



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 12-03929
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Esq., Department Counsel
For Applicant: *Pro se*

05/30/2014

Decision

MALONE, Matthew E., Administrative Judge:

Security concerns about Applicant’s contacts with Australia and his acquisition of Australian citizenship are outweighed by his significant ties and loyalties to the United States, and by the lack of a heightened risk of exploitation. His request for a security clearance is granted.

Statement of the Case

On August 2, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (eQIP) to obtain or renew a security clearance required for his job with a defense contractor. After reviewing the results of the ensuing background investigation, which included his responses to Department of Defense (DOD)

interrogatories,¹ DOD adjudicators could not determine that it is clearly consistent with the national interest for Applicant to have access to classified information.²

On November 25, 2013, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed by Guidelines B (Foreign Influence) and C (Foreign Preference).³ Applicant timely responded to the SOR and requested a decision without a hearing. On February 20, 2014, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM)⁴ in support of the SOR. Applicant received the FORM on March 26, 2014, and was notified that he had 30 days to file a response to the FORM. The record closed after Applicant failed to submit any additional information within the time allowed. The case was assigned to me on May 13, 2014.

Findings of Fact

Under Guideline B, the Government alleged that Applicant owns real property in Australia worth in excess of one million dollars (SOR 1.a); that he has an account in an Australian bank with an estimated balance of \$50,000 (SOR 1.b); that he receives about \$55,000 each year from an annuity from an Australian company (SOR 1.c); and that his wife is a dual citizen of the United States and Australia, who resides part-time in Australia (SOR 1.d). Under Guideline C, the Government alleged that Applicant, who is a U.S. citizen by birth, obtained Australian citizenship in March 2008 (SOR 2.a); and that in March 2008, Applicant obtained an Australian passport, which does not expire until March 2018 (SOR 2.b). (FORM, Item 1) Applicant admitted all of the allegations. (FORM, Item 2) In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 71 years old and works as a consultant to a large defense contractor. He requires a security clearance for his work. Applicant served in the U.S. Navy between 1960⁵ and 1984, when he retired as a captain (paygrade O-6). He is a combat veteran of the Vietnam War, and served in various military intelligence missions during and after the war. While on leave in Australia during the war, he met his future wife. They have been married since October 1968. She was born in Australia, but has been a naturalized U.S. citizen since 1974. They have two adult children together. (FORM, Items 2, 4, and 6)

¹ See DOD Directive 5220.6 (Directive), as amended, Section E3.1.2.2.

² Required by Executive Order 10865, as amended. See *also* Directive, Section E3.1.1.

³ See Directive, Enclosure 2. See *also* 32 C.F.R. § 154, Appendix H (2006).

⁴ See Directive, Enclosure 3, Section E3.1.7. The FORM included six documents (Items 1 - 6) proffered in support of the Government's case.

⁵ Applicant attended the Naval Academy and was commissioned in 1964. (FORM, Item 5)

Applicant first received a security clearance after he was commissioned. He also has held security clearances as part of his defense contracting work since his retirement. Most recently, he has held a top secret clearance with eligibility for access to sensitive compartmented information (SCI) since at least August 2006. Although the Office of Personnel Management (OPM) investigated his clearance eligibility, the record is silent as to what agency granted his access. (FORM, Item 4)

Applicant received a master's degree in 1982. He lived and worked in Australia from 1984 until 1994. Also, between December 2002 and June 2004, he was the chief operating officer of a large financial and consulting firm in Australia. When he left that position, he was vested in an annuity that pays him about \$50,000 each year. He previously worked for his current employer from June 1999 until December 2002, holding a top secret security clearance for that position. (FORM, Items 2, 4, and 6)

In 1988, Applicant bought a house in Australia. He and his wife lived full time in that house while he was employed there. They now either rent it out or use it themselves when they visit Australia. The property is worth more than one million dollars. Applicant also maintains a bank account in Australia to use when he visits that country. The account has an estimated balance of \$50,000. Applicant claims, and Department Counsel agrees, that Applicant has sufficient assets in the United States to overcome the loss of his Australian assets. (FORM at page 7; FORM, Items 2, 5, and 6)

Because he and his wife travel to Australia several times a year, and because Applicant may choose to retire there, he obtained Australian citizenship and passport in March 2008. The passport expires in 2018, and Applicant has used it as a matter of convenience to enter Australia. At all other times, he uses his U.S. passport. When Applicant was advised by DOD adjudicators that possession of a foreign passport could jeopardize his eligibility for a security clearance, he arranged to relinquish the passport to his facility security officer (FSO). Applicant is willing to relinquish his Australian citizenship and passport if failing to do so would keep him from getting a security clearance. (FORM, Items 2, 4, and 5)

In the FORM, Department Counsel argued that Applicant's Australian connections present a heightened risk that Applicant or his wife could be coerced to compromise U.S. interests.⁶ Department Counsel based that argument on "the evidence and administrative notice information." (FORM at page 6) However, no administrative notice information about Australia was included in the FORM. I referred sua sponte to publicly available sources⁷ of information about Australia and its relationship with the

⁶ Elsewhere in the FORM, the Government claimed that Applicant's "deep longstanding connections and financial holdings [in Australia] create a security concern," while acknowledging that "...there is nothing to suggest the nation of Australia creates a heightened risk..." (FORM at page 6)

⁷ I reviewed the Department of State Australia Fact Sheet at <http://www.state.gov/r/pa/ei/bgn/2698.htm>, which also contains a link to the 2013 human rights report on Australia. I also consulted the Central Intelligence Agency (CIA) World Factbook, located at <https://www.cia.gov/library/publications/the-world-factbook>.

