

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Security concerns were raised regarding a 51-year-old French-born, naturalized U.S. citizen. She obtained a French passport in 2001--long after her 1986 U.S. naturalization--and used it repeatedly to enter France and other countries, instead of using her American passport. Her refusal to surrender the French passport and her failure to obtain official approval for the foreign passport's use from the appropriate agency of the United States Government, in light of the August 2000 ASD/C³I memorandum implementing a passport policy "clarification," raise grave questions and doubts as to her allegiance to the United States and as to her security eligibility and suitability. Clearance is denied.

CASENO: 03-19512.h1

DATE: 10/17/2005

DATE: October 17, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-19512

DECISION OF CHIEF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Security concerns were raised regarding a 51-year-old French-born, naturalized U.S. citizen. She obtained a French passport in 2001--long after her 1986 U.S. naturalization--and used it repeatedly to enter France and other countries, instead of using her American passport. Her refusal to surrender the French passport and her failure to obtain official approval for the foreign passport's use from the appropriate agency of the United States Government, in light of the August 2000 ASD/C³I memorandum implementing a passport policy "clarification," raise grave questions and doubts as to her allegiance to the United States and as to her security eligibility and suitability. Clearance is denied.

STATEMENT OF THE CASE

On August 13, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR 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 a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated September 23, 2004, Applicant responded to the allegations set forth in the SOR, and elected to have her case decided on the written record, in lieu of a hearing. Department Counsel submitted the government's written case on January 18, 2005. A complete copy of the file of relevant material (FORM)-(1) was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation, no later than February 25, 2005. She chose not to do so. The case was assigned to me on March 17, 2005.

FINDINGS OF FACT

Applicant has admitted the factual allegations pertaining to foreign preference under Guideline C (subparagraph 1.a.) and foreign influence under Guideline B (subparagraph 2.a.). Those admissions are incorporated herein as findings of fact. She contends the guidelines do not apply to her. ⁽²⁾

After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 51-year-old employee of a defense contractor, and she is seeking to obtain a security clearance the level of which has not been divulged.

Applicant was born in 1954 in France. ⁽³⁾ Her 85-year-old father is a naturalized citizen and resident of France, who was born in Poland in 1920. ⁽⁴⁾ During World War II, Applicant's father fought the Nazis, was imprisoned by them, escaped, and continued fighting them. ⁽⁵⁾ Applicant rarely sees her father and estimates the frequency to be a "few days every other year or so." ⁽⁶⁾ Her mother, now deceased, was a naturalized citizen of France, who was born in either Poland or Germany. ⁽⁷⁾ Her husband is a dual citizen of the United States (naturalized in 1986), ⁽⁸⁾ Canada, ⁽⁹⁾ and France, ⁽¹⁰⁾ who was born in Canada. ⁽¹¹⁾ Her two children hold the dual citizenship of their father (U.S., Canada, and France), and are native-born in the U.S. ⁽¹²⁾

From birth through 1976, Applicant was raised and educated in France, and exercised all the rights, privileges, and benefits accorded all residents of France. ⁽¹³⁾ In 1976, she received a scholarship from the French Government to pursue her university studies at a prestigious university in the U.S. ⁽¹⁴⁾ She has resided in the U.S. since that time, and has earned two masters degrees and a Ph.D. from that same university, with the most recent degree being awarded in June 1981. ⁽¹⁵⁾ Applicant became a naturalized U.S. citizen "with [her] heart" ⁽¹⁶⁾ in September 1986. ⁽¹⁷⁾ She owns no property in France and does not ever intend to live there. ⁽¹⁸⁾

Applicant obtained a French passport in March 2001. ⁽¹⁹⁾ She contends it was for convenience and shorter lines during leisure trips when crossing European borders. ⁽²⁰⁾ She also envisions "having [her] life saved" in situations where she can produce a non-U.S. passport. ⁽²¹⁾ In July 2003, Applicant acknowledged that if she did not relinquish her French

passport, there would be a "high probability that [she] may not obtain a security clearance."⁽²²⁾ Nevertheless, she stated she would not surrender it.⁽²³⁾ She was furnished a copy of the current Department of Defense (DoD) passport policy,⁽²⁴⁾ described below, along with the SOR, on August 13, 2004.⁽²⁵⁾ In September 2004, she again refused to surrender the passport and opined that requesting her to do so "would be in fact acting against the best interest of the United States."⁽²⁶⁾ In January 2005, she was again furnished with a copy of the DoD passport policy, but she chose to ignore it.

