



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 17-01145
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
 For Applicant: *pro se*
 02/21/2019

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant, a naturalized U.S. citizen from Senegal, does not have a foreign preference for France. Even though he maintains ties to Senegal and France, he has shown that he will resolve any potential conflicts of interest in favor of the United States. Clearance is granted.

Statement of the Case

On October 24, 2017, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the foreign influence and foreign preference guidelines.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant’s security clearance.

¹ The DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on June 8, 2017.

Applicant timely answered the SOR and requested a decision on the written record. However, after receiving a copy of the File of Relevant Material (FORM), dated April 2, 2018, he requested that his case be converted to a hearing.² On May 22, 2018, Department Counsel fulfilled the Government's discovery obligation, confirming Applicant's receipt of the documents the Government intended to offer in its case against him that were appended to the FORM.³ At the hearing, convened on November 1, 2018, I admitted Government's Exhibits (GE) 1 and 2, and Applicant's Exhibit (AE) A through C, without objection. I received the transcript (Tr.) on November 9, 2018. On November 16, 2018, I recommended this case for summary disposition in Applicant's favor; however, the Government objected without explanation.⁴

Procedural Matters

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts regarding the Republic of Senegal. Without objection from Applicant, I approved the request and the document is appended to the record as HE III.⁵

On January 18, 2019, I sent the parties an email, indicating that I intended to take administrative notice of facts regarding the Republic of Senegal, the Republic of France, its nationality laws, and its historical relationship with Senegal from the U.S. Department of State, the Central Intelligence Agency, and the Government of the Republic of France. The parties did not object, and the email and the documents are appended to the record as HE V through X.⁶

Department Counsel requested permission to submit additional administrative notice documents in response to those I identified. In a submission dated, February 8, 2019,⁷ Department Counsel requested that I take "simple notice . . . of the adjudicative fact that embassies are very frequently subject to deadly attacks." In support of the proposition, Department Counsel offered: a Wikipedia list of the attacks on diplomatic missions around the world between 1829 and 2018; a Wikipedia article detailing the 1974 attack on the French Embassy at The Hague; an excerpt of a February 2018 article from the French news organization, French 24, regarding attacks on French embassies in Africa since 2000; and an article from Voice of America News regarding a

² Hearing Exhibit (HE) I.

³ HE II.

⁴ HE IV.

⁵ HE III: U.S. Department of State: Diplomacy in Action – Senegal, December 2009

⁶ The facts that I have taken administrative notice are from the following sources: HE V: Central Intelligence Agency: The World Factbook – Senegal; HE VI: U.S. Department of State: Country Reports on Terrorism 2017; HE VII: Central Intelligence Agency: The World Factbook – France; and, HE VIII: U.S. Department of State: U.S. Relations with France.

⁷ HE XI

March 2018 attack on the French embassy in Burkina Faso. Applicant responded to Department Counsel's request as well as the proposed documents, and his comments are construed as an objection to their consideration. By its very nature an adjudicative fact is adduced from the record after the adversarial presentation of evidence and is not appropriate for administrative notice. Setting aside the adjudicative fact offered by Department Counsel, the supporting documents are also inappropriate for administrative notice. The documents neither set forth nor are appropriate sources of legislative facts - those necessary to understand a principal of law and not subject to evidentiary proof (e.g. official pronouncements of the President, State Department, Department of Defense, or other appropriate federal agencies on matters of national security).⁸ However, the documents are appropriate for consideration as Government's Exhibits, and will be admitted to the record as GE 3 through 6, over Applicant's objection. I will consider each document and give it the appropriate weight.

Findings of Fact

Applicant, 42, has worked as a senior associate for a federal contracting company since February 2015. He completed a security clearance application, his first, in March 2015, disclosing his family members and financial interests in Senegal as well as family members in France. He also disclosed part-time employment at the French Embassy in the United States between 1999 and 2015. The SOR alleges the contacts as disqualifying under the foreign influence and foreign preference guidelines.⁹

Applicant was born in the Republic of Senegal, a secular republic with a strong presidency, bicameral legislature, and multiple political parties. Between 1865 and 1960, Senegal was considered a territory of France. However, the two nations established diplomatic relations soon after Senegal gained its independence in August 1960. Today, both France and Senegal work closely together in West African regional affairs, and maintain a close cultural and political relationship. However, this relationship does not provide a right to French citizenship for citizens of Senegal.¹⁰

Since its independence, Senegal has maintained one of the most stable governments in Africa. The country is one of the few African states that has never experienced a coup d'état and throughout its history power has transferred peacefully to new administrations. Senegal maintains a well-trained military that receives most of its training, equipment, and support from the United States and France, with whom Senegal maintains close and favorable relationships. The country has historically taken an active role in United Nations peacekeeping efforts throughout Africa.¹¹

⁸ See ISCR Case No. 05-11292 at 4, FN 1 (App. Bd. Apr. 12, 2007).

⁹ GE 1.

¹⁰ GE 1; HE III, HE V.

¹¹ HE III.

According to the most recent Country Report on Terrorism published by the U.S. State Department, Senegal did not experience any terror attacks in 2017. However, the Senegalese government arrested two individuals with suspected ties to the Islamic State. The Government of Senegal works closely with U.S. military and law enforcement officials to strengthen its counterterrorism capabilities. The risk of terrorist activity in Senegal arises from external and internal factors. Externally, transnational threats arose due to the Senegalese military presence in several theaters of operation in the region and the activities of terrorist groups in neighboring countries. Internally, the promotion of fundamentalist ideologies by a small number of religious leaders constituted the chief concern, however, these ideologies are outside the Islamic norms that predominate in Senegal.¹²

The Republic of France is comprised of metropolitan France and the following territories: French Guiana, Guadeloupe, Martinique, Mayotte, and Reunion. Historically, France and the United States have maintained a friendly and active relationship. The two countries share common values and have parallel policies on most political, economic, and security issues. The United States and France work closely on many issues, including counterterrorism, efforts to end the proliferation of weapons of mass destruction, and on regional problems around the world.¹³

Applicant lived in Senegal with his family until his father, a now retired member of the Senegalese Army, served his final tour of duty as a military attaché at a Senegalese embassy between 1991 and his retirement in 1995. Applicant attended college in France from 1994 to 1998, graduating with a degree in economics. He immigrated to the United States in 1999 after being awarded permanent resident status through the diversity visa lottery program, which provides 55,000 permanent residents visas each year to individuals from countries with a low rate of immigration to the United States.¹⁴ He became a naturalized citizen in April 2005.¹⁵

Upon moving to the United States, Applicant entered graduate school and worked a series of low-paying jobs to support himself. In 1999, while visiting the French Embassy to have documents translated, he saw a family friend. The friend informed Applicant about security positions available at the embassy. The position required Applicant to check identification for individuals entering the embassy, walk around the embassy to ensure employees left for the day, and answer after-hours phone calls from local law enforcement regarding issues with French nationals or French nationals needing assistance with local enforcement. The position was not armed, as the grounds were guarded by French police officers who responded to threats or suspicious

¹² HE VI.

¹³ HE VI – VIII.

¹⁴ See <https://travel.state.gov/content/travel/en/us-visas/immigrate/diversity-visa-program-entry.html>

¹⁵ GE 1; Tr. 19-21, 53-54.

activities. Applicant worked the security position part-time and attended graduate school full-time between 1999 and 2002.¹⁶

He continued the part-time position at the embassy when he began full-time employment because he had grown accustomed to the busy schedule. The job was not difficult, and it allowed him to accumulate savings. He reported the part-time job to each of his previous employers: an international bank (2003 to 2005); his current employer (2005 to 2013, and 2015 to present); and, an international management consulting firm (2013 to 2015). While completing the security clearance application, the nature of the questions caused Applicant to become concerned that the part-time embassy position presented a conflict of interest with having access to classified information. Around the same time, the embassy considered changing the security officer role to an armed-guard position, which Applicant had no interest in pursuing. As a result, he resigned the embassy position. He ceased all ties with embassy contacts when he left the position in 2015, including his contacts with a French police officer with whom he maintained a casual friendship (SOR ¶ 1.k).¹⁷

Aside from taking advantage of the health benefits while he was a graduate student, Applicant received no other benefits from the French government during his employment at the embassy. When he began working full-time in 2002, he relied on his employer-offered health benefits. The embassy job did not provide Applicant a pathway to French citizenship. According to Applicant, the embassy treated him as a U.S. citizen, which impacted how the embassy compensated him in compliance with U.S. tax laws. He paid income taxes only to the U.S. Government. The job neither created obligation between him and the French government, nor did it entitle him to receive benefits from the French government. The job did not require a security clearance or access to any sensitive or classified information.¹⁸

