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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: April 11, 2013)
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Case No.: PSH-13-0045

Issued: July 15, 2013

Decision and Order

William M. Schwartz, Hearing Officer:

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 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 November 2012. On that QNSP, he indicated that he is a citizen of the United States and another country, and that he holds a passport, now expired, issued by that country. On the QNSP, he also revealed that he has relatives and

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://energy.gov/oha/office-hearings-and-appeals>.

friends residing in foreign countries as well as foreign investments, and has availed himself of the benefits of a foreign country. Because this information raised security concerns, the local security office (LSO) summoned the individual for an interview with a personnel security specialist in January 2013. 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 (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 ten numbered exhibits into the record of this proceeding, and the individual introduced nine exhibits, which have been identified as Exhibits A through I. At the hearing convened in this matter, the individual 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 concerns 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 Notification Letter cites information provided by the individual during his QNSP and PSI indicating that he is a dual citizen of the United States and another country, and that, in addition to his U.S. passport, he holds a passport issued by the other country that, while currently expired, he intends to renew. The information the individual provided further indicates that he maintains his citizenship with the foreign country because he wants his son to feel a connection to that country, and because he receives a tax benefit from that country and is eligible for medical care there at no cost. Finally, the individual provided information that he has substantial financial assets maintained in the foreign country, which constitute about 30 percent of his total assets.

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)* (Adjudicative Guidelines) at Guidelines C and B. The holding of current foreign passports and the ownership of substantial foreign financial interests are specifically mentioned as potentially disqualifying conditions under these 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. FINDINGS OF FACT AND ANALYSIS

The individual is a citizen of another country by virtue of his birth there. Transcript of Hearing (Tr.) at 55. He married a United States citizen in 1993. Exhibit 7; Tr. at 34. The couple first lived abroad, where he completed his education and started his career, but then settled in the United States in 2000, and began working for a DOE contractor in 2001. Tr. at 12, 38. They had a child in 2005, and the individual became a United States citizen in 2008. *Id.* at 41, 54.

The individual’s manager encouraged him to apply for a security clearance. The manager testified that, valuable as the individual’s contributions have been in the past, his program’s mission would benefit from the additional support the individual could provide if he were granted a security clearance. *Id.* at 14-16. Consequently, when the manager

became aware in October 2012 that dual citizenship was no longer a bar to obtaining a DOE security clearance, he notified the individual that they would start processing him for a clearance the next business day. *Id.* at 13-14. Responding to questions on the QNSP in November 2012 and, later during a January 2013 PSI, about his relationships with foreign countries, the individual stated the following: that he did not intend to renounce his citizenship of his country of birth; that maintaining that citizenship was important to him for instilling in his son a connection to that country; that he intended to renew his foreign passport; that his foreign citizenship permits him a tax benefit on income earned in that country and renders him eligible for free medical care; and that he maintains over \$200,000 in assets in that country. Exhibits 7, 8.

At the hearing, the individual did not dispute the Notification Letter's allegations, which are based entirely on the individual's disclosures to the LSO. 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. Adjudicative Guidelines at Guideline B, ¶ 7(e). 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. *Id.*, ¶ 8(f).

At the hearing, the individual and his wife credibly testified that the individual's financial interests in his country of birth were acquired through inheritance, his earnings while employed in that country, and the sale of a business owned by his mother, a citizen and resident of that country. *Id.* at 36, 81. He has not actively managed those holdings, but rather has left them there until he has need for them, such as when he purchased a home here some years ago, and a second home recently. *Id.* at 37, 84. The second home purchase has reduced the balance in his foreign bank accounts to about \$70,000, or about ten percent of his total assets. *Id.* at 83; Exhibits C, D, F. In addition, he has initiated the transfer of the remainder of his non-liquid assets to the United States. Exhibit I. Given the routine nature of the individual's remaining 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 bank accounts are 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. *Personnel Security Hearing, Case No. PSH-13-0009 (2013)*

(foreign influence concern mitigated where significantly greater value of assets, and significantly greater percentage of assets, held in foreign countries). 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. In this case, it is undisputed that the individual has maintained citizenships in the U.S. and his country of birth, has expressed an intent to maintain his dual citizenship, in part to inspire in his son a connection with his country of birth, possesses a foreign passport, and has availed himself of tax relief in his country of birth since becoming a United States citizen. Nevertheless, the individual has produced sufficient mitigating information to convince me that no valid security concerns exist regarding any possible foreign preference.

