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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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Filing Date: January 28, 2013)

Case No.: PSH-13-0009

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Issued: May 1, 2013

Decision and Order

Robert B. Palmer, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXX (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 individual is employed by a Department of Energy (DOE) contractor, who requested a security clearance on his behalf in connection with that employment. As part of the clearance application process, the individual completed a Questionnaire for National Security Positions (QNSP) in March 2012. On that QNSP, he indicated that he is a citizen

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>.

of the United States and two other countries, and that he holds passports issued by each of these other two countries. Because this information raised security concerns, the local security office (LSO) summoned the individual for an interview with a personnel security specialist in June 2012. After reviewing the transcript of this Personnel Security Interview (PSI) and the rest of the individual's 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 a Hearing Officer 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 Hearing Officer. The DOE introduced nine exhibits into the record of this proceeding. The individual introduced one exhibit 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 (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Criterion (l) 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 information provided by the individual during his QNSP and PSI indicating that he is a citizen of the United States and also of two other countries, and that he holds active passports issued by the two foreign countries. The information further indicates that he has used both passports since becoming an American citizen. The Letter also cites information that the individual provided during his PSI indicating that he has substantial foreign financial interests, valued at approximately \$1,370,000, which is approximately 60 percent of his total assets. These foreign assets consist of a home valued at approximately \$450,000, a bank account in the amount of approximately \$140,000, and two parcels of land valued at a total of approximately \$780,000. All of these assets are located in the same foreign country.

These circumstances adequately justify the DOE's invocation of criterion (l), 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. Also, foreign financial interests may be a security concern if they make the individual vulnerable to pressure or coercion. *See Revised Adjudicative Guidelines for*

Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guidelines C and B. The holding of current foreign passports and the ownership of substantial foreign financial and property interests are specifically mentioned as potentially disqualifying conditions under these respective *Guidelines*.

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 did not dispute the Letter’s allegations concerning his multiple citizenships and his possession and recent usage of foreign passports. Instead, he attempted to demonstrate, through his testimony and that of his supervisor and two co-workers, that he is a loyal American who will not put other countries’ 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 influence and foreign preference.

A. Foreign Influence

Pursuant to *Adjudicative Guideline B*, the ownership of substantial business, financial, or property interests in a foreign country can constitute a security concern if those interests subject the individual to a heightened risk of foreign influence or exploitation. That concern can be mitigated by a showing that the value or routine nature of the financial or property interests is such that they are unlikely to result in a conflict of interest and could not be used to effectively influence or manipulate the individual.

At the hearing, the individual credibly testified that the \$140,000 account cited in the Letter was in fact a mortgage on the \$450,000 house. Consequently, the individual's equity in the house is approximately \$310,000, and the total value of his foreign assets is approximately 50% of his net worth, not 60% as is alleged in the Letter. Hearing Transcript (Tr.) at 81, 86. Moreover, given the routine nature of the individual's foreign holdings, it is very unlikely that any of his activities in this country could affect their value. Therefore, there is almost no potential for a conflict of interest. Finally, the country in which the real estate is located has friendly relations with the U.S., has not been known to target U.S. citizens in an attempt to obtain protected information, and respects and protects the property rights of its own citizens. As a result, the chances that this country would use these foreign holdings in an attempt to manipulate the individual into revealing classified information are exceedingly small. Accordingly, I conclude that there are no security concerns pertaining to *Adjudicative Guideline B*.

B. 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 maintaining dual citizenship, possessing and using that foreign country's passport, or exercising other rights of citizenship of that country, after becoming a U.S. citizen. In this case, it is undisputed that the individual has maintained citizenships in the U.S. and two foreign countries, and that he possesses two foreign passports and has used those passports since obtaining U.S. citizenship in 2009. Nevertheless, the individual has produced sufficient mitigating information to convince me that no valid security concerns exist regarding any possible foreign preference.

First, at the hearing, the individual expressed his willingness to renounce his two foreign citizenships. Tr. at 71 (*see Adjudicative Guideline C*, ¶ 11(b)). Second, the record in this matter indicates that the individual is a citizen of one of the foreign countries by birth, and a citizen of the other foreign country by virtue of his mother's citizenship in that country. DOE Exhibit 3. *See also Adjudicative Guideline C*, ¶ 11(a). His U.S. citizenship is the only one of the three that he obtained through his own choice. In addition, the foreign country of which the individual's mother is a citizen, like the country discussed in section IV.A above, has friendly relations with the U.S., and has not been known to focus its intelligence-gathering efforts on the U.S. The individual has lived in the U.S. for 17 years, and he and his witnesses testified that the individual is a loyal American who would not favor the foreign countries over the U.S. Tr. at 12, 22, 34, 37, 52, 66.

With regard to the individual's foreign passports, I note that the mitigating circumstances set forth in paragraphs 11(d) (use of passport approved by cognizant security authority) and 11(e) (passport destroyed, invalidated, or surrendered to cognizant security authority) are not applicable to the individual. However, the requirement of *Adjudicative Guidelines* paragraph 2(a) that security clearance eligibility determinations should be based on an evaluation of the "whole person" suggests that these are not the only two factors that can be considered in mitigation of the possession of a foreign passport. Indeed, during the individual's PSI, the LSO indicated that it is no longer the DOE's policy to require clearance applicants to invalidate their foreign passports. To mitigate the security concerns associated with possessing a foreign passport. DOE Ex. 8 at 150-151. The individual testified that he would forgo all future use of his foreign passports, and that he previously used his U.S. passport 90% of the time, anyway. Tr. at 71, 73. When considered in conjunction with the individual's expressed willingness to renounce his foreign citizenships and the other factors discussed in the preceding paragraph, I find that the individual has adequately addressed the DOE's security concerns regarding his foreign passports in particular and any possible foreign preference in general.

V. CONCLUSION

As set forth above, I find that the individual has successfully addressed the DOE's security concerns regarding foreign influence and foreign preference, and has therefore adequately mitigated the derogatory information cited in the Notification Letter under criterion (1). 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
Hearing Officer
Office of Hearings and Appeals

Date: May 1, 2013