



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



In the matter of:)
)
) ISCR Case No. 15-00892
)
Applicant for Security Clearance)

Appearances

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

08/12/2016

Decision

CERVI, Gregg A., Administrative Judge:

Applicant mitigated the foreign influence and foreign preference security concerns. Eligibility for access to classified information is granted.

Statement of the Case

Applicant completed a Questionnaire for National Security Positions (SF 86)¹ on May 11, 2012. On August 24, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline C, foreign preference, and Guideline B, foreign influence.²

¹ Also known as a Security Clearance Application (SCA).

² The action was taken under Executive Order 10865, Safeguarding Classified Information Within Industry (February 20, 1960), as amended; DoD Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (Directive) (January 2, 1992), as amended; and the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

Applicant answered the SOR on September 2, 2015, and requested a hearing before an administrative judge. The case was assigned to me on April 13, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 11, 2016, scheduling the hearing for June 2, 2016. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on June 13, 2016.

Procedural and Evidentiary Rulings

Evidence

Government Exhibits (GE) 1 through 7 were admitted in evidence without objection. Applicant testified³ and submitted Applicant's Exhibits (AE) A through K, which were admitted without objection.

Administrative Notice

Department Counsel did not request that I take administrative notice of facts about Sweden, however, I have taken administrative notice of the following, based on U.S. Government publications:

A military power during the 17th century, Sweden has not participated in any war for two centuries. An armed neutrality was preserved in both world wars. Sweden's long-successful economic formula of a capitalist system intermixed with substantial welfare elements was challenged in the 1990s by high unemployment and in 2000-02 and 2009 by the global economic downturns, but fiscal discipline over the past several years has allowed the country to weather economic vagaries. Sweden joined the EU in 1995, but the public rejected the introduction of the euro in a 2003 referendum.⁴

Relations between the United States and Sweden are built on a shared heritage that dates back to 1638. Sweden was one of the first countries to recognize U.S. independence in 1783 and the two countries have maintained a strong bilateral friendship since then, based on shared values and mutual interests. Sweden is an Enhanced Opportunities Partner (EOP) of the North Atlantic Treaty Organization (NATO) and plays an active leadership role on the international stage, from its long-term investment in Afghanistan to its role as a global peacemaker. Sweden is also a member of the Counter-ISIL Coalition and participates in the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA). Sweden's commitment to promoting global democracy,

³ Applicant called two witnesses to testify at the hearing; his Facility Security Officer (FSO) and a supervisor/co-worker. Both witnesses testified favorably for Applicant.

⁴ CIA World Fact Book - Sweden, at <https://www.cia.gov/library/publications/the-world-factbook/geos/sw.html>.

human rights, gender equality, and international development and sustainability makes it a respected moral leader in international affairs.⁵

None of the government source documents reviewed above reflect that Sweden engages in economic or intelligence activity directed toward the United States.

Findings of Fact

Applicant is a 46-year-old management consultant employed by a defense contractor. He has worked for his current employer since 2012. He married in 2003, and has three children born in the United States. His spouse and children are U.S. dual citizens.⁶ He earned a Master of Business Administration in 1996.⁷ He received a DoD security clearance in 2012.

The SOR alleges under Guideline C that Applicant is a dual citizen of Sweden and exercised his foreign citizenship by possessing a valid Swedish passport and renewed it in 2013 after becoming a U.S. citizen in 2008. He is alleged to have renewed the passport after retrieving it from his facility security officer (FSO), after it was relinquished as a condition of being granted a security clearance. He is alleged to be retaining his passport for ease of travel, despite his U.S. citizenship, and to have traveled to Sweden in 2009 with the passport. Additionally, he is alleged to have voted in Swedish elections in 2009 and 2014, with intent to continue to exercise his right to vote with his Swedish citizenship. Under Guideline B, Applicant's parents, aunt, uncle, cousins and friends are alleged to be Swedish citizens and residents, and he travels to Sweden approximately every year. Applicant admitted all of the SOR allegations in his Answer, and provided some explanations.

Applicant was born in 1969 in Sweden, to Swedish parents. He served in the Swedish military in 1990, for a mandatory ten months. He naturalized as a U.S. citizen in 2008.⁸ He began working for a DoD contractor in 2012, and was determined eligible for a DoD security clearance in August 2012, after relinquishing his foreign passport to his FSO. In August 2013, Applicant requested the passport be returned to him so that he could renew it and obtain a Swedish passport for his newborn son. Applicant's children are eligible for Swedish citizenship by virtue of his birthplace. He relinquished his new passport to his FSO in November 2013, and the expired, invalidated passport in

⁵ Bureau of European and Eurasian Affairs Fact Sheet, *U.S. Relations with Sweden*, (2016), at <http://www.state.gov/r/pa/ei/bgn/2880.htm>.

⁶ Applicant's spouse is a dual citizen of the U.S. and Israel. His mother-in-law and father-in-law are U.S. citizens, residing in the United States. Applicant's children were born in the U.S. and are dual citizens of Sweden.

⁷ GE 1.

⁸ Applicant closed his bank account in Sweden when he moved to the United States. He has no financial interests in Sweden.

