



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



In the matter of:)	
)	
)	ISCR Case No. 11-05287
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

06/26/2012

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) on August 9, 2010. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on November 7, 2011, detailing security concerns under Guideline C, foreign preference. 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 For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR on January 12, 2012, and he answered it on January 25, 2012. Applicant requested a hearing before an administrative judge. DOHA received the request, and Department Counsel was prepared to proceed on March 2, 2012. I received the case assignment on May 1, 2012. DOHA issued a Notice of Hearing on May 16, 2012, and I convened the hearing as scheduled on June 6, 2012. The Government offered exhibits marked as GE 1 through GE 3, which were received and admitted into evidence without objection. Applicant and one witness testified. He submitted exhibits marked as AE A through AE D, which were received and admitted into evidence without objection. The record closed on June 6, 2012. DOHA received the hearing transcript (Tr.) on June 14, 2012.

Procedural Rulings

Notice

Applicant received the hearing notice on May 31, 2012, less than 15 days before the hearing. (Tr. 8.) I advised Applicant of his right under ¶ E3.1.8 of the Directive to receive the notice 15 days before the hearing. Applicant affirmatively waived his right to the 15-day notice. (*Id.*)

Findings of Fact

In his Answer, Applicant admitted all the factual allegations of the SOR. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 35 years old, works as an engineering technician for a Department of Defense contractor. He began his current employment in March 2010. Applicant has never served in the military.¹

Applicant was born in Trinidad and Tobago, where he grew up. His father is a citizen of Trinidad and Tobago, and his mother is a citizen of the United States, living in Trinidad and Tobago. Applicant is a citizen of Trinidad and Tobago and the United States, by birth, as is his sister. His sister currently attends school in Australia.²

Applicant migrated to the United States in 2002, where he has lived and worked for the last 10 years. He is engaged to a United States citizen, and he attends college part-time.³

¹GE 1; Tr. 14-15.

²GE 1 - GE 2; AE A; AE D; Tr. 14.

³AE B; AE C; Tr. 15.

Applicant holds valid passports from the United States and Trinidad and Tobago. He used his Trinidad and Tobago passport to travel to Trinidad and Tobago in 2007 and in 2010. On his return trip, he used his United States passport. His Trinidad and Tobago passport expired in April 2012. He is currently in the process of renewing this passport.⁴

Applicant met with an Office of Personnel Management (OPM) investigator on September 14, 2010 and October 12, 2010 to discuss his contacts with Trinidad and Tobago. The OPM investigator noted in the first meeting that Applicant held a Trinidad and Tobago passport as well as dual citizenship with Trinidad and Tobago and the United States. Subsequent to this, in January 2011, Applicant's facility security officer (FSO) requested Applicant to surrender his Trinidad and Tobago passport, and he declined. In his July 5, 2011 answers to interrogatories, Applicant again declined to surrender or destroy his Trinidad and Tobago passport.⁵

At the hearing, Applicant acknowledged that his Trinidad and Tobago passport expired in April 2012 and that he was in the process of completing the paperwork to renew it. He stated that he did not intend to return, invalidate or destroy his Trinidad and Tobago passport because he believed that giving up the passport equated to the renunciation of his Trinidad and Tobago citizenship and his heritage. He further explained that he needed to retain his Trinidad and Tobago because of his parents' health. His parents are in their 60s and have health problems which may eventually require him to return to Trinidad and Tobago. His Trinidad and Tobago passport allows him to stay as long as his parents would need him, whereas a visitor's visa would require him to leave after three months. In addition, if he needed to stay for an indefinite period of time, his Trinidad and Tobago passport would allow him to work in Trinidad and Tobago.⁶

Applicant indicated that he can have a stamp placed on his U.S. passport which shows that he is a Trinidad and Tobago citizen. He also stated that if this stamp allowed him to work in Trinidad and Tobago, he would consider surrendering his Trinidad and Tobago passport to his FSO. He is not willing relinquish his Trinidad and Tobago passport and seek a Trinidad and Tobago equivalent of a green card for employment if he needed to remain in Trinidad and Tobago to care for his parents because it took his mother about eight years to get such a card in the 1970s. He was unaware of the possibility of getting his Trinidad and Tobago approved by a cognizant security authority.⁷

Applicant does not own any property in Trinidad and Tobago. He closed the one bank account he held in Trinidad and Tobago. He has not voted in elections or served

⁴GE 3; Tr. 19-20, 26-27.

⁵GE 2, GE 3.

⁶Tr. 17-23, 26-28.

⁷Tr. 20-25.

in the military. He does not receive any benefits from the Government of Trinidad and Tobago.

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 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, 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. . . ." An applicant has the ultimate burden of persuasion for obtaining 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 an 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, 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:

(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 has held an active Trinidad and Tobago for the last ten years. The passport expired in April 2012, but Applicant is completing the papers needed to re-activate this passport. He intends to maintain an active Trinidad and Tobago passport. Applicant's failure to surrender his foreign passport, when asked by his FSO, shows allegiance to the country of his birth. The Government established its case under AG ¶¶ 10(a)(1) and 10(d).

AG ¶ 11 provides conditions that could mitigate security concerns:

(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.

I have considered all the above mitigating conditions and find that none apply. Applicant is not willing to surrender his Trinidad and Tobago passport to his FSO nor is he willing to renounce his Trinidad and Tobago citizenship. He has not received approval from the cognizant security authority to hold his Trinidad and Tobago passport. His use of his Trinidad and Tobago passport is his only exercise of his Trinidad and Tobago citizenship, but it demonstrates an unacceptable foreign preference.

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 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant holds dual citizenship with the United States and Trinidad and Tobago. He is not required to by U.S. law to renounce his Trinidad and Tobago citizenship and is not being asked to do so now. However, the exercise of any right of dual citizenship, such as maintaining an active foreign passport, raises a security concern about whether he can be counted on to act in the interests of the United States. Applicant continues to possess an active U. S. passport that he could use for foreign travel, including to Trinidad and Tobago. His Trinidad and Tobago passport expired two months ago, but he intends to renew it and is in the process of completing the required paperwork. He believes that if he does not maintain his Trinidad and Tobago passport, he will automatically lose his citizenship. He did not provide any information which supports his belief.

Applicant could ask the United States to place a stamp on his U.S. passport, indicating that he is also a citizen of Trinidad and Tobago. He appears reluctant to do so because he does not want to lose the citizenship of his birth country. Likewise, he does not want to surrender his Trinidad and Tobago passport to his FSO, although giving the passport to the FSO would prevent him from using it and mitigate security concerns, provided he does not request it. Applicant is adamant about maintaining his dual citizenship and believes that he must retain his passport to do. Given his unwillingness to comply with DoD requirements concerning the possession and use of a foreign passport, he has not mitigated the Government's security concerns about his foreign preference.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his foreign preference under Guideline C.

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
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	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.

MARY E. HENRY
Administrative Judge