

DATE: January 17, 2002

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-05476

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

William S. Fields, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On August 9, 2001, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, 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 clearance should be granted, continued, denied or revoked

Applicant responded to the SOR on September 6, 2001, and requested a hearing. The case was assigned to this Administrative Judge on November 9, 2001, and was scheduled for hearing. A hearing was convened on December 4, 2001, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At hearing, the Government's case consisted of two exhibits; Applicant relied on one witness (himself) and no exhibits. The transcript (R.T.) of the proceedings was received on December 12, 2001.

PROCEDURAL ISSUES

Prior to the close of the proceedings, Applicant asked for leave to supplement the record with documentation of his surrendering his French passport and steps he has taken to renounce his French citizenship, together with copies of his French and US passports. There being no objections, and good cause being shown, Applicant was granted seven (7) days to supplement the record. Within the time permitted, Applicant supplemented the record with letters to the French Consulate surrendering his French passport and renouncing his French citizenship, as well as copies of his French and US passports. There being no objection, Applicant's supplemented documentation is admitted as Applicant's exhibit "A."

STATEMENT OF FACTS

Applicant is a 45-year old vice-president of a soft-ware defense contractor whose government contracts are devoted principally to domestic work. He seeks a security clearance to facilitate his access to classified laboratories without escorting.

Summary of Allegations and Responses

Applicant is alleged to have (1) exercised dual citizenship with France and the US and (2) reapplied for a French passport in January 1998, even though he had become a naturalized US citizen in November 1997 and received a French passport that will not expire until January 2003.

Additionally, Applicant is alleged to have (a) a mother and two brothers, who are both citizens and residents of France, (b) a sister who is a citizen of France residing in the US, and (c) children who are dual citizens of France and the US.

For his response to the SOR, Applicant admitted each of the allegations with explanations. He claimed to have been told by US officials when applying for his US citizenship that renunciation of his French citizenship was not an option. He claimed conversely that he was under the impression when completing the US citizenship application process that dual citizenship would never be an issue for him. Concerning his French passport, he claimed he always used his US passport when he traveled and never used his French passport when he traveled internationally. With respect to the foreign influence issues, he claimed that none of his family members still living in France are agents of France or in a position to be exploited by the French government or any other French institution. He claimed his family members residing in France are financially independent. Applicant claimed his allegiance is with the US and not France, which he has proven many times, both personally (complying with all US laws and paying all of his taxes to the US, and not France) and with the American companies he has worked for: both Company A and Company B he and his two partners started more than fifteen years ago. He claimed he has never received any financial or other types of benefits from the French Government or any other French institution and has never been contacted, requested or threatened by any persons or organizations of any foreign countries, specifically France.

Relevant and Material Factual Findings

The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference adopted as relevant and material findings. Additional findings follow.

Applicant emigrated to the US around 1969 to pursue his education, take advantage of better opportunities, and avoid France's compulsory military service (*see ex. 2*). He established permanent residence in this country upon his arrival and completed his college studies at a recognized local university in 1982. Maintaining his permanent US residency status, he worked for a major US contractor for about five years before leaving to establish his own soft-ware company with his two partners in 1986. Since starting his own company, Applicant has remained with the company (a small company of about eleven employees) which specializes in the development of soft-ware packages for DoD agencies.

When applying for his US citizenship, Applicant was told by US immigration authorities that renouncing his French citizenship was not an option he need consider. He was never asked or requested to renounce his French citizenship during his US application process and completed the process with the understanding that keeping his dual citizenship with France was fully compatible with his taking his oath of US citizenship (*see R.T., at 22*).

While Applicant has used his US passport exclusively when traveling abroad (primarily to France to see his relatives), he continued to maintain his French passport. He even reapplied for his French passport in January 1998 and was granted a five-year extension, still of the impression that this was not incompatible with his US citizenship obligations (*see R.T., at 23*). This renewed French passport was not scheduled to expire until January 2003.

Applicant married a US citizen in 1979 and remains married to her. He and his wife have three children who are also dual citizens of France: due to Applicant's dual citizenship status and not by any choice they made. Each of his children has traveled to France just once: each for a vacation. Hoping for a medical exemption to avert induction into the French military service, a number of years ago he forwarded both the birth certificates of his children and some of his own medical records covering a shoulder problem to French military authorities. Acting on his request, French military authorities, in turn, apparently granted him a military exemption. Applicant has never served in France's military.

Since becoming a US citizen in 1997, Applicant has voted exclusively in US elections, voting in state elections in his home state in 1998. He and his wife own their home in the local state where they live, and have other financial interests here as well. Their children attend US schools. Conversely, he has never voted in a French election and has no property or financial interests in France, save for a small \$200.00 bank account. He does stand to inherit two small real estate properties from his mother, but nothing more in the way of prospective entitlements. He has no military obligations to France and no economic or political entitlements with the country. He has complied with all US laws since becoming a US resident over twenty years ago and paid taxes exclusively to the US, never to France. He assures he has never received any financial or other type of benefits from the French government or French institutions since obtaining permanent US residency in the 1970s.

By his letter of December 5, 2001 to the French Consulate, Applicant surrendered his French passport and initiated steps to renounce his French citizenship. Applicant also provided a copy of the renewed French passport he surrendered: The passport reflected no use of any kind since its issuance in 1998 (*see ex. A*). Before surrendering his French passport to the French Consulate, he cut it into pieces to ensure against its being returned to him. By contrast, Applicant's US passport, which he also copied, reflects foreign travel use.

Besides his current wife and children who reside with him in the US, Applicant has a sister who has been a permanent resident of the US since about 1967. She works for a US bank and has never applied for US citizenship that Applicant is aware of (R.T., at 29). Applicant's father is deceased, but his mother still resides in France, along with his two brothers. Each of these immediate family members are French citizens. None of these family members are or have been agents of the French government, or, to the best of Applicant's knowledge, in a position to be influenced, pressured, or exploited for the purpose of eliciting classified information from Applicant. All of these family members residing in France are financially independent. None require any monetary assistance from Applicant; none have been furnished any financial assistance by Applicant that he can recall.

Applicant is not aware of any of his French-residing family members being in a position to be exploited by the French Government. His relatives have visited him occasionally over the years since his emigration here: His mother last visited him in April 2001. Applicant maintains regular contact with his mother and brothers.

Applicant himself has never been employed by, or acted as a consultant for any foreign government, firm, or agency. He has never been solicited for any written material by any foreign person or institution, visited any foreign embassy or consulate when traveling abroad, bought anything on the black market, exchanged currency illegally, or placed himself in any position overseas which could make him vulnerable to compromise. He has never received any financial or other assistance from any foreign person, government, or organization. And he has never visited any country whose interests he believes are inimical to those of the US.

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list "binding" policy considerations to be made by Judges in the decision making process covering DOHA cases. The term "binding," as interpreted by the DOHA Appeal Board, requires the Judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the Judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E2.2 of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Foreign Preference

The Concern: 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.

Disqualifying Conditions:

DC 1: The exercise of dual citizenship

DC 2: Possession and/or use of a foreign passport.

Mitigating Conditions:

MC 1: Dual citizenship is based solely on parents' citizenship or birth in a foreign country.

MC 4: Individual has expressed a willingness to renounce dual citizenship.

Foreign Influence

The Concern: A security risk may exist when an individual's immediate family, including co-habitants, and other persons to whom he or she may be bound by affection, influence, or are obligation *are not* citizens of the United States *or 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.

Disqualifying Conditions:

DC 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.

Mitigating Conditions:

MC 1: A determination that the immediate family members are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the persons involved and the United States.

Burden of Proof

By dint of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for 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 common sense 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. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a nexus to the applicant's eligibility to obtain or maintain a security clearance. The required showing of nexus 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, consideration must take account of accessible 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 burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant is a naturalized US citizen who after being born and raised in France emigrated to the US in 1977 to pursue educational opportunities. In accepting US citizenship in 1997, he did not renounce his French citizenship, and later (in 1998) applied for a renewal of his French passport, unaware at the time that either his dual citizenship or possessing a French passport could jeopardize his US-issued security clearance. Security issues are raised over Applicant's dual citizenship exercise and his possession of a French passport. Issues of security concern are raised as well with respect to his having immediate family members with French citizenship and residence who could be at risk to coercion, exploitation, or pressure, such that could result in the compromise of classified information. That France has been a longstanding ally of the US does not foreclose security concerns arising out of an applicant's having immediate family members who are citizens and residents of France.

Foreign Preference

Dual citizenship concerns necessarily entail allegiance assessments and invite critical considerations over acts indicating a preference for the interests of the foreign country over the interests of the US. While dual citizenship itself is not a *per se* disqualifier for a security clearance, its active exercise can be. The issues raise concerns over Applicant's preference for a foreign country over the US.

Here, the primary issue is whether Applicant by renewing his French passport in 1998 and not surrendering his French passport and taking steps to renounce his French citizenship until after clearance procedures were initiated against him reveal a preference for his birthplace (France) over his adopted country (the US).

Without denying continuing affections for his birthplace, as well as the current place of residence of his mother and brothers, Applicant insists his preference remains for the US, which he would never compromise under any circumstances, should competing geopolitical interests develop between the two countries. To be sure, Applicant manifested his support for the US in several important ways since taking his oath of allegiance in 1997: voting in local state elections, owning the home he and his wife live in locally, having other local financial interests, and sending his children to local schools. By contrast, Applicant has never served in France's military or voted in any of its elections; he owns no property or other financial interests in France, save for one small bank account and an inheritance expectancy on two properties his mother owns; and he has never accepted any benefits or privileges from France since becoming a US permanent resident and later a citizen. Applicant's US preference credits also include his obtaining a higher education degree from a recognized local university, co-founding his own company which currently employs about eleven persons, and using his US passport exclusively when traveling to France to see his family, or other countries abroad. Both his wife and young children are US citizens by birth. Although his children are dual citizens by reason of Applicant's French citizenship roots, they have been raised to respect and cherish American values and culture and clearly favor the US over France.

So even though Applicant renewed his French passport in 1998, he has never used it in any of his travels abroad. Advised that his possessing a French passport posed a major security concern under the clarifying guidelines of the memorandum issued by the Assistant Secretary of Defense for Command, Control, Communication and Intelligence (ASDC3I), dated August 16, 2000, entitled "Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline (*hereinafter* "Money memo"), Applicant unconditionally surrendered his French passport and initiated important first steps to renounce his French citizenship (*see ex. A*). No conclusions warrant that Applicant at any time since his becoming a US citizen manifested a preference for any country but the US.

Taking into account all of the evidence presented in the record, Applicant mitigates any security concerns raised by his passive holding of dual citizenship with another country (France), averts any risk of recurrent dual citizenship questions by his renouncement of his French citizenship and convinces that his acceptance of a renewed French passport does not expose him to future risks of providing information that could be harmful to the security interests of the US. His essentially passive holding of dual citizenship over a short four-year span between 1997 and 2001 (broken only by his renewal of his French passport in 1998) creates no competing allegiance concerns for Applicant that might otherwise exist for clearance holders that manifest that exhibit active dual citizenship. Favorable conclusions warrant with respect

to the allegations covered by sub-paragraphs 1.a and 1.b of Guideline C.

Foreign Influence

Government concerns over the risk of Applicant's mother and brothers (who are each citizens of France who reside in France) being subject to coercion or pressure are also present. Because Applicant's mother and brothers remain French citizens and residents, his immediate family members may present security risks covered by disqualifying condition (DC) 1 of the Adjudication Guidelines for foreign influence. The citizen/residence status of these relatives in France pose some potential concerns because of the risks of coercion or influence that could compromise classified information under Applicant's possession and/or control.

Whatever potential security risks arise as the result of Applicant's having immediate family members in France, they are by every reasonable measure mitigated. Applicant's situation is in marked contrast to a situation where an applicant's family reside in a country whose interests are considered inimical to those of the US. While not a NATO ally of the US, France is not generally considered a hostile country either. Put another way, France is not a country hostile to the security interests of the US, but a country whose political institutions are sufficiently aligned with our own traditions (which include the rule of law) to absolve Applicant of any foreseeable security risk. While the foreign influence provisions of the Adjudicative Guidelines are ostensibly neutral as to the nature of the subject country, they should not be construed to ignore the geopolitical aims and policies of the particular foreign regime involved.

Because of the presence of some of Applicant's immediate family members in France (a country steeped in Western socio-political and economic traditions), any initial risk of a hostage situation becomes unlikely, or at the very least, an acceptable one. The mitigation benefits of MC 1 (presence of immediate family in host country poses no unacceptable security risk) of the Adjudicative Guidelines are fully available to Applicant herein. Applicant may also claim the mitigation benefits of MC 5 (minimal foreign financial interests). Overall, any potential security concerns attributable to Applicant's having immediate family members in France are sufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand risks of exploitation and pressure attributable to his familial relationships in France. Favorable conclusions warrant with respect to sub-paragraphs 2.a through 2.c of Guideline B.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS and the FACTORS and CONDITIONS listed above, this Administrative Judge makes the following separate FORMAL FINDINGS with respect to Appellant's eligibility for a security clearance.

GUIDELINE C (FOREIGN PREFERENCE): FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

GUIDELINE B: (FOREIGN INFLUENCE): FOR APPLICANT

Sub-para. 2.a: FOR APPLICANT

Sub-para. 2.b: FOR APPLICANT

Sub-para. 2.c: FOR 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 Applicant's security clearance.

Roger C. Wesley

Administrative Judge