



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-01333

Appearances

For Government: Candace Le'i Garcia, Department Counsel

For Applicant: *Pro se*

May 26, 2015

Decision

LOKEY-ANDERSON, Darlene, Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP), on October 12, 2011. (Government Exhibit 3.) On April 24, 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline C 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 after September 1, 2006.

The Applicant responded to the SOR in writing on May 27, 2014, in which she elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on April 27, 2015. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on March 9, 2015, and she failed to submit a response to DOHA. The case was assigned to the Administrative Judge for resolution on April 27, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 46 years old, and married. She has a Master's degree. She is employed as a Senior Technical Writer for a defense contractor. She seeks a security clearance in connection with her employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has acted in such a way as to show a preference for another country over the United States.

Applicant admitted allegations 1.a., 1.d.(1), and 1d.(3), set forth in the SOR under this guideline. She denied the remaining allegations. Applicant began working for her current employer in October 2010.

Applicant was born in the United States in November 1968. She grew up, graduated from high school, and obtained her Bachelor's degree in the United States. In 1991, she left the United States on a student visa to obtain her Master's degree from a Canadian university from September 1991 to May 1993. As a student, she received privileges and benefits usually offered only to Canadian citizens. For example, in September 1991, January 1992, September 1992, and January 1993, she received a fellowship from the university she attended in Canada. Over the years, her fellowship totaled approximately \$21,850. She used the money from the fellowship to pay for her living expenses, tuition, and books.

In December 1991 Applicant married her husband, also a native-born American citizen, in Canada. Applicant enjoyed the lifestyle, the economy, and the opportunities she had in Canada. After graduating with her Master's degree, she decided to obtain a Canadian work visa so that she could stay there and work. Applicant was employed in Canada from March 1995 to April 2002. During that time, she obtained her Canadian permanent residency card, and eventually her Canadian citizenship in 2002. She applied for Canadian medical benefits in accordance with Canadian law, which she became eligible to receive, because she lived in Canada for longer than six months. In fact, from November 1990 to December 2001, Applicant received health care in Canada for about eleven years. She then relocated back to the United States.

While in Canada, in July 1996, Applicant purchased an apartment for approximately \$110,000. She lived in the apartment with her husband from about August 1996 to December 2001. She purchased a second property, another apartment, in Canada in about December 1996 that cost about \$70,000.

In March 2003 Applicant obtained a Canadian passport. She states that she keeps her Canadian passport, although it expired in March 2008, for identification purposes. That same year, Applicant purchased a third property in Canada, also an apartment, this time jointly with her husband for approximately \$200,000. Applicant has maintained her Canadian citizenship, and is unsure as to whether she is willing to renounce her Canadian citizenship. (Government Exhibit 5.)

Applicant's net worth in Canada is approximately \$1,125,000, which is the current value of her three properties in Canada. Her net worth in the United States is approximately \$775,537.

Applicant's three properties are being taken care of by a management company. At the present time, two of the properties have renters. The rental income from both properties is automatically deposited into a checking and saving account she opened in Canada. This account currently has about \$7,660. From about 1996 to at least 2012, Applicant has received a total of approximately \$25,695 in rental income from her properties in Canada. (See Applicant's Answer to SOR.) She expects to hold these properties and her bank account in Canada until she retires in 2025.

Of Applicant's properties, the second one she purchased in December 1996 is paid off. She continues to carry mortgages for the first and third properties through a Canadian bank for a total amount of approximately \$520,537, with payments of approximately \$2,211 monthly. She expects to have both mortgages paid off around 2025.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern, which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Preference

9. *The Concern.* 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.

Conditions that could raise a security concern:

10. (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:

(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;

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavioral changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress, and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence, which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865,

“Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

The Government must make out a case under Guideline C (Foreign Preference) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's situation and her ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal standards and factors, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

The evidence shows that the Applicant is a dual citizen of the United States and Canada by choice. As a young adult, she traveled to Canada to study for her Master's degree and then decided to stay there. She lived and worked in Canada for eleven years. During that time, she integrated into the Canadian lifestyle, and took advantage of the opportunities available to Canadians. She accepted educational benefits from the Canadian government, she applied for a work visa, she obtained her permanent residency, and then her Canadian citizenship. She obtained a Canadian passport that she continues to possess for identification purposes, although it has expired.

When Applicant became a Canadian citizen, she purchased properties in Canada and opened a Canadian bank account. She continues to possess and maintain these properties, as well as her bank account, that are significant financial assets in Canada.

Applicant has failed to demonstrate that Canada is not a foreign preference that may hinder her ability to effectively safeguard United States secrets. She has not expressed a willingness to renounce her Canadian citizenship. Her exercise of the rights, privileges and obligations of a Canadian citizen occurred after she was an American citizen. She continues to possess her foreign passport for identification purposes, even though it has expired. Why she possesses her foreign passport can

only be presumed to be to protect her financial interest in Canada. This raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of Canada. There are also other indicators that show a strong foreign preference. Her net worth in Canada is more than her net worth in the United States. In my opinion, Applicant would find it very difficult if he were ever confronted with a situation where she had to chose between protecting the interests of the United States and the interests of Canada. And more importantly, it is not clear where her loyalties would lie.

Under the particular facts of this case, the possibility of foreign preference does exist, and could create the potential for conduct resulting in the compromise of classified information. Based upon the facts set forth above, I find that the Applicant is vulnerable to foreign preference.

Under Foreign Preference, Disqualifying Condition 10.(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: (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* apply. None of the mitigating conditions are applicable. Applicant currently possesses an expired Canadian passport that she plans to keep and use for identification purposes. She has strong loyalties to Canada, and more financial assets in Canada than she does in the United States. Under these circumstances, I find against the Applicant under Guideline C (Foreign Preference).

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline C of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, She has not met her ultimate burden of persuasion under Guideline C.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

- Paragraph 1: Against the Applicant.
- Subpara. 1.a.: Against the Applicant
- Subpara. 1.b.: Against the Applicant
- Subpara. 1.c.: Against the Applicant
- Subpara. 1.d.: Against the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge