

KEYWORD: Foreign Preference

DIGEST: Applicant is 26 years old and works for a defense contractor. She was born in France to a French mother and an American father. She has dual citizenship with France and does not wish to renounce it because she does not want to preclude her child from any future educational benefits. She failed to mitigate security concerns arising from foreign preference. Eligibility for a trustworthiness position is denied.

CASENO: 06-20756.h1

DATE: 04/30/2007

DATE: April 30, 2007

In re:)	
)	
-----)	
SSN: -----)	ADP Case No. 06-20756
)	
Applicant for Public Trust Position)	

**DECISION OF ADMINISTRATIVE JUDGE
NOREEN A. LYNCH**

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 26 years old and works for a defense contractor. She was born in France to a French mother and an American father. She has dual citizenship with France and does not wish to renounce it because she does not want to preclude her child from any future educational benefits. She failed to mitigate security concerns arising from foreign preference. Eligibility for a trustworthiness position is denied.

STATEMENT OF THE CASE

On November 1, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant Statement of Reasons (SOR) stating it was unable to find that it is clearly consistent with the national interest to grant or continue a position of trustworthiness.¹ The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline C (Foreign Preference, of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued.

The case was assigned to me on February 22, 2007. A notice of hearing was issued on March 14, 2007, scheduling the hearing for March 29, 2007. Applicant waived the 15-day notice requirement. The hearing was conducted as scheduled. The government submitted one exhibit that was marked as Government Exhibit (GE) 1. Applicant did not submit any exhibits. Applicant testified on her own behalf. DOHA received the hearing transcript (TR) on April 11, 2007.

FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to foreign preference under Guideline C (subparagraphs 1.a through 1.f). Those admissions are incorporated as findings of fact. In addition, after a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Since, November 28, 2005, Applicant who is 26 years old, has worked as a customer service representative for a defense contractor. She was born and raised in France, and therefore, had dual citizenship since birth. Her father, who died in 2004, was American and her mother is a French citizen. However, she came to the United States in 2002 for additional study for her undergraduate degree. She is studying for her teaching degree so that she may teach French and Spanish in the United States. She submitted a trustworthiness application on November 28, 2005.²

While in the United States, Applicant married an American veteran. She and her husband have a four-month-old son, who is a United States citizen by birth. She holds a valid U.S. passport, as well as a French one.³ Applicant's French passport was renewed in 2002 or 2003. This passport expires in 2012 or 2013.⁴

Over the years, Applicant has traveled to France. In June 2005, she and her husband spent their honeymoon in France. She plans to visit again during the Christmas holidays. Her grandfather

¹This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

²Item 1 (Applicant's Application (SF 85-P), dated) November 29, 2005 at 1-13.

³Tr. 16.

⁴Tr. 21.

has a business in France, and Applicant holds a 25% share in the business. She does not actively involve herself with the business.⁵

During her time in France, Applicant exercised her rights to vote in elections, and file income tax. She also received unemployment benefits. This was before she came to the United States.⁶

Applicant wishes to retain her dual citizenship, as is her legal right. She reasons that her son should have the opportunity, if he desires, to live and study abroad in France. Applicant is registering her son for his French passport. She is not willing to renounce her French citizenship.⁷

Applicant loves her job. She considers herself loyal to the United States. She denies that she has a preference for France to the United States. She enjoys working and living in the United States. She considers herself a good citizen and has no history of any legal problems.⁸

The government did not submit any information regarding France.

POLICIES

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information and determining trustworthiness within the executive branch.

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive. The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in paragraph 6.3 of the Directive and AG paragraph 2(a).

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable

⁵Applicant's response, dated November 10, 2006, included in file.

⁶Tr.14.

⁷Tr.22.

⁸Applicant's memorandum, dated January 23, 2007, at 1.

participation; (3) the frequency and recency of the conduct; (4) the individuals' age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline C - Foreign Preference: When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Since the protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the standard that the issuance of the trustworthiness eligibility is "clearly consistent with the interests of national security" or "clearly consistent with the national interest."⁹ For the purposes herein, despite the different wording in each, I have concluded all of the standards are the same. In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences that are grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to sensitive information.¹⁰ If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's eligibility.¹¹

A person who seeks access to sensitive information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. Because of this special relationship, the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to sensitive information. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information. Any

⁹The Directive, as amended by Change 4, dated April 20, 1999, uses 'clearly consistent with the national interest' (Sec. 2.3; Sec.2.5.3; Sec 3.2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.2.5.; Sec. E3.1.2.6.; and Sec. E3.1.2.7.), "clearly consistent with the interests of national security" (Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (Enclosure 2, Sec. E2.2.2.).

¹⁰ISCR Case No. 96-0277 (July 11, 1997) at 2.

¹¹ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, Para E3.1.15.

doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of national security.¹²

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of the Executive Order 10865 specifically provides that industrial security clearance 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." Trustworthiness determination decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the following with respect to each allegation set forth in the SOR.

Foreign Preference

The government established its case under Guideline C. Applicant admits that she is in possession of a current French passport and exercises the right to keep her French citizenship after living in the United States and holding a valid U.S. passport. She is not willing to relinquish her French citizenship. This raises a security concern, under Foreign Preference Disqualifying Condition (FP DC) AG ¶ 10 (a) (1) (*possession of a current foreign passport*).

Applicant admits that she is in the process of registering her son for his French citizenship so that he may enjoy any *future* educational or other benefits from France. She also hold a share in her grandfather's company, but is not involved with the day to day business. This raises FP DC AG ¶ 10 (5) (*using foreign citizenship to protect financial or business interests in another country*).

When the Government's initial burden has been met and a disqualifying condition raised, the burden shifts to the Applicant to go forward with evidence in rebuttal, explanation, or mitigation, which is sufficient to overcome or outweigh the Government's case. Here Applicant has expressly decided to retain her dual citizenship. Foreign Preference Mitigating Condition (FP MC) AG ¶ 11 (b) does not apply.

After a review of the other mitigating conditions, I find that none apply in this case. Applicant has not mitigated the Foreign Preference trustworthiness concern.

Whole Person

¹²Directive, Enclosure 2, Para. E2.2.2

In all adjudications, the protection of our national security is the paramount concern. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. As noted above, the adjudicative process is a careful weighing of a number of variables in considering the whole person concept. It recognizes a person be viewed by the totality of his or her acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered both the record evidence and Applicant in light of the whole-person concept. Applicant has been a dual citizen of France and the United States. Ordinarily, an applicant's foreign citizenship possesses little significance if based solely on her birth in a foreign country. Applicant is proud of her U.S. citizenship, but wants to maintain an active assertion of certain foreign citizenship rights for her son. A detrimental impact on the interests of the United States is not required before the Government may deny eligibility for a position of trustworthiness under Guideline C. Because any doubts must be resolved in favor of national security, I find the allegations regarding foreign preference in the government's favor. Eligibility is denied.

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, Guideline C:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a position of trustworthiness to Applicant. Eligibility is denied.

Noreen A. Lynch
Administrative Judge