



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



In the matter of:)	
)	
)	ISCR Case No. 11-10674
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*

07/16/2013

Decision

CURRY, Marc E., Administrative Judge:

Applicant’s relatives who are Peruvian citizens and residents do not generate a foreign influence security concern. Applicant mitigated the foreign preference security concern generated by her exercise of Peruvian dual citizenship. Clearance is granted.

Statement of the Case

On April 24, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) explaining why it was not clearly consistent with the national interest to grant or continue a security clearance. 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) implemented by the Department of Defense on September 1, 2006. Applicant answered the SOR on May 15, 2013, admitting the allegations and requesting a decision on the record evidence. On May 30, 2013, Department Counsel prepared a File of Relevant Material (FORM).

Applicant received the FORM on June 4, 2013. She submitted a response on June 24, 2013. The case was assigned to me on July 2, 2013.

Findings of Fact

Applicant is a 37-year-old woman. She has been married twice previously, with both marriages ending in divorce. She has a bachelor's degree in business management and marketing, earned in 2003, and has been working for a defense contractor as an assistant to the company's facility security officer (FSO) since 2010. (Item 5 at 19)

Applicant is a native of Peru. At age 14, she immigrated to the United States with her mother after her parents divorced. Her father remained in Peru. She has been a naturalized U.S. citizen since 2001. (Item 6 at 31)

Applicant actively exercised her Peruvian citizenship after becoming a U.S. citizen. She volunteered at the Peruvian consulate in the United States, helping Peruvians living in the United States complete passport renewal forms and obtain government identification cards. (Item 5 at 30) She traveled to Peru eight times between 2003 and 2007. The Peruvian consulate paid for one of her trips. (Item 6 at 40)

Applicant has held a Peruvian passport for most of her life. She used it for two of her trips to Peru, and she last renewed it in 2007. Applicant voted in a Peruvian election in 2006. She did so because she did not want to incur fees that the Peruvian government imposes upon citizens who do not vote. (Answer at 3)

Two of Applicant's trips to Peru were to receive medical treatment. In 2006, she began experiencing acute symptoms of rheumatoid arthritis. It got progressively worse and hindered her ability to work. Applicant was self-employed and had no health insurance. (Item 5 at 66) Rather than apply for Social Security disability benefits, Applicant chose to travel to Peru and receive medical treatment that was less expensive than the comparative medical care in the United States. (Answer at 3) While traveling to Peru, Applicant maintained a bank account in order to transfer money from her U.S. bank account and avoid international fees for purchasing the medications necessary to treat her medical condition. (Answer at 3) She maintained a balance of approximately \$300. (Item 6 at 15)

As Applicant's health improved, she was able to get a job with health insurance. She then stopped going to Peru for medical treatment, and she closed the Peruvian bank account in 2007. (Answer at 3; Item 6 at 38) She has not visited Peru since May 2007. (Item 5 at 55-56)

Applicant attributes her continued exercise of dual Peruvian citizenship after becoming a U.S. citizen to not knowing "what the privilege of having a security clearance entail[ed] before working with a DoD contractor." (Response at 2) Since obtaining her current job, she has surrendered her passport to the company's FSO, has

no intention of voting in any future Peruvian elections, and is willing to renounce her Peruvian citizenship. (Response at 2)

Applicant's father, stepmother, and two half-sisters are Peruvian citizens and residents. Her father is retired and in poor health. Applicant was not close to her father while growing up because he "alienated [her] family when [she] was very young" and was largely uninvolved with her child rearing. (Response at 1) Since his health has been declining, Applicant has made efforts to keep in touch. She visited him during her trips to Peru and she talks with him approximately once every other month.

Applicant did not meet her stepmother or her half-sisters until 2006. Her stepmother is a homemaker. (Item 6 at 36) Applicant has no relationship with her and only talks with her when she calls her father and her stepmother happens to answer the phone. (Response at 1)

One of Applicant's half-sisters is a flight attendant. Applicant communicates with her by e-mail approximately once or twice per month. (Item 6 at 38) Applicant's other half-sister works at a health clinic. Applicant exchanges e-mails with her approximately four times per year. (Item 6 at 38)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. 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. 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."

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 as to 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 B, Foreign Influence

Under this guideline, “foreign contacts and interests may be a security concern if an individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interests.” (AG ¶ 6) The following disqualifying conditions under AG ¶ 7 are potentially applicable:

- (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a risk of foreign exploitation, inducement, manipulation, or coercion; and
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information.

According to the Appeal Board, “a current and accurate assessment of the ‘geopolitical situation’ and the security/intelligence profile of the [foreign] country vis-a-vis the United States is crucial in Guideline B cases.” (ISCR Case No. 07-05686 at 4, footnote 3 (App. Bd. November 12, 2008)) The Government provided no evidence regarding Peru’s security/intelligence profile vis-a-vis the United States. Also, there is no evidence that any of Applicant’s family members living in Peru are in positions that raise a conflict of interest or serve as a source of vulnerability or exploitation. Neither AG ¶ 7(a) nor AG ¶ 7(b) applies.

Guideline C, Foreign Preference

Over the years, Applicant has volunteered for the Peruvian consulate in the United States, traveled to Peru twice using a Peruvian passport, voted in Peru, maintained a bank account in Peru, and used her Peruvian citizenship to purchase medication in Peru at a cheaper cost than in the United States. These activities indicate a preference for Peru over the United States. Under this guideline, “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 ¶ 9). Consequently, the following disqualifying condition under AG ¶ 10 applies:

(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 . . . includ[ing] but not limited to

(3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country; [and]

(7) voting in a foreign election.

Applicant did not understand the negative security implications of her activities related to her Peruvian citizenship until she began working at her job that required a security clearance. This does not lessen the nature and seriousness of her exercises of foreign preference. Similarly, using her Peruvian citizenship to obtain cheaper medication to treat a serious health condition, though emotionally compelling, constitutes an example of what the Appeal Board has characterized as a “situational preference.” (ISCR Case No. 99-0424 (App. Bd. (February 8, 2001))). As such, it does not mitigate the negative security implications of the foreign preference either.

Conversely, Applicant’s understanding of the responsibilities of possessing a security clearance combined with her surrender of her Peruvian passport over three years ago, and her willingness to renounce her Peruvian citizenship make it unlikely that any act of preference for Peru will recur. Moreover, she has not travelled to Peru in nearly six years. The passage of time, together with the substantial likelihood that no exercise of foreign preference will recur, outweigh the seriousness of the past exercises of foreign preference. Applicant has mitigated the foreign preference security concern.

Whole-Person Concept

Under the whole-person concept, 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) 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 common sense judgment based upon careful consideration of the guidelines and the whole-person concept. Upon evaluating this case in the context of the whole-person concept, I conclude Applicant has mitigated the security concern. Clearance is granted.

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 B:	FOR APPLICANT
Subparagraph 1.a-1.b:	For Applicant
Paragraph 2., Guideline C:	FOR APPLICANT
Subparagraphs 2.a-2.e:	For Applicant

Conclusion

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

MARC E. CURRY
Administrative Judge