



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



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| In the matter of: |) | |
| ----- |) | |
| |) | ISCR Case No. 14-05344 |
| Applicant for Security Clearance |) | |

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel

For Applicant: *Pro se*

January 7, 2016

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on April 4, 2014. (Government Exhibit 1.) On January 24, 2015, the Department of Defense issued a Statement of Reasons (SOR) detailing security concerns under Guideline 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 adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant submitted an undated answer to the SOR, and requested a hearing. Department Counsel was prepared to proceed on April 23, 2015. This case was assigned to me on April 27, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 11, 2015. I convened the hearing as scheduled on June 17, 2015. The Government offered Government Exhibit 1, which was admitted into evidence without objection. Applicant testified, and submitted Applicant Exhibits A and B, which were admitted without objection. At the request of Applicant, the record was

left open for the receipt of additional documents. Applicant submitted emails dated July 14, July 16, and July 23, 2015. Department Counsel had no objection and those emails are admitted into evidence as Applicant Exhibits C through E.¹ The record closed at that time. DOHA received the transcript (Tr.) of the hearing on June 25, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 33 and engaged. She has a associate's degree and is applying for a security clearance in conjunction with her employment in the defense industry. She has been employed in the defense industry since 2012.

Paragraph 1 (Guideline C - Foreign Preference)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has acted in a way that shows a preference for another country over the United States. Applicant admitted the single allegation under this paragraph. That admission is a finding of fact. She also submitted additional information to support the granting of a security clearance.

Applicant was born in the Philippines in 1982. She emigrated to the United States in 2002. Applicant served in the United States Air Force for four years, from 2002 to 2006, receiving an Honorable Discharge at the end of her service. She became a naturalized American citizen on November 1, 2005. Applicant's parents and her sister also now reside in the United States. (Government Exhibit 1; Applicant Exhibit B; Tr. 16-20.)

Applicant petitioned to reacquire her Philippine citizenship in 2010. The petition was granted and she was issued an Identification Certificate by the Philippine Consulate General on February 23, 2010. She has not reapplied for a Filipino passport, and only uses her American passport for travel. (Tr. 22-24; Applicant Exhibit A.)

Applicant testified, "I re-applied for my - - for dual citizenship for the Philippines because my mom have - - have real estate there in the Philippines. And it's for the purpose of just in case in the future she leaves that real estate to me." Applicant later testified that she was not sure if Philippine law required her to be a dual citizen in order to inherit. She was uncertain of the value of the property. (Tr. 21-22, 26.)

¹Applicant stated in Applicant Exhibit E that she had attached additional documents to that email. Those documents were not attached. Applicant was notified of that fact by email and telephone on December 18, 2015. Records show that she read the email the date it was sent. (AJ Exhibits I and II.) As of the date of this decision, Applicant has not communicated with this office, or submitted those attachments. This decision is being issued based on the available record. (See Directive, Additional Procedural Guidance, Paragraph E3.1.10.)

Applicant subsequently submitted Applicant Exhibit C, which states:

I drove to the . . . Philippine [Consulate] last Friday (July 10, 2015) to renounce my dual citizenship but the officer I spoke to over there informed me that in addition to my dual citizenship paperwork I will also have to turn in my original birth certificate. They said they have to confiscate that as well. I don't see the reason why they'd have to confiscate my birth certificate too . . . and they also informed me that if I turn in my birth certificate I will not be eligible to apply for another copy of my birth certificate. I am at a complete loss now as to what I can do. I would need my birth certificate for almost anything and I can see me having more problems later on if I do turn it in.

Policies

Security clearance decisions are not made in a vacuum. 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 to be used as appropriate 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(a) describing 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "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 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, 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, and has the ultimate burden of persuasion for obtaining a favorable clearance 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the applicant's conduct and circumstances and the granting or continued holding of a security clearance. If such a case has been established, the burden then shifts to the applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

Paragraph 1 (Guideline C - Foreign Preference)

The concern about Applicant's alleged Foreign Preference is stated thus under this Guideline at ¶ 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.

In this case, the Government has met its initial burden of proving by substantial evidence that Applicant petitioned to reacquire her native Filipino citizenship. It also showed that Applicant was granted the status of a dual citizen of the United States and the Philippines in February 2010. Furthermore, the evidence shows that Applicant did this in order to protect her rights to a possible inheritance of real property in the Philippines.

Accordingly, AG ¶ 10 applies to the facts of this case. Conditions that could raise a security concern and may be disqualifying include:

(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:

(5) using foreign citizenship to protect financial or business interests in another country; and

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

Following the hearing, once Applicant understood the full meaning of her actions, she went to the Filipino Consulate to revoke her dual citizenship. As stated, she found the requirement to also surrender her original birth certificate from the Philippines too onerous a burden and elected not to revoke her citizenship at this time.

The following provision under AG ¶ 11 applies and mitigates the security concerns found in Paragraph 1:

(b) the individual has expressed a *willingness* to renounce dual citizenship. (Emphasis supplied.)

Applicant did not know until the hearing the true impact of her 2010 action to re-acquire Philippine citizenship and her security clearance. She not only expressed a credible *willingness* to renounce her citizenship, she did attempt to renounce it. Her decision not to go through with the act, because of the requirement to also surrender her original birth certificate, does not show a preference for the Philippines over the United States. Another factor in support of Applicant is the fact that she only has an American passport, and did not take any action to obtain a passport from the Philippines. Under the particular circumstances of this case, Applicant has taken all the steps a reasonable person in her position can be expected to take. This allegation is found for Applicant.

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 relevant circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. My Guideline C analysis is applicable to the whole-person concept as well. For those reasons, I find that there is little or no "potential for pressure, coercion, exploitation, or duress" as set forth in AG ¶ 2(a)(8). Using the whole-person standard, Applicant has mitigated the security significance of her alleged foreign preference. She is eligible for a security clearance.

On balance, it is concluded that Applicant has successfully overcome the Government's case opposing her request for a security clearance. Accordingly, the evidence supports a finding for Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

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:

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| Paragraph 1, Guideline C: | FOR APPLICANT |
| Subparagraph 1.a: | For Applicant |

Conclusion

In light of all of the circumstances presented by the record, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge