



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-02373

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

07/16/2018

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant mitigated security concerns pertaining to Guideline C (foreign preference) and Guideline B (foreign influence). Clearance is granted.

Statement of the Case

On August 25, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline C (foreign preference) and Guideline B (foreign influence).¹ In a letter dated November 10, 2017, Applicant answered the allegations and requested a determination based on the written record. On November 30, 2017, the Government issued a File of Relevant Material

¹ The action was taken under Executive Order 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) effective within the DOD on or after June 8, 2017.

(FORM) with three attachments ("Items").² Applicant timely responded to the FORM with two letters, which were incorporated into the FORM. The case was assigned to me on May 23, 2018.

Findings of Fact

Applicant is a 44 year old who has worked as a mail handler for the past two-and-a-half years. She was granted an interim security clearance in February 2016. Her past employment has included work in retail sales and customer service. Applicant has earned two associate's degrees. She is married and has two children and one stepchild.

Born in the Argentine Republic (Argentina), Applicant came to this country at some time before 2005 and sought United States citizenship. She returned to Argentina from late 2008 through early 2011, however, to live with her children during a period of unemployment.³ In the interim, in 2009, she became a naturalized United States citizen. She considers herself to be a dual citizen of the United States and Argentina. When she completed a security clearance application (SCA) in January 2016, she noted that she held an Argentine passport, which was issued in 2003 and expired in 2013, which she only used when visiting Argentina. It appears the passport was renewed and used in 2014 on a European trip. (FORM, Item 3, at 2)

In her subject interview, Applicant stated that she has access to free educational and medical benefits in Argentina, but she does not use them. (FORM, Item 3, at 1). In that same interview, she stated that she "has no obligations or citizenship requirements to fill related to her foreign citizenship." (FORM, Item 3, at 1) She has not voted in an Argentine election since becoming a United States citizen and she has no current plans to do so. Applicant has no personal financial interests or holdings in Argentina. She maintains her Argentine citizenship because "she loves the U.S. which is her home, but loves Argentina which is her country." (FORM, Item 3, at 2) Eventually, after she has retired, she plans to split time between the two countries.

Applicant's parents are deceased, but she has a brother, a citizen and resident of Argentina, who is a police officer in Argentina. She maintains regular contact with him by telephone. Her stepson, the son of her U.S.-born husband, was raised in Argentina,

² There was no request for administrative notice regarding the foreign country at issue. It is noted, however, that Argentina has grown and stabilized since the days of the Perón regime. Today, Argentina has the second largest economy in South America, the third largest in Latin America and is a member of the G-15 and G-20 major economies. It is also a founding member of the United Nations, World Bank, World Trade Organization, Union of South American Nations, and Community of Latin American and Caribbean States. It is the country with the second highest Human Development Index in Latin America with a rating of "very high." Its military is designed to insure self-defense of the country, and to assist in multinational endeavors. Argentina was the only South American country to send warships and cargo planes in 1991 to the Gulf War under UN mandate and has remained involved in peacekeeping efforts in multiple locations. See <https://en.wikipedia.org/wiki/Argentina>.

³ In discussing her return to Argentina during this period, Applicant noted that she later returned "home." (United States). (SOR Response)

the place of his birth. He is a citizen of Argentina. He is or was living with Applicant and her husband.⁴ He arrived in their care some time at the end of 2014. (FORM, Item 2, at 30 of 59) The stepchild's visa expired in October 2015. An attorney's help was obtained for finalizing the stepchild's residency status within the United States.⁵ As of December 2016, he was awaiting receipt of his residency papers so he could start college in the United States. (FORM, Item 3, at 6) Applicant also has a friend who is a citizen and resident of Argentina. This friend currently works in an Argentine revenue division. Applicant and this friend maintain regular contact.

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 used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." All reliable information about the person must be considered in making a decision.

The protection of the national security is the paramount consideration. Any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence.

Under the Directive, the Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. The ultimate burden of persuasion to obtain a favorable security decision is on an applicant.

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. 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 protected information.

⁴ In her December 2016 interview, Applicant stated he was staying with her family in preparation of college. (FORM, Item 3, at 6)

⁵ Given that the stepchild already lives in the United States, it is unclear whether Applicant's use of "residency" implies a pursuit of citizenship.

Analysis

Guideline C – Foreign Preference

The security concern under this guideline is stated 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.

The Government bases its intent to revoke Applicant's security clearance on her stated reluctance to relinquish her foreign citizenship, because she spent time in Argentina after becoming a United States citizen, and because she may split time between the United States and Argentine after retirement. Applicant was born and raised in Argentina, hence her claim to Argentine citizenship. There is no indication she might retire soon (she is still in her 40s), that she soon plans to return to Argentina, or that she has begun making financial preparations in Argentina so she could execute such a plan. Affection for one's birthplace is not the same as exhibiting a foreign preference. At best, the circumstances presented comprise a future interest in Argentina that may or may not come to fruition.

Additionally, there is no current bar to retaining foreign citizenship absent a conflict or some motive to do so that might pose a security risk. Neither situation is present here. Moreover, the renewal of a foreign passport is no longer a disqualifying condition under this guideline. Furthermore, she has no financial interests in Argentina. I conclude the record evidence as a whole does not establish a *prima facie* case for disqualification under Guideline C in its current form.

Guideline B – Foreign Influence

Under the AG, foreign contact 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 be made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contact and interests should consider the country in which the foreign contact or interest is included.

The AG lists nine available disqualifying conditions. Here, given that Applicant has two contacts who are citizens and residents of Argentina: a brother who is a police officer and a friend who works for the Argentine government in a white collar position. In addition, the stepson who lives with her had an expired visa in about October 2015. I find the following potentially apply:

¶ 7(a): contact, regardless of method, 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 classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and

¶ 7(e): shared 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.

Under ¶ 8, the mitigating condition set forth at ¶ 8(a) is clearly applicable:

¶ 8(a): the nature of the relationships with foreign persons, the country 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 United States.

At the onset, I note that Applicant's stepson, with the aid of retained legal counsel, is in the process of finalizing the needed paperwork to obtain U.S. residency. During this process, he has resided in the United States with his father and Applicant, both U.S. citizens. He has posed no heightened risk of foreign exploitation or manipulation. Also, with his plans to continue living in the United States and attend college in the U.S., his Argentine citizenship does not raise serious security concerns.

Applicant's brother is a citizen and resident of Argentina, where he works as a police officer. Given the status and stability of Argentina today, Applicant's relationship with her brother similarly poses little security concern. The same can be said of her friend, who works in a civil service position for the Argentine government. It is highly unlikely that either of these Argentine connections would be placed in a position where Applicant would have to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States.

Whole Person Concept

In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guidelines B and C, 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 all available information bearing on Applicant's eligibility for access to classified information supports a conclusion in favor of the Applicant.

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.d:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 1.a-1.c:	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 grant Applicant a security clearance. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge