



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



In the matter of:)
)
-----) ISCR Case No. 20-03288
)
Applicant for Security Clearance)

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: Jacalyn Crecelius, Esq.

05/05/2022

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant mitigated foreign influence and foreign preference concerns. Eligibility for access to classified information or to hold a sensitive position is granted.

Statement of the Case

On April 2, 2021, the Department of Defense (DoD) Consolidated Central Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant detailing reasons why under the foreign influence and foreign preference guidelines the DoD could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); *Defense Industrial Personnel Security Clearance Review Program*, DoD Directive 5220.6 (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR on May 7, 2021, and requested a hearing. The case was assigned to me on January 6, 2022. A hearing was scheduled for February 22, 2022, and heard on the scheduled date. At the hearing, the Government's case consisted of two exhibits (GEs 1-2) and a request for administrative notice of the country of France. Department Counsel's official notice request covered one document addressing U.S. relations with France. Administrative notice was taken of Government source documents covered by the administrative notice request without objection, in accordance with Federal Rules of Evidence 201(a). See ISCR Case No. 05-11292 at 4 (App. Bd. Apr. 12, 2007); ISCR Case No. 01-26893 at 10 n.2 (App. Bd. Oct. 16, 2020). The Government's administrative notice request was accepted as H1. The Government's case consisted of two exhibits (GEs 1-2). Applicant relied on nine exhibits (A-I) and one witness (himself). The transcript (Tr.) was received on March 2, 2022.

Procedural Issues

Before the close of the hearing, I asked, *sua sponte*, the parties to brief the subject of adultery as a potential security concern. For good cause shown, the parties were afforded 14 days to brief the issue. (Tr. 152) Within the time permitted Department Counsel briefed the issue and concluded that adultery is not an issue of security concern in this case. Department Counsel's supplemental submission was received as HE 2.

Summary of Pleadings

Under Guideline B, Applicant allegedly (a) has a girlfriend since about July 2017, who is married and is a citizen and resident of France; (b) paid his girlfriend approximately \$11,252 in U.S. dollars between March 2020 and June 2020 for rent and other expenses; (c) purchased an apartment in France in December 2020, worth approximately \$1,106,679 (€908,176); (d) maintains four personal business and investment accounts with foreign institutions, in addition to the mortgage account, and has approximately \$602,000 in assets divided between those accounts; (e) created a French property investment company in order to obtain a mortgage on the French apartment covered in SOR ¶ 1.c; (f) maintains contact with an individual who serves in the French government with the National Cybersecurity Agency of France (ANSSI); and plans to retire in France in about 2025.

Under Guideline C, Applicant allegedly was offered employment in a civilian organization in Italy in July 2018. Allegedly, Applicant denied the offer.

In his response to the SOR, Applicant admitted some of the allegations but denied some of the specific details of the allegations with explanations. He claimed the total amount of money-transfers he paid to his girlfriend approximated \$12,414 and poses no potential to be a foreign influence concern. He also provided detailed information about the various financial accounts he holds in France. Applicant further claimed that the individual with whom he maintained 15 years of contact with while Applicant was employed by a U.S. intelligence agency (before his retirement in March

2017) was his counterpart within the French government and a source of informational exchanges on a number of North Atlantic Treaty Organization (NATO) and multilateral programs. And, Applicant claimed that having a person like himself, who has a NATO and U.S. security clearance, would enhance his value to his current company.

Addressing the allegations covered by Guideline C, Applicant claimed that he was not looking for employment when he was approached with a job proposal by a civilian company in Italy. He claimed that the Italian company's interest in him was linked to the working relationships he developed while working together as a U.S. intelligence agency employee on NATO secure communication projects. He further claimed that while the Italian offer presented an interesting and challenging prospect, he rejected the offer over concerns that his employment by the Italian company could result in his losing his U.S. security clearance. And, Applicant claimed that like his great grandparents and grandparents who emigrated from Italy, and became naturalized U.S. citizens, he, too, took an oath to protect the U.S. Constitution and has never wavered or changed in his defense of that oath.

Findings of Fact

Applicant is a 65-year-old civilian employee of a defense contractor who seeks a security clearance. Applicant admitted each of the allegations with explanations. Allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in June 1979, legally separated in June 2019, and divorced in October 2020. (GEs 1-2; Tr. 20-21, 88, 135) He has two adult children from this marriage. (GE 1; Tr. 20) Applicant earned a high school diploma in May 1975. (GE 1) He earned a bachelor's degree in May 1979 in engineering and a master's degree in May 1984 in electrical engineering. Additionally, Applicant completed Ph. D. coursework requirements during his four years of study at the same academic institution where he earned his master's degree, except for his dissertation. (GE 1 and AE H) Applicant reported no military service.

Since March 2019, Applicant has worked for a defense contractor as a senior systems engineer. (GEs 1-2 and AE's A and H; Tr. 21-22) This contractor is a U.S. corporation headquartered in the United States, with offices located in communities throughout the United States The contractor provides high-speed satellite internet access to customers located in communities with limited or no direct satellite and cable internet connections. Applicant's principal role with this company is to provide key management expertise to aid the company's meshing of its network satellite system for distribution. (Tr. 22) Applicant also provides expertise for his company's development of key cryptography certificates for use in high assurance devices across the world. (Tr. 22)

Before taking a job with his current employer, Applicant was unemployed for almost two years (May 2017 to March 2019). He used this time to make a number of trips to France with an interest in pursuing painting. (GE 2 and AEs G-H; Tr. 75-76, 89-104) For the previous 39 years, he was employed by a U.S. intelligence agency as a senior technical leader before retiring from federal service in March 2017. (GEs 1-2 and AEs A and G-H; Tr. 23, 32) Applicant currently holds security clearances with both the United States and NATO. (GEs 1-2 and AE A; Tr. 25) Applicant's current employer holds both U.S. and NATO facility clearances. (Tr. 82-83)

Applicant has held a U.S. security clearance continuously since 1979, and has never been reprimanded for any infractions, either in his federal service, or while he has been employed by his current employer. (Tr. 24-25) In addition to his work with his current full-time employer, Applicant provides some extra part-time consulting services for another firm that does not require a security clearance. (GE 1; Tr. 86-87)

Following his retirement from federal service, Applicant relied on his annual pension he earned under the civilian service retirement system (CSRS) of around \$118,000 per year. The pension covers his earned 39 years of uninterrupted federal service. (GE 2 and AEs A and G-H) With his federal agency employer, he served as his agency's senior technical leader and worked in his agency's research directorate. In his work, he regularly interfaced with his NATO counterparts from France and Italy, *inter alia*, in developing secure encryption devices that meet NATO interoperable requirements. (AEs A and G-H; Tr. 24-28, 140, 146) His contributions included cutting edge research on the development of training algorithms designed to produce superior vector quantizing codebooks used in coding algorithms. (AEs A and G-H; Tr. 24-25)

In or about July 2017, Applicant met a French woman (a married citizen and resident of France) through a close former NATO friend from his time with a U.S. intelligence agency who invited him to spend summers painting in France. (GE 1; Tr. 45-46) He established a friendship with this French woman. (GE 2; Tr. 142) Over the course of the ensuing three years, the friendship grew into an intimate one that included frequent cohabitation in their respective residences. (GE 2 and AE A; Tr. 43-44, 87) This French girlfriend is a retired teacher with no known ties to the French government. (Tr. 50-52) She has two grown children and deceased parents. While her husband (a farmer from Southern France) has considerable family wealth (Tr. 44-47), she has only her disability pension and a small inheritance from her mother to support herself. (Tr. 109-110)

In the early months of his relationship with his French girlfriend, Applicant would rent her old apartment while he was in France. (Tr. 102) Part of the time when he occupied her apartment, she stayed with him. (Tr. 105-106) During their relationship, she confided in him about her ongoing emotional struggles with her husband and intentions to separate and divorce him, citing her claims of infidelity and verbal abuse. (Tr. 43-44, 46-47) Should her husband ever learn of her relationship with Applicant, she would expect him to accelerate the divorce process with her. (Tr. 48-49)

Applicant continues to store his furniture in his French girlfriend's old apartment. (Tr. 107) After purchasing her new apartment in December 2021, his girlfriend intends to sell her old apartment, which will require Applicant to make new storage arrangements. (Tr. 107) Applicant last saw his French girlfriend in January 2022, and has given her a key to his French apartment. (Tr. 111)

Between March 2020 and June 2020, Applicant paid his French girlfriend approximately \$11,252 in rent and other expenses to help her maintain her old Paris apartment while she was making arrangements to transition to a new one. (Tr. 107-108) He estimated his total monetary transfers to his girlfriend approximated \$12,414, and were made in exchange for his use of her old apartment while he was in France. (GE 2 and AE A; Tr. 52-54, 111-112) These funds were used by his French girlfriend for multiple purposes. Applicant assured that he self-reported to his employer his friendship with his French girlfriend and his wire transfers of his U.S. bank funds to British and French institutions to provide financial support to his girlfriend. (Tr. 52-53) Applicant assured, too, that he has never provided any general financial assistance to his French girlfriend. (Tr. 55)

After going to work for a private U.S. employer in March 2019, Applicant established a number of his investment accounts in French and English banking organizations. (GEs 1-2 and AE A; Tr. 59-61) Because he did not live or pay taxes in France, or have a business account with a French bank, French banking regulators required him to open a business account to pay the mortgage on any real estate purchase he planned, as well as a separate investment account, equal to 20% of the value of any mortgage he took out. (Tr. 61-62) Applicant, in turn, set up his French business account. He set up this business account specifically to deposit funds to pay his mortgage and related costs like insurance policies. (AE A; Tr.119-120)

In December 2020, Applicant purchased his own apartment in France. (GE 2 and AE A; Tr. 56, 112) To purchase the apartment, he obtained a loan from a French banking institution in the amount of €700,000 (\$842,730), at a rate of 1.38% for 20 years. (AE A; Tr. Tr. 63) He supplemented these borrowed funds with his own saved funds to purchase the apartment. He paid \$800,000 to purchase his French apartment, which with the added of costs and fees of closing reached a total purchase amount of \$1,106,679 (€908,156). (GE 2 and AE A) Applicant has no foreign bank accounts that are not related to the purchase of his French apartment. (AE A, Tr. 64) Further, he does not use his French business account "except for holding the mortgage," and the account earns no profits. (Tr. 66)

Demand for French real estate from U.S and other foreign investors has increased in recent years. French banks, however, have not been willing to finance direct real estate purchases from non-French purchasers. (Tr. 62) As a result of French restrictions on French real estate mortgages by non-French citizens, Applicant found it necessary to create his own French company and use French bank accounts to facilitate his purchase of his French apartment. To this end, he transferred \$170,000 from his U.S. checking account in November 2020, and wired most of the funds in his

U.S. savings account (in excess of \$149,000) to his opened British and French bank accounts. (GE 2 and AEs A-D)

When Applicant created a local French company, he utilized a French method for foreign purchasing of real estate in France to satisfy French lending requirements. (AE A; Tr. 61-62) He created this French company for the sole purpose of obtaining a mortgage on his purchased French apartment. This method involves setting up a local French company, called a Societe Civile Immobiliere or SCI for short. (AE A; Tr. 61-67) To establish this French company, French regulations and lending practices required him to use a French citizen to complete the paperwork for the creation of the SCI. (Tr. 128) This SCI holds no funds or other assets not related to the financing of his French apartment. (AE A; Tr. 64-66)

The French citizen who signed his purchase documents for his French apartment purchase was the same French counterpart that Applicant worked professionally with on NATO matters during Applicant's employment by his former U.S. intelligence agency. Applicant credited this French counterpart with never asking for any inappropriate information and being wholly trustworthy based on his professional experiences with him. (Tr. 71) Applicant finds this French counterpart to be trustworthy and above reproach. so much so that he used this French contact to sign his purchase documents for his French apartment purchase, when at the last minute his French lawyer could not sign the papers due to an acquired COVID-19 infection and he could find no other legal sources in France to sign the documents for him. (AE A; Tr. 127-129)

The act of signing Applicant's purchase documents by his French counterpart was of a ministerial nature, and made necessary to satisfy French purchasing requirements and did not signify any financial interest in the property by Applicant's French contact. Nothing covered in any of the documentation and hearing testimony is enough to support any drawn inference of a financial interest in Applicant's French apartment by his French contact.

Currently, Applicant maintains an average balance of €50,000 in his French bank business account for the funding of his French apartment purchase. (AE A; Tr. 120-122) To satisfy French banking requirements, he also keeps €151,000 on hand in a French retirement account. (Tr.123) Applicant assured he reported these wire transfers to his employer. Contemporaneously, he maintains an average balance of \$50,000 in a U.S. savings account (Tr. 64-65, 121) He also continues to maintain a residence (his cousin's home) in the United States. (GEs 1-2; Tr. 114)

Aggregate balances held by Applicant in British and French bank accounts in February 2021 totaled \$191,302, exclusive of balances he held in French banks to fund his French mortgage. (AE A) These personal balances are documented in his annuity statement. (AE B) Reported amounts held in his French bank accounts in May 2021 to fund his mortgage on his purchased French apartment totaled €14,404. (AE A) These numbers supplied by Applicant are very detailed and are accepted as accurate

accountings of the funds held in divided personal, business, and investment accounts that Applicant maintained in British and French banking institutions in 2021. (AEs A-D)

Applicant continues to maintain contact with the French government official he interfaced with professionally while he was employed by a U.S. government intelligence agency. (AE A; Tr. 79, 123-125) This individual served as his counterpart within the French government and worked closely with Applicant on a number of NATO and multilateral programs. Applicant's collaborative relationship with this French counterpart continued until his retirement from his federal agency post in 2017.

With his employment by his current employer in 2019, Applicant resumed his collaborative contacts with his former French counterpart (a resident and citizen of France). He reported monthly contacts with this French counterpart in his security paperwork. (AE A; Tr. 67-70, 127-129)

After purchasing his French apartment in December 2020, Applicant expressed his intention to retire in France, which is close to NATO headquarters in Brussels, Belgium. (AE A; Tr., 46, 56-57, 75-76) When he broached the subject to his employer, he encountered no opposition. (Tr. 58) Although, his retirement plans could change, depending on his current employer's future needs. In the meantime, he continues to pay his federal income taxes to the United States Government and will continue to do so for so long as he does not overstay the maximum 183 days he is allowed by France to reside in the country without paying French income taxes. (Tr. 58-59) Applicant also continues to use his U.S.-issued credit cards. (Tr. 60)

With his current employer, Applicant's duties include participation in various NATO groups and standards activities, consistent with the standards activities he managed while employed by his U.S. intelligence. He opined that a U.S. secret clearance is required to sponsor his NATO secret clearance that is needed to attend NATO meetings.

Acknowledging he was first approached by an Italian civilian employer in November 2017, and again in March 2018 in an exploratory exchange about a potential job opportunity, Applicant was offered employment by the same Italian civilian organization in July 2018. (GE 2; Tr. 132-133) He declined the offer, citing several reasons, including his concerns over the potential for his losing his security clearance. (GEs 1-2, and AE A; Tr. 76-77, 130-134) In each of the instances when he was approached, this Italian group included individuals familiar to Applicant as former Italian counterparts who collaborated with Applicant on joint projects. (Tr. 78-79, 132-33) In each exchange, Applicant had already retired from federal service.

While Applicant considered the Italian offer to be an interesting and challenging prospect, he rejected the offer of employment out of concern it could cause him to lose his security clearance. (GEs 1-2 and AE A) Applicant assured that he would never "willfully betray his country." (Tr. 80, 84) And, he assured he has no intention of acquiring dual citizenship in France, or changing his U.S. citizenship. (Tr. 83-84)

France's country status

The United States and France established diplomatic relations in 1778 following the United States' Declaration of Independence from Great Britain. See Request for Administrative Notice; *U.S. Relations with France, Bilateral Relations Fact Sheet*, U.S. Dept. of State (July 2020) As one of the United States' oldest allies, France is remembered for its significant assistance to the United States in its war of independence.

French military intervention was instrumental in helping the British American colonies establish their independence. More American soldiers have been killed on French soil in WW I and WW II than that of any other foreign country.

After the Vichy government of France severed diplomatic relations with the United States in 1942 during WW II, relations were normalized in 1944. Today, the United States and France are among the five permanent members of the UN Security Council. See *U.S. Relations with France, Bilateral Relations Fact Sheet, supra*.

U.S. relations with France remain active and friendly. Both countries share common geopolitical values and have policies in place that parallel on most political, economic, and security issues. Differences are discussed in friendly means, and have not generally been allowed to impair the close relations between the two countries. Examples include joint United States-France efforts to prevent Iran from developing nuclear weapons. See *U.S. Relations with France, Bilateral Relations Fact Sheet supra*. France is one of NATO's top troop contributors and one of NATO's leading contributors to the NATO response force. France is a major collaborator with the United States on international public health threats (like COVID-19).

France is a member of the European Union and is the United States' third largest trading partner in Europe (after Germany and the United Kingdom). See *U.S. Relations with France, Bilateral Relations Fact Sheet, supra*. The United States is a leading destination for French investment, and the United States is the largest foreign investor in France. (*id.*) The United States and France work in tandem with their bilateral convention and through their bilateral tax treaty addressing, *inter alia*, such subjects as double taxation and tax evasion.

Endorsements and awards

Applicant is highly regarded by his current and past supervisors, friends, and colleagues. (AE F) Uniformly, they credit him with solid character, honesty and integrity, a strong work ethic and devotion to his family and the United States. (AE F) Applicant's former supervisor at the federal intelligence agency Applicant worked for considered Applicant not only honest and trustworthy, but exceptionally reliable in his working with sensitive information. (AE F) Applicant was the recipient of numerous awards during his federal service. (AE E) His awards include certificates of appreciation for his NATO contributions.

Policies

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a ‘right’ to a security clearance.” As Commander in Chief, “the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. Eligibility for access to classified information may only be granted “upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual’s reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant’s life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant’s conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation of the conduct; (8) the potential for

pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Foreign Influence

The Concern: Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual 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. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain protected classified or sensitive information or is associated with a risk of terrorism. See AG ¶ 6.

Foreign Preference

The concern: When an individual acts in such a way as to indicate a preference for a country over the United States, then he or she may provide information or make decisions 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. By itself, the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship. See AG ¶ 9.

Burdens of Proof

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Security concerns are raised over Applicant’s intimate relationship of several years with a married French citizen that included his assisting her with her finances while exhausting his own U.S. bank accounts with wire transfers to British and French banks. These overseas accounts he used to fund his planned purchase of a French apartment, were in contemplation of his planned retirement in France. Additional security concerns are raised over Applicant’s post-retirement offer of a job with an Italian organization that Applicant declined.

Applicant’s long-term intimate relationship with a married French citizen to whom he provided major financial assistance with wired funds from his U.S. bank accounts, coupled with his use of wired funds from his U.S bank accounts to fund his planned purchase of a French apartment and his maintenance of close contacts with French citizens, present initial security concerns raising heightened security risks covered by four qualifying conditions. (DC) DC ¶¶ 7(a) of the AGs for foreign influence: “contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion”; and 7(b), “connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect classified or sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information or technology,” apply to Applicant’s situation.

Because of the long-running intimate relationship Applicant maintained with his French girlfriend (almost four years) and the property interests he pursued in France with wire-transferred funds from his U.S. bank accounts, DC ¶¶ 7(e), “shared living

quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion, and 7(f), “substantial business, financial, or property interests in a foreign country, or in any owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest,” apply to the facts of Applicant’s case.

While Applicant has expressed an intent to retire in France, without evidence of dual citizenship with France or close family relationships in the country that could create potential conflicts of interest, his retirement intentions play no more than a minor role in assessing any heightened risks associated with his French connections. Further, any retirement plans of Applicant to retire in France are still not fully formulated and will presumably be influenced by the business needs of his current employer (inclusive of the potential needs of his of employer to have a NATO presence in France).

The AGs governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relationships and contacts with persons who are citizens and residents of foreign countries in general. What is considered to be an acceptable risk in one country may not be in another. The geopolitical aims and policies of the particular country (in this case France) do matter. Summarized, the AGs do take into account the country’s demonstrated relations with the United States as an important consideration in gauging whether the particular relative, friend, or contact with citizenship and residency elsewhere create a heightened security risk. France is one of the United States’ oldest allies and one in which the United States enjoys excellent bilateral relations.

Alleged conflicts of interest are centered on Applicant’s intimate relationship with a married French citizen, his purchase of a French apartment with mortgage financing from a French banking institution with proxy assistance in the signing of Applicant’s purchase papers from a long-time French NATO counterpart, his creation of French and British bank accounts to maintain large bank deposits, and his expressed intention to retire in France. All of Applicant’s use of French banks to utilize banking payment distributions through a French-created company (an SCI) he found necessary to create to meet French legal requirements reflect credible straight-forward business decisions reconcilable with U.S. and French banking laws and regulations.

Since 2014, the U.S.’s Foreign Account Tax Compliance Act (FATCA) has imposed rigorous reporting requirements on foreign financial institutions of countries with bilateral bank reporting agreements with the United States (France included). See Public Law 111-147, 124 Stat 71 (March 2010), 26 U.S.C. § 1471 (a-d) (2010). These imposed reporting obligations on French financial institutions have prompted French banks to impose increased burdens on U.S. residents seeking to finance purchases of French real estate with French banking institutions. As a result, France and the vast majority of Europe’s banks now refuse credit requests from U.S. mortgage applicants, regardless of the asset and income levels of the prospective borrowers.

To minimize the risks of non-compliance with FATCA, French banks are now refusing to respond to potential borrowers linked to the United States. See *Mortgage Update: Can a U.S. Citizen get a Mortgage in France*, in French Entre (August 2020). In a post-pandemic world, French lenders can become very binary (linked as they are to agreed FATCA reporting requirements) in their handling of U.S. mortgage applications and impose all kinds of caveats and explanations for denying mortgage applications from U.S. citizens that collectively diminish the prospects of a U.S. citizen getting a French mortgage.

To avoid French legal challenges imposed on U.S. applicants seeking French mortgage financing, Applicant took advantage of legal options available to him under French law and achieved success in financing his French apartment purchase. Nothing in the French financing arrangements he chose conflicts in any discernible way with U.S. laws and regulations covering purchases of French property using legally available French financing instruments. Neither Applicant's French signatory of his purchase papers nor anyone not officially associated with his purchase and financing of his French apartment acquired any legal or equitable interest in his French apartment.

Mitigating conditions are available to Applicant as follows: MC ¶¶ 8(a), "the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States," 8(b), "there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest," and 8(e), "the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country."

Applicant's relationship with his married French girlfriend and acquired property interests in France with a stated intention of eventually retiring in France, while enough to raise initial security concerns, are surmounted by the absence of any evidence of (a) an actual or potential conflict of interest with his French connections (former counterparts of Applicant during his past employment with his federal intelligence agency); (b) the absence of any actual or potential conflict of interest with U.S. security interests associated with his established financial and personal interests in French property; (c) the status of France as a long-time ally of the United States that maintains close and friendly geopolitical relations with the United States; and (d) the absence of any dual loyalties with France.

Foreign preference

Security concerns are raised under Guideline C over Applicant's receipt of an offer of employment from an Italian civilian organization in July 2018 that he declined.

Absent evidence of any dual citizenship with France, assuming any type of employment, position, or political office with the Italian government, or otherwise acting in a way that serves the interests of the Italian government in a way that conflicts with U.S. national security interests, Applicant's job offer alone (which he declined) is not enough to raise any preference concerns that are covered by any of the Guideline C disqualifying conditions. Raised foreign preference concerns by the Government are unsubstantiated based on the facts developed in the record.

Whole-person assessment

Whole-person assessment of Applicant's security clearance eligibility requires consideration of whether his personal connections with French citizens, proxies, and banks, along with his property ownership in France and expressed interest in retiring to France, are compatible with his holding a U.S. security clearance. Favoring Applicant's application to maintain his security clearance is the high regard in which he is held by former agency managers, colleagues, and counterparts from France and Italy who worked closely with him and were in a good position to assess his judgment, reliability, and trustworthiness.

Raised security concerns over Applicant's intimate relationship with a still married French citizen, his close contacts with former French counterparts who currently interface with each other on NATO issues, his use of French banks to finance his purchase of a French apartment, and his expressed intention to retire in France are material to considerations of foreign influence that could potentially create a heightened risk of pressure, influence, and compromise, but are not dispositive.

Important considerations for determining whether Applicant has mitigated the Government's foreign influence security concerns are (a) the close geopolitical relations that have existed between France and the United States for over three centuries; (b) Applicant's distinguished record of handling the Government's most closely held classified secrets over the course of his 39 years of uninterrupted federal service; and (c) his record of honesty and integrity that he has demonstrated with his managers and colleagues (past and present). Applicant's contributions to the United States and NATO are continuing with his current employer and include his furnishing important expertise for his employer's development of key cryptography certificates for application in high assurance devices for use across the globe.

Applicant's defense contributions, weighed together with his mitigation efforts, are enough to overcome his foreign interest activities associated with his French connections. While Applicant's French connections when evaluated piecemeal can be concerning, they are reconcilable with Applicant's overall record of integrity, trustworthiness, and reliability in his professional relationships with trusted friends and counterparts over developed over a forty-year period of devoted service to the United States and NATO. I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude foreign influence and

foreign preference security concerns are mitigated. Eligibility for access to classified information is granted.

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:

Guideline B (FOREIGN INFLUENCE):	FOR APPLICANT
Subparagraphs 1.a- 1.g:	For Applicant
Guideline C (FOREIGN PREFERENCE):	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

Roger C. Wesley
Administrative Judge