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May 17, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: January 19, 2007

Case Number: TSO-0461

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter "the individual") to hold an access authorization.¹ The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the individual's suspended access authorization should be restored. As discussed below, I find that access authorization should not be restored in this case.

I. BACKGROUND

This administrative review proceeding began with the issuance of a notification letter by a Department of Energy (DOE) Office, informing the individual that information in the possession of the DOE created substantial doubt pertaining to his continued eligibility for an access authorization in connection with his work. In accordance with 10 C.F.R. § 710.21, the notification letter included a statement of the derogatory information causing the security concern.

The letter refers to concerns under Section 710.10(1) (Criterion L), which pertains to reliability and trustworthiness. In this regard, the letter states that the individual possesses dual citizenship of the United States and another country, and

^{1/} An access authorization (or security clearance) is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

further that he failed to indicate this fact on a November 5, 2004 Questionnaire for National Security Positions (QNSP).

The record in this case provides the following background regarding this matter. The individual was granted a DOE security clearance in 1994, after gaining employment with a DOE contractor. The individual discussed his dual citizenship in a personnel security interview conducted on January 11, 2006. He stated that he was born in that foreign country and came to the United States as an infant. In 1988 he became a U.S. citizen. He further stated that he obtained dual citizenship with that other country on April 24, 2001. He indicated that he has used a card confirming this citizenship to travel to that foreign country. He also stated that he wants to retain that dual citizenship in order to exercise benefits as a citizen of that foreign country in the future, and in order to travel back and forth between that country and the U.S. more easily. Transcript of January 11, 2006 Personnel Security Interview (PSI) at 32-35.

According to the notification letter, the failure to disclose and the desire to maintain the dual citizenship constitute Criterion L security concerns because they indicate a lack of trustworthiness, and because by holding dual citizenship, the individual may be subject to pressure which could cause him to act contrary to the best interests of the national security of the United States.

The notification letter informed the individual that he was entitled to a hearing before a Hearing Officer in order to respond to the information contained in that letter. The individual requested a hearing, and that request was forwarded by the DOE Office to the Office of Hearings and Appeals (OHA). I was appointed the Hearing Officer in this matter. In accordance with 10 C.F.R. § 710.25(e) and (g), the hearing was convened.

At the hearing, the individual represented himself, and testified on his own behalf. He brought forward no witnesses to support his position. The DOE Counsel presented the testimony of a security specialist.

II. Applicable Standards

A. Legal Standards

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type

of case, we apply a different standard, which is designed to protect national security interests. A hearing 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). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See Dep't of Navy v. Egan, 484 U.S. 518, 531 (1988) ("the clearly consistent with the interests of the national security test" for the granting of security clearances indicates "that security-clearance determinations should err, if they must, on the side of denials"); Dorfmont v. Brown, 913 F.2d 1399, 1403 (9th Cir. 1990)(strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. Personnel Security Hearing (Case No. VSO-0002), 24 DOE ¶ 82,752 at 85,511 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. Personnel Security Hearing (VSO-0005), 24 DOE ¶ 82,753 (1995), aff'd, 25 DOE ¶ 83,013 (1995). See also 10 C.F.R. § 710.7(c).

B. DOE's Adjudicative Guidelines Regarding Eligibility for Access to Classified Information

The DOE has published Adjudicative Guidelines pertaining to Part 710. 66 F.R. 47061 at 47067 (September 11, 2001). "Adjudicative Guideline C: Foreign Preference" states that if 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." According to Guideline C, conditions that could raise a security concern and may be disqualifying include "the exercise of dual citizenship," and "accepting educational, medical or other benefits, such as retirement and social welfare from a foreign country." Conditions that could mitigate security concerns include "(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country; (b) indicators of possible foreign preference. . . occurred before obtaining United

States citizenship; . . . (d) individual has expressed a willingness to renounce dual citizenship." *Id.* at 47068.

C. Documentary Evidence

1. DOE Manual Chapter VI (DOE Exhibit 14)

This Exhibit is entitled "Access Authorization for Foreign Nationals and Dual Citizens." With respect to dual citizens, the exhibit states that there are "two alternatives" if an individual does not want to be processed for access authorization as a foreign national. He may renounce his citizenship in the other country. DOE Manual 470.4-5, Chapter VI, 3(a). The alternative is to request a waiver of the renunciation requirement from the DOE cognizant security authority.²

D. DOE's Exhibit 7

This exhibit sets forth the steps an individual can take to renounce his citizenship of the country in question here. The exhibit states that citizenship may be renounced by sending a letter of renunciation to the Foreign Affairs representative of the country in question in this case. Exhibit 7 also sets forth appropriate contacts and telephone numbers for inquiries regarding these matters. It is not clear from the Exhibit itself who produced the material although, as stated below, the security specialist believed it was produced by the Office of Personnel Management.

