



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



In the matter of:)	
)	
)	ISCR Case No. 14-04592
)	
Applicant for Security Clearance)	

Appearances

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

01/12/2016

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline C, foreign preference, and Guideline E, personal conduct. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On December 1, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline C, foreign preference, and Guideline E, personal conduct. 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 effective within the DOD for SORs issued after September 1, 2006.

On January 3, 2015, Applicant answered the SOR and elected to have her case decided on the written record in lieu of a hearing. On May 20, 2015, Department

Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and she received it on August 7, 2015. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence and Items 2 through 5 are admitted into evidence. Applicant did not provide additional evidence and the record closed. The case was assigned to me on December 9, 2015.

Procedural matters

On December 10, 2015, I requested Department Counsel provide me with a copy of the original SOR. I also inquired whether he intended to provide administrative notice documents regarding the Guideline B, foreign influence allegations in the SOR. Department Counsel withdrew the Guideline B allegations and provided me the original SOR.¹

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.a and 1.b. She partially admitted the allegation in ¶ 2.a with an explanation and denied ¶ 2.b. I have incorporated her admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 53 years old. She was married from 1982 to 1989 and from 2001 to 2006. She has a 13-year-old child from her second marriage. She earned a bachelor's degree in 1987 and a management certificate in 1995. She has worked for federal contractors since 1999, and her present employer, a federal contractor, since 2007. She has held a security clearance since 2003.²

Applicant was born in Brazil and moved to the United States in 1983. She became a naturalized citizen of the United States in 1988. Applicant holds dual citizenship with Brazil. She has not renounced her citizenship with Brazil. She has maintained a Brazilian passport for many years. In 2007, she renewed her Brazilian passport. In August 2008, as part of her background reinvestigation for her security clearance, Applicant surrendered her Brazilian passport and it was shredded by her employer. During her background interview in September 2008, Applicant indicated she maintained dual citizenship with Brazil because it was easier to travel using a Brazilian passport. At that time, she indicated she was willing to renounce her Brazilian citizenship.³

After destruction of her Brazilian passport, Applicant was granted a top secret security clearance in November 2008. In November 2009, Applicant applied for and was

¹ Hearing Exhibit I.

² Item 2.

³ Item 2 and 4.

issued a new Brazilian passport. She used the Brazilian passport to travel to Brazil to visit family in 2009, 2011, 2012 and 2013. Although her foreign travel to Brazil was approved by her employer, there is no evidence to substantiate that she disclosed to her employer that she had obtained a new Brazilian passport and that she was using it to travel there. During her five year periodic reinvestigation for her security clearance in 2013, Applicant acknowledged that she used her Brazilian passport to travel from 2009 through 2013, which was subsequent to being granted a top secret security clearance. There is no evidence she disclosed this information to her employer prior to the reinvestigation. On her October 2013 security clearance application (SCA) she wrote: "I shall provide my [Brazilian] passport to my Security Officer for safekeeping, as necessary."⁴ In 2014, Applicant retrieved the passport from the facility security officer and used it to travel to Brazil while accompanying her elderly mother.⁵

On Applicant's October 2013 SCA she wrote:

I surrendered my previous [Brazilian] passport-it was shredded 8/2008 by [federal contractor employer]. I looked into renouncing the Brazilian citizenship, but was told at the [Brazilian] consulate [it] was a complicated and protracted process. Also, that renouncing citizenship may hinder future travel to that country, as I have my family living there.⁶

During Applicant's background interview in December 2013, she reiterated that she maintains dual citizenship with Brazil because renunciation is a difficult and long process. She indicated renouncing her Brazilian citizenship is not an option because she travels to Brazil regularly to visit her family. Her most recent Brazilian passport expired in November 2014. Applicant did not provide information as to whether she renewed it.⁷

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 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

⁴ Item 2 page 50; Answer to SOR. An email dated September 22, 2014, which is included as part of Applicant's answer to the SOR, indicates the facility security officer was holding Applicant's Brazilian passport.

⁵ Item 2; Answer to SOR.

⁶ Item 2.

⁷ Item 3.

factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 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 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 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, 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, and has the ultimate burden of persuasion as to obtaining a favorable security decision."

