DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
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	)	
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Applicant for Security Clearance	)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

02/23/2016

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant did not mitigate security concerns regarding foreign preference. Security concerns about foreign influence were mitigated. Eligibility for access to classified information is denied.

History of the Case

On May 14, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators 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 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AGs) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on June 18, 2014, and elected to have his case decided on the basis of the written record. Applicant received the Government's File of Relevant Material (FORM) on August 31, 2015, and responded to the FORM within the time permitted with a cover letter and a copy of a renewed U.S. passport issued in May 2009. Applicant's submissions were admitted as Items 7 and 8. The case was assigned to me on November 10, 2015.

Summary of Pleadings

Under Guideline B, Applicant allegedly has (a) a mother who is a citizen of France; (b) a father who is a dual citizen of France and the United States; (c) a wife who is a citizen of France residing in Belgium; (d) a son who is a citizen of France, residing in Belgium; (e) a daughter who is a dual citizen of France and the United States, residing in Belgium; (f) parents-in-law who are citizens and residents of France; and (g) extended family members that are citizens and residents of France. These foreign relationships allegedly create security concerns when applied in connection with Guideline C foreign preference concerns.

Under Guideline C, Applicant allegedly (a) possesses a French identity card (a Carte Nationale d'Identite) that he has used for travel throughout Europe and (b) has voted in French elections since turning the age of 18. These allegations allegedly reflect foreign preference for France.

In his response to the SOR, Applicant admitted each of the foreign influence and foreign preference allegations with explanations. He claimed he was born in France to a father who is a dual citizen of the United States and France and to a French mother. He claimed he married a French citizen in 2005 and was still granted a U.S. security clearance. He claimed that neither France nor Belgium is known to target U.S. citizens to obtain protected information or are associated with any risk of terrorism. He claimed he uses the French identity card for practical purposes when traveling throughout Europe, which European Union (EU) citizens are permitted to do. And he claimed that voting in French elections is a right he has as a French citizen, just as he has the right to vote in U.S. elections.

Findings of Fact

Applicant is a 34-year senior linguist for the North Atlantic Treaty Organization (NATO) who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant, who was born in France and spent most of his growth years in France, married his spouse (a French citizen) in 2005 and has two children from this marriage: a son who is a French citizen by birth, residing in Belgium and a daughter who is dual citizen of France and the United States, residing in Belgium. (Item 3) His daughter is a nurse by training, who works in Belgium and has no affiliations or connections with any

foreign government, military, or intelligence service. (Item 5) Applicant acquired French citizenship through his parents and dual citizenship with the United states through his father, who holds dual citizenship with France and the United States. (Items 3-5)

Applicant attended college classes in France between September 1998 and June 2000 and earned an associate's degree. (Item 3) Between September 2000 and August 2001, he attended classes in Spain and earned a bachelor's degree. He earned a master's degree in July 2004 from a French university. (Item 3)

Since October 2009, Applicant has been employed as a full-time French-English staff interpreter for NATO in Belgium. (Item 3) As an interpreter, he has worked in multiple meetings of many types, both inside and outside the United States. Previous to his work with NATO, he was self-employed as an interpreter in the United states (i.e., between August 2006 and September 2009). All of his previous employments and student activities between January 1997 and July 2006 were centered in France and other EU member countries. Citizens of these countries (France included) are permitted to travel freely within EU countries with only a country identity card. (Item 1)

Applicant received his first U.S. passport in May 1999. (Item 6) He renewed it in May 2009. (Item 8) Months later in September 2009, he left the United States to accept an interpreter's position with NATO. (Items 3-5) In 2007, he applied for and received a U.S. security clearance. (Items 3-6)

Applicant claims no military service, either in the United States or France. (Items 2-6) As a French citizen, he has voted in multiple French elections since turning 18 years of age in 1998. (Item 3) While he claims to have voted in U.S. elections (Item 7), he provided no documented evidence of doing so. Without corroborating evidence of his voting in U.S. elections, no favorable inferences of his voting in U.S. elections can be drawn.