April 2014.⁹ He has not used his foreign passport to travel after he was granted a security clearance, but he did travel to Sweden using his foreign passport in 2009, 2010 and 2011, before he received a security clearance. He traveled to Sweden on his U.S. passport in 2013, 2014 and 2016, and notified his employer each time in accordance with company security policies. Applicant also voted in Swedish elections in 2009 and 2014 by use of mail-in ballots. He wanted to keep his Swedish citizenship so that he can return for an extended period to care for his aging parents if the need arises. He has no financial or property interests in Sweden, but may inherit from his parents upon their death. If such an occasion arises, he intends to liquidate any property and return the funds to the United States.

Applicant was unaware of the concerns with exercising the benefits of foreign citizenship while holding a security clearance such as renewing a passport and voting in a foreign election. He understood that he was only required to relinquish his passport to his FSO and not travel with it. In testimony, he acknowledged a renewed understanding of the responsibilities placed on a clearance holder, and vowed to refrain from voting or using his foreign passport for any reason. He has no intent to return to Sweden to live. He expressed his full allegiance to the United States. His family and work are in the United States, and he enjoys the freedoms and values in this country, especially religious freedom, and would report any unauthorized attempt by anyone to gain protected information from him.

Applicant has family and friends who are residents and citizens of Sweden. They include his parents (ages 69 and 71), aunt and uncle, three cousins and two friends. None of his family or friends are affiliated with the Swedish government or military, and except for his parents, he has not shown a particularly close relationship with his family members or friends.

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 to be 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, administrative judges apply the guidelines 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.

⁹ The old passport expired in 2013. The renewed passport expires in 2026.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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.

Section 7 of EO 10865 provides that adverse 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

The security concern for foreign influence is set out in AG ¶ 6:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

- (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
- (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 parents, aunt and uncle, cousins and friends are citizens and residents of Sweden. His contacts in Sweden may create a potential conflict of interest, but no heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion is present. AG ¶ 7(b) has been raised by the evidence, but ¶ 7(a) is not applicable. Sweden is not known to target United States citizens or obtain protected information, nor is it associated with a heightened risk of terrorism.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

- (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.; 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.

I considered the totality of Applicant's ties to Sweden, but they are outweighed by his established relationships and loyalties in the United States. Applicant's parents are 69 and 71 years old. None of his foreign contacts are associated with the Swedish government or military. He does not own property or financial interests in Sweden, besides the possibility of a future inheritance. He has no desire to live in Sweden, but may have to care for his parents if needed. He, his wife, and their children are U.S. citizens residing in the U.S. His children were born in the U.S. and his work, home and financial interests are in the U.S. He credibly testified about his loyalty to the United States and that he would report any unauthorized attempt by anyone to gain protected information from him.

I find that it is unlikely Applicant will be placed in a position of having to choose between the interests of the United States and the interests of the Swedish government or any foreign interest. There is little risk associated with a conflict of interest, because Applicant can be expected to resolve any conflicts in favor of the United States. AG ¶¶ 8(a) and 8(b) are applicable.

Guideline C, Foreign Preference

The security concern for foreign preference is set out in AG ¶ 9:

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 guideline notes several conditions that could raise security concerns under AG ¶ 10. The following are potentially applicable in this case:

(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;

(7) voting in a foreign election; and

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

Applicant possessed a current Swedish passport as a dual citizen, and renewed it after it was relinquished to his FSO while he held a security clearance. He exercised his Swedish citizenship by renewing his Swedish passport, obtaining a foreign passport for his son, and voted in Swedish elections. These actions implicate AG ¶¶ 10(a) and 10(b).

Conditions that could mitigate foreign preference security concerns are provided under AG ¶ 11. The following is potentially applicable:

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant became a naturalized U.S. citizen in 2008. He keeps his Swedish citizenship only to facilitate an extended stay in Sweden if required to care for his aging parents, and wanted his son to have his dual citizenship. He did not travel with the passport while holding a security clearance, and he always informed his employer of his personal travels to Sweden. He has since surrendered the old and renewed passport to his FSO, with the understanding that they must remain in his employer's possession as

a condition of his security clearance. AG ¶ 11(e) applies. Without understanding the security significance, he voted in two Swedish elections, once before and once after obtaining a security clearance. He has expressed a new understanding of the concerns about exercising the rights of foreign citizenship while holding a security clearance, and vowed to refrain from any further such actions.

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 the 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and C in my whole-person analysis. I considered Applicant's ties to Sweden, but they are far outweighed by his established relationships and loyalties in the United States.

Applicant now understands with greater clarity the security concerns related to his use of a foreign passport after it has been surrendered as a condition of his security clearance, and about exercising his rights of foreign citizenship, such as voting in foreign elections. He has acknowledged a renewed understanding of the security implications of his actions. His loyalty and security consciousness were never in doubt. His actions were not malicious or hidden from his employer, and his reasoning was not unusual. His FSO and colleague testified favorably.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the foreign influence and foreign preference security concerns.

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:	For Applicant
Subparagraph 1.a - 1.f:	For Applicant
Paragraph 2, Guideline B:	For Applicant
Subparagraphs 2.a - 2.g:	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.

Gregg A. Cervi
Administrative Judge