



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



In the matter of:

)  
)  
) ISCR Case No. 15-05979  
)  
)  
)

Applicant for Security Clearance

**Appearances**

For Government: Andrew Henderson, Department Counsel  
For Applicant: *Pro se*

March 28, 2017

---

**Decision**

---

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on October 31, 2014. (Government Exhibit 1). On April 29, 2016, the Department of Defense (DOD), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOD could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant answered the SOR in writing on June 1, 2016, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals. The case was assigned to the undersigned Administrative Judge on September 8, 2016. A notice of hearing was issued on November 9, 2016, scheduling the hearing for January 18, 2017. The Government offered one exhibit, referred to as Government Exhibit 1, which was received without objection. Applicant presented seven exhibits, referred to as

Applicant's Exhibits A through G, which were admitted into evidence without objection. He also testified on his own behalf. The transcript of the hearing (Tr.) was received on January 26, 2017. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, testimony, and the exhibits. The Applicant is 31 years of age. He has a Doctorate degree in Electrical Engineering. He is employed as a Communications Systems Engineer by a defense contractor and seeks to obtain a security clearance in connection with his 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 he has acted in such a way to indicate a preference for a foreign country over the United States, and may be prone to provide information or make decisions that are harmful to the interests of the United States.

Applicant admits each of the allegations set forth under this guideline. Applicant was born in Poland to a Polish family in 1985. He immigrated to the United States in 1992, at the age of seven, with his parents. He became a naturalized American citizen in 2002. He obtained a Polish passport, at the age of 20 on August 10, 2005, that expired on August 10, 2015. He also possesses a Polish Identification Card. Both documents have expired and are no longer valid. (Applicant's Exhibit A.) When Applicant applied for his Polish passport and his Polish identification card, they were a method of granting easier passage through Poland, after it joined the European Union in 2005. There are no markings for travel in the Polish passport because Applicant has been using his American passport that he obtained in 2002. Applicant is willing to renounce his dual citizenship, but has been told that Polish citizenship cannot be renounced without presidential approval. (See, Applicant's Answer to SOR.)

Applicant voted only one time in a Polish election in 2010. He explained that on this occasion, a tragic accident had occurred where the Polish President and most of his cabinet were killed in an airplane accident in Russia. As a show of solidarity, Polish citizens in the country and abroad were asked to participate in a special election to elect a new President. He voted absentee from the Polish Consulate in the United States. (Tr. p. 34.) He has no plans to participate in Polish politics in the future.

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts, which could create the potential for foreign influence that could result in the compromise of classified information.

Applicant admitted each of the allegations set forth under this guideline. His mother, father, sister, and brother are dual citizens of Poland and the United States. Applicant's entire family came to the United States in 1992. His mother returned to Poland from 2014 to 2016, with the intention of staying in Poland. In January 2017 she returned to the United States when she learned that her husband's employer would not allow him to work from Poland. She now lives in the United States with her husband and is retired. Since 1992, when the family first came to the United States, except for 1999 to 2000, when the family moved back to learn the language and meet some of their relatives, his father, and brother have consistently resided here.

Applicant's sister, who is also a dual citizen of the United States and Poland, is the only member of the immediate family who currently resides in Poland. She has lived there since 2013. She works for in the area of Human Resources for an American company in Poland. She is not married. (Tr. p. 34.)

Applicant's brother graduated from college in the United States, obtained his undergraduate and graduate degrees and now works for an American oil company. In May of last year, he got married to an American citizen.

Applicant's grandparents are citizens and residents of Poland. They are both retired electrical engineers for the state. (Tr. p. 35.) Applicant also has numerous extended family members that include aunts, uncles, and cousins who are citizens and residents of Poland. He maintains contact with some of them, talking with them once every two or three months. None of them work for the state or the military of Poland.

In 2005, Applicant was a co-signer on a bank account with his mother for purposes of emergency and to allow tenants to deposit their rents. Applicant explained that his parents own several apartments in Poland. In 2006, Applicant's parents closed the account as they no longer needed the bank account for depositing money. A family member in the real estate business now manages the properties. (Tr. p. 39.) A letter from Applicant's mother attests to the fact that the bank account no longer exists, and that Applicant's name is not on any accounts in any Polish banks or financial institutions. (Applicant's Exhibit G.)

## **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:

- (1) possession of a current foreign passport;
- (7) voting in a foreign election.

#### Conditions that could mitigate security concerns:

11.(a) dual citizenship is based solely on parent's citizenship or birth in a foreign country;

11.(b) the individual has expressed a willingness to renounce dual citizenship, and

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

### Foreign Influence

6. *The Concern.* 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.

Conditions that could raise a security concern:

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;

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; and

7. (d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Conditions that could mitigate security concerns:

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.;

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; and

8. (c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

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 behavior 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) and Guideline B (foreign influence) 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 his 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 Applicant presently qualifies for a security clearance.

An individual who shows foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the

United States. Foreign influence can raise 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, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

Under Foreign Preference, Disqualifying Conditions 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 (7) voting in a foreign election* apply. Mitigating Conditions 11.(a) *dual citizenship is based solely on parent's citizenship or birth in a foreign country*, 11.(b) *the individual has expressed a willingness to renounce dual citizenship*, and 11.(e) *the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated* are also applicable.

Applicant's dual citizenship is based solely on the fact that he was born in Poland. He chose to become an American citizen. He obtained his foreign passport for the benefit of travel convenience in Poland and throughout Europe, but he never used it. He used his American passport. Both his Polish passport and his Polish identification card are invalid and no longer useful. He has no intentions of ever applying for them again. Under the circumstances, Guideline C is found for the Applicant.

Under Foreign Influence, Disqualifying Conditions 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*; 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*, and 7.(d) *sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion* apply. However, Mitigating Conditions 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.*; 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; and 8.(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation also apply.*

It is acknowledged that Applicant's parents, brother, and sister are all dual citizens of Poland and the United States. His sister resides in Poland. His grandparents and other extended family members are also citizens and residents of Poland. None of them are currently affiliated with the Polish government. At one time, his grandparents worked as for the state, but they are now retired.

In this case, Applicant has everything to lose and nothing to gain by engaging in any conduct that may prove harmful to the interests of the United States. Applicant has lived in the United States for almost twenty-five years. His parents and brother are here. The United States is now the Applicant's permanent home and he has adopted the American culture and its values. The government has presented no evidence showing that Poland presents a heightened risk to the United States. Accordingly, I make no finding that it does. Under the particular facts of this case, the possibility of foreign influence does not exist, nor could it create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is not vulnerable to foreign influence. Accordingly, I find for the Applicant under Guideline B (Foreign Influence).

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole-person assessment of good judgement, trustworthiness, reliability, candor, a willingness to comply with rules and regulations, or other characteristics indicating that the person may properly safeguard classified information.

Considering all the evidence, the Applicant has met the mitigating conditions of Guidelines C and B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines C and B.

## **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: For the Applicant.

Subpara. 1.a.1.: For the Applicant

Subpara. 1.a.2.: For the Applicant



Paragraph 2: For the Applicant.

Subpara. 2.a.: For the Applicant

Subpara. 2.b.: For the Applicant

Subpara. 2.c.: For the Applicant

Subpara. 2.d.: For the Applicant

Subpara. 2.e.: For the Applicant

Subpara. 2.f.: For the Applicant

Subpara. 2.g.: For the Applicant

## **DECISION**

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson  
Administrative Judge