DATE: May 24, 2001

In Re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 00-0276

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Wm. David Byassee, Esquire

SYNOPSIS

Fifty-six year old Applicant's participation in "national service" in an international cooperation program at a Canadian university, under the joint auspices of the French inistry of War and Ministry of Foreign Affairs during 1969-71, which occurred while he was a French citizen, and prior to becoming a Canadian citizen in May 1972, or an American citizen in March 1983, when he took an oath of citizenship and renounced all other allegiances, while relevant under the whole person concept, in this instance, is no longer of security concern. The foreign citizenship and residency status of Applicant's children (Canadian), brother and sister (French), and his sisters-in-law (Canadian)--none of whom are agents of those foreign governments or in positions to be exploited by those governments--does not constitute an unacceptable security risk. The renewal and retention of French and Canadian passports after he became an American citizen--without any use--until the Canadian passport expired in 1998, and he surrendered the French passport to the authorities in March 2001, while of concern, cannot be considered merely in isolation, but should be analyzed in light of all the facts and circumstances to determine the possible existence of a foreign preference. The combined overseas holdings of Applicant and his wife constitute substantially less than 10 percent of their combined United States holdings, and given that ratio and considering the countries in which the foreign financial interests are located (France and Canada), it appears those foreign holdings are too insubstantial to his overall worth to open himself to vulnerability to foreign influence. Under the specific facts in evidence herein, the Government's security concerns have been mitigated by Applicant's strong preference for, and demonstrated loyalty and allegiance to, the United States, over France and Canada. Clearance is granted.

STATEMENT OF THE CASE

On December 14, 2000, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *"Safeguarding Classified Information Within Industry,"* dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *"Defense Industrial Personnel Security Clearance Review Program"* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly

consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated December 20, 2000, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was initially assigned to Administrative Judge Jerome H. Silber, on February 23, 2001, but, due to caseload considerations, was subsequently reassigned to, and received by, this Administrative Judge on March 8, 2001. A notice of hearing was issued on March 14, 2001, and the hearing was held before me on March 29, 2001. During the course of the hearing, three Government exhibits and 26 Applicant exhibits, and the testimony of four Applicant witnesses (including the Applicant), were received. The transcript (Tr.) was received on April 30, 2001.

FINDINGS OF FACT

Applicant has admitted nearly all of the factual allegations pertaining to foreign preference under Guideline C (subparagraphs 1.b. through 1.f.), as well as a portion of another allegation (subparagraph 1.a.). He has also admitted all of the factual allegations pertaining to foreign influence under Guideline B (subparagraphs 2.a. through 2.g.). Those admissions are incorporated herein as findings of fact. He denied the remaining portion of subparagraph 1.a.

After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 56 year old male employed by a defense contractor, and he is seeking to obtain a security clearance, the level of which has not be revealed.

Applicant was born in 1944 in France--a nation whose interests are not inimical to the United States. He exercised the rights and privileges, and performed the responsibilities, of a citizen of France. He attended a French university during 1962-66, and after graduation in 1966, moved to Canada--another nation whose interests are not inimical to the United States--where he continued his post-graduate education during 1966-70. In 1970, he received his Ph.D. in chemistry from a Canadian university. As a French citizen, he was required to perform either active military service or "national service," a substitute for active military service. He chose the national service, and from about October 1969, and continuing until about January 1971, served as a Technical Expert in an international cooperation program at a Canadian university, under the joint auspices of the French Ministry of War and Ministry of Foreign Affairs.[(1)]

At some point after his arrival in Canada, Applicant met a native-born Canadian citizen and they eventually married in Canada in September 1967 while he was still undergoing his post-graduate training. In January 1971, after having completed his post-graduate training and national service, Applicant commenced a position as a Research Scientist with a Canadian research institute, a position he maintained until February 1975.[(2)] Applicant's two children--a daughter and a son--were born in Canada in 1969 and 1971, respectively.[(3)] With a wife and family, as well as a good job, Applicant fully intended to remain in Canada,[(4)] and in May 1972, he became a Canadian citizen.[(5)]

In February 1975, however, Applicant was offered a position with a company in the United States, so he and his family relocated.[(6)] Commencing at that time and continuing up to the present, Applicant has held several successive positions of greater responsibility with different domestic corporations throughout the United States. After residing in the United States for a number of years, he decided to become a citizen.[(7)] In March 1983, after completing the required immigration and naturalization citizenship process, Applicant became a naturalized citizen of the United States.[(8)] At the time he took his oath of allegiance and was granted his new citizenship, he intended to renounce his French and Canadian citizenship, but was aware that France would not approve of his action regarding his French citizenship, and was unsure about the Canadian position.[(9)] In describing his motivation for becoming an American citizen, he stated: "I chose to become a U.S. citizen because I believe in the democratic principles and in the freedom and boundless opportunities for individuals embedded in the Constitution."[(10)]

Since becoming an American citizen, Applicant has exercised the rights and privileges, and performed the responsibilities, of a citizen of the United States. He has voted in American elections but has not voted in any French or [(11)]

Canadian elections. Applicant exercised one right and privilege of being a Canadian citizen by applying for a Canadian passport in 1988,[(12)] and renewing it in 1993.[(13)] He never used either Canadian passport.[(14)] His most recent Canadian passport expired in 1998, and was never renewed. In 1997, while interviewing for another position, the interviewer suggested to Applicant that he would be a more attractive candidate for work with the European Community if Applicant possessed a current French passport.[(15)] As Applicant's previous French passport had expired in the late 1980s,[(16)] he acquired a new French passport in September 1997.[(17)] He never used the French passport which was due to expire in September 2002.[(18)]

Applicant had first expressed a willingness to relinquish his French passport in December 1999, when he was interviewed by a Special Agent of the Defense Security Service (DSS).[(19)] At that time he also stated an intention of not renewing it when it eventually expires. In May 2000, in responding to interrogatories submitted to him by DOHA, he solicited advice from DOHA as to the appropriate course of action to be taken to surrender the French passport, but that inquiry went unanswered. Applicant remained unaware of the true significance of possessing a foreign passport, or its potential impact on his obtaining or maintaining a security clearance, until December 2000 when he was furnished with the passport policy "clarification" issued in August 2000 by the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD/C^3I). Upon receipt of the ASD/C^3I memo, Applicant again expressed a willingness to relinquish his French passport, and again solicited advice from DOHA as to the appropriate course of action to follow to comply with the passport policy "clarification," but again, he received no such guidance.

On March 28, 2001, the day prior to the hearing in this matter, on his own initiative, after discussing the matter with his attorney, Applicant cut up the French and expired Canadian passports and surrendered the pieces to the French and Canadian Consulates, respectively.[(20)] As of the date of the hearing, Applicant no longer possessed either a French or a Canadian passport.

In his letters to the two Consulates, Applicant declared an intention to renounce his foreign citizenships and requested guidance on the proper methods of doing so.[(21)] Although he concedes he may legally still be a citizen of France and Canada, Applicant's declared *primary* allegiance and loyalty are to the United States.[(22)] Regardless of future circumstances, he intends to remain a citizen and resident of the United States.[(23)] Applicant asserts his only ties to France and Canada are through family members who continue to reside in those countries.[(24)]

By virtue of her marriage to Applicant, his Canadian-citizen wife purportedly became an instant French citizen.[(25)] She became a citizen of the United States in 1995.[(26)] Their children have remained Canadian citizens, and they both continue to reside in that country.[(27)] Applicant's parents and his wife's parents are deceased.[(28)] His brother and sister are French citizens who reside in France.[(29)] His wife's two sisters are Canadian citizens who reside in Canada.[(30)] None of those blood relatives or relatives through marriage referenced above are employees of either the French or Canadian governments.[(31)] A cousin of Applicant's wife (a Canadian citizen residing in Canada) is a retired employee of the Canadian Customs Service.[(32)]

Applicant averages about two trips per year to Canada to visit his children,[(33)] and in the last four years has taken only one trip to France to see his brother.[(34)]

Applicant and his wife maintain several investment or checking accounts outside the United States. The investment account, solely owned by Applicant's wife, was her inheritance upon the death of her father, currently worth about $231,219.01 (Canadian) or about $150,518.51 (U.S.).[(35)] They have one checking account in Canada, with funds furnished from the proceeds from her investment account,[(36)] currently worth about $2,000.00,[(37)] and maintained solely for their convenience when traveling to Canada. Applicant also has a checking account in France, with funds furnished from a reimbursement of a loan made to his brother several years earlier,[(38)] currently worth about $3,000.00,[(39)] and also maintained solely for their convenience when traveling to France.

Applicant and his wife also maintain substantial holdings here in the United States. In addition to his residence [(40)] and a rental property,[(41)] both of which they own outright, having previously paid off the mortgages for both properties, Applicant and his wife have combined United States investments in investment accounts, brokerage accounts, and individual retirement accounts, currently worth about $1,123,335.19.[(42)] The combined overseas holdings of Applicant and his wife constitute less than 10 percent of their combined United States holdings.[(43)]

Applicant has been employed in his current position by a Government contractor since April 1998. The quality of his performance has been characterized as "outstanding," the highest possible evaluation.[(44)] In addition, one member of the search committee which recommended his hiring and the senior vice president who selected him referred to Applicant by using the terms "honesty and integrity," as well as characterizing him as a person who can be counted on and trusted.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An Administrative Judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E.2.2., Enclosure 2, of the Directive, are intended to assist the Administrative Judge in reaching fair and impartial common sense decisions.

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 participation; (3) the frequency and recency of the conduct; (4) the individual's 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 guidelines most pertinent to an evaluation of the facts of this case:

[GUIDELINE B - FOREIGN INFLUENCE]: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Conditions that could raise a security concern and may be disqualifying include:

(1) an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;

(2) sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse influence or duress exists;

(8) a substantial financial interest in a country, or in any foreign owned or operated business that could make the individual vulnerable to foreign influence.

Conditions that could mitigate security concerns include:

(1) a determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States;

(5) foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

[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.

Conditions that could raise a security concern and may be disqualifying include:

(1) the exercise of dual citizenship;

(2) possession and/or use of a foreign passport;

(3) military service or a willingness to bear arms for a foreign country.

Conditions that could mitigate security concerns include:

(1) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(2) indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship;

(4) individual has expressed a willingness to renounce dual citizenship.

Since the protection of the national security is the paramount determinant, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security,"[(45)] or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded both standards are one and the same. In reaching this Decision, I have endeavored to draw only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have attempted to avoid 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 classified information. 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 clearance.

A person who seeks access to classified 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. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified 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 classified information.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of the witness testimony, demeanor, and credibility, and

after application of all appropriate legal precepts and factors, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

With respect to Guideline B, the Government has established its case. Applicant has been portrayed as a person who is a potential security risk because members of his immediate family or persons to whom he is bound by affection, influence, or obligation--in this instance, Applicant's two children, and his brother and sister--are not citizens of the United States or may be subject to duress. The concern also carried over to Applicant's wife because of her multiple-citizenship status. In addition, there is concern over the financial interests of Applicant and his wife in Canada. These situations raise the potential for vulnerability to coercion, exploitation, or pressure, and the exercise of foreign influence that could result in the compromise of classified information. In support of its contentions, the Government has cited the fact Applicant's wife is a citizen of France and Canada, in addition to the United States; his children are citizens of, and reside in, Canada; his brother and sister are citizens of, and reside in, France; and he has "several relatives"--not further identified--who are citizens of France or Canada, and they reside in one of those two countries. Based on my review of the evidence, I conclude the security concerns manifested by the Government, in this instance, are largely unfounded.

It is uncontroverted that some of Applicant's immediate family members and persons to whom he has close ties of affection are citizens and residents of either France or Canada. That simple fact, standing alone, is sufficient to raise security concerns over the possibility of Applicant's vulnerability to coercion, exploitation, or pressure. However, the mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B:[(46)]

The language of [Guideline] B (Foreign Influence) in the Adjudicative Guidelines makes clear that the possession of such family ties *may* pose a security risk. Whether an applicant's family ties in a foreign country pose a security risk depends on a common sense evaluation of the overall facts and circumstances of those family ties. *See* ISCR Case No. 98-0419 (April 30, 1999) at p. 5.

Applicant's daughter is a social worker in Canada and his son is a financial analyst there. His wife's two sisters are professors (one of mathematics and the other of special education) in Canada. There is no evidence to indicate they are involved in any "intelligence work" for the Canadian Government, and they apparently have no "official ties" to the Canadian Government. A cousin of his wife--a person whom, under the circumstances herein I deem not to be "an immediate family member"--is a retired employee of the Canadian Customs Service. These facts, when considered in light of the nature of the government in Canada--a friendly democracy which has not been hostile to the United States since the War of 1812, and whose heritage and interests are nearly identical, and not inimical to the United States--facilitates an analysis involving the adjudicative guidelines and the various applicable conditions set forth therein.

Likewise, regarding the French citizenship and residency of Applicant's brother and sister, there is no evidence to indicate they are involved in any "intelligence work" for the French Government, and they apparently have no "official ties" to the French Government. These facts, when considered in light of the nature of the government in France--a friendly democracy whose background and interests are not inimical to the United States--also facilitates an analysis involving the adjudicative guidelines and the various applicable conditions set forth therein

Finally, the French citizenship of Applicant's wife was derived solely because she married Applicant. There is no evidence she ever took an oath of allegiance to France, and the effort to bring into question, through such citizenship, her "foreign" influence on Applicant is misguided. The potential foreign influence she may have on Applicant through her Canadian citizenship should be resolved in a manner identical to that applicable to her children and her sisters. Moreover, Applicant's wife is a citizen and resident of the United States, and her "foreign" influence on him is deemed minimal at best.

The residence and citizenship of Applicant's family members are clearly of security concern under foreign influence Disqualifying Condition (DC) E2.A2.1.2.1. and DC E2.A2.1.2.2., but the significance of that ruling is mitigated by the "protection" afforded by foreign influence Mitigating Condition (MC) E2.A2.1.3.1. In this instance, after an examination of the evidence, I determine that Applicant's children, brother and sister, and his sisters-in-law, considering their citizenship and residency status, do not constitute an unacceptable security risk. Furthermore, their continuing personal relationship is viewed in positive terms, having no security significance.

The continuing financial interest of Applicant's wife in her Canadian-based investment account, as well as their French-based bank checking account and Canadian-based bank checking account, also raise a security concern, and are of security concern under foreign influence DC E2.A2.2.1.2.8. if it can be shown those financial interests are substantial. The uncontroverted evidence is that the investment account--her inheritance from the estate of her deceased father--is currently worth about $150,518.51 (U.S.); the French checking account contains about $3,000.00; and the Canadian checking account contains about $2,000.00. The value of those financial interests in Canada and France relative to any potential vulnerability to coercion, exploitation, or pressure, is, under the circumstances, virtually nil.

The evidence before me reflects Applicant's outright ownership in United States real estate worth at least $277,000.00, and investments in United States investment accounts, brokerage accounts, and individual retirement accounts, currently worth about $1,123,335.19. As indicated above, the combined overseas holdings of Applicant and his wife constitute substantially less than 10 percent of their combined United States holdings. Given that ratio and considering the countries in which the foreign financial interests are located, with the vast majority of it located in Canada, it appears those foreign holdings are too insubstantial to his overall worth to open himself to vulnerability to foreign influence. Applicant's financial interests in France are minimal and not sufficient to affect his security responsibilities. Such a conclusion is in concurrence with foreign influence MC E2.A2.1.3.5., and minimizes the applicability of foreign influence DC E2.A2.1.2.8. Thus, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the Government's case with respect to Guideline B. Accordingly, allegation 2.a. through 2.g. of the SOR are concluded in favor of Applicant.

With respect to Guideline C, the Government has established its case. Applicant has been portrayed as a person who failed to formally renounce his French and Canadian citizenship and acted in such a way as to indicate a preference for a foreign country--in this instance, France and Canada--over the United States, and in so doing, he may be prone to provide information or make decisions that are harmful to the interests of the United States. In support of its contentions, the Government has cited Applicant's dual citizenship with France, Canada, and the United States; and his acceptance (but interestingly, not use) of both a French and Canadian passport.

The Government has alleged Applicant continues to "exercise" citizenship of France--derived from his birth in that country; Canada--based on his naturalization in that country; and the United States, facts disputed by Applicant. The evidence of the purported "exercise" of citizenship to support that allegation is his renewal of his Canadian passport in 1988 and 1993, and his French passport in 1997. Furthermore, it has surmised Applicant's original French and Canadian citizenships presumptively survived his acceptance of United States citizenship, notwithstanding Applicant's oath "in a public ceremony . . . to renounce and abjure absolutely and entirely all allegiance to any foreign prince, potentate, state or sovereignty of whom the applicant for U.S. citizenship was before a subject or citizen." That oath, formally taken at the arch 1983 naturalization ceremony, and Applicant's subsequent statements, offer sufficient positive proof of an intention to renounce his French and Canadian citizenship.

Likewise, Applicant's renewal of those foreign passports constitutes negative and conflicting evidence of the exercise of foreign citizenship. Applicant may have intended to renounce his foreign citizenships when he took the oath for United States citizenship, but his subsequent actions in renewing the foreign passports indicates he was apparently "hedging" his bets. His more recent actions in writing to the French and Canadian Consulates in March 2001, in which he declared an intention to renounce those foreign citizenships and asked for guidance in doing so, would seem more consistent with his contention he intends to remain solely an American citizen. Thus, there is evidence of two foreign citizenships--Canadian and French--along with United States citizenship, with no evidence of the exercise of those foreign citizenships other than the renewal and possession of the foreign passports--until they were destroyed and surrendered to the respective issuing authorities. In my estimation, Applicant's status in this regard falls within foreign preference DC E2.A3.1.2.1., and DC E2.A3.1.2.2., but Applicant also enjoys the benefit of foreign preference MC E2.A3.1.3.1., at least as to his French citizenship, and MC E2.A3.1.3.4.

In addition, the Government has argued the consequence of Applicant's prior service as a Technical Expert with the French military, and thus his willingness to bear arms for France. Based on my review of the evidence, I conclude the characterizations by the Government are ostensibly true, but largely misleading.

It is quite true Applicant seemingly exercised the rights and privileges, and performed the responsibilities, of a citizen of

France--all before he became a citizen of the United States in March 1983. That conduct, while relevant under the whole person concept, in this instance as a matter of law, cannot constitute a "preference for a foreign country over the United States.[(47)] As indicated above, as a French citizen, Applicant was required to perform either active military service or "national service," a substitute for active military service. He chose the national service, and from about October 1969, and continuing until about January 1971, served as a Technical Expert in an international cooperation program at a Canadian university, under the joint auspices of the French Ministry of War and Ministry of Foreign Affairs. Applicant's national service while solely a citizen of the France is not of present security concern under foreign preference DC E2.A3.1.2.3., and Applicant does enjoy the benefit of foreign preference MC E2.A3.1.2.

Applicant's allegiance to the United States has been questioned, and an allegation made that he prefers France and Canada over the United States. A review of the evidence reveals his allegiance and loyalty to the United States are resolute, and supported by significant indicia of same. Applicant has maintained a residence in the United States with his wife since February 1975; has been employed in the United States since that time; became a citizen of the United States in March 1983; and declared allegiance to the United States.

It is of substantial concern that Applicant kept and renewed the French and Canadian passports after he became an American citizen, and did not surrender the French passport to the authorities until March 2001. The Canadian passport had already expired in 1998 and was never renewed. It is also significant Applicant did not use either foreign passport after he became an American citizen. It is clear that possession of a foreign passport cannot be considered merely in isolation, but should be analyzed in light of all the facts and circumstances, "with the adjudicator needing to consider whether the facts and circumstances of possession reasonably indicate the applicant is demonstrating a foreign preference within the meaning of [Guideline] C."[(48)]

As noted above, in August 2000, ASD/C^3I issued a passport policy "clarification." While the declared intent of the ASD/C^3I memo was "to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport," one area for which further clarification or explanation might have been beneficial--what action constitutes a "surrender," and to whom or what entity does an applicant surrender the foreign passport--remains vague. In this regard, in December 2000, only four months after the memo was issued, but still not widely circulated, Applicant expressed a willingness--not the first time, but the third time--to relinquish his French passport and, in writing, solicited advice from DOHA as to the appropriate course of action to follow to comply with the ASD/C^3I memo. He received no such guidance. Thereafter, on his own initiative, following discussions with his attorney on March 28, 2001, Applicant cut up the expired Canadian passport as well as his then-current French passport, and surrendered them to the appropriate Consulates. As of the date of the hearing, Applicant no longer possessed either a French or a Canadian passport.

Thus, the issue, distilled to its basic components, is: whether Applicant's actions in renewing and merely possessing, but not using, his French or Canadian passport from arch 1983 until the Canadian passport expired in 1998 and the French passport was surrendered in March 2001, constituted the exercise of dual citizenship or was indicative of a preference for France or Canada over the United States. It is clear the renewal and possession of the passports after March 1983 falls within DC E2.A3.1.2.1. and DC E2.A3.1.2.2. The ASD/C^3I memo states there are no mitigating factors "related to an applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country," a phrase which I construe to relate solely to the use of a foreign passport, and not to mere possession of same. On the other hand, the memo states "consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport. . . ." Applicant has already surrendered the passports.

I had the opportunity to evaluate the demeanor of Applicant, observe his manner and deportment, appraise the way in which he responded to questions, assess his candor or evasiveness, read his statements, listen to his testimony, and watch the interplay between himself and those around him. It is my impression Applicant's explanations are both consistent and sincere, and have the solid resonance of truth. Thus, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the Government's case with respect to the issue of foreign preference. Accordingly, allegations 1.a. through 1.f. of the SOR are concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is suitable for access to classified information.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline C: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Paragraph 2. Guideline B: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: For the Applicant

Subparagraph 2.d.: For the Applicant

Subparagraph 2.e.: For the Applicant

Subparagraph 2.f.: For the Applicant

Subparagraph 2.g.: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

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Robert Robinson Gales

Chief Administrative Judge

1. *See* Government Exhibit 1 (Security Clearance Application (SF 86), dated November 17, 1998), at 5. *See also*, Applicant Exhibit N (Public Service Record); and Tr., at 80-84.

2. *See* Applicant Exhibit A (Resume), at 2.

3. *See* Government Exhibit 1, *supra* note 1, at 4.

4. Tr., at 87.

5. *Ibid. See also* Applicant Exhibit M (Certificate of Canadian Citizenship, dated May 23, 1972.

6. *See* Applicant Exhibit A, *supra* note 2, at 2. *See also*, Tr., at 87.

7. Tr., at 88.

8. *See* Government Exhibit 1, *supra* note 1, at 1.

9. Tr., at 116.

10. *See* Government Exhibit 3 (Interrogatories, dated May 8, 2000), at 2.

11. *Id.*, at 88-89.

12. *Id.*, at 89. Applicant renewed his Canadian passport at the same time his wife, who at that time was not yet an American citizen, renewed her passport. He did so only for convenience, and not as a sign of allegiance. *Id.*, at 110.

13. *Ibid.*

14. *Ibid.*

15. *Id.,* at 93-94. *See also* Government Exhibit 2 (Statement of Subject, dated December 13, 1999), at 2. Applicant Exhibit L (Affidavit, dated March 27, 2001) (In the affidavit, the affiant acknowledged advising Applicant his value would be increased if he obtained a French passport.).

16. *Ibid.*

17. *See* Applicant Exhibit O (French passport, dated September 8, 1997). *Also see Id.*, at 94.

18. *See* Government Exhibit 3, *supra* note 10, at 2 and 4. *Also see* Tr., at 94.

19. *See* Government Exhibit 2, *supra* note 15, at 2.

20. *See* Applicant Exhibit Q (Letter to French Consulate, dated March 28, 2001); *see also* Applicant Exhibit R (Letter to Canadian Consulate, dated March 28, 2001); and Applicant Exhibits U-X (Photographs depicting the cutting and mailing of the two passports).

21. *Id.,* Exhibits Q and R.

22. *See* Government Exhibit 3, *supra* note 10, at 2.

23. Tr., at 116-17.

24. *See* Government Exhibit 3, *supra* note 10, at 2. *See also*, Response to SOR, dated December 20, 2000, at 3.

25. *See* Government Exhibit 2, *supra* note 15, at 2. *See also* Tr., at 77.

26. Tr., at 91.

27. *See* Government Exhibit 1, *supra* note 1, at 4. Applicant's daughter is a social worker and his son is a financial analyst. Tr., at 79.

28. *See* Government Exhibit 1, *supra* note 1, at 4.

29. *Ibid.*

30. *Ibid.* One sister is a professor of mathematics and the other is a professor of special education. Tr., at 78.

31. Tr., at 104 and 122.

32. *Ibid.*

33. *Id.,* at 103.

34. *Ibid.*

35. Converted at an exchange rate of $1.00 (U.S.) equal to $1.53615 (Canadian). *See* Applicant Exhibit D (Investment Account Statement, dated February 28, 2001), at 1 and 3. *See also* Tr., at 96-98.

36. Tr., at 121.

37. *Id.,* at 102. It was not specified whether the amount was in Canadian or U.S. funds.

38. *Id.*, at 121.

39. *Id.*, at 102. It was not specified whether the amount was in French or U.S. funds.

40. *See* Applicant Exhibit S (Release of Mortgage, dated June 10, 1999). Applicant originally paid between $260,000.00 and $270,000.00 for the property. *See* Tr., at 100.

41. *See* Applicant Exhibit T (Mortgage, Security Agreement an Assignment of Rents and Profits, dated April 26, 1990). Applicant originally paid $7,110.00 for the property in 1985. *See* Tr., at 100.

42. *See* Applicant Exhibits E (Retirement Account Statement, dated December 31, 2000); F (Portfolio Summary, dated December 31, 2000; Individual Retirement Account Statements, dated February 28, 2001; and Brokerage Account Statements, dated February 28, 2001); *See also* Tr., at 96-99.

43. Applicant estimated their assets to be eight to nine percent overseas holdings. *See* Tr., at 101.

44. *See* Applicant Exhibit H (Performance Appraisal, dated March 21, 2000), at 4.

45. *See* Executive Order 12968, *"Access to Classified Information;"* as implemented by Department of Defense Regulation 5200.2-R, *"Personnel Security Program,"* dated January 1987, as amended by Change 3, dated November 8, 1995. However, the Directive uses both "clearly consistent with the national interest" (*see* Sec. B.3; Sec. C.2.; and Sec. D.2.; Enclosure 3, Sec. 1.; and Sec. 25), and "clearly consistent with the interests of national security" (*see* Enclosure 2 (Change 3), Adjudicative Guidelines, at 2-2).

46. *See* ISCR Case No. 98-0507 (Appeal Board Decision and Reversal Order, May 17, 1999), at 10.

47. *See* ISCR Case No. 97-0356 (Appeal Board Decision and Reversal Order, April 21, 1998), at 4. The Appeal Board in that case also commented: "[U]ntil Applicant became a naturalized U.S. citizen, his conduct could not reasonably be construed as indicat[ing] a preference for a foreign country over the United States within the meaning of [Guideline] C (Foreign Preference)."

48. *See* ISCR Case No. 97-0356, *supra* note 37, at 5-6.