Applicant maintains ties to Senegal and France through his family members. His parents are residents and citizens of Senegal (SOR ¶¶ 1.a - 1.b). His father, 81, no longer works. After retiring from military service he briefly worked for a private university. Applicant's mother, 73, also retired, worked as an educator. Both receive government pensions and are financially self-sufficient. Applicant has seven siblings, one of whom is deceased. His two oldest sisters (SOR ¶ 1.c and 1.h), 55 and 50, respectively, are residents and citizens of France. The oldest sister works as a consultant, the other works as an administrator at a French financial institution. Applicant's two older brothers (SOR ¶¶ 1.d - 1.e), 48 and 46, respectively, are citizens of Senegal and residents of France. The older brother is a construction worker and the younger brother is disabled and does not work. Applicant's two younger sisters (SOR ¶¶ 1.f and 1.g), are citizens of Senegal. The older of the two, who is 38, is a resident of France and works for a French bank. His youngest sister, 30, resides in Senegal and

¹⁶ GE 1; Tr. 44-46, 49-50.

¹⁷ GE 1; Tr. 35-36, 45-46.

¹⁸ Tr. 48, 50-53.

works for a French mining company.¹⁹ Applicant also has one friend who is a citizen of France, residing in Senegal and is employed as an economist with the Senegalese Ministry of Finance. (SOR ¶ 1.j).²⁰

Applicant owns property in Senegal: two parcels of land (SOR ¶¶ 1.m and 1.n) valued at \$14,000 (USD), and a house (SOR ¶ 1.o) valued at \$115,000. He owns the properties outright and they are managed by his youngest sister. The house is rented and generates approximately \$600 in revenue each month. The proceeds are held in a Senegalese bank account (SOR ¶ 1.l), which Applicant opened at a U.S. branch in 2013. Applicant uses the money in the Senegalese bank account to pay for his parents' pet projects, such as redecorating their home. He admits that in the past he has provided them as much as \$6,000 each year in financial support. Applicant does not provide financial support to any other of his family members on a continuing basis, and he does not rely on the income generated by the Senegalese properties for his ongoing financial maintenance.²¹

Since 2016, Applicant has lived and worked overseas. He is slated to continue in this position until at least 2020, pending the resolution of his security clearance. Applicant's annual compensation is approximately \$200,000 and earns additional income on the rental of his home while he works overseas. He has approximately \$300,000 in retirement savings, and between \$30,000 and \$50,000 in stocks and other cash assets. He purchased his home in the United States in 2011 for approximately \$306,000 and it is now valued at \$450,000. He owes \$100,000 on the mortgage loan and has \$2,000 in other consumer debt.²²

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, 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, impartial, and commonsense decision. According to AG ¶ 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

¹⁹ The SOR also alleges this sibling in SOR ¶ 1.i. The duplicate allegation is resolved in Applicant's favor.

²⁰ GE 1; Tr. 25-35, 55-56.

²¹ Tr. 36-41.

²² AE A-C; Tr. 22-24, 42-44.

available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Foreign Preference

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then they may provide information or make decision that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual’s judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it.

The SOR alleges that Applicant’s part-time employment as a security officer at the French Embassy in the United States from 1999 to 2015 is evidence of Applicant’s foreign preference for France over the United States. The Government argues that Applicant established a foreign preference when he chose to work for the French Embassy over a U.S Government employer or enter the U.S. armed forces.²³ However,

²³ Tr. 60.

the relevant disqualifying condition requires more to find a foreign preference. The relevant Foreign Preference Disqualifying Condition AG ¶¶ 10(d) states that an Applicant acts in a way that indicates a foreign preference when he participates in foreign activities.

Although Applicant assumed employment with a foreign government, there is no evidence that the nature of the employment with France, a long-time ally, conflicted with U.S. interests. There is no evidence that the French Embassy, as suggested by the Government, is part of the “strong cultural heritage of embassies being associated with espionage.”²⁴ The position was not, as Department Counsel argues, akin to foreign military service.²⁵ The position did not make Applicant part of the French diplomatic corps, armed forces, or even the armed police force responsible for the physical protection of the embassy. Applicant did not swear an oath of allegiance to France. The position did not provide a pathway to French citizenship, make Applicant eligible for any entitlements from the French government, or bestow upon him any rights or privileges of French citizenship or residency. He did not require a security clearance from the French Government, nor did the position expose him to any sensitive or classified information.

Applicant worked at the French Embassy in the United States because it furthered his personal goals. Initially, he worked the part-time position because it provided income and medical benefits while he attended graduate school full time between 1999 and 2002. He continued working the part-time job after earning his graduate degree because it furthered his financial goals. However, when he believed the job presented a potential conflict of interest with his current full-time position on a federal contract, he resigned and ceased contacts with embassy employees. Also, his unwillingness to continue in the position if he was required carry a firearm is another indication that he did not have an allegiance or preference for France. Aside from maintaining the part-time employment, Applicant has not acted in any other way to demonstrate a foreign preference for France.

Foreign Influence

“[F]oreign contacts and interests, including . . . business, financial and property interests, are a national security concern if they result in a divided allegiance [or] . . . may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest.” An assessment of foreign contacts and interests should consider the country in which the foreign interest is located, including but not limited to, consideration such as whether it is known target U.S. citizen to obtain classified or sensitive information or associated with a risk of terrorism.

The SOR alleges that Applicant’s multiple ties to Senegal and France constitute a possible foreign influence, in particular that his familial and financial ties to Senegal and his familial ties to France create a “heightened risk” of foreign influence or

²⁴ Tr. 58-59, 61-62.

²⁵ Tr. 61.

exploitation because of the respective foreign tie, contact, or interest. The “heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country, but it is nonetheless a relatively low standard. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government; a family member is associated with, or dependent on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue.²⁶ Based on the available record, there is not a heightened risk associated with either country, which the Government seems to concede.²⁷

Historically, both countries maintain close ties to the United States. Neither country, nor non-governmental entities operating inside their borders, is known to manipulate its citizens or ex-patriots to further their political or economic positions. Neither is known to be a state sponsor of terrorism. Although terrorist threats have become a greater concern in France in recent years, the United States and France have maintained a favorable relationship, often working together on counterterrorism issues. Senegal, on the other hand, does not have history of terrorist groups operating within its borders, nor have U.S. interests operating in the country been a target of terrorist organizations.²⁸

Also, there is no heightened risk associated with Applicant’s father’s status as a retired military officer or Applicant’s friend’s position as an employee of the Senegalese government as an economist. Applicant’s father has been retired for 25 years and there is no evidence that he or Applicant maintains ongoing contact with any military or other government officials, or that Applicant has used these contacts in a way that increases his vulnerability to exploitation. Likewise, there is no evidence in the record to indicate that Applicant’s friend has a position or status that raises a concern.

While a heightened risk may not exist, his familial and financial ties to Senegal may create a personal conflict of interest, or a conflict of interest between his obligation to protect classified or sensitive information or technology or the desire to help a foreign person, group, or country by providing that information or technology.²⁹ However, this concern is mitigated. None of his family members are currently employed by the Senegalese or French governments, or have positions in those societies that he will be placed in a position of having to choose between foreign interests and those of the

²⁶ See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

²⁷ Tr. 64.

²⁸ HE III, V – VIII.

²⁹ AG ¶ 7(b).

United States.³⁰ The SOR alleges Applicant's relationships with his friend employed by the Senegalese government and a police officer at the French embassy. The former relationship can be classified as casual and infrequent. The latter relationship no longer exists. The record does not contain any evidence that either relationship could serve as a source of vulnerability.³¹

Applicant's Senegalese assets do not create a conflict of interest. The assets, valued at \$130,000 (USD), represents 20% of his net worth. He owns the properties outright and is not subject to influence by any foreign financial entities. Neither Applicant nor his foreign family members are financially dependent on the income generated by the properties. Given these facts and the nature of the Senegalese government, it is unlikely that the assets will result in a conflict or effectively be used to influence, manipulate, or pressure him. In comparison, Applicant has approximately \$660,000 in U.S.-based assets, which include his home, retirement savings, and other financial assets. His debt, including his mortgage loan is approximately \$102,000. He earns almost \$200,000 annually from his employment with a U.S.-based company. Given Applicant's choice to pursue U.S. citizenship and his significant financial ties to the United States, he is likely to resolve any conflict in favor of U.S. interests.³²

Based on the record, I have no doubts about Applicant's ability to protect and handle classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). Although Applicant has strong ties to Senegal and some familial ties to France, the record contains sufficient evidence to mitigate any foreign preference and foreign influence concerns. On his own, Applicant identified a potential conflict of interest between his full-time employment on a federal contract and his part-time employment and resolved that conflict in favor of U.S. interests. In doing so, he has demonstrated that he takes the concerns and responsibilities of being a clearance holder seriously and that he can be expected to act in accordance with U.S. interests in the future.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Foreign Preference	FOR APPLICANT
Subparagraphs 1.a:	For Applicant
Paragraph 2, Foreign Influence:	FOR APPLICANT
Subparagraphs 2.a – 2.p:	For Applicant

³⁰ AG 8(a).

³¹ AG ¶ 8(c).

³² AG ¶ 8(f).

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Nichole L. Noel
Administrative Judge