

DATE: September 24, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-26861

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

After security concerns arose over Applicant's foreign preference because of his dual citizenship and use of a foreign passport after he became a naturalized United States (US) citizen, he voluntarily chose to comply with the Department of Defense (DoD) policy requirements when he learned of them. He relinquished the foreign passport in January 2004. Although he has relatives who are citizens of a foreign country, they do not have ties to the government. He has had a security clearance granted in 1984 and again in 1990 without incident. He has mitigated the allegations of foreign preference and influence. Clearance is granted.

STATEMENT OF THE CASE

The Government could not reach the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant, ⁽¹⁾ so the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on September 12, 2003. The SOR detailed security concerns in paragraph 1 over foreign preference (Guideline C) and in paragraph 2 over foreign influence (Guideline B). Applicant received the SOR and replied to these SOR allegations in an Answer forwarded on September 30, 2003, requested a decision without a hearing.

The case was assigned to Department Counsel who on December 22, 2003, prepared a File of Relevant Material (FORM) which he then forwarded to Applicant for reply within 30 days of receipt. Applicant received the FORM on January 6, 2004; he replied on January 28, 2004 with attachments (Exhibit A) to which Department Counsel did not object. On February 20, 2004, the case was assigned to me.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, 67 years old, has been a principal engineer from 2000 to present at a defense contractor in State #1. He completed an Office of Personnel Management (OPM) Security Clearance Application (Standard Form 86) (SF 86) in May 2000. Applicant previously had a Secret Defense Department clearance granted in 1990 and a Secret Defense Department clearance granted in 1984. (Exhibit 4)

Applicant was a Fulbright scholar and received an Masters in Electrical Engineering in 1960 from a university in State #2. (Exhibits 3, 4) Applicant married in 1965 to a U.S. citizen; they have three children who are U.S. citizens and four grandchildren. (Exhibits 3, 4, 5)

Foreign Preference

Applicant is a dual citizen of the U.S. and France as he was born there. He moved to the U.S. in the 1960's and has been a resident of the U.S. since that time. He became a naturalized U.S. citizen in March 1980. He has maintained his dual citizenship as his mother and sisters still reside in France. In May 2002 he stated that he would not take any steps to relinquish his citizenship from France. He served in the French military from 1960-63 as he was required to serve in the military. He has no financial interest or property in France. He receives no benefits from France and has not voted in France since he became a naturalized U.S. citizen. His investments are in the U.S. (Exhibits 3, 4, 5)

Use and Surrender of Passport

Applicant has maintained a French passport to make it easier to enter and leave the country. He has had a security clearance since 1984 and was never advised that he needed to give up his passport to have a security clearance. In May 2002 he stated he was "not willing to relinquish" his passport as it was easier to travel; indeed he had renewed his passport in December 2001. He had intermittently maintained his French passport for the thirty years he has lived in the U.S. In previous U.S. jobs he has traveled extensively and was transferred to Belgium for two years; he used his French passport for easier travel to enter France. He used us U.S. passport to enter the U.S. He was advised that the U.S. allows dual citizenship and that France allows dual citizenship for life. In September 2003 he stated he was willing to relinquish his French passport and had learned the proper procedures to do so. (Exhibits 3, 4, 5, 7)

In January 2004 After receiving the FORM he sought guidance from the DoD as to how he could then comply with the ASD(C³I) mandate. Applicant consulted an attorney and decided to return his French passport to the French embassy and request that it be cancelled in order to comply with DoD security guidelines. (Exhibit A)

Foreign Influence

Applicant's mother who is now 88 and one sister who is now 68 were hairdressers. Another sister who is now 60 was a secretary for the French Embassy in London more than thirty years ago before she married. His mother and both of his siblings are retired and there is no evidence they have any contact with the government of France. He has limited contact with his relatives there approximately once a month. He provides no financial support to his relatives in France. (Exhibits 4, 5)

Applicant has traveled to France in November 2001 and again in September 2002 for visits to his family. (Exhibit 3)

Although an ally of the U.S., France was listed in the 2000 National Counterintelligence Center's Annual Report to Congress on Foreign Economic Collection and Industrial Espionage as an active collector of economic and industrial espionage. (Exhibit 8)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. The mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed the following relevant Adjudication Guidelines:

Guideline C - Foreign Preference⁽²⁾

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;
- (2) Possession and/or use of a foreign passport⁽³⁾;

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;

Guideline B - Foreign Influence

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: (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

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;

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order

to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Guideline C - Foreign Preference

A citizen of France by birth, Applicant came to the United States in 1959 to pursue graduate education at a university and in 1960 earned his masters degree. He obtained a position in the defense sector and secured clearances in 1984 and again in 1990. He became a United States citizen by naturalization in 1980, and subsequently obtained a United States passport. Applicant continued also to maintain a French passport, and renewed it in 2001 as he used his French passport for travel to France. This active pursuit of a benefit of his foreign citizenship places him in the position of being subject to the duties or obligations owed to two different countries, and raises the potential of him being subjected to competing claims. Under the adjudicative guidelines pertinent to foreign preference, disqualifying conditions (DC) E2.A3.1.2.1. the exercise of dual citizenship and E2.A3.1.2.2. possession and/or use of a foreign passport must be considered in evaluating Applicant's security worthiness.

Such foreign preference concerns raised by dual citizenship are potentially overcome where the dual citizenship is based solely on birth or the foreign citizenship of one's parents. [See mitigating condition (MC) E2.A3.1.3.1.]. While Applicant derives his foreign citizenship from his birth in France, security concerns are created by his exercise of a benefit of that foreign citizenship after becoming a U.S. citizen as he maintained his foreign passport without any official approval or sanction by the United States Government. Maintenance of dual citizenship itself is not per se disqualifying. Feelings of affection and even a degree of affiliation for the land of one's birth are understandable. The issue is whether Applicant can be counted on to act in preference to the United States and without concern for the interests of France. Notably, he has not voted in a French election since he became a United States citizen.

As explained by the ASD(C³I) in the August 16, 2000, memorandum, possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and could facilitate travel unverifiable by the United States. Applicant initially told the DSS in May 2002 that for reasons of convenience he did not wish to invalidate his French passport. While that statement raises a legitimate question as to whether Applicant has a preference for France over the United States, it must be viewed in the context that Applicant was not aware at that time that his possession and use of a foreign passport was potentially security disqualifying. Once he learned of the security concerns, he stated his willingness to have the passport cancelled and investigated the methods to implement this action in September 2003. After receiving the FORM, he sought guidance from counsel and from the DoD as to how he could then comply with the ASD(C³I) mandate. Subsequently, he had his French passport returned to the French Embassy to be cancelled. Thus, security concerns related to potentially undetected travel no longer exist.

The recent steps taken by Applicant to comply with the ASD(C³I) memorandum to surrender of a foreign passport corroborate his claim of sole allegiance to the United States. When made aware of the security significance, Applicant surrendered his French passport in January 2004. Having now expressed sole allegiance to the United States, Applicant demonstrated through his actions that his preference is for the United States as he has made complying with DoD security guidance a priority. In this case I also considered the fact that Applicant has had a security clearance for over twenty years, initially granted in 1984 and again in 1990. Thus, favorable findings are warranted with respect to subparagraphs 1.a. through 1.e. of the SOR.

Guideline B - Foreign Influence

The Government also expressed security concerns over Applicant's possible foreign influence raised by his close ties of affection to citizens of a foreign country. Although an ally of the U.S., France was listed in the 2000 National Counterintelligence Center's Annual Report to Congress on Foreign Economic Collection and Industrial Espionage as an active collector of economic and industrial espionage. Applicant has siblings and a mother in France who are citizens there. The security concern under Guideline B, Foreign Influence, is that a security risk may exist when an individual's immediate family. . . 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.

On the other hand, contacts with citizens of other countries are relevant to security determinations only if they make an

individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. Applicant has relatively infrequent contacts with his family with respect to visits there; further, these security concerns are mitigated by the fact that Applicant's relatives are elderly have no ties to their foreign government. His sister's job with the French embassy was over thirty years ago. Nor is there any substantial likelihood that they would exercise foreign influence over Applicant. Merely because of these family ties Applicant is not vulnerable to duress. Given his history of responsible conduct, it is improbable that any of his family members would create a situation that could result in the compromise of classified information.

Applicant has had ties to the U.S. over a long period of time; thus, any risk of foreign duress or influence on Applicant and/or his immediate family would appear to be slight and clearly manageable After considering the Adjudicative Process factors and the Adjudicative Guidelines, here I conclude these ties are not of such a nature as to create any tangible risks of undue pressure, so do not invoke foreign influence concerns. In this case I also considered the fact that Applicant personally has had a security clearance for over twenty years. Thus, I resolve SOR paragraph 2 and subparagraphs 2.a. through 2.c. in Applicant's favor.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1.Guideline C: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 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 a security clearance for the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. The DoD August 16, 2000, Policy Clarification Memorandum (Exhibit 9) elucidated the policy on Foreign Preference, Guideline C and stated, in part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's

possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigation factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent application of the guideline 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 State Government. Modification of the Guideline is not required.

3. DoD policy clarification of Guideline C issued in August 2000 made clear that "any clearance [must] be denied or revoked unless the applicant surrenders the foreign passport"