

DATE: January 22, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-18169

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 42-year-old software engineer was born in France in 1961, moved to the U.S. in 1984, and became a U.S. citizen in 1998. He retains his French citizenship, but is willing to renounce it. He has surrendered his French passport. Applicant has parents and siblings who are citizens of France and reside there. There is little risk they would be asked to pressure Applicant to reveal U.S. secrets, and Applicant credibly avers he would reject any such attempt and report it immediately to U.S. authorities. His financial interests in France have been liquidated. Mitigation has been established. Clearance is granted.

FINDINGS OF FACT

Applicant was born in France in February 1961. He came to the U.S. in 1984 and became a U.S. citizen and obtained a U.S. passport in 1998. The SOR contains two allegations, 1.a. and 1.b. under Guideline C (Foreign Preference) and four allegations, 2.a. - 2.d. under Guideline B (Foreign Influence). In his response to the SOR, Applicant admitted all of the allegations in SOR 1.a., some with explanations. His admissions are accepted and deemed findings of fact as to the state of the evidence at the time of Applicant's response.

After considering the totality of the evidence derived from the hearing testimony and all evidence of record, I make the following FINDINGS OF FACT as to each SOR allegation:

Guideline C (Foreign Preference)

1.a. - Applicant exercises dual citizenship with the United States and France. He is willing to renounce his French citizenship.

1.b. - As of the issuance of the SOR, Applicant possessed a French passport that was valid until July 5, 2008. At the hearing, Applicant documented that he had cut up and returned his French passport. (AX E). He never used it one he became a U.S. citizen. (GX 2). Applicant did not use the French passport after obtaining his U.S. passport in 1998. (*Id.*).

Other than his retention of French citizenship, and his former possession of the now surrendered passport, there is no record evidence of any other conduct showing a preference for France over the United States.

Guideline B (Foreign Influence)

2.a. - Applicant's parents, two brothers, and sister are citizens of and resident in France. He has not seen his family in more than two years. They have visited him in the U.S. only a few times in the 19 years he has been here.

2.b. - Applicant's wife and two children are dual citizens of the U.S. and France. His wife is the one most interested in maintaining contact with French culture. His youngest daughter was born in France in 1998, and he made sure she was registered as a U.S. citizen within a few days of her birth.

2.c. - As of the issuance of the SOR, Applicant owned stock in a French corporation worth approximately \$2,000. Applicant has documented that the stock has been sold and the money sent to him in the U.S.

2.d. - As of the issuance of the SOR, Applicant maintained savings accounts in two French banks, the amounts being approximately \$500 and \$2000 respectively. Applicant has documented that the two accounts have been closed and the funds transferred to the U.S.

Applicant has an exemplary work record .

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

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

Guideline C (Foreign Preference)

When an individual acts in a way as to indicate a preference for a foreign country over the U.S., then he or she may be prone to provide information or make decisions that are harmful to the interests of the U.S.

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

1. The exercise of dual citizenship.

Conditions that could mitigate security concerns include:

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

4. Individual has expressed a willingness to renounce dual citizenship

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

There is no dispute as to the basic facts in this case. Applicant was born in France in February 1961, came to the U.S. in 1984 to get married, and has lived here ever since, becoming a citizen in 1999. He retains cultural ties with and feelings about France, but nothing in his conduct suggests anything close to the nature of the possible disqualifying conditions cited under Guideline C.

Applicant has shown a desire to become a part of American society, in addition to the act of becoming a U.S. citizen. He has recently been admitted to his local police department's reserve program, a process that required him to pass a polygraph examination. (Tr at 28). Applicant has cut up his French passport and surrendered it to French authorities. (Tr at 36 and AX E, AX G at pages 3, 4,). He remains willing to renounce his French citizenship. (*Id.*). Applicant has committed himself to being an American. (Tr at 38).

