



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



In the matter of:)
)
) ISCR Case No. 15-03055
)
Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

08/03/2016

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On November 23, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline C, foreign preference. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on December 11, 2015, and requested a hearing before an administrative judge. The case was assigned to me on May 5, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 20, 2016, scheduling the hearing for June 20, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 and 2 were admitted in evidence without

objection. Applicant testified and submitted Applicant's Exhibits (AE) A and B, which were admitted without objection. DOHA received the hearing transcript (Tr.) on June 28, 2016.

Findings of Fact

Applicant is a 43-year-old engineer employed by a defense contractor. She has worked for her current employer since 2002. She seeks to retain a security clearance, which she has held since about 2003. She has two bachelor's degrees that were awarded in 1996 and 2001. She is married with two minor children.¹

Applicant was born in Ukraine to Ukrainian parents. She came to the United States as a child and became a U.S. citizen in 1985. Her husband and children are dual U.S. and Italian citizens. Her children were born in the United States. They obtained their Italian citizenship through their father. Her husband became a U.S. citizen in 2008.²

Applicant's employer has a large contract to produce military equipment. The contract is funded by the United States and multiple allied nations, including Italy. In about 2003, Applicant's husband started working on the project for an Italian company in the United States as a subcontractor to Applicant's employer. Applicant and her husband met through their jobs and married in 2003.³

Applicant's husband owned a property in Italy valued at about \$78,000. He had about \$20,000 in stocks in an Italian company. When he turns 65, he will be eligible to collect the equivalent of about \$3,000 per month from the Italian government in retirement compensation similar to Social Security. He and Applicant wanted to protect his financial interests in Italy in case of his death, and they believed the best way to do so would be for Applicant to obtain Italian citizenship through her marriage to an Italian citizen. She became an Italian citizen in 2013. Applicant never obtained an Italian passport; she never voted in Italian elections; and she has no plans to do either in the future.⁴

Applicant's husband quit his job with the Italian company and now works directly for Applicant's employer. He sold his property in Italy and his stocks in the Italian company. Applicant and her husband are using the proceeds as partial payment for a home in the United States. Applicant has about \$610,000 in stocks and a 401(k) retirement account. Her husband is applying for a security clearance through his employer. He destroyed his Italian passport. The United States is their home and

¹ Tr. at 16, 23-24; GE 1, 2.

² Tr. at 24; GE 1, 2.

³ Tr. at 16-18; Applicant's response to SOR; GE 1.

⁴ Tr. at 18-20, 24-28; Applicant's response to SOR; GE 1, 2.

Applicant and her husband do not intend to ever live in Italy. Applicant credibly testified that her loyalties lie in the United States.⁵

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.

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).

⁵ Tr. at 17-27; Applicant's response to SOR; AE A.

Analysis

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:

(5) using foreign citizenship to protect financial or business interests in another country; and

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

Applicant became a U.S. citizen in 1985. In 2013, she became an Italian citizen to protect her husband's financial interests in Italy in case of his death. The above disqualifying conditions are applicable.

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.

The above mitigating condition is applicable when an applicant obtains a foreign passport and then destroys it, surrenders it, or otherwise invalidates it. That mitigating condition is not applicable here because Applicant never obtained a foreign passport and never intends to. There are no other mitigating conditions specifically on point. However, the listed concern is that "[w]hen 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." Applicant's children were born in the United States. She has a good job and about \$610,000 in stocks and a 401(k). Her husband became a U.S. citizen, quit his job, started working for the same employer as Applicant, applied for a security clearance, destroyed his Italian passport, and sold his Italian assets. Having considered all the evidence, I find that Applicant does not have a preference for Italy over the United States and that she is not prone to provide information or make decisions that

are harmful to the interests of the United States. Foreign preference security concerns are mitigated.

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 Guideline C in my whole-person analysis. I considered Applicant's ties to Italy, but they are far outweighed by her deep and longstanding relationships and loyalties in the United States.

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 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
Subparagraphs 1.a-1.b:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge