



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



In the matter of:)
)
) ISCR Case No. 14-07031
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: *Pro se*

03/15/2016

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant is a dual citizen of his native United Kingdom and the United States, who retained his U.K. passport after becoming a naturalized U.S. citizen in August 2013. He earned pensions in the U.K. and contributed to the U.K. social security system before he moved to the United States. The foreign preference concerns are mitigated by Applicant's surrender of his U.K. passport to his facility security office for the duration of his employment. His future pension interests are not currently disqualifying in the absence of active steps on his part to protect those pensions. Clearance is granted.

Statement of the Case

On May 29, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline C, Foreign Preference, and explaining why it was unable to grant or continue a security clearance to Applicant. The DOD CAF acted 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 (AG) effective within the DOD on September 1, 2006.

Applicant filed a *pro se* response to the SOR allegations on June 15, 2015, and he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On October 27, 2015, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. I scheduled a hearing for November 18, 2015.

At the hearing, Government Exhibit (GE) 1 was admitted into evidence without objection. The letter forwarding discovery of the Government's exhibit was marked as a hearing exhibit (HE 1) for the record but not admitted as an evidentiary exhibit. Applicant testified, as reflected in a transcript (Tr.) received on December 3, 2015.

I held the record open after the hearing for Applicant to supplement the record. On November 19, 2015, Applicant submitted Applicant Exhibit (AE) A, which was accepted into evidence without any objection from the Government.

Findings of Fact

The SOR alleges under Guideline C that Applicant holds a valid U.K. passport issued in January 2012 (SOR ¶ 1.a) and that he is eligible for a U.K. state pension (SOR ¶ 1.b). Applicant admitted the allegations when he answered the SOR in June 2015, but indicated that he had not used his U.K. passport after becoming naturalized in the United States. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 59-year-old engineer. A citizen of the United Kingdom from birth, Applicant earned his bachelor's degree from a university in the United Kingdom in June 1979. He and his first wife wed in July 1983. They had two daughters, who were born in 1988 and 1990 and are lifelong U.K. resident citizens. (Tr. 26.) In April 1988, Applicant and his first wife bought a home in the United Kingdom for approximately \$120,000 USD. (GE 1.)

Applicant worked as an engineer in the United Kingdom, primarily in the defense industry. (Tr. 30.) He earned pensions with three private companies and a state pension from the United Kingdom based on 32 years of contributions into the U.K.'s national insurance program akin to U.S. social security. (GE 1; Tr. 15, 21.) He estimated the value of his U.K. state pension at £9,000 a year. (Tr. 18-19.) He cannot draw on his U.K. state pension until age 66. (Tr. 21.) In June 2014, he estimated the total value of his foreign pensions at \$400,000 USD. (GE 1.) He testified in November 2015 that his private pensions in the United Kingdom total approximately \$200,000 USD. He will have to cash in the private pensions while his U.K. state pension is a lifetime benefit. (Tr. 33.) In February 2004, Applicant began working for a U.K. subsidiary of his current employer, a U.S. defense contractor. (GE 1.)

Applicant and his ex-wife separated permanently in December 2005. He moved into an apartment in the United Kingdom until October 2006, when his employer placed

him on assignment at the parent company in the United States. Applicant met his current spouse and decided to stay. In April 2008, he bought his current residence in the United States. In June 2008, he acquired U.S. permanent residency. In September 2008, he and his first wife sold their marital home in the United Kingdom for \$400,000 USD, and they split the proceeds. Applicant transferred his employment from the U.K. subsidiary to the U.S. defense contractor. In February 2009, Applicant and his first wife were divorced. In September 2010, Applicant married his current wife, who is a U.S. resident citizen. (GE 1.)

As a citizen solely of the United Kingdom, Applicant used his U.K. passport to travel regularly to visit his daughters and other family members in the United Kingdom. He travels to the U.K. twice a year, always during the Christmas holiday, and stays a couple of weeks. (Tr. 26.) He renewed his U.K. passport in late January 2012 for another ten years, until February 5, 2022. (GE 1; AE A.) On August 28, 2013, Applicant became a naturalized U.S. citizen. He obtained a U.S. passport on September 17, 2013, and he used that passport exclusively for all international travel thereafter, including to the United Kingdom. (GE 1; Tr. 28.)

On June 3, 2014, Applicant completed and certified to the accuracy of an Electronic Questionnaire for Investigations Processing (e-QIP). He disclosed that he was a dual citizen of his native United Kingdom and of the United States since his naturalization in August 2013 and that he held valid passports from both nations. He indicated that he did not know his first wife's address. He provided address information in the United Kingdom for his mother, his two daughters, his brother, his maternal aunt, a female cousin, and a friend. In response to whether he had ever had any foreign financial interests, Applicant listed the purchase and sale of the home he had shared with his first wife in the United Kingdom and that he had personal pensions and a state pension from employment in the United Kingdom. He indicated that the personal pensions would provide income when he reached age 65 or 66, sometime around April 2021. About any financial support for foreign nationals, Applicant disclosed that he had given the elder of his two daughters around \$50,000 USD in total support. She had completed her education and was about to commence employment as a nurse within the U.K.'s national health system. Applicant indicated that he provided his younger daughter, a university student, about \$10,000 USD in support. Applicant denied any voting in any foreign election after moving to the United States. He listed his foreign travel for business and pleasure, and indicated that he had made several short trips to the United Kingdom to visit family members since July 2008. (GE 1.)

Applicant continued to possess his U.K. passport after he received the SOR and learned it was an issue for his security clearance. On June 15, 2015, Applicant indicated that he had not used his U.K. passport since becoming a U.S. citizen. Applicant explained that he holds his U.K. passport to ensure that he could return to the United Kingdom for an extended period if need be, given that his two daughters reside there. He denied any loyalty to the United Kingdom. Absent what he characterized as "extreme, extenuating circumstances relating to [his] daughters," Applicant denied any intent to use his U.K. passport. He added that he would never use his U.K. passport

without first informing the U.S. government in advance of his intent to use his U.K. passport to enter the United Kingdom. Concerning his U.K. state pension benefit, Applicant explained that his eligibility stems from having contributed funds into the U.K. National Insurance Scheme for some 32 years, before he moved to the United States. He views it as an earned entitlement rather than a benefit from the United Kingdom and did not see the U.K. having any leverage against him because of the future pension. (Answer.)

At his November 18, 2015 security clearance hearing, Applicant reiterated that he had not used his current U.K. passport, but he continued to possess it should anything happen to his daughters where he needed to be with them for an extended period. Concerning his pension assets in the United Kingdom, Applicant admitted that he needs the pension when he turns 66. He does not personally consider either the U.K. passport or the pension as presenting a conflict of interest for him. Applicant did not dispute the concerns of the Government, but he wanted some guidance about what he could do to assuage the concerns. (Tr. 15-17.) Applicant testified that he would be willing to consider relinquishing his foreign passport although he would “truly need to think hard” about giving up his pension because he will need the money. (Tr. 19-20, 22.) Applicant had considered and rejected invalidating or destroying his U.K. passport because he would be ineligible for a U.K. passport for five years. Concerning the possibility of surrendering his U.K. passport to his facility security officer (FSO), Applicant believed that he could not replace it for five years. (Tr. 23-24.) Applicant did not consider whether it was possible to give possession of his U.K. passport to his company’s FSO to ensure that he cannot travel abroad on that passport. (Tr. 24.) He testified that he would be “fine” with providing his U.K. passport to his security office. (Tr. 25.)

On November 19, 2015, Applicant surrendered his U.K. passport to his employer’s security office. Applicant was advised that his passport would be retained until it becomes invalid due to its expiration, the termination of his employment, or if he requests that the passport be returned to him. If the passport is returned to him, security will document the return by filing an incident report with the DOD. (AE A.)

Applicant has 401(k) assets with his current U.S. defense contractor employer in addition to his pension with the company’s U.K. subsidiary. (Tr. 31-32.) He is not certain about his future plans after he retires. He would like to retire around September or October 2018. He expects to remain in the United States in the short term and return to the United Kingdom to see his daughters. (Tr. 20-21.) Applicant continues to provide some financial support for his daughters. As of November 2015, Applicant was sending his younger daughter £375 per month for her share of rent in the United Kingdom. She is a university student. (Tr. 34.) Applicant no longer supports his older daughter because she is employed as a nurse. (Tr. 27, 30.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 the adjudicative process. The administrative judge’s overall 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. 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 to obtain 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 the 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 relating to the guideline for foreign preference is articulated 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.

Applicant is a citizen of his native United Kingdom from birth and, albeit relatively recently, of the United States by choice. Retention of foreign citizenship acquired from birth out of respect for one's ethnic heritage, for example, is not disqualifying in the absence of an exercise of a right, privilege, or obligation of that citizenship. See AG ¶ 11(a), "dual citizenship is based solely on parents' citizenship or birth in a foreign country." However, after Applicant became a naturalized U.S. citizen in August 2013, he retained his U.K. passport, which he last renewed in January 2012. He has not traveled on his U.K. passport as a U.S. citizen, using his U.S. passport even to enter and exit the United Kingdom. He kept the passport just in case he needed to remain in the United Kingdom for an extended period for either of his daughter's sake. Even so, his possession of a valid U.K. passport after his naturalization in the United States raises significant issues of foreign preference under AG ¶ 10(a):

(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.

Applicant has substantial pension interests in the United Kingdom. After paying into the U.K.'s social security system for some 32 years, Applicant expects a benefit of £9,000 for life from age 65 or 66. He also has three private pensions from his employments in the United Kingdom, which he estimates now total \$200,000 USD. However, there is no evidence that he is currently accepting any retirement money or other benefit from the United Kingdom, or that he is retains his U.K. citizenship to protect that future entitlement. Neither AG ¶ 10(a)(3), "accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country," nor AG ¶ 10(a)(5), "using foreign citizenship to protect financial or business interests in another country," are currently implicated. Concerns of foreign preference because of his foreign pensions are not yet matured. Applicant clearly does not intend to give up any of the pensions that he legally earned. While these future substantial financial interests could conceivably present a conflict of interest or be a source of coercion or manipulation, the Government did not allege foreign influence as a security issue.

Dual citizenship is not encouraged by the United States because of the competing obligations that could arise. Applicant has not expressed a willingness to renounce his U.K. citizenship, so AG ¶ 11(b), “the individual has expressed a willingness to renounce dual citizenship,” does not apply in mitigation. AG ¶ 11(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,” applies to Applicant’s use of his U.K. passport as a U.S. resident before August 2013 and to Applicant’s earning of the foreign pensions. It does not apply to Applicant’s retention of a U.K. passport after his U.S. naturalization.

On November 19, 2015, the day after his security clearance hearing, Applicant turned over custody of his U.K. foreign passport to the company sponsoring him for a security clearance. The delay in surrendering his foreign passport was credibly explained by his failure to understand that he had an alternative acceptable to the DOD that did not require renunciation of foreign citizenship or invalidation of the passport such that he would be ineligible to obtain a U.K. passport for five years. AG ¶ 11(e), “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated,” applies in mitigation of the foreign preference concerns where Applicant does not intend to ask for return of his U.K. passport for the duration of his employment with the DOD contractor absent some extraordinary circumstance involving his daughters, which would then trigger a report from his employer to the DOD. The foreign preference concerns are mitigated.

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 her conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).¹ The analysis in Guideline C is incorporated in my whole-person analysis. However, some factors warrant additional comment.

Applicant came to the United States as an employee of a U.K. subsidiary of his current U.S. employer in October 2006. His time in the United States is short in comparison to his 50 years as a resident citizen of the United Kingdom. He married, raised two daughters, and had a career in the defense industry in the United Kingdom. It is understandable that he earned pensions in the U.K. and that he contributed for some

¹ The factors under AG ¶ 2(a) are as follows:

- (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.

32 years into the U.K. social security system. After meeting his spouse, a U.S. native citizen, Applicant decided to remain in the United States. He bought a home in April 2008, transferred his employment from the U.K. subsidiary to the U.S. parent company, married his spouse in July 2010, and became a U.S. citizen in August 2013. Showing a preference for his U.S. citizenship, he used his U.S. passport for all international travel after he obtained it in September 2013. Applicant retained his U.S. passport in case he had to stay in the United Kingdom for an extended time should either or both of his daughters need him. There is no evidence that his daughters intend to live other than in the United Kingdom, so Applicant can be expected to travel to the United Kingdom in the future to visit them. His surrender of custody of his U.K. passport to his employer for the duration of his employment with the defense contractor is evidence of his willingness to comply with DOD requirements.

The Government has a compelling interest in ensuring those given security clearances will make decisions free of concerns for the foreign country of which they may also be a citizen. While the United Kingdom and the United States share common interests and have a history of cooperation, including in defense matters, their interests are not always completely aligned. Yet, Applicant did not show a preference for his native U.K. when he chose to travel on his U.S. passport to the U.K. His ties to the United States are considerable despite being relatively recent. For the reasons noted, I find that it is clearly consistent with the national interest to grant security clearance eligibility for Applicant.

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
Subparagraph 1.b:	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.

Elizabeth M. Matchinski
Administrative Judge