



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



In the matter of: )  
)  
) ISCR Case No. 12-02448  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Department Counsel  
For Applicant: *Pro se*

03/27/2014

**Decision**

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, I conclude that Applicant failed to provide adequate information to mitigate security concerns under Guideline B for foreign influence and Guideline C for foreign preference. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 8, 2011, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP) to obtain a security clearance for his employment with a defense contractor. (Item 4) After an investigation conducted by the Office of Personnel Management (OPM), the Department of Defense (DOD) issued Applicant interrogatories to clarify information in his background. After reviewing the results of the background investigation and Applicant’s responses to the interrogatories, DOD could not make the affirmative findings required to issue a security clearance. On September 10, 2013, the DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for foreign influence under Guideline B and foreign preference under Guideline C. (Item 1) 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 in the DOD on September 1, 2006.

Applicant answered the SOR on October 24, 2013. He admitted all allegations under both guidelines. Applicant requested a decision on the written record. (Item 3) Department Counsel submitted the Government's written case on November 26, 2013. Applicant received a complete file of relevant material (FORM) on January 28, 2014, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely provided additional information in response to the FORM on March 3, 2014. The case was assigned to me on March 18, 2014.

### **Findings of Fact**

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is a 36-year-old high school graduate who is working for a defense contractor at a U.S. military base in Spain as the air terminal operations center manager. Applicant was born in Spain. His father was a United States service member serving in Spain and a Spanish mother. As such, he was a United States citizen at birth. In 1977, Applicant's father was reassigned to a military base in the United States, and Applicant and his family moved to the U.S. In 1981, Applicant's father was reassigned to a base in Spain, and the entire family returned to live in Spain. Applicant and his mother and father have resided in Spain since returning in 1981. Applicant's brother and sister have returned to the United States, and are residents and citizens of the United States. Applicant's entire schooling was in DOD schools on military bases in Spain, graduating from the DOD high school in Spain in 1995. He married a Spanish citizen in 2010, and they have one child. Applicant's wife is a citizen and resident of Spain. She has never been to the United States, and Applicant states she never intends to go to the United States.

Applicant has worked on military bases in Spain since 1995. He initially worked for the DOD commissary and exchanges agencies. He has been employed by defense contractors working on base maintenance contracts since 2002 on a military base in Spain.

Applicant always considered himself to be a dual citizen of Spain and the United States. In February 2001, when he realized that employment opportunities in Spain were better on the military base for Spanish citizens, he obtained a Spanish residency identification card. In 2011, he formally became a dual citizen of Spain and the United States. In February 2011, for his reentry to Spain, Applicant obtained a Spanish passport that does not expire until 2021. He intends to keep the Spanish passport because he does not know what the future employment opportunities will be, and he has not decided about his dual citizenship. He has always had a United States

passport. The latest version was issued in December 2007, and is not due to expire until December 2017. He mainly uses this passport for his travels. He is undecided about his future citizenship since that depends on his employment opportunities. If needed, he would relinquish his Spanish passport to the Spanish government. He turned the passport into his facility security officer (FSO) in February 2012. The FSO still has possession of the Spanish passport. (Item 4, e-QIP, dated July 8, 2011)

Applicant's wife is a citizen and resident of Spain. She has no intention of moving to the United States or becoming a United States citizen. He has daily contact with her. Applicant's mother is a citizen and resident of Spain. She has spent most of her life in Spain and only a brief time in the United States. She has no intention of becoming a United States citizen. He talks to her frequently by phone and sees her almost every week. Applicant's father is a United States citizen but resides in Spain. He has spent most of his adult life in Spain, first as a member of the U.S. military and then as a civilian employee of the U.S. military. He has continually resided in Spain since 1981.

Applicant's in-laws are residents and citizens of Spain. They have never been to the United States. He sees them frequently since they live near him and help take care of his son. Applicant has occasional contact with his wife's family members who are citizens and residents of Spain. He sees them on holidays and family events and celebrations. He sees one uncle more frequently since the uncle also works on the military base.

Applicant and his wife purchased a home in Spain in 2007. It is valued at approximately \$460,000. The mortgage on the house is carried by a Spanish bank. Applicant also has a Spanish bank account used to deposit his pay and to pay bills. The account usually carries a balance of about \$3,000. (Item 5, Response to Interrogatories and Personal Interview, dated August 2, 2013)

As a dual citizen of Spain and the United States, Applicant has always felt a sense of conflict regarding his allegiance to the United States. He would promote the interest of both the United States and Spain. If he were asked to take up arms for either the United States or Spain, he is not sure which he would choose. (Item 5 at 11-12)

In response to the FORM, Applicant emphasized that his contact with his mother is by phone approximately once a week, and personal contact about once a month. His contact with his wife's parents is more frequent since they help with child care. His contact with his wife's extended family is infrequent and casual since they only interact for family events and celebrations. None of his wife's relatives have ties to any foreign government. He has daily contact with the Spanish residents and citizens he works with. The contact with the co-workers is limited to the work place and other company-sponsored events. He exercised his dual citizenship with Spain in 2001 by obtaining a Spanish National Identity card. He claims he obtained the card due to a lack of information and guidance and the need to find employment. (Response, dated March 8, 2014)

I note, *sua sponte*, that Spain is an ally and friend of the United States. Diplomatic relations go back to 1783. The U.S. has maintained important military bases in Spain for over 50 years. Spain is a member of the European Union (EU) and the North Atlantic Treaty Organization (NATO). The United States has defense and security relations with Spain through the Mutual Defense Assistance Agreement and the Agreement on Defense Cooperation. Spain has authorized the United States to use facilities on Spanish military bases and recently authorized the stationing of missile defense-capable destroyers in Spain. The United States and Spain are strong allies in the fight against terrorism. The U.S. and Spanish space agencies have mutual space research programs and for tracking space vehicles.

### **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 considered 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, 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 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 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.

## **Analysis**

### **Guideline B: Foreign Influence**

Foreign contacts and interests may be a security concern if the 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 the U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including but not limited to, such consideration as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism. (AG ¶ 6)

Applicant's immediate family members have been residents of Spain for many years. His mother and wife are residents and citizens of Spain. His father is a United States citizen but a resident of Spain. His wife's family members are citizens and residents of Spain. His only immediate family members that are not residents and citizens of Spain are his two siblings. Applicant himself has been a resident of Spain for almost his entire life, except for about four years living in the United States when he was a youngster. Applicant has frequent and continuous contact with his relatives who are citizens and residents of Spain. These contacts raise Foreign Influence Disqualifying Conditions AG ¶ 7(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 heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion), and AG ¶ 7(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). Applicant's house and bank account in Spain raise AG ¶ 7(e) (a substantial business, financial, or property interest in a foreign country, or in foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation). The Government's security concern is based on the strength and depth of Applicant's connections to Spain.

The mere existence of foreign relationships and contacts is not sufficient to raise the above disqualifying conditions. The nature of Appellant's contacts and relationships must be examined to determine whether it creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. "Heightened" is a relative term denoting increased risk compared to some normally existing risk that can be inherent anytime there are foreign contacts and relationships. A factor that heightens the risk in Applicant's case is the extent, degree, and level of his connection to his

family in Spain. Under these guidelines, the potentially conflicting loyalties should be weighed to determine if Applicant can be expected to resolve any conflict in favor of the United States interest.

The totality of an applicant's ties to a foreign country as well as to each individual family tie must be considered. The foreign influence security concern is not limited to countries hostile to the United States. The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States. Even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Friendly nations have engaged in espionage against the United States, especially in economic, scientific, and technical fields. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant is at risk of coercion, persuasion, or duress.

Applicant raised facts that potentially could mitigate the security concerns for the contact and relationship with his family in Spain. I have considered Foreign Influence Mitigating Conditions AG ¶ 8(a) (the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.); AG ¶ 8(b) (there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest); AG ¶ 8(c) (contact or communication with foreign citizens is so casual or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation); and AG ¶ 8(f) (the value or routine nature of the foreign business, financial, or property interest is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual). None of these mitigating conditions apply.

This is a case in which the Applicant has both feet firmly planted in a foreign country. He has lived and worked in Spain almost his entire life. He has spent little time in the United States, and he is now raising his family in Spain. His connection to the United States is through his father's citizenship, his entire education in the DOD school system, and his work on military bases in Spain for U.S. agencies and contractors. Applicant's contacts with his family members in Spain are strong and frequent. He sees his parents at least once a month and talks to them at least weekly by phone. He sees his in-laws many times in a week since they help with child care. He sees his wife's other relatives at family events and on holidays. Applicant has allegiance issues as an admitted dual citizen of Spain and the United States. He has always felt a sense of conflict regarding his allegiance to the United States. He would promote the interest of

both the United States and Spain. If he were asked to take up arms for either the United States or Spain, he is not sure which he would choose. His house is in Spain and the mortgage is held by a Spanish bank. His bank is a Spanish bank. It is not clear that he has a sense of loyalty and obligation to the United States. Since it is not clear that he would chose the interest of the United States over the interest of Spain, he has a clear conflict of interest.

