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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: June 14, 2013 )

Case No.: PSH-13-0075

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Issued: September 6, 2013

**Decision and Order**

Robert B. Palmer, 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.”<sup>1</sup> For the reasons set forth below, I conclude that the individual’s security clearance should not be restored at this time.<sup>2</sup>

**I. BACKGROUND**

The individual is employed by a Department of Energy (DOE) contractor, and was granted a security clearance in connection with that employment. On March 13, 2013, the individual, who is a dual citizen of the United States and of the country of his birth, reported to the DOE that he had renewed his foreign passport and used it nine days earlier to travel from his native country to another foreign country for religious purposes. Because this information raised security concerns, the local security office (LSO) summoned the individual for an interview with a

<sup>1</sup>An 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.

<sup>2</sup> 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>.

personnel security specialist in April 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. 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 13 exhibits into the record of this proceeding. The individual introduced four exhibits and presented the testimony of four 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. Such conduct or circumstances include, but are not limited to, violation of any commitment or promise upon which the DOE previously relied to favorably resolve an issue of access authorization eligibility. As support for its invocation of this criterion, the Letter cites the individual's renewal and use of his foreign passport, despite his statement during a 2010 PSI that he had no intention of obtaining a foreign passport in the future, and despite his written commitment in 2010 that he would only use his U.S. passport for foreign travel.

These circumstances adequately justify the DOE's invocation of criterion (1), and raise significant security concerns. Conduct involving questionable judgment, lack of candor, or dishonesty can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Also, 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), Guidelines E and C.* The exercise of any right or privilege of foreign citizenship, such as the holding of 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. FINDINGS OF FACT AND ANALYSIS**

##### **A. The Hearing Testimony**

At the hearing, the individual did not dispute the allegations in the Letter concerning his use of a foreign passport and his violation of his 2010 commitment that he would not use such a passport. Instead, he attempted to demonstrate, through his testimony and that of his supervisor, two co-workers, and a friend, that he is a loyal American who will not put other countries’ interests ahead of those of the United States, and who can be trusted to keep his commitments.

The individual indicated that in 2010, he provided a written statement to the DOE in which he committed to using only his U.S. passport for foreign travel. Hearing transcript (Tr.) at 54. This statement, which was notarized, was made during the process of the individual initially being granted a clearance, and it was his understanding that he would not have been granted access authorization without it. Tr. at 70. Nevertheless, in 2013 the individual applied for a passport issued by his native country, and used that passport to travel from that country to another foreign country for religious purposes. Most of the individual’s testimony was devoted to explaining the circumstances that led up to that usage.

Initially, the individual’s plan was to travel only from the U.S. to the country of his birth, using his American passport. However, “a week or two” before his departure, the individual learned that his elderly mother, who still resided in the individual’s native country, wanted the individual to accompany her on a pilgrimage to a religious site in another foreign country. Tr. at 68.

According to the testimony of the individual's friend, who is of the same religion as the individual and his mother, it is the duty of all adherents to their faith to make at least one pilgrimage to this religious site, if they are able to do so. Tr. at 44. The friend also testified that their religion requires that they "satisfy their [parents'] wishes," unless doing so would endanger themselves or their parents. Tr. at 38.

Before the individual's trip, he met with an unidentified employee of the security office at his work site (not the LSO). According to the individual, he asked this employee whether the prohibition against the use of foreign passports by security clearance holders had changed, and the employee told him that "rules could change all the time, but you better check . . . with [the LSO]." Tr. at 58. The individual called the security office at his work site and again inquired as to whether he could renew and use his foreign passport. He was again advised to "check with" the LSO. *Id.* During the 48 hours leading up to his departure, he called the LSO twice, but the person he was calling was not available, and the individual left a voicemail message the day before his departure. That message was not returned prior to his leaving for his native land. *Id.*

