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United States Department of Energy
Office of Hearings and Appeals

In the Matter of Personnel Security Hearing)

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Case No.: PSH-15-0002

Issued: April 14, 2015

Administrative Judge Decision

Robert B. Palmer, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the individual should be granted a security clearance.²

I. BACKGROUND

The following facts are undisputed. The individual was born in a foreign country and emigrated to the United States in 1993 to pursue his chosen profession, leaving behind his parents, a sister, and three brothers, who still reside in that foreign country. He became a U.S. citizen in 2000, but did not renounce his citizenship of the country of his birth, and did not surrender or invalidate his foreign passport.

¹An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will also be referred to in this Decision as a security clearance.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

In 2005, the individual's employer, a Department of Energy (DOE) contractor, requested a security clearance on his behalf. During the ensuing investigation, the Local Security Office (LSO) summoned the individual for an interview with a personnel security specialist. When asked about his dual citizenship during this Personnel Security Interview (PSI), the individual stated that he was not willing to renounce his foreign citizenship, but that he would be willing to relinquish his foreign passport. The processing of this first application for a security clearance was administratively terminated in 2009 because of the individual's unwillingness to renounce his foreign citizenship.

Based on its belief that DOE's policy regarding clearance holders and dual citizenship had changed, the individual's employer again requested a security clearance on the individual's behalf. The individual was interviewed by an Office of Personnel Management (OPM) investigator in February 2014, and reiterated on that occasion that he would not be willing to renounce his foreign citizenship. The LSO attempted to resolve its concerns about the individual's dual citizenship and use of a foreign passport by issuing a Letter of Interrogatory (LOI) to the individual in October 2014. In his response to the LOI, the individual again stated that he was not willing to renounce his foreign citizenship. He further responded that he intended to keep and use his foreign passport when travelling outside of the United States.

After reviewing the individual's responses to the questions posed in the LOI, and the rest of his personnel security file, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. It informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt concerning his eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Administrative Judge. The DOE introduced 13 exhibits into the record of this proceeding. The individual introduced 16 exhibits and presented the testimony of three witnesses, in addition to testifying himself.

II. THE NOTIFICATION LETTER AND THE DOE'S SECURITY CONCERNS

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraph (1) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Criterion (1) defines as derogatory, information indicating that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of national security. As support for its invocation of this criterion, the Letter cites the individual's responses

to the questions set forth in the LOI indicating that he is unwilling to renounce his foreign citizenship or to surrender, invalidate or destroy his foreign passport.

These circumstances adequately justify the DOE's invocation of criterion (I), and raise significant security concerns. When an individual acts in such a way as to indicate a preference for a foreign country over the United States, he or she may be prone to provide information or make decisions that are harmful to the interests of the United States. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guideline C.* The exercise of any right or privilege of foreign citizenship, such as holding a current foreign passport, is specifically mentioned as a potentially disqualifying condition under *Guideline C.*

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting or restoring a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). *See Personnel Security Hearing, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (affirmed by OSA, 1996), and cases cited therein.* The regulations further instruct me to resolve any doubts concerning the individual's eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. ANALYSIS

At the hearing, the individual attempted to demonstrate, through his testimony and that of three present or former co-workers, that he is a loyal American who will not put another country's interests ahead of those of the United States. For the reasons set forth below, I agree, and I find that the individual has adequately addressed the DOE's security concerns regarding foreign preference.

Under *Adjudicative Guideline C*, a security concern arises when an individual acts in such a way as to indicate a preference for a foreign country over the U.S., such as by exercising rights or privileges relating to foreign citizenship, including possessing and using a foreign country's passport, after becoming a U.S. citizen. In this case, the individual is admittedly a dual citizen who has used a foreign passport since obtaining U.S. citizenship. Nevertheless, he has produced sufficient mitigating information to convince me that no valid security concerns exist regarding the possible foreign preference.

First, in his response to the Notification Letter and at the hearing, the individual expressed a willingness to renounce his foreign citizenship. DOE Exhibit (DOE Ex.) 2; Hearing Transcript (Tr.) at 102 (*see Adjudicative Guideline C*, ¶ 11(b)). As noted above, this is contrary to the individual's previous statements on the matter. However, he indicated that when he made those statements, he incorrectly believed that his eligibility to receive social and medical benefits from the foreign country would be adversely affected by renouncing his foreign citizenship, as well as his ability to inherit from his parents' considerable estate upon their deaths. Tr. at 83-90, 112, 114, 138. Since then, he has learned that he would not be eligible for such benefits even if he retained his foreign citizenship, Tr. at 83-88, and that any inheritance would not be as large as he once thought, but would amount to only a fraction of his expected future net worth. Tr. at 88-90, 98-99, 126. He further stated that he now believes that he could inherit from his parents' estate even if he renounced his foreign citizenship. Tr. at 127. Second, the individual has surrendered his passport to his employer's facilities security officer. Tr. at 77, Individual's Exhibits 2 and 13 (*see Adjudicative Guideline C*, ¶ 11(e)). He further testified that even if it were returned to him, he would not use the foreign passport or renew it as long as he held a security clearance. Tr. at 78, 109. Third, the individual is a citizen of the foreign country by birth (*see Adjudicative Guideline C*, ¶ 11(a)). His U.S. citizenship is therefore the only one that he affirmatively chose.

Although the individual has made conflicting statements about his willingness to renounce his foreign citizenship and to surrender or invalidate his foreign passport, he has repeatedly and consistently said that his loyalty is to the United States, that he does not have a preference for the foreign country and would not place its interests over those of the United States. DOE Ex. 12 at 66, 69; DOE Ex. 13 at 77-78; DOE Ex. 8 at 1; Tr. at 83, 122, 129-130. The length of time that the individual has spent in this country, 22 years, also suggests that his ties to the United States are strong.³ He testified that he became a U.S. citizen in 2000 because he planned to remain in the United States on a long term basis, and that he intends to remain in the U.S. at least until his retirement. Tr. at 73, 83. The individual's co-workers testified that he has never indicated, through his words or actions, any preference for the foreign country over the U.S. or any loyalty to a country other than the U.S. Tr. at 20, 40, 41, 52. I also note that the individual has no assets or financial or business interests in the foreign country. Tr. at 91.

Two other factors lead me to believe that granting the individual access authorization will not compromise national security interests. First, the foreign country has friendly relations with the U.S. and has not been known to focus its intelligence-gathering efforts on this country. Second, the individual has demonstrated that he can be relied upon to safeguard sensitive or classified

³ The individual did return to the foreign country to attend school for a period of several years during this period.

information. One of his co-workers testified that the individual was involved in a research program with a graduate student from a “sensitive country,” who began asking questions that went beyond the scope of the program.⁴ The individual attempted to steer the conversation away from sensitive areas, and when this failed, he ended the conversation. He reported the incident to his supervisor and to his employer’s security personnel. The student was expelled from the program, and the individual helped to develop procedures that were designed to prevent the recurrence of such an incident. Tr. at 21. For these reasons, along with the individual’s expressed willingness to renounce his foreign citizenship, the surrendering of his foreign passport and the other factors discussed above, I find that the individual has adequately addressed the DOE’s security concerns regarding foreign preference.

V. CONCLUSION

I find that the individual has successfully addressed the DOE’s security concerns regarding foreign preference, and has therefore adequately mitigated the derogatory information cited in the Notification Letter under criterion (l). I therefore conclude that he has demonstrated that granting him access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the individual should be granted a security clearance. The DOE may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Administrative Judge
Office of Hearings and Appeals

Date: April 14, 2015

⁴ “Sensitive country” refers to a country that is included on the DOE’s “List of Sensitive Countries.” The DOE has determined that these countries either sponsor terrorism or have directed their intelligence gathering efforts at the U.S., or both.