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**United States Department of Energy  
Office of Hearings and Appeals**

**In the Matter of: Personnel Security Hearing )**

**Filing Date: October 22, 2014 )**

**Case No.: PSH-14-0097**

**Issued: January 23, 2015**

**Administrative Judge Decision**

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXX X. XXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, 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, after carefully considering the record before me in light of the relevant regulations and the Adjudicative Guidelines, I conclude that the Individual’s request for a security clearance should not be granted.<sup>2</sup>

**I. BACKGROUND**

During an initial background investigation of the Individual, a Local Security Office (LSO) obtained information that raised security concerns. In order to address those concerns, the LSO conducted a Personnel Security Interview (PSI) of the Individual on June 26, 2014. Because the PSI did not resolve these concerns, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility for a security clearance. *See* 10 C.F.R. § 710.21. The Individual requested a hearing and the

<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>.

LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter on October 23, 2014.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his supervisor, and a DOE Personnel Security Specialist (the PSS). *See* Transcript of Hearing, Case No. PSH-14-0097 (hereinafter cited as "Tr."). The LSO submitted seven exhibits, marked as Exhibits 1 through 7. The Individual submitted no exhibits.

## **II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS**

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to paragraph (l)<sup>3</sup> 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).

To justify its reliance on Criterion L, the LSO alleges that the Individual (1) is married to an undocumented alien; (2) continues to associate with his in-laws, who are also undocumented aliens; (3) has attempted to conceal these facts by answering "no comment" when asked about his wife and in-laws' immigration status during a background interview, and (4) is currently in possession of an active passport issued by a foreign country, which may indicate that he has a preference for that country over the United States. Exhibit 1 at 1.

These circumstances, as alleged, adequately justify the LSO's invocation of Criterion L, and raise significant security concerns. "Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process." Guideline E of the Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House (Adjudicative Guidelines) at ¶ 15. The Adjudicative Guidelines also state that association with persons involved in criminal activity could raise a security concern and may be disqualifying. Adjudicative Guideline E at ¶ 16(g). The exercise of any right, privilege or obligation of foreign citizenship after becoming a United States citizen or through the foreign citizenship of a family member, including the possession of a current foreign passport, may indicate a preference for a foreign country over the United States. Adjudicative Guideline C at ¶¶ 9 and 10(a)(1). Moreover, 10 C.F.R. § 710(a)(1) states:

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<sup>3</sup> Criterion L refers to information indicating that the Individual has "engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, conflicting allegiances, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility." 10 C.F.R. § 710.8(l).

It is the responsibility of the individual to cooperate by providing full, frank, and truthful answers to DOE's relevant and material questions, and when requested, to furnish or authorize others to furnish information that the DOE deems pertinent to the individual's eligibility for DOE access authorization. This obligation to cooperate applies when completing security forms, during the course of a personnel security background investigation or reinvestigation, and at any stage of DOE's processing of the individual's access authorization, including but not limited to, personnel security interviews, DOE-sponsored mental evaluations, and other authorized DOE investigative activities under this subpart. The individual may elect not to cooperate; however, such refusal may prevent DOE from reaching an affirmative finding required for granting or continuing access authorization.

### **III. REGULATORY STANDARDS**

The Administrative Judge's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common sense judgment, made after consideration of all the relevant information, favorable and unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). In rendering this opinion, I have considered the following factors: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

### **IV. FINDINGS OF FACT**

The Individual is an applicant for a security clearance. He immigrated to the United States on June 24, 2000. Exhibit 6 at 7-8; Exhibit 7 at 16. The Individual's spouse entered the country illegally in 2003. Exhibit 6 at 13, 17-18. In May 2007, the Individual obtained a passport issued by the country where he was born (foreign passport). Exhibit 7 at 18, 66. The foreign passport expires in May 2017. Exhibit 6 at 9-10; Exhibit 7 at 66. On May 19, 2007, the Individual married his wife. Exhibit 6 at 11. The Individual last used his foreign passport in 2010. Exhibit 6 at 39-40. He became a naturalized citizen in September 14, 2012. Exhibit 6 at 8; Exhibit 7 at 16, 66. In February 2014, the Individual met with an attorney to discuss his wife's immigration status. Exhibit 6 at 19. That attorney advised him to “file a petition” on her behalf. Exhibit 6 at 19. The Individual did not follow this advice, since he had still not filed at the time of the December 15, 2014, hearing. Tr. at 39.

#### **A. The Questionnaire for National Security Positions (QNSP)**

On March 27, 2014, the Individual electronically submitted a QNSP to the LSO. One of the questions on the QNSP asked individuals with foreign born spouses to “provide one type of documentation that he or she possesses and the document number.” Exhibit 5 at 21. The QNSP provided eight check-boxes for an applicant to indicate their spouse’s documentation status, including “None” or “Other.” The Individual checked “Other” which he explained by stating: “[his wife’s country of citizenship] Passport.” *Id.* The QNSP further required individuals with foreign born relatives residing in the United States to “provide type of documentation that he or she possesses to support U.S. residence.” Exhibit 5 at 34. The Individual responded by checking “other” and explaining that his in-laws “did not want to give out their personal information.” Exhibit 5 at 34-36. The Individual admitted at the PSI that he was aware that his in-laws were undocumented before he married his wife in 2007. Exhibit 6 at 28-31.

