

DATE: May 15, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-09076

## **DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Kathryn MacKinnon, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Although born and raised in Algeria, the Applicant is a dual citizen of the U.S. and France. The Applicant has nine siblings who are citizens of and living in foreign countries. The Applicant had a French passport, but when informed of the requirements set forth in the ASDC<sup>3</sup>I memo, she returned it to the French embassy. She has expressed a willingness to renounce her dual citizenship and has surrendered her foreign passport. Her siblings, husband, and children are not agents of a foreign power nor in a position to be exploited by a foreign power. Clearance is granted.

### **STATEMENT OF THE CASE**

On January 3, 2002, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding [\(U\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On January 22, 2002, the Applicant answered the SOR and requested a hearing. The case was assigned to me on March 7, 2002. A Notice of Hearing was issued on March 8, 2002, scheduling the hearing which was held on March 27, 2002. The Government's case consisted of two exhibits (Gov Ex). The Applicant relied on her own testimony and three exhibits (App Ex). The record was held open to allow the addition of material from the Applicant. On April 10, 2002, material was received and, there being no objection to its admission, was admitted. A transcript (tr.) of the hearing was received on April 4, 2002.

### **FINDINGS OF FACT**

The SOR alleges foreign preference (Guideline C) and foreign influence (Guideline B). The Applicant admits the allegations with explanation.

The Applicant is 52 years old, has worked for a federal contractor as a financial analyst since May 1999, and is seeking a security clearance.

The Applicant was born in Algeria and attended, but did not complete high school. Following the Algerian War for Independence, which ended in 1962, her father took action to make her and the rest of the family French citizens. This was done without her knowledge when she was a teenager. (tr. 21, 71) In 1959, at age 19 she moved to France unaccompanied by other family members. (tr. 76) The Applicant arrived in France with an Algerian passport, which she has never renewed. When in France, she attended one year of high school before experiencing racial prejudice and discrimination which caused her to quit school. (tr. 35) Racial and ethnic prejudice made life in France difficult for people from North Africa including those from Algeria. From 1970 through 1972, the Applicant worked sporadically in France before obtaining a full time job from 1972 through 1973.

In 1973, the Applicant-- age 24-- moved to the U.S., where she met and married her husband. In 1975, she and her husband returned to France. They stayed in France for approximately two years before returning to the US. After a period of time in the US, they returned to France. The Applicant's husband studied in France at various times between 1975 and 1982. The Applicant accompanied her husband in France, took cooking classes and, because she spoke English, obtained secretarial and banking jobs with U.S. or British companies. The Applicant's two sons were born in France. In August 1982, the Applicant and her husband returned to the U.S. to allow her husband to obtain his master's degree. Since 1982, the Applicant has lived continually in the US. Between 1984 and 1994, the Applicant worked as a chef. In September 1988, her daughter was born in the US.

In 1994, at age 44, the Applicant returned to school and in 1996, received a bachelor degree in finance. In January 1998, the five-year residency requirement having been met, she became a naturalized U.S. citizen. The Applicant took an oath to renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which she was before a subject or citizen. She consciously and sincerely declared a preference for the U.S. over France by becoming a U.S. citizen. (tr. 21) In taking the oath she believed she had renounced her French citizenship.

In February 1999, the Applicant was issued a U.S. passport. In the same month, the Applicant was issued a renewal on her French passport which expires in 2004. On March 18, 2002, the Applicant returned her French passport to the French embassy. (App Exs B and C) It is her intent to travel exclusively on her U.S. passport in the future (tr. 58) and she does not intend to obtain a new French passport in the future. (tr. 64)

Since becoming a U.S. citizen the Applicant has made three trips to France: in April 1999, April 2000, and April 2001. On each visit she would stay a week to 10 days with family at the home once owned by her parents and now occupied by three of her siblings. The trips were made when her children were out of school for Spring break. The Applicant would enter France using on her French passport because the lines were shorter. Her children would enter on their U.S. passports. After February 1999, whenever the Applicant returned to the U.S. she would enter using her U.S. passport. The Applicant's husband works as a speech writer for a U.S. government commission and would spend six weeks each Spring in Switzerland on U.S. government business. On occasion, when the Applicant was in France visiting her family she would travel to Switzerland to see her husband. The travel did not require the use of her French passport because both France and Switzerland are part of the European Union.

The Applicant has never voted in a French election (tr. 22) although in a September 2000-sworn statement (Gov Ex 2) the Applicant said she was considering doing so in September 2000. She did not vote in that election. She has voted in every U.S. election--local, state, and national, including primaries--since become a U.S. citizen. (tr. 22)

She has no business or financial interests in France or any other foreign country. The Applicant and her husband have financial accounts in the US. They have approximately \$3,000.00 in their checking account. They have a 401(k) retirement plan. The Applicant is uncertain if she is entitled to French social security benefits due to her part time jobs and her one, two year full time job. (tr. 43, 44) If entitled to benefits, they would be extremely modest. The Applicant and her husband own a house in the U.S. worth approximately \$250,000.00. The Applicant has been active in the Parent Teacher Association (PTA). Her children, all of whom live in the US, understand French, but do not speak it fluently. Her sons are ages 21 and 19 and her daughter is 13 years old. They have expressed no interest in moving to France. The oldest was not two years of age when the family moved permanently to the U.S. and her second son was but two months old. Because of the racial discrimination the Applicant experienced when in France, she has no warm feelings for France.

The Applicant has nine siblings (App Ex A) all French citizens of which seven live in France and two live in England. None of her siblings have ever worked for or are currently working for a foreign government, except for her two brothers who did serve their French mandatory military service. Her two oldest sisters are both retired housewives. Prior to retirement, one was an air hostess and the other an accountant. (tr. 65) Of the five other siblings living in France, one is a retired restaurant owner, one owns a construction business, one is a fork lift operator, one is a housewife, and the fifth is a hardware and window salesman. Of her two siblings living in England one is a restaurant manager and the other is a computer company head-hunter. None of her siblings are subject to duress or undue influence by a foreign government. (App Ex A)

The Applicant's father owned a house in France. Following a stroke, his mortgage payments were made by an old age assistance program, which left a debt to the program when he died in 1998. The house is worth approximately \$150,000.00 and is occupied by three of her siblings. The Applicant owns 10% of the house and correspondently 10% of the debt. She owes approximately \$3,500.00 to \$4,000.00 for her \$15,000.00 value in the house. The Applicant is still waiting to be contacted by the insurance company holding the debt so she can arrange to pay her share of the debt.

The Applicant sees her siblings on her yearly trips to France. She makes monthly telephone calls of 20 to 40 minutes (tr. 86) to three of her siblings. She also has monthly e-mails to these three siblings. She provides no support to anyone in a foreign country. (tr. 68) Three of her siblings attended school in the U.S. and while attending school those siblings occasionally visited the Applicant.

On August 16, 2000, the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASDC<sup>3</sup>I) issued guidance clarifying the application of the Foreign Preference adjudicative guideline, hereinafter the "ASDC<sup>3</sup>I memo." The ASDC<sup>3</sup>I memo did not exist when the Applicant renewed her French passport, nor when she applied for a security clearance, and she was unaware she needed to surrender her French passport. In January 2002, a copy of the ASDC<sup>3</sup>I memo accompanied the SOR. When the Applicant became aware of the significance of this memo, she promptly mailed (App Ex B) her French passport to the French embassy. (tr. 73) If the passport is returned to her, she intends to cut it up and return it to the embassy. She intends to never again possess a foreign passport.

## POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this I find the following adjudicative guidelines to be most pertinent to this case:

**Foreign Preference (Guideline C)**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.

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

1. The exercise of dual citizenship. E2.A3.1.2.1.
2. Possession and/or use of a foreign passport. E2.A3.1.2.2.

Conditions that could mitigate security concerns include:

1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country. E2.A3.1.3.1.
4. Individual has expressed a willingness to renounce dual citizenship. E2.A3.1.3.4.

**Foreign Influence (Guideline B)** The Concern: 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 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.

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. E2.A2.1.2.1.

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 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 person(s) involved and the United States. E2.A2.1.3.1.
3. Contact and correspondence with foreign citizens are casual and infrequent. E2.A2.1.3.3.

### **BURDEN OF PROOF**

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the Applicant who must remove that doubt and establish her security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue her security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the applicant.

### **CONCLUSIONS**

The Government has satisfied its initial burden of proof under Guideline C, Foreign Preference. Under Guideline C, the security eligibility of an applicant is placed into question when an individual acts in such a way as to indicate a preference for a foreign country over the United States; she may then be prone to provide information or make decisions that are harmful to the interests of the United States.

The Applicant holds her dual U.S. and French citizenship due to her father's actions taken when she was yet a minor. She did not actively seek French citizenship. Mitigation Condition (MC) 1 <sup>(2)</sup> applies to her initial citizenship. However, the Applicant took steps to get, renew, and use a French passport, and her last renewal of her French passport was in February 1999-- after she had become a naturalized U.S. citizen and after she had received a U.S. passport. There is no evidence the Applicant's possession of the foreign passport was officially approved by the U.S. government. The

Applicant used her French passport to enter France because of the shorter line. Her use of the French passport was not an indication of her preference for France over the US, but merely for convenience. However, personnel convenience is not a mitigating factor listed in the ASDC<sup>3</sup>I memo. Disqualifying Conditions (DC) 1-(3) and 2-(4) apply.

The Applicant is willing to renounce her French citizenship, which she thought she had done when she took the oath (5) of allegiance, prior to becoming a naturalized U.S. citizen. Due to the prejudice and racial discrimination she experienced in France, she has no warm feelings for France. The Applicant consciously and sincerely declared her preference for the U.S. over France. The Applicant's husband and children live in the US. Her home is in the U.S. as are her financial accounts, retirement accounts, and social involvements which are all supportive of her expressed willingness to renounce her foreign citizenship. MC 4-(6) applies. I find for the Applicant as to SOR subparagraph 1.a.

Although she did at one time have a foreign passport, she no longer possesses one. When the Applicant became aware of the significance of the ASDC<sup>3</sup>I memo, she followed the direction set forth in the ASDC<sup>3</sup>I memo and mailed her French passport to the French embassy. If it is returned to her, she intends to cut it up, and return it again to the French embassy. It is her intention to never again secure or possess a French passport. All future travel will be with her U.S. passport. I find for the Applicant as to SOR subparagraphs 1.b., 1.c. and 1.d.

Prior to August 1982, the Applicant had some jobs of short duration in France, but now she has a job at a professional level, much better than any job she held in France. She is uncertain she would be entitled to French Social security benefits and has taken no steps to protect these benefits, if any. It is mere speculation the benefits do exist and that the Applicant would ever receive such benefits. I find for the Applicant as to SOR subparagraph 1.e.

Although the Applicant has never voted in a French election, she did contemplate doing so in the Fall of 1999. She has voted in numerous U.S. elections since becoming a U.S. citizen. Mere contemplation of an event that never occurred is insufficient to find against the Applicant. I find for the Applicant as to SOR subparagraph 1.f.

The Government has satisfied its initial burden of proof under Guideline B, (Foreign Influence). Under Guideline B, a security risk may exist where the Applicant is bound by affection, influence, or obligation to individuals who are not citizens of the United States or may be subject to duress. The burden is on the Applicant to demonstrate those close family members are not in a position to be exploited by a foreign power.

The Applicant's four sisters and five brothers are French citizens, all living in France except for two brothers who live in England. The Applicant visits them in France each year. Her two oldest sisters are both retired housewives, one was an air hostess and the other an accountant. Of the five other siblings living in France, one is a retired restaurant owner, one owns a construction business, one is a fork lift operator, one is a housewife, and the fifth is a hardware and window salesman. Of her two siblings living in England one is a restaurant manager and the other is a computer company headhunter. Except for her two brothers who served their mandatory French military service, none of her siblings ever worked for or is now working for a foreign government.

The Applicant makes monthly telephone calls and e-mails to three of her siblings and sends them holiday and birthday cards and presents. Although all of her siblings are close family, she has regular and frequent contact with only three of them. The Applicant's siblings are not agents of a foreign power nor are they 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. C 1-(7) applies. Although the security significance of an applicant's family ties in a foreign country extends beyond whether the foreign relatives have official ties with a foreign government, based on this record, I conclude her family ties in France present an acceptable security risk. I find for the Applicant as to SOR subparagraph 2.a.

The Applicant's two sons were born in France and are dual U.S. French citizens as is her daughter, although born in the US, through the Applicant's citizenship. All of her children live in the US, they do not work for a foreign government, and have expressed no desire to live in France. Her sons were less than two months old and less than two years old when the family moved permanently to the U.S. The children have been raised and educated in the U.S. Additionally, the U. S. residency and U.S. citizenship of Applicant's spouse and children reduce significantly the risk that the Applicant might be subject to undue foreign influence through these individuals. MC1 applies. I conclude his husband

and children are an acceptable security risk. I find for the Applicant as to SOR subparagraph 2.b.

Although the Applicant has a small interest in her parent's house in France and on which a small debt is owed, neither foreign influence nor foreign preference have been alleged nor are they at issue concerning the house.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline C (Foreign Preference): 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 (Foreign Influence): FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: 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 the Applicant.

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**Claude R. Heiny**

**Administrative Judge**

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 as amended.
2. MC 1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country. E2.A3.1.3.1.
3. DC 1. The exercise of dual citizenship. E2.A3.1.2.1.
4. DC 2. Possession and/or use of a foreign passport. E2.A3.1.2.2.
5. Although taking the oath is a strong indicator of preference to the U.S., it is not conclusive or dispositive evidence in a foreign preference case.

6. MC 4. Individual has expressed a willingness to renounce dual citizenship. E2.A3.1.3.4.

7. MC 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 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 person(s) involved and the United States. E2.A2.1.3.1.