



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-06096
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ray T. Blank, Jr., Esq., Department Counsel  
For Applicant: *Pro se*

03/09/2016

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant’s ownership of two properties in Mexico does not generate a foreign influence security concern. Although Applicant’s vote in a Mexican election after becoming a U.S. citizen was an exercise of foreign preference, it no longer poses a security concern given the amount of time that has elapsed since the vote. Applicant has mitigated the security concern. Clearance is granted.

**Statement of the Case**

On March 16, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines C, foreign preference, and B, foreign influence. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG), current as of September 1, 2006.

Applicant answered the SOR on March 28, 2015, admitting the allegations and opting for a decision on the written record rather than a hearing. On September 22, 2015, Department Counsel prepared a file of relevant material (FORM) setting forth the Government's case. Applicant received the FORM on October 1, 2015, and did not reply, whereupon, the case, on November 10, 2015, was assigned to me.

### **Findings of Fact**

Applicant is a 62-year-old married man with three adult children. He was born, raised, and educated, through high school, in Mexico. He immigrated to the United States in 1997 and became a naturalized U.S. citizen in 2004. (Item 4 at 8) In 2009, Applicant completed an associate's degree, earning a certification as a networking specialist. (Item 4 at 13) Since 2011, he has worked for a defense contractor as a general office worker. (Item 4 at 13)

In 1972, Applicant purchased a home in Mexico. He lived there after moving from his parents' home. It is currently worth \$160,000 USD. (Item 7 at 4) He still owns this property, and intends to pass it on to his children. (Item 7 at 4) In 2009, Applicant purchased a rental property in Mexico. Its current value is \$26,000. Applicant does not own his current residence in the United States.

Applicant has several relatives who are Mexican citizens and residents, including one of his children. He travels to Mexico approximately twice per year to visit them, and he stays approximately three weeks per trip. (Item 4 at 49-65) Applicant lives with his wife. She is a Mexican citizen.

Applicant voted in the Mexican elections of 2000 and 2006. (Item 7 at 5) He viewed the exercise of his Mexican voting rights as an opportunity to help his relatives who are still living in Mexico. (Item 7 at 5) His voting in these Mexican elections was not encouraged by the United States. (Item 6 at 1) He has not voted in any Mexican elections since then.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines 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, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a 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 access to classified information will be resolved in favor of national security. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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 applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

## **Analysis**

### **Guideline C, Foreign Influence**

Under this guideline, “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 ¶ 9). Preference for a country need not be motivated by political or ideological reasons to have negative security implications (ISCR Case No. 98-0476 (App. Bd. December 14, 1999) at 5)).

Applicant’s vote in a 2006 Mexican election after becoming a naturalized U.S. citizen triggers the application of AG ¶¶ 10(a), “exercise of any right, privilege, or obligation of foreign citizenship after becoming a U.S. citizen, and 10(a)(7), “ voting in a foreign election.”

AG ¶ 11(f) is the only potentially mitigating condition.<sup>1</sup> There is no record evidence that the U.S. Government encouraged Applicant’s vote in the Mexican election, therefore, this mitigating condition does not apply

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

Under this guideline, “a security risk may exist when an individual’s immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress.” Moreover, “financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.” (AG ¶ 6)

Applicant has substantial property interests in Mexico. This raises the issue of whether AG ¶ 7(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,” applies. In order to determine whether a heightened risk exists, “a current and accurate assessment of the ‘geopolitical situation’ and the security/intelligence profile of the country vis a vis the

---

<sup>1</sup>The vote in a foreign election was encouraged by the U.S. Government.

U.S.” is crucial. (ADP Case No. 06-14978 (App. Bd. Oct 11, 2007) at 4) Here, there is no record evidence of the geopolitical situation and security/intelligence profile of Mexico vis a vis the United States. Under these circumstances, I conclude that Applicant’s Mexican property interest, despite its substantial nature, does not trigger a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Therefore, AG ¶ 7(e) does not apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the applicant’s conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): “(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) 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.”

Applicant’s voting in a foreign election triggered a foreign preference security concern that was not mitigated by any of the mitigating conditions set forth in AG ¶ 11. However, one of the votes occurred before he became a naturalized U.S. citizen, and the post-naturalization vote was a one-time activity that occurred approximately ten years ago. Absent any behavior that demonstrates a preference for Mexico over the United States since then, I conclude that it is unlikely that any such activities will recur. Upon considering the whole-person factors, I conclude it is clearly consistent with the national interest to grant or continue Applicant’s access to classified information.

### **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
Subparagraph 1.a :	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY  
Administrative Judge