Applicant possesses no French passport, but does have a French identity card (characterized in France as a Carte Nationale d' Identite) (Items 5 and 6) Exercising his French citizenship, he has used this identity card on multiple occasions to travel throughout Europe. (Item 2) When interviewed in October 2007 by a State Department investigator, he produced his U.S. passport which bore stamps documenting his travel abroad to various countries between July 1999 and July 2007. (Item 6) When and where he used his U.S. passport for foreign travel since 2007 is not known.

Besides using his French identity card for foreign travel to member countries of NATO and the EU and voting in French elections, Applicant received direct medical benefits from France when he resided there and more recent indirect medical benefits from his wife and children, who have received continuous medical benefits in Belgium through his wife's Belgium medical insurance. (Items 5 and 6)

During his interview with an agent from the Office of Personnel Management (OPM) in November 2013, Applicant stressed that "he specifically tries not to demonstrate a preference for either the United States or France." (Item 5) He told this

OPM agent that he had no need to renounce his French citizenship. (Item 5) Since his 2013 OPM interview, Applicant has expressed no interest in renouncing his French citizenship and has taken no reported actions to do so.

Applicant's mother and in-laws are citizens and residents of France. (Item 3) Both his father and brother hold dual citizenship with France and the United States and reside in France. His father derived his U.S. citizenship from his birth in the United States and his French citizenship from either his parents or French naturalization. (Items 3 and 6) Applicant maintains regular contact with his parents and brother. (Items 3 and 5) Besides his immediate family members, Applicant has several extended family members who are citizens and residents of France. (Item 5) He has no contacts with any of these family members, to whom he is not bound by affection, common interests, or obligations. (Item 5)

None of Applicant's family members residing in France have any known ties to the French government, military, or intelligence services. (Items 5 and 6) Applicant's father is a teacher at a French university and teaches French. His mother is a retired school teacher who also taught French during her teaching career. (Item 5) His daughter is a full-time student attending classes in Belgium; while his son is too young for school or employment. Applicant's brother is a curator who purchases artifacts for a local French museum. (Item 5)

Applicant maintains contact with several friends and attested that none of these friends have any known affiliations with foreign governments, military, or intelligence services. (Item 5) Applicant's foreign property interests are very limited: a small checking account in Belgium and a few other assets. (Item 5) He has no reported assets in the United States. (Item 5)

Policies

The AGs list guidelines to be used by administrative 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 "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns."

The AGs must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial

commonsense decision based upon 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 AG ¶ 2(a) 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 chances; (7) the motivation for 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 guideline is pertinent in this case:

Foreign Preference

The Concern: When an individual acts in such a way as to indicate 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. *See* AG ¶ 9.

Foreign Influence

The Concern: Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under the this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism. *See* AG ¶ 6.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. *See United States, v. Gaudin,* 515 U.S. 506, 509-511

(1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." *See Department of the Navy v. Egan,* 484 U.S. 518, 531 (1988).

Analysis

Applicant is an interpreter for NATO and has resided in Belgium since he accepted his interpreter position with NATO in 2009. He is a French citizen by virtue of his birth in France to parents of French citizenship and a dual citizen of France and the United States through his father who was born in the United States with dual French citizenship, and is perforce a dual citizen of France and the United States. Applicant holds both a renewed U.S. passport and French identity card that permits expedited country entry and exit in EU countries, inclusive of Belgium where NATO's headquarters is located.

Trust concerns relate to foreign preference based on Applicant's exercise of a French identity card to travel to other European countries within the EU and his receipt of other bestowed French privileges. Other exercised French privileges include voting in French elections and receiving free family medical benefits for himself and his family.

Foreign Preference

Preference concerns involving applicants with dual citizenship necessarily entail allegiance assessments and invite critical considerations of acts indicating a preference for the interests of the foreign country (France) over the interests of the United States. The issues, as such, raise concerns over Applicant's preference for a foreign country (France) over the United States. By accepting and using a French identity card to travel throughout Europe that entitles him and his family to special

access privileges when entering and exiting France, he demonstrated some disposition for a split preference for France and the United States.

Since obtaining a French identity card, Applicant has taken multiple trips to member NATO countries (inclusive of Belgium where he now resides with his wife and family). On each of these trips since 2009, he has relied on his French identity card for entry and exit. He has no French passport and provided no proof of ever using his U.S. passport for travel in Europe after July 2007. These exercises of travel privileges, when combined with his receipt of other French benefits, reflect active indicia of French preference. In post-FORM submissions, he provided a copy of his renewed U.S. passport with no travel entries.

Because Applicant elected to obtain and use his French identity card exclusively for travel throughout Europe, he acquired travel privileges not available to other U.S. citizens. A major policy reason for requiring U.S. citizens with security clearances to use their U.S. passports for foreign travel is to facilitate the tracing of the clearance holder's whereabouts when on travel. This tracking capability is lost when the clearance holder uses a foreign passport or identity card to enter and exit a foreign country.

In the present case, the Government may apply certain provisions of disqualifying condition (DC) ¶ 10(a) of AG ¶ 9, "exercise of any right, privilege or obligations of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This DC includes, but is not limited to:

(1) possession of a current foreign passport;

(2) military service or a willingness to bear arms for a foreign country;

(3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;

(4) residence in a foreign country to meet citizenship requirements;

5) using foreign citizenship to protect financial or business interests in another country;

(6) seeking or holding political office in a foreign country; and

(7) voting in a foreign election.

Specifically, DC ¶ 10(a)(3) has some application to the established facts and circumstances herein. By obtaining and using his French identity card, which replaces the need for a foreign visa and passport for travel to Belgium and other European countries within the European Union, Applicant was able to achieve travel privileges and conveniences not available to other U.S. citizens. By receiving French medical benefits for himself and his wife and children, Applicant obtained direct benefits not

available to U.S. citizens. DC ¶ 10(a)(7) also applies to Applicant's situation. Applicant admits to voting regularly in French elections after reaching the age of 18. While claiming entitlement to vote in U.S. elections, he provided no evidence of his actually doing so.

In assessing split-preference cases, the Appeal Board has looked to indicia of active exercise of dual citizenship. In cases where there is record evidence of a dual-citizen applicant having substantial property and other benefits in a country that are not available to non-residents or citizens on the same terms, the Appeal Board has considered such interests to represent special benefits or privileges that reveal a preference for that particular country. *See* ISCR Case No. 08-02864 at 4 (App. Bd. Dec. 29, 2009); *See* ISCR Case No. 16098 at 2 (App. Bd. May 29, 2003).

Without French citizenship retention, Applicant potentially could be subjected by the French government to a forced surrender of his identity card and create not only inconveniences for Applicant (e.g., required visas and passports for travel entry and exit in other European countries), but potential restrictions on stays in Belgium where he currently works for NATO. Applicant's retaining and utilizing his French citizenship and identity card in these circumstances represents material indicia of a preference for France that cannot be easily reconciled with the split preference he claims for the United States.

Preference questions require predictive judgments about how an applicant can be trusted in the future to honor his fiduciary responsibilities to the U.S. Government. Applicant spent three years (2006-2009) working as a self-employed linguist in the United States. But, except for this brief three-year period, he has spent most of his entire life in France, where he has forged strong loyalties and family ties.

Based on OPM and State Department interviews, Applicant clearly places a high value on his French citizenship and wants to retain it. While his interests and choices are understandable, considering his circumstances when he left the United States for Belgium in 2009 to accept a linguist assignment with NATO, they also reflect a current and ongoing split preference for France and the United States.

Whole person precepts are certainly helpful to Applicant in surmounting the Government's preference concerns herein. The strong trust impressions he has forged with his supervisors, coworkers, and friends who have worked with him through the years add support to his claims that he retains loyalty and preference to the United States.