The individual further testified that when he arrived in his native country and attempted to travel with his mother from that country to the religious site using his American passport, he was told that he could not obtain a visa to travel to the foreign country in which the religious site was located unless he was using a passport issued by his native country. Tr. at 54-55. He added that since he had doubts about whether the prohibition on the use of non-U.S. passports by clearance holders was still in effect, and since he did not believe that he would be able to renew his foreign passport anyway before the end of his stay, he decided to apply for a passport from the country of his birth, rather than attempt to explain the attendant security-related issues to his mother. To the individual's "surprise," he was issued a new passport and granted a visa within two days. Tr. at 55-56. The individual then travelled to the religious site with his mother. He said that the only reason that he renewed his foreign passport and used it was to take his mother on the pilgrimage, that he would not use the passport again, and that he would look into having it invalidated. Tr. at 66-67. Regarding his commitment to the DOE not to use the passport, he said that he believed that a change in the rules barring such usage would invalidate his promise. Tr. at 63. The individual's supervisor, co-workers and friend all testified that the individual is an honest person who can be trusted to keep his commitments and that they believed that he would not put the interests of other countries before the interests of the United States. Tr. at 17, 22-23, 30, 32, 40-41, 44, 51. A former supervisor made similar statements in a written submission. *See* Individual's Exhibit 4.

## **B. Hearing Officer's Findings**

The individual's violation of his 2010 commitment to use only his United States passport for foreign travel raises two separate, and very serious, concerns regarding his eligibility for access authorization. The first is that, in availing himself of one of the rights or privileges of foreign citizenship, possession and use of a foreign passport, he may have indicated a preference for that foreign country over the United States. The LSO was able to mitigate this foreign preference concern in 2010 by having the individual submit a written statement indicating his willingness to renounce his foreign citizenship and promising that he would use only his U.S. passport for foreign travel. *See* DOE Exhibit 9. The fact that the individual has violated this commitment

indicates that this concern still exists. The second concern relates to the individual's reliability and trustworthiness. The individual has acknowledged that the DOE relied on his 2010 commitment in reaching a favorable determination regarding his access authorization eligibility. Nevertheless, the individual violated this commitment, an act that casts into substantial doubt whether the DOE can rely on the individual to abide by any future commitments.

Moreover, I cannot conclude that the circumstances surrounding the individual's usage of his foreign passport are sufficient to mitigate these serious concerns. Although I found the testimony concerning the importance in the individual's religion of making the pilgrimage and of honoring a parent's wishes to be credible, those goals could readily have been achieved without the individual violating his commitment to the DOE. The individual testified that he could have used his U.S. passport to travel to his native country, and from there to the religious site in another foreign country, if he had obtained his visa for the country in which the religious site is located before leaving the U.S. He explained that he did not do this because he believed that he could get the necessary visa in his native land. Tr. at 60. Even if this is true, it was incumbent upon the individual to familiarize himself with the passport and visa requirements that his foreign travel would entail. This is especially the case given the existence of security rules and guidelines for clearance holders who travel abroad, guidelines that the individual should have exercised greater diligence to ascertain before his departure. Although the individual apparently did make inquiries with the security office at his work site, he was advised on two occasions to contact the LSO. Although he knew of his potential trip to the religious site "a week or two" before his departure, his attempt to contact the LSO consisted solely of two telephone calls, neither of which resulted in actual contact with an LSO employee, and only one of which resulted in the individual leaving a voicemail message, the day before his scheduled departure.

More significantly, once he arrived in the country of his birth and learned that he could not use his U.S. passport, the individual could still have arranged for his mother to visit the religious site without violating his commitment to the DOE. Although the individual testified that the country in which the religious site is located does not allow females to make the pilgrimage unless accompanied by a male family member, Tr. at 71, the individual has brothers who still reside in his native country whom he could have asked to escort their mother. Tr. at 64. That the individual failed to do so, and decided to renew, and use, the foreign passport based in part on a suspicion that the security rules barring such actions "might" have changed, constituted very poor judgment on the individual's part, judgment that ill befits a security clearance holder.

Finally, I note that the individual again promised, at the hearing, that he would not use his foreign passport, and that in a previous case, an OHA Hearing Officer favorably resolved a foreign preference concern based primarily on a similar commitment. *See Personnel Security Hearing*, Case No. PSH-13-0009 (2013). However, unlike in that case, the individual has already committed to the DOE that he would travel abroad using only his U.S. passport, and has violated that promise. I see no reason to believe that he would treat this commitment with greater deference than he did the one that he made in 2010. The DOE's security concerns under criterion (I) remain unresolved.

## V. CONCLUSION

As set forth above, I find that the individual has not successfully addressed the DOE's security concerns regarding foreign preference, trustworthiness and reliability cited in the Notification Letter under criterion (l). I therefore conclude that he has not 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's security clearance should not be restored at this time. The individual 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: September 6, 2013