport. Applicant did not file a response to the FORM. There is no evidence that he has surrendered or destroyed his Irish passport. (Item 4.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant's eligibility for access to classified information "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.

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the revised adjudicative guidelines (AG). 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, the administrative judge applies these guidelines 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 in seeking 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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

Under AG ¶ 9, the security concern involving foreign preference arises "[w]hen an individual acts in such a way as to indicate a preference for a foreign country over

the United States.” Such an individual “may be prone to provide information or make decisions that are harmful to the interests of the United States.”

AG ¶ 10 describes several conditions that could raise a security concern and may be disqualifying. These disqualifying conditions are as follows:

(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; and,
- (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.

Applicant, a native-born U.S. citizen, claims dual citizenship with Ireland and possesses a valid Irish passport which will not expire until December 2015. Applicant's conduct raises a potentially disqualifying security concern under AG ¶10(a)(1).

Under AG ¶11(a), dual citizenship might be mitigated if “it is based solely on [an applicant's] parents' citizenship or birth in a foreign country.” Under AG ¶ 11(b), an individual's dual citizenship might be mitigated if he or she “has expressed a willingness to renounce dual citizenship.” Under AG ¶11(c), an individual's “exercise of the rights,

privileges, or obligations of foreign citizenship might be mitigated if it occurred before becoming a U.S. citizen or when the individual was a minor.” Under AG ¶11(d), an individual’s use of a foreign passport might be mitigated if it were “approved by the cognizant security authority.” Under AG ¶ 11(e), an individual’s use of a foreign passport might be mitigated if he or she presents credible evidence that “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.”

Applicant, a native-born U.S. citizen, born to parents who were also native-born U.S. citizens, actively sought Irish citizenship and an Irish passport as a mature adult of approximately 63 years. He has not indicated that he intends to renounce his Irish citizenship, which he acquired in order to feel closer to the land of his ancestors. There is no evidence in the record that Applicant’s use of his Irish passport was “approved by the cognizant security authority.” Moreover, Applicant failed to present credible evidence that his Irish passport has “been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.” Accordingly, I conclude that none of the Guideline C mitigating conditions applies to the facts of Applicant’s case.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of an applicant’s conduct and all relevant 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 is a mature adult who is proud of his Irish heritage. In order to feel closer to the land of his ancestors, Applicant acquired Irish citizenship and an Irish passport, which will not expire until December 2015. He has elected to retain his Irish passport. Applicant’s active preference for his Irish citizenship raises security concerns that are not mitigated by the record in this case.

Overall, the record evidence leaves me with questions and doubts at the present time about Applicant’s eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate security concerns under Guideline C, Foreign Preference.

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
Subparagraph 1.a.:	Against Applicant

Conclusion

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

Joan Caton Anthony
Administrative Judge