Overall, though, Applicant is not able to persuade that his current exclusive preference is for the United States. Because he has made considerable use of French privileges associated with his retaining his French citizenship and identity card, and benefitting from other French privileges (such as voting in French elections and receiving French medical benefits), he manifested a preference for France under the criteria as established by the Appeal Board. Applicant fails to absolve himself of foreign preference concerns associated with the presented issue of whether he retains a preference or split preference for his birth country (France), or the United

States through his father's dual citizenship. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 2.a and 2.b of Guideline C.

Foreign Influence

Under Guideline B, "[f]oreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest." Although France (a charter NATO member) is sometimes characterized as a foreign collector, it generally is not considered to present any heightened risk geopolitically in its relationships with the United States. Because Applicant's foreign preference has been raised as an issue of security concern as well, his potential exposure to foreign influence risks through his close ties to his wife and other family members who are citizens and residents of France and Belgium are raised as additional security concerns.

The Government raises security concerns over risks that Applicant's wife and family members, who reside in Belgium and France, respectively, might be subject to undue foreign influence by French and Belgian government authorities to access classified information in Applicant's possession or control. Because Applicant has a wife and family members who have French citizenship by birth and reside currently in France and Belgium, respectively, they present potential heightened security risks covered by disqualifying condition (DC) ¶ 7(a), "contact 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," of the AGs for foreign influence. The citizenship and residence status of Applicant's wife, family members, and friends in France pose some potential concerns for Applicant because of the risks of undue foreign influence that could potentially impact the privacy interests subject to Applicant's control.

Because neither Applicant's wife nor his and her family members residing in France have any identified French government or military service affiliation, little consideration of DC ¶ 7(b), "connection to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information," or DC ¶ 7(d), "sharing 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," is warranted. To be sure, neither Applicant's wife nor their immediate and extended family members residing in Belgium and France, respectively, have any history of being subjected to any coercion or influence, or appear to be vulnerable to the same. No more than partial application of these disqualifying conditions are warranted.

The AGs governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens and

residents of foreign countries in general. What is considered to be an acceptable risk in one foreign country may not be in another. *See* ISCR Case No. 00-0317 at 6 (App. Bd. March 29, 2002). The AGs take into account the country's demonstrated relations with the U.S. as an important consideration in gauging whether the particular relatives with citizenship and residency elsewhere create a heightened security risk.

Summarized, the geopolitical aims and policies of the particular foreign regime involved do matter. In the case of France, where Applicant has forged strong integration into French and Belgium society, his French relationships are entitled to considerable weight. *See* ISCR Case No. 03-03974 (App. Bd. April 20, 2006).

Based on his case-specific circumstances, MC ¶ 8(a), "the nature of the relationships with foreign persons, the country in which these persons are located, or the persons or activities of these 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 a foreign individual, group, organization, or government and the interests of the United States," is available to Applicant. Neither Applicant's parents, his wife's parents, his siblings, nor his extended family members and friends residing in France pose heightened security risks that could subject them to potential pressures and influence from French government and military officials.

Another mitigating condition available to Applicant is MC ¶ 8(b): "there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, 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." Despite the lack of any significant Applicant links to the United States, his linguist work with NATO is not likely to yield any potential conflicts.

Whole-person assessment is available also to minimize Applicant's exposure to potential conflicts of interests with his NATO linguist work and his wife and family members. Most importantly, Applicant is not aware of any risks of coercion, pressure, or influence that either his wife or family members residing in Belgium or France might be exposed to. So, in Applicant's case, the potential risk of coercion, pressure, or influence being brought to bear on him, or his wife and family members is minimal and mitigated. Overall, potential security concerns over Applicant's wife and family members in Belgium and France are sufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand risks of undue influence attributable to his familial relationships in Belgium and France. Favorable conclusions warrant with respect to the allegations covered by Guideline B.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE B (FOREIGN INFLUENCE):	FOR APPLICANT
Subparagraphs 1.a through 1.g:	For Applicant
GUIDELINE C (FOREIGN PREFERENCE):	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge