

KEYWORD: Foreign Preference

DIGEST: Although Applicant surrendered his French passport in compliance with the Money Memorandum, his demonstrated foreign preference was not mitigated where Applicant had been a naturalized French citizen for over twenty-five years before becoming a U.S. citizen, had continued to use his French passport in preference to his U.S. passport, had renewed his French passport after becoming a U.S. citizen, and had expressed an intent to continue to renew the French passport in order to facilitate travel to France and help deal with his French pension. Clearance denied.

CASENO: 02-02052.h1

DATE: 10/24/2002

DATE: October 24, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-02052

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Henry Lazarro, Esquire, Department Counsel

## **FOR APPLICANT**

Togo D. West, Jr., Esquire

C. Thomas Harvie, Esquire

## **SYNOPSIS**

Although Applicant surrendered his French passport in compliance with the Money Memorandum, his demonstrated foreign preference was not mitigated where Applicant had been a naturalized French citizen for over twenty-five years before becoming a U.S. citizen, had continued to use his French passport in preference to his U.S. passport, had renewed his French passport after becoming a U.S. citizen, and had expressed an intent to continue to renew the French passport in order to facilitate travel to France and help deal with his French pension. Clearance denied.

## **STATEMENT OF THE CASE**

On 11 February 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<sup>(1)</sup> that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 1 arch 2002, Applicant answered the SOR and requested a hearing. The case was assigned to me on 1 May 2002, and I received the case the next day. I issued a notice of hearing on 10 June 2002 for a hearing on 26 June 2002.

At the hearing, the Government presented three exhibits--admitted without objection--and no witnesses; Applicant presented eight exhibits--admitted without objection--and the testimony of two witnesses, including himself. DOHA received the transcript on 5 July 2002.

## **FINDINGS OF FACT**

Applicant admitted the allegations of the SOR; accordingly I incorporate those admissions as findings of fact.

Applicant--the 63-year-old Chairman and Chief Executive Officer (CEO) of a major defense contractor--seeks access to classified information. He has not previously held a clearance.

Applicant was born in Egypt in 1939. He grew up and was educated there. In 1962, Applicant came to the U.S. on a student visa to pursue his M.B.A. degree at a major U.S. university. Upon graduating in 1964, Applicant went to work for a major defense contractor, and--with the exception of a brief stint with a different major U.S. corporation in the mid-1980s--has remained with that corporation, or one of its foreign subsidiaries, climbing the corporate ladder until he became President, Chairman, and CEO; he recently surrendered the title of President of the company (G.E. 3). When Applicant went to work for the company, he was immediately sent overseas because of his language capabilities, and spent the next twenty-eight years working outside the U.S.: 1964-1970 at the company's subsidiary in France, 1970-1972 at the company's subsidiary in Belgium, 1972-1976 in Morocco, 1976-1981 back in France. From 1981 to 1983, he worked for the foreign subsidiary of another major U.S. corporation in France. In 1983, he returned to his company's subsidiary in France, where he remained until 1989. From 1989-1990, he worked in Canada. From 1990-1992, he worked again in Belgium. In 1992, he came to work at corporate headquarters in the U.S., where he has remained. He reapplied for permanent resident status,<sup>(2)</sup> and became a U.S. citizen in September 1998 (G.E. 1, Tr. 31). He obtained his U.S. passport within days of becoming a citizen (G.E. 3, Tr. 74-75).

In 1971--when he was 32 years old--Applicant became a French citizen and obtained a French passport (Tr. 29-30).<sup>(3)</sup> He used his French passport for business and personal travel, renewing it as necessary, before emigrating to the U.S. in 1992. Like all citizens of a country, he paid taxes to France, but also paid local taxes wherever the company sent him (Tr. 77). He voted in French elections. He worked long enough in France to be entitled to a pension--the apparent equivalent of social security (Tr. 40-42). Applicant's pension from the company, with or without the French portion, will be about \$1,000,000.00 per year when he reaches the company retirement age of 65 (Tr. 78). Although Applicant technically started with the company as a trainee and then became a local hire, he formally became a U.S. hire in 1969 or 1970. Since that time, his salary has been calculated in U.S. dollars, although converted to local currency wherever he was located (Tr. 76). The portion of his total pension attributable to his years of French employment is small, and has been structured by the company to be essentially a wash transaction (Tr. 82, A.E. B., G., H.). Applicant maintains a bank account in France, although the balance has fallen below \$2,000.00 (Tr. 39-40).

In March 1999, Applicant applied for his security clearance (G.E. 1). He appears to have completely and truthfully disclosed his dual citizenship, possession of a foreign passport, foreign family members, and extensive foreign travel.

Until 30 May 2002, Applicant possessed a French passport, re-issued in July 2000, that would not have expired until November 2005. Applicant retained his French passport after becoming a U.S. citizen because the presiding immigration official informed him that it was not illegal to have two passports (Tr. 32). Use of the French passport also made traveling to Europe easier, because the immigration line for European Union members is shorter than the line for other travelers (Tr. 67). Applicant surrendered his passport to the French Ministry of the Interior (A.E. A) when he

became aware of the security significance of his retention of the passport (Tr. 33-38).<sup>(4)</sup> However, Applicant used his French passport in preference to his U.S. passport to travel to Europe four or five time between October 1998 and November 2000 (when he renewed his French passport) (Tr. 75) and once or twice after November 2000, but not since becoming aware of the security significance of his using the passport (Tr. 76).

On 10 August 1999, Applicant gave a sworn statement to a Special Agent of the Defense Security Service (DSS) (G.E. 2) in which he responded to questions about his dual citizenship, use of his foreign passport, and his future intentions:

I would like to provide the following information concerning my dual citizenship status. I was born in Egypt and left Egypt for good for in 1962 for political reasons. I went to [major U.S. university] and earned my MBA [there]. I have been with [the company] in 1964 after graduating from [major U.S. university]. I have been with the company since that time. [The company] sent me overseas soon after I was hired due to my background and ability to speak several languages. I became a French citizen in 1971 and acquired a French passport at that time. The main reason that I acquired French citizenship was to facilitate my frequent travel for [the company] around the world.

I still have a valid French passport that will expire on 20 December 2000. I became a naturalized U.S. citizen on 10 September 1998. I continued to use my French passport for business travel with [my company] until I became a U.S. citizen. The reason I acquired the French passport first was to help in travel for [my company]. I was not eligible to become a U.S. citizen until later in life. I did not have my five years residency requirement met until April 1998. Therefore, I was not eligible to have a U.S. passport. I did apply and receive a green card from the INS immediately after I came to the U.S. in late 1992. My job duties with [my company] required frequent travel of perhaps once a month for business. I have only used my U.S. passport for travel since 1998 aside from when I go back to France. I would guess that I have been back to France five or six times since I acquired my U.S. citizenship. I have had the need to return to France for business on behalf of [my company].

I have not exercised any rights, privileges or benefits offered to me by France in preference to those of the U.S. I have not traveled back to France for the purpose of fulfilling any citizenship requirements. I have not maintained my dual citizenship for the purpose of protecting any financial interests in France. I do own rental property in France that I am leasing. . . I was not required to serve in the French military and was not required to register for military service there. I did vote in French presidential elections only when I resided in France. I have not voted in France for over ten years. I have never been employed as an agent or official representative of the French government. I have never sought or held political office in any foreign state. I would be willing to renounce my foreign citizenship and passport as a condition for access to classified material if required. It is my understanding that the French laws may consider me a French citizen for life regardless of other citizenship status. The only government benefit coming to me is a French pension along the lines of social security. The only reason that I acquired this pension was due to the fact that I lived and worked in France. It was not related to my French citizenship. I will turn this pension over to [my company] and there is a letter on record with the Board of Directors stating this.

In his 8 January 2002 response to interrogatories (G.E. 3), Applicant disclosed that he renewed his French passport in November 2000, approximately one month before it was to expire; the new passport was valid to November 2005. He

further indicated an intent to renew this passport in the future:

I travel extensively outside the United States, primarily for business but also for personal reasons. As a consequence of that travel, I occasionally find a European passport to be a substantial convenience in speeding processing through European Customs and Immigration. In addition, I am entitled to a pension under the French National Pension System, and I believe my retaining a French passport may be helpful in dealing with the relevant French authorities.

Attached photocopies of his French and U.S. passports indicated that he had used his new French passport once to travel to France, and his U.S. passport for all other travel.

Applicant insists that he is a loyal American and is willing to surrender his French citizenship (Tr. 48). However, he also acknowledges that he swore an oath to France in 1971 similar to the oath he took to the U.S. in 1998 (Tr. 52), and has not renounced his French citizenship (Tr. 53). He has stated a conditional willingness to forego obtaining any foreign passport in the future (A.E. F). He was not aware of the provisions of the Money Memorandum until he received the SOR, whereupon he took steps to surrender the passport to French authorities (Tr. 33, A.E. A).

Applicant's living relatives have all emigrated to the U.S. and have either become citizens or obtained permanent resident status (Tr. 26-29, 71).

The members of Applicant's Congressional delegation (the two U.S. Senators and the local Member of Congress)--who know Applicant personally through his prominence as the CEO of a major employer in his home state--consider Applicant a man of impeccable character and allegiance to the U.S., who should be entrusted with access to classified information (A.E. C., D., E.). Similarly, a retired President and CEO of another major U.S. corporation, who has known Applicant for 7 or 8 years socially and through their work on the boards of directors of non-profit organizations, considers Applicant a man of great integrity and trustworthiness who has an impeccable reputation in the local community (Tr. 86-91).

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors

listed in Section F.3. and in Enclosure (2) of the Directive. 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, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

### **FOREIGN PREFERENCE (GUIDELINE C)**

E2.A3.1.1 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.

E2.A3.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A3.1.2.1. The exercise of dual citizenship:

E2.A3.1.2.2. Possession and/or use of a foreign passport;

E2.A3.1.2.4. Accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country;

E2.A3.1.2.6. Using foreign citizenship to protect financial or business interests in another country;

E2.A3.1.2.8. Voting in foreign elections;

E2.A.1.3. Conditions that could mitigate security concerns include:

E2.A3.1.3.2. Indicators of possible foreign preference (e.g. foreign military service) occurred before obtaining United States citizenship;

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

On 16 August 2000, the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD, C<sup>3</sup>I) issued a memorandum to clarify the application of Guideline C., Foreign Preference, to cases involving possession and/or use of a foreign passport. In pertinent part, the ASD, C<sup>3</sup>I memorandum **"requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government."**(Emphasis added).<sup>(5)</sup>

### **Burden of Proof**

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with

the U.S. Government that is predicated upon trust and confidence. Where 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 he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the 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."

## CONCLUSIONS

Applicant has been a dual citizen of France and the United States since his naturalization in 1998. Ordinarily, an applicant's foreign citizenship possesses little security significance if based solely on his birth in a foreign country. Applicant's case presents unique circumstances because he was born Egyptian, and became a naturalized French citizen before becoming a naturalized U.S. citizen. Nevertheless, for Applicant's conduct to fall within the security concerns of Guideline C, Foreign Preference, he must have acted in a way to indicate a preference for a foreign nation over the United States. However, inimical intent or detrimental impact on the interests of the United States is not required before the Government can seek to deny access under Guideline C. The Government has a compelling interest in ensuring those entrusted with this Nation's secrets will make decisions free of concerns for the foreign country of which they may also be a citizen. Under this assessment, I conclude the Government has established its case under Guideline C.

Although Applicant claims to prefer his U.S. citizenship to his foreign citizenship, his conduct belies that assertion. Applicant is clearly proud of his U.S. citizenship, but he has maintained significant aspects of his foreign citizenship. While his oath of allegiance to the U.S. and his rejection of allegiance to any foreign government in the citizenship oath is powerful evidence of a preference for U.S. citizenship, the citizenship oath does not automatically operate to terminate his citizenship rights in France. Applicant acknowledged as much in his sworn statement. The fact that France may still consider him a citizen would ordinarily not affect the analysis of Applicant's preference. However, in this case Applicant reasserted his foreign citizenship and his preference for that citizenship when he used his French passport to travel to France several times after his naturalization and his obtaining a U.S. passport, and renewed this passport in 2000 before traveling there once or twice more before learning of the requirements of the Money Memorandum.

A citizen of any country, including the U.S., who travels to another country, submits to the sovereignty of that country, including application of its laws regarding visits by foreign citizens. However, a citizen of the U.S. who travels abroad only as a U.S. citizen, travels with the knowledge that the U.S. Government is available to provide diplomatic assistance if the traveler encounters difficulty. A dual citizen of the U.S. and a foreign state who travels to that foreign state faces potential difficulty in obtaining U.S. diplomatic assistance, because the foreign state may insist on treating the traveler as its own citizen.

Regarding possession and use of his foreign passport, Applicant meets none of the mitigating conditions (MC) for foreign preference. (6) His dual citizenship is not based merely on his birth in a foreign country, but on his active assertion of his citizenship rights in that country. Applicant's voluntary assertion of his foreign citizenship rights occurred after he became a naturalized U.S. citizen. Although his conduct is lawful, there is no evidence that the conduct was formally sanctioned by the United States. Applicant has expressed a conditional willingness to renounce his foreign citizenship, which can be given little weight under the circumstances of this case. Especially where he voluntarily chose to renew, and accept, the benefits of his foreign citizenship in preference to his U.S. citizenship.

The ASD, C<sup>3</sup>I Memorandum provides only partial relief for Applicant. The Memorandum states that Applicant's past



possession and use of his foreign passport can be mitigated only if Applicant surrenders the foreign passport or obtains U.S. Government approval for its use. Applicant has surrendered his French passport. His doing so confirms my conclusion that Applicant is a law abiding citizen, but does not end the inquiry into the security significance of his conduct. Put another way, compliance with Money Memorandum is a necessary, but not necessarily sufficient, condition for mitigating his possession and use of his French passport. Further, the presence or absence of any one disqualifying or mitigating factor is not determinative of a case. I must still consider the circumstances of Applicant's conduct and determine whether that conduct demonstrates unacceptable foreign preference notwithstanding the surrender of the foreign passport.

In this case, Applicant appears to have begun expressing some preference for his French citizenship as early as the day of his U.S. naturalization, when he inquired of the presiding immigration official if he could retain his French passport. He continued to demonstrate that preference by using his French passport on multiple occasions after becoming a U.S. citizen, by expressing a desire to renew his French passport (both for the continued convenience of travel and as an aid to dealing with French authorities regarding his French pension), and in fact renewing and using his French passport. That Applicant engaged in this conduct, all otherwise lawful, in ignorance of the security implications of the conduct is beside the point. Although the Money Memorandum postdates some of Applicant's conduct, the adjudicative guidelines for foreign preference have remained essentially unchanged since before Applicant became a U.S. citizen. Yet, even the constancy of the guidelines is somewhat beside the point. To a certain extent, foreign preference is best measured by observing an Applicant's legal conduct without regard to administrative regulations or other limitations. This is because foreign preference is to be expected in a nation of immigrants. It is natural to have a certain affection for the land of one's birth, and for one's adopted homeland. Applicant is somewhat unusual because he had two adopted homelands, but it is still not unusual to expect Applicant to retain some affection for France even while obtaining U.S. citizenship. However, Applicant continued to demonstrate his foreign preference even after his dual citizenship began to be an issue. Applicant certainly knew when he was interviewed by the DSS that his dual citizenship was an issue, and in fairness to Applicant, he then first offered to renounce his French citizenship and surrender his passport if required for access to classified information. Yet, he continued to use the French passport, renewed it in 2000, and used it again after renewal. As late as January 2002, he expressed an intent to continue to renew and use his French passport. He maintains a bank account in France and had expressed an interest in preserving his French pension. [\(7\)](#)

I found Applicant to be open and honest. I believe him to be a trustworthy individual of impeccable integrity and a valued member of his community. I also know him to be a French citizen by naturalization for more than twenty years before emigrating to the U.S., and more than twenty-seven years by the time of his naturalization as a U.S. citizen. His demonstrated conduct in reasserting his foreign citizenship so soon after acquiring U.S. citizenship, and his conditional willingness to renounce his foreign citizenship cast serious doubt on his fitness for access to classified information, and presents an unacceptable level of foreign preference. I resolve Guideline C against Applicant.

## **FORMAL FINDINGS**

Paragraph 1. Guideline C: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

### **DECISION**

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

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated 2 January 1992--amended by Change 3 dated 16 February 1996 and by Change 4 dated 20 April 1999 (Directive).

2. With the company's assistance, Applicant apparently applied for, and received, permanent resident status in 1969, but was unable to fulfill the actual residence requirement because of his foreign assignments (Tr. 26).

3. Again, the company supported Applicant's citizenship application. As an Egyptian citizen, Applicant's travel was limited by having to obtain visas to travel to other foreign countries (Tr. 29-30). Applicant had long realized it was unlikely that he would ever return to Egypt to live. In fact, aside from the educational opportunity in the U.S. in 1962, Applicant had left Egypt because of changes in the political and religious climate brought about by a regime change in the 1950s (Applicant and his family were part of a Christian minority living in an increasingly fundamentalist Islamic state)(Tr. 21-22).

4. In compliance with the Money Memorandum, discussed below.

5. During the proceeding this document was sometimes referred to as the Money Memorandum because it is signed by Assistant Secretary Arthur L. Money.

6. Of course, any conduct Applicant engaged in as a French citizen before becoming a U.S. citizen--such as voting in French elections, paying taxes, or otherwise fully participating in the rights and privileges of French citizenship--may be considered mitigated as occurring before his naturalization.

7. The size of the bank account and the size of the French pension are irrelevant to an assessment of foreign preference. No one has suggested that Applicant would be subject to foreign influence (cognizable under a different guideline) because of his French assets. And the size of Applicant's pension dwarfs the French pension in terms of foreign influence issues. However, the retention of the French bank account and the past expressions of interest in preserving the French pension are indicative of a foreign preference.