



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

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ISCR Case No. 15-06783

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

10/31/2017

Decision

MALONE, Matthew E., Administrative Judge:

The information about Applicant's possession of a Romanian passport is no longer disqualifying. Applicant's request for eligibility for access to classified information is granted.

Statement of the Case

On April 30, 2013 Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for access to classified information, as required for his job with a defense contractor. After reviewing the completed background investigation, Department of Defense (DOD) adjudicators could not determine that it was clearly consistent with the interests of national security for Applicant to have access to classified information.¹

¹ Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive).

On April 7, 2016, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline C (Foreign Preference).² At the time the SOR was written, the DOD CAF applied the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006. On December 10, 2016, the Director of National Intelligence (DNI) issued a new set of AGs, effective for all security clearance adjudications conducted on or after June 8, 2017. I have based my recommended decision in this case on the June 8, 2017 AGs.

Applicant timely responded to the SOR (Answer) and requested a decision without a hearing. On September 15, 2016, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on November 9, 2016, and had 30 days from the date of receipt to object to the use of the information included in the FORM and to submit additional information in support of his case.⁴ Applicant did not object to the use of any information in the FORM; nor did he provide any additional information in response to the FORM. I received the case on October 1, 2017.

Findings of Fact

Applicant was born, raised, and educated in Romania. He immigrated to the United States in 1998 and became a United States citizen in September 2010. The Government alleged in the SOR that, as a U.S. citizen, Applicant also exercised his Romanian citizenship by renewing his Romanian passport in June 2009 for another ten years (SOR 1.a(1)); and that he is unwilling to relinquish his Romanian passport (SOR 1.a(2)). Applicant admitted renewing his Romanian passport, but denied doing so after becoming a U.S. citizen. He also denied being unwilling to relinquish his foreign passport. (FORM, Items 1 – 4)

Applicant is 57 years old. He and his wife have been married since July 1992 and have three children, ages 8 – 22. Applicant earned a PhD in 1995 and has been a professor at a large university in the United States since July 2002. Since February 2013, he also has been a committee member of a prominent scientific organization in the United States. In his e-QIP, Applicant disclosed that he owns a house in Romania worth about \$120,000. He bought the house for his mother after his father died. When his mother dies, he likely sell the house when he wraps up her estate. To do this, by Romanian law, he must be able to show that he is a Romanian citizen and lawful owner of the property. For that reason, he does not wish to relinquish his Romanian passport. Applicant has not used his Romanian passport since becoming a U.S. citizen. (FORM, Items 3 – 5)

² See Directive, Enclosure 2.

³ See Directive, Section E3.1.7. In the FORM, Department Counsel relies on five enclosed exhibits (Items 1 - 5).

⁴ See Directive, Section E3.1.7.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(d) 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 interest⁶ for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOD 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.⁷ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁸

Because no one is entitled to a security clearance, applicants bear a heavy burden of persuasion to establish that it is clearly consistent with the national interest for them to have access to protected information. 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.⁹

⁵ See Directive. 6.3.

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See Directive, E3.1.14.

⁸ See Directive, E3.1.15.

⁹ See *Egan*, 484 U.S. at 528, 531.

Analysis

Foreign Preference

The Government's information about Applicant's renewal and continued possession of a foreign passport reasonably raised the security concern expressed at 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 provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. *By itself*; the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

At the time the SOR was issued, mere possession of a foreign passport was potentially disqualifying.¹⁰ Under the new guidelines, possession of a foreign passport only becomes disqualifying when an individual uses that passport instead of a valid U.S. passport for travel in and out of the United States.¹¹ That has not occurred here. SOR 1.a(1) is resolved for Applicant.

As to SOR 1.a(2), Applicant's unwillingness to relinquish his passport is not, in and of itself, disqualifying. Under the old adjudicative guidelines, there was potential mitigation in a willingness to renounce foreign citizenship¹² or if one's passport had been relinquished to the custody of proper authority.¹³ Nonetheless, Department Counsel argues that Applicant exercised his foreign citizenship to protect a financial or business interest in a foreign country. This may have been disqualifying under the previous guidelines;¹⁴ however, current guidelines now require such conduct to be in

¹⁰ See AG ¶10(a) of the adjudicative guidelines effective September 1, 2006 (*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.*).

¹¹ See AG ¶10(c) of the adjudicative guidelines effective for adjudicative actions taken after June 8, 2017 (*failure to use a U.S. passport when entering or exiting the U.S.*).

¹² See AG ¶11(b) of the adjudicative guidelines effective September 1, 2006 (*the individual has expressed a willingness to renounce dual citizenship*).

¹³ See AG ¶11(e) of the adjudicative guidelines effective September 1, 2006 (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*).

¹⁴ See AG ¶10(a)(5) of the adjudicative guidelines effective September 1, 2006 (*using foreign citizenship to protect financial or business interests in another country*).

violation of U.S. law before it is disqualifying.¹⁵ That is not the case here. SOR 1.a(2) is resolved for Applicant. The security concerns raised by the Government's information are resolved for Applicant.

In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). A fair and commonsense assessment of the record evidence as a whole shows that the doubts about Applicant's suitability for clearance raised by the Government's information have been resolved.

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 C: FOR APPLICANT

Subparagraph 1.a: For Applicant

Conclusion

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

MATTHEW E. MALONE
Administrative Judge

¹⁵ See AG ¶10(e) of the adjudicative guidelines effective for adjudicative actions taken after June 8, 2017 (*using foreign citizenship to protect financial or business interests in another country in violation of U.S. law*).