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 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 that an applicant may deliberately or inadvertently fail to 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 Executive Order 10865 provides that decisions shall be "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 C, Foreign Preference

The security concern for foreign preference is set out in 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 be prone to provide information or make decisions that are harmful to the interests of the United States.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. The following is potentially applicable in this case:

- (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; and
- (b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

Applicant applied for and was issued a Brazilian passport after becoming a naturalized citizen of the United States. She has repeatedly used her Brazilian passport to travel to Brazil. It is unknown whether she has a current Brazilian passport. The above disqualifying conditions apply.

AG ¶ 11 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (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) the 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; and
- (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant exercised dual citizenship when she repeatedly renewed her Brazilian passport after becoming a U.S. citizen and used it to travel to Brazil. She has not expressed a willingness to renounce her dual citizenship. There is no evidence that her use of the Brazilian passport was approved by a cognizant security authority. It is alleged that her passport expired in November 2014. I have not been provided evidence to substantiate that that passport expired, and it is unknown if she renewed it. None of the above mitigating condition applies.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (1) untrustworthy or unreliable behavior . . . ; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

In 2008, as part of Applicant's reinvestigation for her security clearance eligibility, it was learned that she held a current Brazilian passport and used it repeatedly to travel to Brazil. It is unknown whether she previously had reported that she held a Brazilian passport. She surrendered that passport, whereupon it was shredded, and she expressed a willingness to renounce her dual citizenship with Brazil. She was subsequently issued a top secret security clearance. At that time, Applicant was on notice that holding a foreign passport prohibited her from holding a top secret security clearance. In 2009, she reapplied for a Brazilian passport, did not inform her security manager of her actions, and subsequently used the passport to travel to Brazil. She did not disclose this information to her employer until October 2013 as part of the reinvestigation for her top secret security clearance. Although her employer was aware of her foreign travel, there is no evidence that she disclosed she was using a foreign passport for the travel. Applicant had a duty to report this information. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating condition under AG ¶ 17:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is

unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant had a duty to disclose that she had applied for and was issued a new Brazilian passport in 2009. When she disclosed her foreign travel to her employer, there is no evidence she disclosed that she would be using a foreign passport for her travel. She did not disclose that she had obtained a new Brazilian passport in 2009 and used it to travel, until 2013 during the reinvestigation for a top secret security clearance. She stated she was required to obtain a Brazilian passport because of her dual citizenship status in order to travel to Brazil to visit family. Applicant may renounce her citizenship with Brazil and travel on her U.S. passport, but has chosen not to go through the process. Her conduct was not minor because she actively sought to circumvent the rules after being granted a top secret security clearance. There is considerable circumstantial evidence to conclude that Applicant was aware after the destruction of her Brazilian passport in 2008 that she could not possess an active foreign passport, use it to travel, and continue to hold a top secret security clearance. The above mitigating condition 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) 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines C and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 53 years old. She immigrated to the United States from Brazil and became a naturalized citizen of the United States in 1989. She maintains dual citizenship with Brazil. She has exercised her rights as a Brazilian citizen by obtaining

and renewing her Brazilian passport for travel there. In 2008, she surrendered her Brazilian passport and it was destroyed. At the time, she indicated her willingness to renounce her Brazilian citizenship. She was granted a top secret security clearance. In 2009, she subsequently obtained a new Brazilian passport and used it to travel to Brazil until 2013. There is no evidence she disclosed this information to her facility security manager at the time she renewed and received it. She waited until October 2013 when she was reinvestigated for her security clearance eligibility. There is sufficient evidence to conclude that Applicant intentionally circumvented the security clearance process. She has not met her burden of persuasion. Her conduct raises serious questions about her trustworthiness, reliability, and good judgment. The record evidence leaves me with doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline C, foreign preference, and Guideline E, personal conduct.

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:	AGAINST APPLICANT
Subparagraph 1.a (1) and (2):	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Paragraph 3, Guideline B:	WITHDRAWN
Subparagraphs 1.a-1.c:	Withdrawn

Conclusion

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

Carol G. Ricciardello
Administrative Judge