



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-07878
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

March 31, 2008

**Decision**

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LYNCH, Noreen A., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86) on June 29, 2006. On October 3, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny her application, citing security concerns under Guidelines B (Foreign Influence) and C (Foreign Preference). 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on October 18, 2007; answered it on the same day; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 25, 2008. The case was assigned to me on the same day. DOHA issued a notice of hearing on February 27, 2008. I convened the

hearing as scheduled on March 7, 2008.<sup>1</sup> Government Exhibits (GX) 1 and 2 were admitted in evidence without objection.<sup>2</sup> Applicant testified on her own behalf, and submitted Applicant's Exhibit (AX) A, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on March 17, 2008. Eligibility for access to classified information is granted.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.c, 2.a, 2.b and 2.d. She denied the factual allegations in ¶¶ 1.b and 2.c. Her admissions in her answer to the SOR and at the hearing are incorporated in my findings of fact. I make the following findings:

Applicant is a 33-year-old woman. She has been employed as an architect by a defense contractor since March 2006. She is regarded by her employer as a diligent employee whose ability to contribute to projects would be enhanced if she had a security clearance (AX A).

Applicant was born and educated in the United States (U.S.) (Tr. 17). She graduated from high school in 1993. She attended college and worked part time. She graduated from a U.S. university in 2005.

Applicant's parents are living in the U.S. and are naturalized U.S. citizens. She has one sister. While growing up in the U.S., Applicant visited El Salvador with her parents during holidays each year. (Tr. 18).

Applicant's father was born in El Salvador. Her mother was born in Guatemala. Her father and mother keep in touch with their extended family outside the U.S.

Applicant's cousins are citizens and residents of El Salvador. Her uncles live there and also her grandmother. (Tr. 37). Her uncles are professionals and are not connected with the government.

In 1999, Applicant met a citizen and resident of El Salvador on line. They started to communicate by e-mail regularly. She met him in 1999. (Tr. 11). She visited him in 2000. In 2002, Applicant lost her job. She decided to move to El Salvador. Her decision was based on her relationship with her boyfriend and her love of the culture and history of the country. She intended to live there for the rest of her life. She began the process of obtaining Salvadoran citizenship, with her father's help at the Salvadoran consulate in the U.S. Her father provided his birth certificate to show that he was born in El Salvador.

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<sup>1</sup>Applicant waived her 15 days notice in this case.

<sup>2</sup>Department Counsel did not offer any documents for administrative notice at the hearing. I requested information on El Salvador after the hearing. Counsel provided U.S. Department of State Background Note (September 2007). Applicant was advised about the document and did not object.

She obtained recognition of and pursued citizenship in El Salvador. She did not vote in elections while there or receive any benefits. (GX 2).

After living in El Salvador from February 2002 until December of 2002, Applicant decided to return to the U.S. She missed the life in the U.S. Also, she was having difficulty finding employment in El Salvador. Her relationship with her boyfriend ended. She does not have any contact with him at this point.<sup>3</sup>

Applicant now lives with her parents in the U.S. Her father owns a home in El Salvador and he and his wife plan to retire there perhaps in a year or so. The value of the house is approximately \$300,000 to \$400,00. Applicant and her sister may inherit the home at some point. (GX 2).

Applicant does not keep in touch with any of her cousins or relatives in El Salvador. When she was living there she had some differences of opinions and now chooses not to contact them. (GX 2). She hears news of them from her father. (Tr. 19).

In October 2006, Applicant told a security investigator she was willing to renounce her Salvadoran citizenship. She does not possess a passport from that country. (GX 1). Whenever she traveled there or to any other country, she used her U.S. passport. She never relinquished her U.S. citizenship.

Applicant testified she would be willing to renounce her Salvadorian citizenship in order to work on preferred projects with her employer. She has no intention to live in El Salvador again. She does not believe a situation would arise where she would be under pressure because she has no contact with the extended family and they are not involved in any political or government associations.

Applicant was candid and straightforward at the hearing. She explained that when asked by the investigators if she could be put under duress, she does not recall replying yes. She also does not foresee that happening for any reason. She did honestly state that she would not know what to do if someone threatened her parents but she knows her primary allegiance is to the U.S. (Tr. 33).

I take administrative notice of the following facts about El Salvador. El Salvador is a democratic republic governed by a president and an 84 member unicameral Legislative Assembly. The Salvadoran economy continues to benefit from a commitment to free markets and careful fiscal management. U.S.-Salvadoran relations remain close and strong. U.S. policy toward El Salvador seeks to promote the strengthening of El Salvador's democratic institutions and general growth. El Salvador has been a

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<sup>3</sup>Applicant stopped dating him in 2003. She sent an occasional email after that because he owed her money.

committed member of the coalition of nations fighting against terrorism and has also provided a battalion to the efforts to bring stability to Iraq.<sup>4</sup>

## Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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.

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See v.

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<sup>4</sup>Department Counsel conceded that this case is not about heightened risk due to the country of El Salvador. Nor is this a case about Applicant’s loyalty to the U.S. (Tr. 12).

*Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## Analysis

### Guideline B (Foreign Influence)

The SOR alleges Applicant's cousin and numerous other relatives are citizens and residents of El Salvador. (SOR ¶ 1.a). It also alleges Applicant's boyfriend is a citizen and resident of El Salvador. (¶ 1.b). Finally, it alleges Applicant traveled to El Salvador in 1999, 2000 and 2002 (¶ 1.c). The security concern relating to Guideline B is set out in AG ¶ 6 as follows:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

A disqualifying condition may be raised by "contact 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." AG ¶ 7(a). A disqualifying condition also may be raised by "connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information." AG ¶ 7(b). Finally, a security concern may be raised if an applicant is "sharing 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" AG ¶ 7(d). Applicant's extended family

lives in El Salvador. She did have a boyfriend in 1999-2003 who lived in El Salvador. Based on this evidence, AG ¶¶ 7(a), (b), and (d) are raised.

Since the government produced evidence to raise the disqualifying conditions in AG ¶¶ 7(a), (b), and (d), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns under this guideline can be mitigated by showing that “the nature of the relationships with foreign persons, the country in 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 U.S.” AG ¶ 8(a). The totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Similarly, AG 8(c) “contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.” Applicant has no contact with extended family members living in El Salvador. She does not intend to communicate with them due to her differences in opinion based on her 2002 visit. She no longer has a Salvadoran boyfriend. It has been almost six years since her time spent in El Salvador. Thus, the above mitigating conditions apply in this case.¶

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation’s government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S.

All members of Applicant’s immediate family are citizens and residents of the U.S. Her cousins’ specific occupation is not reflected in the record, but none of her extended family is connected to the Salvadoran government.

Security concerns under this guideline also can be mitigated by showing “there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.” AG ¶ 8(b). Applicant’s testimony at the hearing showed her willingness to sever her ties to El Salvador. As such, her testimony supported this mitigating condition.

### **Guideline C (Foreign Preference)**

The SOR alleges Applicant, born a U.S. citizen, pursued and became a citizen of El Salvador in 2002 (¶ 2.a), she stands to inherit a home from her parents in El Salvador (¶ 2.b), she admitted that it was possible that she could be put under duress if pressure or threats were to be used against her extended family (¶ 2.c), and when questioned she declined to state whether she would betray U.S. secrets in order to help her extended family (¶ 2.d). The concern under this guideline is set out in AG ¶ 9 as follows: “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.”

Dual citizenship standing alone is not sufficient to warrant an adverse security clearance decision. ISCR Case No. 99-0454 at 5, 2000 WL 1805219 (App. Bd. Oct. 17, 2000). Under Guideline C, “the issue is not whether an applicant is a dual national, but rather whether an applicant shows a preference for a foreign country through actions.” ISCR Case No. 98-0252 at 5 (App. Bd. Sep 15, 1999).

A disqualifying condition may arise from “exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen,” including but not limited to “possession of a current foreign passport.” AG ¶ 10(a)(1). Applicant does not possess a foreign passport, AG ¶ 10(a)(1) is not established because there is no evidence Applicant has a “current foreign passport.” In fact she never had one.

Nevertheless, the record established she took action to acquire or obtain recognition of a foreign citizenship while she was an American citizen. Thus, the general disqualifying condition under AG ¶ 10(b) is raised.

Because the disqualifying condition under AG ¶ 10(b) is raised, the burden shifted to Applicant to rebut, explain, mitigate, or extenuate the facts. Several mitigating conditions are potentially relevant.

Security concerns under this guideline may be mitigated by evidence that “dual citizenship is based solely on parents’ citizenship or birth in a foreign country.” AG ¶ 11(a). This mitigating condition is not fully established in this case.

Security concerns under this guideline also may be mitigated if “the individual has expressed a willingness to renounce dual citizenship.” AG ¶ 11(b). Applicant has stated

numerous times, including at the hearing, that she is willing to renounce dual citizenship, if it is a condition for obtaining a clearance. Her testimony was sincere and credible on this issue.

Allegations in ¶¶ 2.c and 2.d relate to the statements that Applicant made to investigators in 2006. The allegations concern her extended family. She has no contact with them. She answered immediately at the hearing that she does not have any affiliation or affection for them since her 2002 trip. Her comments were very candid concerning her parents and any possible threats to them. While a concern may exist hypothetically, these allegations do not invoke any Disqualifying Conditions under Foreign Preference. Moreover, the situation of threat is very unlikely to arise in regard to Applicant and the country of El Salvador. Her statements could be a factor for consideration under the whole-person analysis. She was more honest than most people would be when she said she loves her parents and would not want anyone to threaten them. For all these reasons, the above allegations are found in favor of Applicant.

### **Whole Person Concept**

Under the whole person concept, an 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. An 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept. Some of the factors in AG ¶ 2(a) were addressed above, but some warrant additional comment.

Applicant is a mature, well-educated, very intelligent adult. She loves her family and is proud of her culture and heritage. She is a U.S. citizen who received her education in the U.S. and lived her entire life in the U.S. except for a period of time in 2002. She believed she would pursue a romantic relationship and live in El Salvador. Applicant's conduct of potential concern under Guideline C resulted from choices made while young and during a previous romantic relationship. For the past six years she has lived and worked in the U.S., her home country. She does not intend to live in El Salvador and has not visited since 2002. I do not believe she is a threat to the United

States, but rather an honest, hard-working young woman, who possibly made uninformed decisions early in her life, which she will never repeat.

After weighing the disqualifying and mitigating conditions under Guidelines B and C, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign influence and foreign preference. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

### **Formal Findings**

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

Paragraph 1, Foreign Influence:	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant
Paragraph 2, Foreign Preference:	FOR APPLICANT
Subparagraphs 1.a-1.d:	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.

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Noreen A. Lynch  
Administrative Judge