At the hearing, the individual noted that his United States citizenship was a matter of personal choice, whereas his citizenship in the other country accrued to him as a circumstance of birth. Tr. at 55. He further stated that, at the time of the PSI, he believed that the DOE had lifted its restriction on dual citizens being granted security clearances, and was not prepared to renounce his foreign citizenship at that time. *Id.* His wife testified that he was still grieving the loss of his last family member, who resided in his country of birth, and felt a strong emotional attachment to his past. *Id.* at 50. At the hearing, the individual stated that he was now willing to renounce his foreign citizenship if necessary. *Id.* at 58, 63. *See* Adjudicative Guidelines at Guideline C, ¶ 11(b) (willingness to renounce dual citizenship is a mitigating factor). Regarding his concern that his son develop a connection with the individual's country of birth, the individual testified that he now realizes that his "son's connection to his [familial] roots and my citizenship are not necessarily interdependent." Tr. at 63.

With respect to his passport issued by his country of birth, the individual confirmed at the hearing that it expired in 2011. He also testified that he had not used it to travel internationally since he became a United States citizen in 2008. Since that time, he has used his United States passport exclusively when traveling abroad. *See* Adjudicative Guidelines at Guideline C, ¶ 11(c) (exercising privilege of foreign citizenship before, and not after, becoming U.S. citizen is a mitigating factor). He further stated at the hearing that he was now willing to forgo renewing his foreign passport. Tr. at 64-65.

The individual also addressed the benefits of foreign citizenship with which the LSO had found concern. At his PSI, the individual stated that, as a citizen of his country of birth, he was eligible for free medical care and had received a tax benefit on his financial assets located in that country. Prior to the hearing, however, the individual investigated his eligibility for free medical care. He testified that he had learned that eligibility is conferred on the basis of residency rather than citizenship; as a non-resident of the country, he is treated the same as a non-citizen of that country, and eligible for very

limited services. *Id.* at 68-70; Exhibits G, H. As for the tax benefit, the individual explained that all income earned in his country of birth is subject to taxation. As a citizen, he may exempt the first \$13,700 (approximately) from income tax. Because the value of his assets in his country of birth are now significantly less than in the past, and he is currently transferring even more of them to the United States, the interest income they will generate in the future will be minimal. As a result, the value of the tax exemption in the future will likewise be minimal. Tr. at 71, 76-77. Moreover, the individual offered at the hearing to waive this benefit in the future, should it be regarded as a security risk. *Id.* at 70.

Finally, the individual's relationship to his country of birth has diminished with the passage of time. In November 2010, the last member of his immediate family, all of whom resided in his country of birth, died. His remaining relatives living in that country are a nephew and niece with whom he communicates once or twice a year. *Id.* at 56. On the other hand, the individual has forged strong links to his local community, not the least of which are his United States-born wife and child. In addition, his wife's extended family lives nearby and constitutes a significant element in his social life. He also participates in a number of community bands and orchestras, and supports his son in sports activities. *Id.* at 56-57. The individual has lived in the U.S. for 13 years, and he and his witnesses testified that he has never favored his country of birth over the United States, and believed he would never do so. Tr. at 12, 26, 36, 54.

Because the individual has demonstrated in several manners that his connection to his country of birth is a mostly matter of familial history and that his connection to the United States is well established, including his expressed willingness to renounce his foreign citizenship and any benefits accruing to him as a result, I find that the individual has adequately addressed the DOE's Guideline C security concerns regarding his foreign preference.

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 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.

William M. Schwartz
Hearing Officer
Office of Hearings and Appeals

Date: July 15, 2013