III. The Hearing

A. Security Specialist's Testimony

The security specialist testified as to why the individual's dual citizenship presents a security concern. She stated that individuals holding security clearances must be of unquestioned allegiance to the United States. In this regard, she asserted that the individual's refusal to renounce his dual citizenship

2/ The DOE counsel stated that this option is not possible for the individual in this case. Transcript of Hearing at 13-14. Chapter VI of the DOE Manual, Section 3(b) describes the waiver approach. If he wishes to pursue this matter formally, the individual may address a request for a waiver to the DOE cognizant security authority as set out in the DOE Manual.

"it's . . . questioned allegiance, showing preference towards another country." Transcript of Hearing (Tr.) at 36. Furthermore, the security special noted that the individual in this case "purposely applied for his own gain, went out and obtained citizenship," and that this fact combined with his refusal to relinquish the dual citizenship create the concerns in this case. Tr. at 36-37.

The security specialist also testified regarding what steps the individual could take to mitigate the concern. Overall, she stated that it was only by renouncing the dual citizenship that the individual could show his allegiance to the United States. Tr. at 36. She indicated that it was her understanding that the country involved in the instant case is one which permits renunciation of citizenship. She pointed out DOE Exhibit 7 in this regard. She stated that the information set forth in the exhibit was issued by the Office of Personnel Management. Tr. at 39. However, she indicated that if the information in Exhibit 7 is incorrect and the country in question here does not permit renunciation of citizenship, the DOE security office might accept the individual's dual citizenship, as long as he were not accepting benefits from that foreign country. Tr. at 39-40.

B. Individual's Testimony

The individual asserted his belief that he is not able to renounce his citizenship. Tr. at 8. He indicated that the consulate of the country in question here told him that he could not renounce his citizenship. Tr. at 9. He testified that he has not been able to speak directly with anyone at the consulate since the beginning of this Part 710 process, and has therefore been unable to obtain official written confirmation of his assertion. Tr. at 8-11. Nevertheless, he testified that even if he were able to do so, he would not give up this second citizenship because "I want to keep my ability to do all the things and the benefits from my . . . citizenship." Tr. at 9. In this regard, he also testified that it would not be beneficial for him "to lose his citizenship." Tr. at 11, 15. He cited land ownership and facilitation of humanitarian work that he is doing in that foreign country as some of the benefits of holding dual citizenship. Tr. at 17, 26. He admitted that he failed to indicate on his QNSP that he held dual citizenship, stating "It never even clicked to put it in there." Tr. at 19.

Finally, the individual emphasized that he is a loyal citizen of the United States, and asserted that there has never been any question

about his loyalty during the 15 years he has held a security clearance. Tr. at 17.

IV. Analysis

The individual has not convinced me that his suspended access authorization should be restored. As an initial matter, the individual has clearly indicated that his dual citizenship with the foreign country is more important to him than his security clearance. In this regard, he testified that the benefits he receives from his dual citizenship are extremely important to him. His position that the benefits he receives from the foreign country are more important to him than his security clearance certainly does not in any way mitigate the security concerns in this case. Quite the contrary, his assertions persuade me that the individual does have a preference for the benefits that he can receive from the foreign country and that he therefore has a motive for protecting those benefits. Such circumstances could well put his allegiance and loyalty to the U.S. to the test.

I also find no mitigation for the individual's failure to reveal his dual citizenship in the 2004 QNSP. Question 8(d) of the 2004 QNSP indicates that if the person completing the form holds dual citizenship with another country, he must set forth the name of that country in the space provided. There is nothing particularly difficult about this question. It is brief and easy to understand. The individual left that space blank. Tr. at 20. In offering a rationale for why he failed to include his dual citizenship on his 2004 QNSP, the individual stated that "it never clicked to put it in there." Tr. at 19. This rather casual, dismissive explanation indicates to me that he has not taken the DOE security process particularly seriously. It does nothing to mitigate the concerns that he will not be completely honest and meticulous with the DOE in the future.

The individual's argument that he has held a security clearance for 15 years and during this period there has never been a question as to his loyalty to the U.S. does not resolve the concerns here. The DOE need not and should not wait until a security breach has occurred in order to withdraw or deny an individual's access authorization. Such an approach would not be sensible. *Personnel Security Hearing* (Case No. TSO-0142), 29 DOE ¶ 82,788 (2005); *Personnel Security Hearing* (Case No. VSO-0227), 27 DOE ¶ 82,798 (1999).

I note that the security specialist indicated that if the individual is able to bring forth information demonstrating that he is unable to renounce his foreign citizenship, the cognizant security authority might be willing to consider accepting the dual citizenship. The individual has been offered the opportunity to submit this information, but so far has not done so. Tr. at 31-32. In any event, this is not a matter which I am able to address under Part 710.

V. CONCLUSION

As indicated above, the individual has not resolved the Criterion L concerns in this case. It is therefore my decision that his suspended access authorization should not be restored.

The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Virginia A. Lipton
Hearing Officer
Office of Hearings and Appeals

Date: May 17, 2007