In evaluating the potential conflict of interests between his family and the interests of the United States under these mitigating conditions, I considered that Spain is a strong ally of the United States with mutual defense and strategic interests. A friendly relationship is not determinative, but it makes it less likely that a foreign government would attempt to exploit a United States citizen through relatives or associates in that country. Even though Spain is not a hostile country and its interests are not inimical to the United States, it is reasonable to consider that Applicant's connection to Spain is so strong that Applicant likely could be placed in a position to choose between the interests of his parents and his wife's family and the interests of the United States. Accordingly, Applicant has not met his heavy burden to show that his contacts and relationships with Spain will not cause a security concern. I conclude Appellant has not mitigated security concerns for foreign influence with Spain.

### **Guideline C, Foreign Preference**

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he may be prone to provide information or make decisions that are harmful to the interests of the United States. (AG ¶ 9) The principal goal of the foreign preference assessment is to determine the risk, based on foreign associations, that information may be compromised if access to sensitive information is granted. It is not a measure of Applicant's loyalty to the United States.

Applicant has always been a citizen of the United States. He was born and raised in Spain. His mother is a Spanish citizen, but his father is a U.S. citizen qualifying him at birth for U.S. citizenship. He considers himself a dual citizen of the United States and Spain. He used his Spanish citizenship to gain employment on the military base. He has always had a U.S. passport, but he applied for and received a Spanish identity card in 2001 and a Spanish passport in 2011. He uses his U.S. passport for his travels. He owns a house in Spain and has a Spanish bank account. He stated that he always felt a conflict concerning his allegiance to both the United States and Spain. These facts raise Foreign Preference Disqualifying Conditions AG ¶ 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: (1) possession of a current foreign passport; and (2) using foreign citizenship to protect financial or business interest in another country); AG ¶ 10(b) (action to acquire or obtain recognition of a foreign citizenship by an American citizen); and AG ¶ 10(d) (any statement or action that shows allegiance to a country other than the United States; for example, declaration of interest to renounce United States citizenship; renunciation of United States citizenship).

I considered Foreign Preference Mitigating Conditions AG ¶ 11(a) (dual citizenship is based solely on parent's citizenship or birth in a foreign country); AG ¶ 11(b) (the individual has expressed a willingness to renounce dual citizenship); and AG ¶ 111(e) (the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated). These mitigating conditions do not apply. While Applicant's United States and Spanish dual citizenship is traced to his parents' citizenship, Applicant exercised the privilege of both citizenships by applying for a position with the U.S. forces in Spain as both an American and Spanish citizen. Applicant has not indicated a willingness to renounce his foreign citizenship but instead indicated his intent to continue as a dual citizen. Applicant still has possession of his Spanish identity card. Even though he has turned his Spanish passport over to his FSO, he can still retrieve the passport whenever he needs it. Applicant has not mitigated security concerns for foreign preference.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an Appellant's eligibility for a security clearance by considering the totality of the Appellant'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 access to sensitive information 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. The whole-person concept requires consideration of all available information about Applicant, not a single item in isolation, to reach a determination concerning Applicant's eligibility for access to classified information.

Applicant has frequent contacts and close relationships with his family in Spain. Applicant has not established that he has such deep and longstanding relationships and loyalties in the United States such that he can be expected to resolve any conflict of interest in favor of the United States. While access to classified information is not based on a finding of loyalty in the United States, Applicant showed a divided loyalty to Spain and the United States. These facts leave me with questions and doubts about



Applicant's eligibility and suitability for access to classified information. For all these reasons, I conclude Applicant has not met the heavy burden of mitigating potential security concerns arising from his contacts with family in Spain. He has not mitigated his foreign preference for Spain. Applicant has not mitigated the security concerns arising from foreign influence and foreign preference, and access to classified information should be denied.

### **Formal Findings**

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a -1.c:	Against Applicant
Paragraph 2, Guideline C:	AGAINST APPLICANT
Subparagraphs 2.a – 2.f:	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 access to classified information. Eligibility for access to classified information is denied.

---

THOMAS M. CREAN  
Administrative Judge