



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



In the matter of: )  
)  
) ISCR Case No. 15-00424  
)  
)  
Applicant for Security Clearance )

**Appearances**

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

02/10/2016

**Decision**

WHITE, David M., Administrative Judge:

Applicant is a U.S. citizen who obtained dual citizenship from a foreign country and a foreign passport in 2008. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SF-86) on March 6, 2012.<sup>1</sup> On July 25, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline C (Foreign Preference).<sup>2</sup> The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as

---

<sup>1</sup>Item 4.

<sup>2</sup>Item 1.

amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR on August 20, 2015, and requested that his case be decided by an administrative judge on the written record without a hearing.<sup>3</sup> Department Counsel submitted the Government's written case on November 2, 2015. A complete copy of the File of Relevant Material (FORM)<sup>4</sup> was received by Applicant on November 18, 2015, and he was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant timely submitted a statement in response to the FORM, including documentation that he surrendered his foreign passport to his Facility Security Officer (FSO). Department Counsel indicated that he had no objection to consideration of Applicant's FORM response, which is admitted into the record as Applicant Exhibit (AE) A. I received the case assignment on January 7, 2016.

### **Findings of Fact**

Applicant is 33 years old. He worked for a Federal contractor from August 2011 until January 2014, when he resigned on favorable terms. He is currently employed by another Federal contractor and continues to seek a clearance in connection with that position. He earned a bachelor's degree in mechanical engineering in May 2004, and a master's degree in business administration (MBA) in May 2010. He is married, with no children.<sup>5</sup>

Applicant admitted the truth of the two SOR allegations, with explanations. His admissions are incorporated into the following findings.

Applicant was born in Connecticut in 1982, and both of his parents are also native-born U.S. citizens. In 2004, while still in college, he began the process of applying for dual citizenship in Ireland. He said that he did this to better understand his family history, to expand his employment opportunities in the European Union (EU) after graduating from college, and to facilitate foreign travel. His college girlfriend, who is now his wife, is a dual U.S. and United Kingdom (U.K.) citizen. They had ambitions of living abroad after graduation, before settling down in the United States.<sup>6</sup>

---

<sup>3</sup>Item 3.

<sup>4</sup>Department Counsel submitted six Items in support of the SOR allegations. Item 5 comprises an unsworn summary of Applicant's interview by an investigator from the Office of Personnel Management (OPM), that was conducted on April 19, 2012. Per Directive ¶ E3.1.20 this ROI summary is inadmissible, absent either adoption by Applicant or evidence from an authenticating witness. It will not be considered in this decision.

<sup>5</sup>Item 3.

<sup>6</sup>Items 3 and 4.

On May 1, 2008, Applicant was granted Irish citizenship and was issued an Irish passport, which will expire in May 2018. Applicant admitted that he used his Irish passport to travel to Europe on four occasions between March 2010 and October 2011. The first trip was made in connection with his MBA studies. The next three were made in connection with his wedding and honeymoon. These trips involved travel to the U.K., France, Greece, and Italy. Applicant stated that travel notifications were filed with his FSO for all travel as required. He also said that he does “not have a preference for a foreign country over the United States” and has “never even been to Ireland.”<sup>7</sup>

Applicant revealed his dual citizenship and possession of a current Irish passport on his March 2012 SF-86. During May 2012, it became apparent to him and his employer that this could raise security concerns. He said that he did not want the passport destroyed, but agreed to surrender it to his FSO for the duration of his employment at that company.<sup>8</sup>

When he left employment with that contractor in January 2014, he asked the company’s FSO to return his Irish passport to him. The FSO submitted an appropriate incident report of the matter on JPAS. On July 22, 2015, after he began working for his current employer, Applicant surrendered his Irish passport to that company’s FSO for safekeeping and return to him upon his request. He acknowledged that return of his foreign passport would require the FSO to submit a JPAS incident report, which could result in revocation or denial of his security clearance.<sup>9</sup>

The record lacks any other evidence concerning the quality of Applicant’s professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

### **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 (DCs) and mitigating conditions (MCs), which are to be used 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

---

<sup>7</sup>Items 3 and 4.

<sup>8</sup>Items 3, 4, and 6.

<sup>9</sup>Items 3 and 6; AE A.

to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he 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.” Section 7 of Executive Order 10865 provides: “[a]ny 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.”

A person applying for access to classified information 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 access to classified information. 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.

## **Analysis**

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

Under AG ¶ 9 security concerns involving foreign preference arise because, “[w]hen 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 describes conditions that could raise a security concern and may be disqualifying under this guideline:

(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.

The evidence in this case established security concerns under AG ¶¶ 10(a)(1) and (b). Applicant obtained his foreign passport in 2008, and used it exclusively for his foreign travel since then. He is a U.S. citizen by birth, but from 2004 to 2008 he applied for and obtained Irish citizenship in anticipation of traveling, living, and working abroad, primarily in the European Union. He has exercised no other rights, privileges, or obligations of an Irish citizen, and has never been to Ireland.

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

- (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.

The only potentially mitigating condition for which there is admissible record evidence is AG ¶ 11(e). Applicant's Irish passport was surrendered to the FSO at his previous employer in May 2012, and again to his current FSO in July 2015. However, both times his surrender of possession was on the condition that the passport remain in a current and valid status, and be returned to Applicant upon request or separation from employment. The degree of mitigation established under these circumstances is minimal, given that this mitigating condition describes surrender of the passport as being equivalent to its being, "destroyed . . . or otherwise invalidated."

I have considered that the October 2008 revision of Guideline C for Sensitive Compartmented Information (SCI) access under Intelligence Community Policy Guidance (ICPG) 704.2, is the only guideline that differed from the AG approved for basic security clearance eligibility. As an administrative judge, I have no authority to modify, or to fail to apply, AG Guideline C as written in 2006 since this case involves Applicant's eligibility for a security clearance, rather than eligibility for access to SCI. I would note, however, that Applicant's conduct was in total compliance with ICPG 704.2, which expressly states:

The principal goal of the Foreign Preference assessment is to determine the risk based on foreign associations that information may be compromised if access is approved; it is not a measurement of how loyal a subject is to the United States. Therefore, a finding that there is a preference must be established by adequate evidence of heightened risk related to national security. Furthermore, the fact that a U.S. citizen is or has become a citizen of another country does not establish a preference

for a foreign country. Being a U.S. citizen and a citizen of another country is not prohibited or disqualifying absent a showing of heightened risks related to national security. The same is true for the exercise of any right, privilege or obligation of foreign citizenship or action to acquire or obtain recognition of a foreign citizenship by a U.S. citizen.

In that respect it is anomalous that he would be eligible for access to Sensitive Compartmented Information (SCI) and other controlled access program information. This decision is further constrained by the fact that Guideline C, unlike Guideline B (Foreign Influence),<sup>10</sup> contains no provision permitting consideration of the identity of the foreign country involved and whether it is known to target U.S. citizens to obtain protected information or is associated with a risk of terrorism.

### **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 relevant 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) 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance 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 pertinent facts and circumstances surrounding this case. Applicant is an accountable and experienced adult, who is responsible for the voluntary choices and deliberate conduct that caused the Government's prima facie security concerns. His explanations and motivations for maintaining his dual citizenship and the ability to obtain and use his foreign passport were insufficient to meet his burden to establish mitigation under the applicable adjudicative guideline. Overall, the record evidence leaves me with doubt as to Applicant's present eligibility and suitability for a security clearance.

---

<sup>10</sup>AG ¶ 6.

### **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 C:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, and the adjudicative guideline concerned, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE  
Administrative Judge