



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



In the matter of: )  
)  
) ISCR Case No. 15-06810  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

04/10/2017  
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**Decision**  
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RIVERA, Juan J., Administrative Judge:

Applicant's family contacts and her financial and property interests in the United Kingdom (UK) do not create a heightened risk of foreign influence or exploitation, a potential conflict of interest, or an unacceptable security risk. She surrendered her UK passport. Considering the relations between the United States and the UK, Applicant has mitigated the foreign influence and foreign preference security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On January 8, 2015, Applicant submitted a security clearance application (SCA). After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) was unable to make an affirmative decision to grant Applicant eligibility for a security clearance. On April 10, 2016, the DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline C (foreign preference) and Guideline B (foreign influence).<sup>1</sup> Applicant answered the SOR on May 4, 2016, and requested a decision based on the written record.

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<sup>1</sup> The DOD acted under Exec. Or. 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

A copy of the Government's file of relevant material (FORM) (adducing the evidence in support of the denial), was provided to Applicant by transmittal letter dated May 31, 2016. Applicant received the FORM on June 9, 2016. She was allowed 30 days to submit any objections to the FORM and to provide material to refute, extenuate, and mitigate the concerns. Applicant submitted an eight-page response to the FORM that was received by the Defense Office of Hearings and Appeals (DOHA) on July 1, 2016. The case was assigned to me on March 21, 2017.

### **Procedural and Evidentiary Rulings**

The Government presented no evidence concerning the government of the UK and its relations with the United States. Because the identity and the character of the foreign country at issue and its relationship with the United States is always a concern in Guideline B cases (see AG ¶ 6), I took administrative notice (*sua sponte*) of facts about the UK contained on a U.S. Department of State Fact Sheet - *U.S. Relations With United Kingdom*, dated July 20, 2016 (<https://www.state.gov/r/pa/ei/bgn/3846.htm>).

### **Findings of Fact**

Applicant denied the allegations in SOR ¶¶ 1.a, 2.d, and 2.e. She admitted the factual allegations in SOR ¶¶ 2.a through 2.c, and submitted a two-page letter with comments to refute, extenuate, and mitigate the security concerns. Applicant's SOR and FORM response admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact:

Applicant is a 46-year-old managing partner (self-employed) of a company she and her spouse founded. She was born, raised, and educated in the UK, where she earned a bachelor's degree, a master's degree, and a professional degree (Common Professional Examination in Law). She immigrated to the United States in August 2000 and became a naturalized U.S. citizen in September 2014. Applicant married her spouse in 1997. He also was born, raised, and educated in the UK, and is a naturalized U.S. citizen. They have two boys, ages 12 and 10, who were born in the United States.

Between 2001 and 2005, Applicant worked for a private company in the United States as an engineering manager. She was unemployed between 2005 and 2012, and used the period to raise her children. She has been self-employed as a managing partner of her company since April 2012. This is her first SCA.

Applicant disclosed in her 2015 SCA that she was in possession of an UK passport, issued to her in 2006, that would not expire until May 2017. Applicant revealed that she used her UK passport extensively to travel to the UK and other foreign countries. During her interview with a government investigator in April 2015, Applicant was in possession of the UK passport, and she offered to give up her UK passport, if needed. She was issued a U.S. passport after her naturalization in September 2014.

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for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

Applicant denied, and there is no evidence to the contrary, that she used her UK passport after she became a naturalized U.S. citizen and was issued her U.S. passport.

In her answer to the SOR, and in her response to the FORM, Applicant stated that sometime after her 2015 interview, she returned her UK passport to the UK. She did not submit documentary evidence to corroborate her claim, but indicated she would have submitted the documentation if she had been asked for it. Applicant last voted in a UK local election in June 2000. She believes she is no longer eligible to vote in UK elections.

Applicant, her parents, sister, and parents-in-law are citizens and residents of the UK. Applicant's parents are both retired and in their eighties. Her parents-in-law are both retired and in their seventies. Applicant's mother's most recent employment was with the "Inland Revenue Service." Her father worked for the Bank of England. Her sister worked for a primary school. Her mother-in-law worked for a bank before she retired. Applicant claimed not to know what her father-in-law's employment was before he retired. Presumably, all of them receive a pension or other benefits from their employers or the UK government.

Applicant disclosed in Section 20A (Foreign Activities) of the 2015 SCA, that she and her spouse had significant financial interests in the UK, which included UK accounts with an estimated value of \$981,975 (depository and custodial accounts and assets reported to the IRS on Form 8938, Statement of Foreign Financial Assets. In her May 2016 answer to the SOR, Applicant stated that the current value of her UK financial assets was approximately \$623,000. She noted that a significant portion of those assets were in retirement accounts that she cannot access until she reaches her retirement age. In her June 2016 response to the FORM, Applicant stated that she had reduced her financial assets in the UK to \$575,000.

Applicant and her spouse purchased a home in the UK in 1997 with an estimated value at the time of the purchase of \$200,000. Applicant purchased another property in 1990 with an estimated value at the time of the purchase of \$52,000. In her answer to the SOR, Applicant denied owning a home in the UK. However, she admitted to having an interest in a real estate investment property in the UK. There is no information as to the current value of the properties.

Applicant submitted documents showing that she and her spouse's U.S. financial assets are about \$850,000, and their U.S. property interests have a value of about \$2.1 million. (See response to the FORM) Applicant averred that any financial or proprietary interests that she has in the UK are insignificant when compared to her financial and proprietary interests in the United States. She also submitted a certificate showing that she and her spouse recently formed a domestic limited liability company in her state of residency.

Applicant believes that she has deep and longstanding relationships and loyalties in the United States formed over that last 17 years. She and her spouse are raising their children in the United States as Americans.

I take administrative notice of the following facts concerning the United States relations with the UK:

The United States has no closer ally than the United Kingdom, and British foreign policy emphasizes close coordination with the United States. Bilateral cooperation reflects the common language, ideals, and democratic practices of the two nations. Relations were strengthened by the United Kingdom's alliance with the United States during both World Wars, in the Korean conflict, in the Persian Gulf War, in Operation Iraqi Freedom, and in Afghanistan, as well as through its role as a founding member of the North Atlantic Treaty Organization (NATO). The United Kingdom and the United States continually consult on foreign policy issues and global problems and share major foreign and security policy objectives.

U.S. Department of State Fact Sheet: *U.S. Relations with United Kingdom*, July 20, 2016 (<https://www.state.gov/r/pa/ei/bgn/3846.htm>).

### **Policies**

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment,

reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## **Analysis**

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

AG ¶ 9 explains the concerns about foreign preference stating:

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.

AG ¶ 10 indicates four conditions that could raise security concerns and may be disqualifying 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;
  - (2) military service or a willingness to bear arms for a foreign country;
  - (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
  - (4) residence in a foreign country to meet citizenship requirements;
  - (5) using foreign citizenship to protect financial or business interests in another country;
  - (6) seeking or holding political office in a foreign country;
  - (7) voting in a foreign election;
- (b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

Applicant is a dual citizen of the United States and the UK. She was born, raised, and educated in the UK by her UK parents and relatives. She immigrated to the United States in 2000, at age 30. Applicant became a naturalized U.S. citizen in 2014, and was issued a U.S. passport shortly thereafter. She possessed an UK passport before immigrating to the United States. There is no evidence to show that Applicant ever used her UK passport after becoming a U.S. citizen and receiving her U.S. passport. Applicant stated that she returned her UK passport to UK authorities shortly after her 2015 interview with a government agent. Applicant continues to hold financial and proprietary interests in the UK.

Foreign preference disqualifying conditions AG ¶ 10(a) is supported by the evidence. If this condition is not mitigated, it would disqualify Applicant from eligibility to hold a security clearance.

AG ¶ 11 provides conditions that could mitigate the security concerns for foreign preference:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship;

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) use of a foreign passport is approved by the cognizant security authority;

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

(f) the vote in a foreign election was encouraged by the United States Government.

Applicant was made aware of the Government's concerns raised by her possession of an UK passport, and she surrendered the passport to the UK authorities. Applicant's surrendering her UK passport mitigates the security concerns alleged under

Guideline C. I considered that Applicant could be exercising her UK citizenship to protect and maintain her financial and property interests in the UK. Notwithstanding, she acquired the financial and property interest before she became a naturalized U.S. citizen, and she has been reducing her interests after she was made aware of the security concerns. Considering the evidence as a whole, in particular, the lack of heightened risk of foreign exploitation, I find the Guideline C concerns mitigated.

### **Guideline B, Foreign Influence**

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] 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 indicates three conditions that could raise a security concern and may be disqualifying under AG ¶ 7 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;
- (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
- (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.

Applicant’s parents, sister, and parents-in-law are citizens and residents of the UK. They are all retired and receive retiree pensions. Applicant owns a property interest in a house she and her husband purchased in 1997 for about \$200,000, and on another property purchased in 1990 for about \$52,000. Applicant presented no documentary evidence about the current value of the two properties she owns in the UK. Applicant’s current financial interests in the UK are about \$575,000. Applicant believes that her financial and property interests in the UK are not substantial when compared to her

financial and property interests in the United States. Applicant financial and property assets in the United States are valued at close to \$3 million.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.<sup>2</sup>

Applicant has frequent contacts and a close relationship of affection and obligation with her parents, sister, and parents-in-law living in the UK. These contacts create a potential conflict of interest between the Applicant's obligation to protect sensitive information and her desire to help her family members in the UK. Additionally, Applicant has significant financial and property interests in the UK.

The Government produced substantial evidence raising these three disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

- (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.;
- (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;
- (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;
- (d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;
- (e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

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<sup>2</sup> See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).



(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant is a dual citizen of the United States and the UK. She was born in the UK and immigrated to the United States in 2000, at age 30, with her spouse. She became a naturalized U.S. citizen in 2014. Her two sons were born in the United States.

Applicant is deeply rooted in the United States, and believes that there is no evidence to show that she has a preference for the UK over the United States. Applicant documentary evidence shows that she has substantial financial and property interests in the United States, with a value of close to \$3 million. Applicant and her husband have financial and property interests in the UK with a value of at least \$800,000. She explained that most of the assets are in retirement accounts that she cannot access until she reaches her retirement age.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with family members living in the UK. Considering the UK's government and its relationship with the United States, Applicant is able to fully meet her burden of showing there is "little likelihood that [her relationships with her relatives who are UK citizens and living in the UK] could create a risk for foreign influence or exploitation."

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c).

I have incorporated my comments under Guidelines C and B in my whole-person analysis. I considered that Applicant lived in the UK the first 30 years of her life and in the United States during the most recent 17 years. Applicant considers the United States her home, and she considers herself an American. She has two sons born in the United States that she is raising as Americans. Additionally, Applicant has substantial financial and property interests in the United States that she believes trump her financial and property interests in the UK. Considering the evidence as a whole, in particular, the nature and quality of the relations between the United States and the UK, Applicant has carried her burden of persuasion and the foreign influence and foreign preference security concerns are mitigated. Eligibility for access to classified information is granted.

### **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:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a - 2.e:	For Applicant

### **Conclusion**

In light of all of the circumstances, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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JUAN J. RIVERA  
Administrative Judge