### **B. The OPM Interview**

On April 15, 2014, an Office of Personnel Management (OPM) investigator interviewed the Individual. Exhibit 7 at 66. During this interview, the Individual expressed his willingness to relinquish the passport and stated that he has no intent to use the passport in the future. Exhibit 7 at 66. The Individual further stated that he has no loyalty or obligations to his birth-country and that he is loyal to the United States. Exhibit 7 at 66. The Individual further indicated that his spouse was also foreign-born (in another country). When the Individual was asked about his spouse’s visa or alien registration status, the Individual responded by stating “no comment.” Exhibit 7 at 67. The Individual again responded by stating “no comment” when asked whether his wife was pursuing United States citizenship. Exhibit 7 at 67. The Individual further indicated that his parents-in-law, who reside in the United States, are also citizens of that country. When the Individual was asked about the immigration status of his in-laws, the Individual reported that he had no information pertaining to their citizenship, since they do not share personal information. Exhibit 7 at 67. As noted above, the Individual subsequently admitted that he was aware that his in-laws were undocumented.

### **C. The PSI**

On June 26, 2014, the LSO conducted a PSI of the Individual. During this PSI, the Individual stated that he had never used his foreign passport after becoming a U.S. citizen. Exhibit 6 at 10. The Individual stated that he was willing to relinquish his foreign passport. Exhibit 6 at 43. He further stated that he does not claim dual citizenship. Exhibit 6 at 43. The Individual indicated that he has no intentions of exercising any citizenship rights of his country of birth. Exhibit 6 at 51. The Individual indicated that he has few attachments to his birth country, other than several family members who still reside there. Exhibit 6 at 43-49. The Individual admitted that his wife is not a U.S. citizen. Exhibit 6 at 10. When he was asked whether his wife was a legal resident of the United States, he replied “she’s in the process to become a resident.” Exhibit 6 at 10-11. However, at the hearing, the Individual admitted that his wife has not yet taken any official action to resolve her immigration status. Tr. at 45-46. The Individual was then asked if his wife had entered the United States illegally. The Individual answered “I don’t know.” Exhibit 6 at 11. He subsequently admitted that his wife had entered the U.S. illegally. Exhibit 6 at 13, 17. The Individual admitted that he had responded to the OPM Investigator’s questions concerning

his wife's immigration status by stating "no comment." Exhibit 6 at 11-12. When the Individual was asked why he answered "no comment," the Individual answered by stating that he did not want to "make any comments that would affect something with [his] wife." Exhibit 6 at 12, 57. When the Individual was asked to clarify that remark, he responded by admitting that "she doesn't have any documents." Exhibit 6 at 12. The Individual then expressed concern that his statements would be used to deport or punish his wife for her immigration status. Exhibit 6 at 12, 23, 57-58. The Individual stated that he knew his wife was undocumented before he married her in 2007. Exhibit 6 at 14. The Individual denied that he had ever helped his wife conceal her undocumented status. Exhibit 6 at 16. The Individual claimed that his wife had immigrated to the United States in order to escape an individual in her native country who had abused her. The Individual indicated that he had bi-weekly contact with his in-laws. Exhibit 6 at 34-35. Exhibit 6 at 23. He further admitted that he was aware of their undocumented immigration status. Exhibit 6 at 28-31. The Individual stated that he had discussed his wife's immigration status with an attorney who suggested that he file a petition on her behalf. Exhibit 6 at 19. However, the Individual and his wife had not yet filed such a petition because they were waiting to see if legal developments would reduce the cost of obtaining documentation. Exhibit 6 at 19-20. He further indicated that they would file a petition in November 2014. Exhibit 6 at 20-22. However, at the December 15, 2014, hearing the Individual testified: "I already consulted . . . immigration lawyers and choose one that we will retain and go forward with the process, and I will file a petition for her as soon as possible." Tr. at 39.

## V. ANALYSIS

### A. Failure to Provide Full, Frank, and Truthful Answers to Lawful Questions Posed by the OPM Investigator and the QNSP

The Individual's failure to provide full, frank and truthful statements, and to fully cooperate with the OPM investigator, raises serious security concerns about his judgment, reliability and trustworthiness. When an individual is being evaluated for the important responsibility of maintaining a DOE security clearance, it is imperative that he or she completely cooperate and provide full, frank, and truthful answers to DOE's relevant and material questions. By failing to answer the OPM investigator's and QNSP's relevant and material questions concerning his spouse's (and his in-laws') immigration status, the Individual exhibited poor judgment, unreliability, and untrustworthiness.<sup>4</sup> The Individual continued to exhibit this poor judgment, unreliability, and untrustworthiness during the PSI, when he initially claimed he did not know his

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<sup>4</sup> Several facts raise concerns about the Individual's honesty, reliability, and trustworthiness under Criterion L and serve to impeach his credibility. First, the Individual omitted information from his QNSP that would have revealed that his wife and in-laws were undocumented. Second, when asked by the OPM investigator, on April 15, 2014, to provide information about his wife and in-laws' immigration status he answered "no comment." This failure to respond directly to the QNSP and the OPM investigator's questions shows a lack of cooperation and failure to fully disclose relevant information. Third, at the PSI, he was initially evasive when questioned about his wife and in-laws' immigration status. When he was asked about his wife's immigration status, he told the PSS, "she's in the process to become resident." At the hearing, the Individual testified that his wife had not taken any action towards resolving her undocumented status, other than consulting with an attorney. The Individual's statements and omissions set forth above, demonstrate a pattern of prevarication during the security clearance process. These actions indicate that he was attempting to conceal information from the government and was susceptible to blackmail and coercion.

wife's immigration status. Exhibit 6 at 10-11. The Individual's reluctance to share information concerning his family members' immigration status also revealed his susceptibility to pressure, coercion or extortion, that resulted from his family members' immigration status. The Individual has not presented me with evidence or information mitigating the concerns raised by his failure to cooperate and I find that none of the mitigating factors set forth in Adjudicate Guideline E at ¶ 17 are present. Accordingly, I find that the Individual has not resolved the security concerns raised by his failure to fully cooperate with the OPM Investigator.

### **B. Close Association with Undocumented Aliens**

The Individual admitted that his wife and in-laws are undocumented aliens. Because residing in the United States without proper documentation or citizenship is a violation of our immigration laws, the LSO considers the Individual to be associating with persons involved in an illegal activity.

The Adjudicative Guidelines provide that security concerns raised by an individual's association with persons involved in criminal activities can be mitigated if the individual shows that he has ceased such association, or that the association occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations. Adjudicative Guideline E at ¶ 17(f).<sup>5</sup> However, in the present case, the Individual has been, as discussed above, less than forthright about his wife's immigration status, and his desire to conceal his family members' immigration status has led him to exercise poor judgment, to exhibit untrustworthiness, and to act unreliably. Accordingly, I find that the Individual has not resolved the security concerns arising from his close association with undocumented aliens.

### **C. Foreign Preference**

In this case, it is undisputed that the Individual possesses a foreign passport. 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., including possessing that foreign country's passport, or exercising other rights of citizenship of that country, after becoming a U.S. citizen. These guideline are not inflexible rules of law. Instead, recognizing the complexities of human nature, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair,

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<sup>5</sup> Our sister agency, the Department of Defense, has ruled on several occasions that there are no mitigating circumstances for marriage to an undocumented spouse. *Industrial Security Program*, ISCR Case No. 12-11954 (2014) (Defense Office of Hearings and Appeals Administrative Judge found applicant ineligible for security clearance, since no mitigating circumstances exist when applicant's spouse has been an undocumented alien for 20 years); *Industrial Security Program*, ISCR Case No. 12-11954 (2014) (Defense Office of Hearings and Appeals Administrative Judge found applicant ineligible for security clearance) *Industrial Security Program*, ISCR Case No. 11-05826 (2013) (Defense Office of Hearings and Appeals Administrative Judge found applicant ineligible for security clearance, because their spouse had been an undocumented alien for many years); *Industrial Security Program*, ISCR Case No. 07-07645 (2009) (Defense Office of Hearings and Appeals Appeal Board affirms Administrative Judge's holding that no countervailing mitigating circumstances exist for an applicant when his close family members are undocumented aliens).

impartial, and commonsense decision. According to Adjudicative Guidelines ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

Paragraph 11 of the Adjudicative Guidelines sets forth five conditions that could mitigate security concerns arising from derogatory information that indicates that an Individual might prefer a foreign country over the United States. One of these mitigating conditions is present in the instant case. Paragraph 11(c) states that a mitigating condition exists when an individual’s “exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen . . .” Specifically, the Individual last used his foreign passport in 2010, two years before he became a naturalized U.S. Citizen. Also, the Individual has repeatedly expressed his willingness to relinquish his foreign passport. Exhibit 7 at 66; Exhibit 6 at 43; Tr. at 36, 45. Finally, I note that the Individual has lived in the U.S. for seven years, and he convincingly testified that he is a loyal American who would not favor the foreign country over the U.S. Tr. at 37-38.

For these reasons, the Individual has produced sufficient mitigating information to convince me that no valid security concerns exist regarding any possible foreign preference.

## **VI. CONCLUSION**

For the reasons set forth above, I conclude that the LSO properly invoked Criterion L. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that Individual has not sufficiently mitigated all of the Criterion L security concerns. Accordingly, the Individual has not demonstrated that granting his request for a security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual should not be granted a security clearance 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.

Steven L. Fine  
Administrative Judge  
Office of Hearings and Appeals

Date: January 23, 2015