Applicant's parents are French citizens and reside there. They are in their 70s and retired. His mother was a nurse in a hospital, and his father worked for a French railway company. (Tr at 42). Both receive pension from the French government. (Tr at 43). His mother calls him about once a week and his parents send gifts for the children. (*Id.*). His three siblings are a baker, unemployed, and a social worker, respectively. His family knows generally what he does, but he never discusses his work with them. (Tr at 45). None of them have any connection to any intelligence agency or the French government in general beyond what he described. (*Id.*).

His French bank account and stock ownership accounts cited in SOR 2.c. and 2.d. have been liquidated and cancelled and the funds returned to Applicant in the U.S. (Trat 46-55 and AX A - D, AX F, Ax G at pages 5 - 14, AX H, and AX I).

Applicant understands the government's concerns about his having family in France. His response was, in essence, that he understands the rules, he has direct contact with the security officer at his company, and he would report any threat of coercion. "There is no ambiguity here." (Trat 61 - 64).

Considering all of the record evidence, I conclude that Applicant of a man of integrity, who now understands the government's concerns and has taken steps to mitigate those concerns. He has surrendered the French passport, so the Money Memorandum is no longer an issue. My decision must be based on an evaluation of all of the evidence and determining whether the findings of fact indicate a foreign preference and/or the risk of foreign influence so as to create a risk that Applicant might act against U.S. security interests.

Disqualifying and Mitigating Conditions

Under Guideline C (Foreign Preference), the only current issue concerns Applicant's "exercise" of dual citizenship. I conclude that Applicant's "exercise" of his French citizenship is limited to his status, and does not relate to any conduct, statements, or financial, political, or other interests in that country. Dual citizenship is recognized as legal by the U.S. Supreme Court, and is an issue in security clearance adjudications when considered individually or along with other factors, suggests the possibility of a preference for a foreign country over the U.S. While Disqualifying Condition (DC)

1 (exercise of dual citizenship) does apply, Mitigating Condition (MC) 4 (willingness to renounce dual citizenship) is also applicable and has been repeatedly stated by Applicant. While Applicant has not yet taken the step of actually renouncing his French citizenship, that is not a requirement of the mitigating condition and, I conclude, he would do it if asked to do so by the government as a condition of obtaining a security clearance. I consider this issue in the context of Applicant's long residence in the U.S. and his family and other ties here. Since there are no other disqualifying conditions alleged by the government; the absence of renunciation is not enough, by itself, to suggest a preference for France over the U.S. Guideline C is therefore found in favor of Applicant.

Under Guideline B (Foreign Influence), DC 1 (immediate family in France) is applicable as to SOR 2.a. and 2.b., but no other disqualifying conditions are suggested by the record. Mitigating Condition 1 is also applicable in that I determine that Applicant's evidence suggest a minimal risk that his family in France would be pressured to has taken decisive action as to the two allegations about which he could actually do something.

U.S.-Mexican citizenship and the exercise of that Mexican citizenship to save money, no other concerns are expressed in the SOR. Because of this singular concern, which relates to a document he obtained for \$12.00, and has used on only three occasions over the years to save a little money, his overwhelming ties the U.S. over more than 40 years are far more indicative of his national preferences. I conclude that the conduct alleged in SOR 1.a does not establish a foreign preference, as that term is used in Guideline C.

Disqualification and Mitigation,

Foreign Preference - Disqualifying Condition (DC) 1 (exercise of Mexican citizenship) is applicable, but Mitigating Condition (MC) 1 also applies in that his exican citizenship is derived from his being born in that country to Mexican parents. MC 4 also applies in that Applicant has indicted a willingness (conditional on his being asked) to renounce his dual citizenship. There simply are no other indicia of any preference for Mexico over the United States.

Overall, I conclude that Applicant has shown himself to be a man of integrity and one who takes his obligations seriously. Considering the evidence as a whole, I conclude that the evidence does not show that any risk exists that Applicant would ever act against U.S. security interests.

FORMAL FINDINGS

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

Guideline C (Foreign Preference) For the Applicant

Subparagraph 1.a.. For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent

5with the national interest to grant or continue a security clearance for Applicant.

BARRY M. SAX

ADMINISTRATIVE JUDGE