



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



In the matter of:

ISCR Case No. 16-03967

Applicant for Security Clearance

Appearances

For Government: Ray T. Blank, Esq., Department Counsel

For Applicant: *Pro se*

04/10/2018

Decision

DAM, Shari, Administrative Judge:

Applicant mitigated the foreign influence and foreign preference security concerns related to her connections to the United Kingdom. National security eligibility for access to classified information is granted.

History of Case

On February 25, 2016, Applicant submitted an electronic Questionnaire for Investigations Processing (e-QIP). On February 10, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines B (foreign influence) and C (foreign preference).

Applicant answered the SOR on March 9, 2017, and requested that her case be decided by an administrative judge on the written record without a hearing. On March 29, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing five Items, was mailed to Applicant

and received by her on April 13, 2017. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM.

Applicant timely submitted additional information in response to the FORM that I marked as Applicant Exhibit (AE) A. In it, she noted minor factual corrections to information in Item 5, which is her Enhanced Subject Interview, dated October 4, 2016.¹ She did not object to the admissibility of any other Items. Items 1 through 4 are admitted into evidence. Item 5 is admitted, subject to Applicant's factual corrections, as noted in AE A. Department Counsel had no objection to AE A. It is admitted. The Defense Office of Hearings and Appeals assigned this case to me on October 1, 2017.

Findings of Fact

Applicant denied the allegations in the SOR and provided explanations. (Item 2)

Applicant is 56 years old. She was born in the United States to British citizens. She has held dual citizenship with both countries since her birth. She attended school in the United Kingdom (UK) from 1980 to 1983 and earned a degree. In 1983, she married a man, who also holds dual citizenship with the United States and the UK. They have one child who is a dual citizen. Applicant's mother, some siblings, and in-laws are resident citizens of the UK. (Item 4)

From 1988 to 1996, Applicant and her husband lived in the United States. They then sold their home in the United States and moved to the UK, where they purchased a home. That home has an estimated value of \$700,000. In 2010, they purchased a home in the United States, which they use when residing here. She lives in each country half-time. She has held a bank account with her husband in the UK since 1983. She estimated that she had \$3,000 in her UK account at the time she submitted her February 2016 e-QIP. She stated she needs a bank account there in order to live in the country. She also has a U.S. bank account. (Item 4; Item 2; AE A)

As a citizen and resident of the UK, Applicant has been receiving medical benefits from the government since 1996. She is entitled to receive them until her death. She estimated they are worth \$50,000. She needs the benefits while residing there and has no ability to refuse them. (Item 4; Item 2; AE A)

Applicant owns a small business. Since 1995, she has subcontracted services to a U.S. department that has an agreement with a British ministry to develop a specific project. She said the project is directed by U.S. employees. She is paid in U.S. dollars and pays taxes in the UK. She files U.S. tax returns and pays applicable taxes. In May 2015, she voted in a general election in the UK. (Item 2; AE A)

¹ Applicant's corrections to Item 5 are listed on AE A, page 2.

Applicant has held a current British passport prior to the time she renewed it in 2007. She uses that passport for convenience purposes when she enters and exits the UK and other countries, as alleged in the SOR. She uses her U.S. passport to enter and exit the United States. She said she must maintain a UK passport in order to work there in a supportive role for the U.S. department. (Item 2; Item 5; AE A)

Applicant has repeatedly stated in documents that she maintains dual citizenship in order to operate her business which benefits the United States. She said there is no conflict of interest or pressures to favor the interests of the UK. She emphasized that the UK is an ally of the U.S. and does not sponsor terrorism. (Item 2; AE A)

The Department did not file documents setting forth facts that indicate the UK is known to target U.S. citizens to obtain classified information or poses a heightened risk of foreign exploitation or coercion.

Policies

This case is adjudicated 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, which became effective within the DOD on June 8, 2017.

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are useful 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(b) and 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 national security eligibility will be resolved in favor of the national security."

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for national security eligibility seeks to enter 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 eligibility for access to classified information or assignment in sensitive duties. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides, “Any determination under this order adverse to an applicant 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B: Foreign Influence

AG ¶ 6 expresses the security concerns regarding foreign influence:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

AG ¶ 7 sets out conditions that could raise a security concern and may be disqualifying in this case. One is potentially applicable:

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

Applicant has substantial financial and property interests in the UK, which consist of a \$700,000 residence and a bank account that has \$3,000. However, those financial interests do not subject her to a heightened risk of foreign influence or personal conflict of interest, given the fact that the UK is one of the U.S.'s closest allies. This guideline is found in her favor and a discussion of mitigating conditions is not relevant.

Guideline C: Foreign Preference

AG ¶ 9 sets out the foreign preference 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 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.

AG ¶ 10 lists the conditions that could raise a security concern and may be disqualifying in this case:

- (a) applying for and/or acquiring citizenship in any other country;
- (b) failure to report, or fully disclose when required, to an appropriate security official, the possession of a passport or identity card issued by any country other than the United States;
- (c) failure to use a U.S. passport when entering or exiting the U.S.;
- (d) participation in foreign activities, including but not limited to:
 - (1) assuming or attempting to assume any type of employment, position, or political office in a foreign government or military organization; and
 - (2) otherwise acting to serve the interests of a foreign person, group, organization, or government in any way that conflicts with U.S. national security interests;
- (e) using foreign citizenship to protect financial or business interests in another country in violation of U.S. law; and

(f) an act of expatriation from the United States such as declaration of intent to renounce U.S. citizenship, whether through words or actions.

Based on the fact that the UK is the country in issue in this case and it is a close ally of the United States, none of the above disqualifying conditions apply. Applicant did not apply for citizenship with the UK. She received it at birth. She fully disclosed her possession of a UK passport. There is no evidence that she fails to use her U.S. passport when she enters or exits the United States. Her receipt of medical benefits or voting one time in the UK's general election are not activities that conflict with U.S. national security interests. There is no evidence that she uses foreign citizenship to protect her financial interests in the UK in violation of U.S. law. She has not declared an intent to renounce her U.S. citizenship. This guideline is found in her favor. Hence, a discussion of mitigating conditions is not relevant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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(d):

(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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility 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 facts and circumstances surrounding this case. My comments under Guidelines B and C are incorporated into this whole-person analysis.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, I conclude Applicant met her burden to mitigate the foreign influence and foreign preference security concerns raised by the facts of this case. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. National security eligibility is granted.

SHARI DAM
Administrative Judge