In July 2003, Applicant contended her heart, will, and naturalized citizenship were American, but she chose not to relinquish her French citizenship especially in light of the changed international situation.⁽²⁷⁾ In March 2004, she indicated she was proud of her U.S. citizenship, declared her allegiance to the U.S. is "paramount," and pointed out that her children were born here.⁽²⁸⁾

Applicant has been employed by the same government contractor since August 2001. The quality of her performance has not been developed.

On August 16, 2000, the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD/C³I) issued a passport policy "clarification" pertaining to Adjudicative Guideline C--foreign preference. As noted above, photocopies of the memorandum were furnished to Applicant on several occasions. The memorandum states, in pertinent 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 mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the 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 States Government.*** Modification of the Guideline is not required. (Emphasis supplied)

Applicant has offered no evidence subsequent to receipt of the ASD/C³I memorandum to indicate she had either actually received official approval to use the passport or that she had surrendered it to the French Embassy. As of the date of the closing of the record herein, it appears Applicant still possesses a French passport, and its use has not been officially approved by the appropriate agency of the United States Government.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E.2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an Administrative Judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable 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.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

GUIDELINE C - FOREIGN PREFERENCE: 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.

GUIDELINE B - FOREIGN INFLUENCE: 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, as well as those which could mitigate security concerns, pertaining to each of the adjudicative guidelines are set forth and discussed in the Conclusions section below.

Since the protection of the national security is the paramount determinant, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security," or "clearly consistent with the national interest."⁽²⁹⁾ For the purposes herein, despite the different language in each, I have concluded both standards are one and the same. In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

The government has established its case under Guideline C. Applicant is a naturalized American citizen who failed to formally renounce her French citizenship and acted in such a way as to indicate a preference for a foreign country--in this instance, France. In doing so, she may be prone to provide information or make decisions harmful to the interests of the United States. In support of its contentions, the government has cited Applicant's active exercise of "dual citizenship" with France and the United States; her acceptance and continued use of a French passport; and her refusal to

surrender the passport. Applicant's actions clearly fall within foreign preference disqualifying condition (FP DC) E2.A3.1.2.1. (*the exercise of dual citizenship*), and FP DC E2.A3.1.2.2. (*possession and/or use of a foreign passport*).

None of the foreign preference mitigating conditions apply.

This case is not to be construed as an assault on dual citizenship, for the issue is not that Applicant is a dual citizen, but rather her possession and use of a foreign passport. Of substantial significance is Applicant's repeated use of it to enter not only France, but other countries as well, instead of using her American passport. Even more significant is her conscious refusal to surrender the French passport.

As noted above, in August 2000, ASD/C³I issued a passport policy "clarification." Under that policy "clarification," it is clear the possession and repeated use--or any use for that matter--of the French passport that falls within FP DC E2.A3.1.2.2. The ASD/C³I memo states there are no mitigating factors "related to an applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country," a phrase which I construe to relate solely to the use of a foreign passport, and not to mere possession of same. On the other hand, the memo requires a 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." Consequently, I conclude Applicant has failed to mitigate or overcome the government's case. Accordingly, allegation 1.a. of the SOR is concluded against Applicant.

The government has established its case under Guideline B. Applicant has been portrayed as a person who is a potential security risk because a member of her immediate family or a person to whom she is bound by affection, influence, or obligation--in this instance, her father who is a citizen and resident of France--is either not a citizen or resident of the United States or may be subject to duress. This situation raises the potential for vulnerability to coercion, exploitation, or pressure, and the exercise of foreign influence that could result in the compromise of classified information. However, the mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B:

The language of [Guideline] B (Foreign Influence) in the Adjudicative Guidelines makes clear that the possession of such family ties *may* pose a security risk. Whether an applicant's family ties in a foreign country pose a security risk depends on a common sense evaluation of the overall facts and circumstances of those family ties. *See* ISCR Case No. 98-0419 (April 30, 1999) at p. 5. [\(30\)](#)

Because of her father's citizenship and residency in France, Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1. (*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*) applies.

It is noted that no evidence has been offered by the government indicating any sinister French intentions or activities, such as industrial espionage or active collection of foreign economic information, directed towards the United States. In fact, France is very active in such activities. But France is also a republic and happens to be the United States' oldest ally, having aided the U.S. during the American War of Independence from the British.

Also applicable, in this instance, is Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1. (*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*), FI MC E2.A2.1.3.3. (*contact and correspondence with foreign citizens are casual and infrequent*), and FI MC E2.A2.1.3.5. (*foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*). I determine that Applicant's father, considering his age, citizenship and residency status, does not constitute an unacceptable security risk. Applicant's continuing, though rather infrequent, personal relationship with him has little, if any, security significance. Furthermore, there is no evidence that her father is a target of any intelligence gathering efforts. Additionally, as noted above, she has zero financial interests in France. Thus, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the government's case. Accordingly, allegation 2.a. of the SOR is concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is not eligible for access to classified information.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1., Guideline C: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 2.a.: For 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. Clearance is denied.

Robert Robinson Gales

Chief Administrative Judge

1. The government submitted eight items in support of its contentions.
2. Item 3 (Response to SOR, dated September 23, 2004), at 1-2.
3. Item 4 (Security Clearance Application (SF 86), dated January 11, 2002), at 1.
4. *Id.* at 3.
5. Item 3, *supra* note 2, at 2.
6. *Id.* In reality, that estimate may be too high, for Applicant has only been in France on three occasions since 1994. Item 4, *supra* note 3, at 5-6.
7. *Id.*; Item 5 (Statement, dated July 28, 2003), at 1. Applicant's assertion regarding the birth location of her mother is inconsistent. At one time (January 2002) she claimed it was Germany, and another (July 2003), it was Poland.
8. *Id.* at 4.
9. *Id.*
10. *Id.*

11. *Id.* at 3.
12. *Id.* at 3-4.
13. Item 6 (Answers to DOHA Interrogatories, dated March 1, 2004), at 3.
14. *Id.*
15. Item 4, *supra* note 3, at 2; Item 3, *supra* note 2, at 2.
16. Item 5, *supra* note 7, at 1.
17. Item 7 (U.S. Certificate of Naturalization, dated September 19, 1986).
18. Item 5, *supra* note 7, at 2.
19. Item 4, *supra* note 3, at 5.
20. *Id.*; Item 5, *supra* note 7, at 2.
21. *Id.*, Item 5.
22. *Id.*
23. *Id.*
24. Item 8 (Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD/C³I) Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline, dated August 16, 2000).
25. Item 2 (DOHA letter of transmittal, dated August 13, 2004), at 3.
26. *Id.*
27. Item 5, *supra* note 7, at 2.
28. Item 6, *supra* note 13, at 3.
29. Exec. Or. 12968, "*Access to Classified Information*;" as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program*," dated January 1987, as amended by Change 3, dated November 8, 1995. However, the Directive uses both "clearly consistent with the national interest" (Sec. B.3; Sec. C.2.; and Sec. D.2.; Enclosure 3, Sec. 1.; and Sec. 25), and "clearly consistent with the interests of national security" (Enclosure 2 (Change 3), Adjudicative Guidelines, at 2-2).
30. ISCR Case No. 98-0507 (Appeal Board Decision and Reversal Order, May 17, 1999), at 10.