United States. Australia is one of our closest allies in every regard. Culturally, politically, economically, and militarily, there is little difference between the two countries. Australia is governed democratically through an openly-elected bicameral legislature. Australia boasts an independent judiciary, and there are few significant complaints about human rights abuses in Australia.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁸ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

(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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁹ for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOHA based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.¹⁰ If the Department Counsel meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.¹¹

Because no one is entitled to a security clearance, an applicant bears a heavy burden of persuasion to establish that it is clearly consistent with the national interest for

⁸ Directive, 6.3.

⁹ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

¹⁰ Directive, E3.1.14.

¹¹ Directive, E3.1.15.

the applicant to have access to protected information.¹² A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.¹³

Analysis

Foreign Influence

The Government's information and Applicant's admissions support the SOR 1 allegations. Applicant has substantial financial interests in a foreign country and is married to a foreign national. These facts are sufficient to raise the security concern addressed by Guideline B at AG ¶ 6, as follows:

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 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 considerations 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.

This record also requires consideration of the following¹⁴ AG ¶ 7 disqualifying considerations:

- (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

- (e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

¹² See *Egan*, 484 U.S. at 528, 531.

¹³ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

¹⁴ None of the other AG ¶ 7 disqualifying conditions are pertinent to the facts and circumstances presented.

Foreign ties such as those presented here present possible security concerns that must be examined when assessing an individual's suitability to hold a security clearance. Applicant has foreign property and other financial holdings valued in excess of one million dollars. Also, his wife remains an Australian citizen by birth, despite more than 40 years as a naturalized U.S. citizen. However, this guideline urges consideration of the foreign country at issue, and both AG ¶¶ 7(a) and (e) require that there be a heightened risk of foreign influence or exploitation. The Government did not present any information about Australia to support its claim that there is such a risk. To the contrary, Australia is a close ally and trading partner. It presents no human rights, safety, or international terror threats to the United States. I conclude that the record does not support application of any of the Guideline B disqualifying conditions.

In the alternative, the record supports application of the following AG ¶ 8 mitigating conditions:

(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. (emphasis added); and

(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* (emphasis added).

The undeniably close relationship between the U.S. and Australia precludes a heightened risk of exploitation. Also, Applicant has a long record of military service, including combat during the Vietnam War. He has held a security clearance for nearly 50 years, and most of his personal and professional interests lie in the United States. On balance, available information is sufficient to mitigate the security concerns about possible foreign influence.

Foreign Preference

Applicant's acquisition and exercise of foreign citizenship since 2008 are sufficient to raise the security concern addressed by Guideline C at AG ¶ 9, as follows:

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.

The Government's information and Applicant's admissions show that he obtained foreign citizenship in 2008 after living his whole life as a U.S. citizen. He exercised his

foreign citizenship by also obtaining and using a foreign passport, which is still active. These facts support application of the following¹⁵ AG ¶10 disqualifying conditions:

- (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
- (b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

By contrast, Applicant has expressed a willingness to relinquish his foreign citizenship and passport if it would keep him from getting a security clearance. To that end, Applicant has relinquished his Australian passport to his FSO. Although he can still retrieve the passport when he needs it, his travel using it will be noted by a cognizant security authority. Department Counsel has asserted that Applicant has not shown “any inclination” to renounce his foreign citizenship or his foreign passport. (FORM at page 8) All that is required, however, is an expressed willingness to renounce, which Applicant has done. Further, he has, in fact, acted consistent with the Government’s guidelines by relinquishing his foreign passport to his FSO. As to Applicant’s financial interests in Australia, the Government conceded that Applicant would not be disadvantaged if he had to rely solely on his U.S. financial interests, and there is no information that shows his Australian citizenship was obtained to preserve his financial interests there.

All of the foregoing supports application of the following AG ¶ 11 mitigating conditions:

- (b) the individual has expressed a willingness to renounce dual citizenship; and
- (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

On balance, Applicant has mitigated the security concerns expressed in the SOR under this guideline.

Whole-Person Concept

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines B and C. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Department Counsel argued under Guideline B that “[a]lthough [Applicant] states his only loyalty is to the U.S., this is not an issue of loyalty . . .” (FORM at pages 5 - 6) I disagree. One of the salient points of the Guideline B mitigating conditions, as expressed in AG ¶ 8(b), requires a balancing of the individual’s loyalties. Here, all information probative of this issue shows Applicant’s loyalties lie firmly in the United States. His wife is a naturalized

¹⁵ None of the other AG ¶ 10 disqualifying conditions are pertinent to the facts and circumstances presented.

citizen of 40 years; he served in combat as part of a 24-year Navy career; and he has held high-level security clearances for most of the past 50 years. As to Guideline C, Applicant has taken proper corrective action regarding his foreign passport and he should be taken at his word that he is willing to renounce his Australian citizenship. A fair and commonsense assessment of this record shows the Government's security concerns are mitigated.

Formal Findings

Formal findings 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
Subparagraphs 1.a - 1.d:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraphs 1.a - 1.b:	For Applicant

Conclusion

In light of all available information, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge