

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant is a 45-year-old naturalized U.S. citizen who has lived and worked in the U.S. since the 1990's. She was born in France and retains her French citizenship. Applicant's parents and two sisters live in France. She visits her family in France frequently and is in close contact with them via the telephone. Her French passport expired in 2004. Applicant wants to retain dual citizenship so that her daughter may benefit from attending school in France. She has not mitigated the security concerns under Guidelines B and C. Clearance is denied.

CASENO: 05-02310.h1

DATE: 01/31/2006

DATE: January 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-02310

DECISION OF ADMINISTRATIVE JUDGE

NOREEN A. LYNCH

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 45-year-old naturalized U.S. citizen who has lived and worked in the U.S. since the 1990's. She was born in France and retains her French citizenship. Applicant's parents and two sisters live in France. She visits her family in France frequently and is in close contact with them via the telephone. Her French passport expired in 2004. Applicant wants to retain dual citizenship so that her daughter may benefit from attending school in France. She has not mitigated the security concerns under Guidelines B and C. Clearance is denied.

STATEMENT OF THE CASE

On August 18, 2005, 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 Review Program* dated January 2, 1992, as amended and modified (Directive), issued a Statement of Reasons (SOR) to Applicant. The SOR alleges security concerns under Guidelines C (Foreign Preference) and B (Foreign Influence). 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 16, 2005, Applicant responded to the SOR and elected to have her case decided on the written record, in lieu of a hearing. Department Counsel submitted the government's File of Relevant Materials (FORM) dated October 31, 2005. [\(1\)](#) Applicant received the FORM on November 8, 2005, and was given an opportunity to file objections and submit materials in refutation, extenuation, or mitigation. Applicant submitted a written response on December 8, 2005. The case was assigned to me on December 19, 2005.

FINDINGS OF FACT

Applicant admitted all the factual allegations of the SOR, but denied the underlying security concerns under the guidelines.⁽²⁾ Those admissions are incorporated as findings of fact. After a complete and thorough review of the evidence in the record, I make the following findings of fact:

Applicant is 45 years old. She was born and raised in France, and emigrated to the U.S. in the 1990's. She was married from 1990 until 1993 to a U.S. citizen but is now divorced. She has one daughter from the marriage who lives with her.⁽³⁾

Applicant became a U.S. citizen in 1999 and obtained a U.S. passport which expires in 2009.⁽⁴⁾ She received a certificate from a technical school in the U.S. in 2003. She has been employed in the defense industry since 1995 as an administrative assistant.⁽⁵⁾ On two occasions, she served on jury duty in her state of residence in the U.S. She works, pays U.S. taxes, and performs civic duties in her state, such as voting in elections.⁽⁶⁾

Applicant's mother, father, and two sisters are French citizens and reside in France. Her family is not employed by the French government, military, police or any security services.⁽⁷⁾ She remains in close contact with her family, and calls her mother every week. She travels to France to maintain her familial ties. She visited France in 1999, 2001, 2004, and 2005. Her French passport expired on August 29, 2004. She does not intend to renew it.⁽⁸⁾

Applicant has no personal property or financial, political or military ties to France. She has not voted in any French elections since becoming a U.S. citizen. However, she wants to maintain her French citizenship so that she can maximize educational opportunities for her daughter. She wants her daughter to have the option of gaining economic benefit from attending French schools.⁽⁹⁾

Relations between the U.S. and France are active and cordial. France and the United States share common values and have parallel policies on most political, economic, and security issues.⁽¹⁰⁾

Although France is considered one of our oldest allies, it is an active practitioner of industrial espionage. Department Counsel submitted a report citing a private survey of "nearly a dozen selected Fortune 500 companies."⁽¹¹⁾ The report

does not indicate how the companies were selected, what companies were selected, or how they decided upon their input to the survey. Nonetheless, Department Counsel cites to the survey results as an indication that France is an active collector of "Foreign economic information."

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines For Determining Eligibility For Access To Classified Information*, sets forth the criteria which must be applied when determining security clearance eligibility. The adjudicative guidelines specifically distinguish between those factors that are considered in denying or revoking an employee's request for access to classified information (Disqualifying Conditions), and those factors that are considered in granting an employee's request for access to classified information (Mitigating Conditions). By acknowledging that individual circumstances of each case are always different, the guidelines provide substantive standards to assist an administrative judge in reaching fair and impartial common sense decisions.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at meritorious decisions. Section E2.2 of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the conduct of the applicant and the circumstances in any case, the factors an administrative judge should consider pursuant to the concept 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 the 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.

Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interest of national security. Granting an applicant's clearance for access to classified information is predicated on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not just the *actual* risk of disclosure of such information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information in any aspect of his or her life. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information.⁽¹²⁾ The decision to deny a security clearance request to an individual is not necessarily a determination of the loyalty of the applicant.⁽¹³⁾ It is merely an indication the applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

In accordance with the Directive, the government bears the initial burden of proof in the adjudicative process to establish conditions which indicate it is not clearly consistent with the national interest to grant or continue an

applicant's access to classified information. ⁽¹⁴⁾ When the government meets this burden, a heavy burden of persuasion then falls on the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the position of the government, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance. ⁽¹⁵⁾

Based upon consideration of all the evidence submitted in this matter, the following adjudicative guideline is appropriate for evaluation with regard to the facts of this case:

Guideline B - Foreign Influence: 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.

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.

The Guideline B and C disqualifying and mitigating conditions, raising either raising security concerns or mitigating security concerns applicable to this case, are set forth and discussed in the Conclusions section below. For clarity, I will discuss each separately.

CONCLUSIONS

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

Foreign Influence

Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1. (*An immediate family member or person to whom the individual has close ties of affection or obligation, is a citizen, or, a resident or present in, a foreign country*), applies because Applicant's mother, father and two sisters are citizens and residents of France. Such ties raise a *prima facie* security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for her. 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. Whether an applicant's family ties in a foreign country pose a susceptibility to foreign influence depends on a common sense evaluation of the overall facts and circumstances of those family ties. ⁽¹⁶⁾

Applicant's immediate family live and reside in France. There is a rebuttable presumption that a person has ties of

affection for, or obligation to, the immediate family members of the person's spouse.⁽¹⁷⁾ Applicant has frequent communication with her family via the telephone. She traveled to France to visit her family four times since 1999. She stayed with them in the family home. I conclude this potentially disqualifying condition applies.

FI DC E2.A2.1.2.2. (*Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists*) does not apply. Applicant lives with her daughter who is a citizen of France but also a citizen of the U.S. and lives with her mother in the U.S.

FI MC E2.A2.1.3.3. (*Contact and correspondence with foreign citizens are casual and infrequent*), does not apply in this case. As discussed earlier, Applicant maintains close contact with her family in France and visits them frequently.

Foreign Preference

Foreign Preference Disqualifying Condition (FP DC) E2.A3.1.2.2. (*Possession and/or use of a foreign passport*) applies in this case. Applicant's French passport was renewed on August 30, 1999 after her naturalization. It expired on August 29, 2004. She does not intend to renew it.⁽¹⁸⁾ She does intend to get a French identification card to ease her travels in France.

FP DC E2.A3.1.2.1. (*The exercise of dual citizenship*) applies in this case. Renewal of the French passport is an exercise of dual citizenship. Applicant clearly stated that she does not wish to renounce her French citizenship. Her reasoning is based on her desire to maximize educational benefit for her daughter to study in France. Applicant wants to exercise rights and privileges of French citizenship after becoming a U.S. citizen. Thus, even Applicant's limited exercise of dual citizenship is sufficient under the facts to invoke this FP DC.

FP DC E2.A3.1.2.4 (*Accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country*) arguably applies in this case. This is the reason that Applicant wants to retain dual citizenship, so that her daughter could accept education benefits in France.

Foreign Preference Mitigating Condition (FP MC) E2.A3.1.3.1. (*Dual citizenship is based solely on parents' citizenship or birth in a foreign country*) applies in this case. Applicant was born in France and her parents are French citizens.

FP MC E2.A3.1.3.4. (*Individual has expressed a willingness to renounce dual citizenship*)

does not apply. Applicant was clear in her answers to the SOR and additional statement that while she considers herself loyal to the U.S. and does not maintain a preference for a foreign country, she is not willing to renounce her dual citizenship as a condition for security clearance access. She wants her daughter, if she chooses, to avail herself of the economic benefit of studying in France.

On August 2000, the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence ("Money Memorandum") 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 Money 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.

I considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. Applicant has been a dual citizen of France and the United States since her naturalization in 1999. Ordinarily, an applicant's foreign citizenship possesses little security significance if based solely on her birth in a foreign country. I am persuaded by the totality of the evidence in this case that although Applicant claims to prefer her U.S. citizenship to her foreign citizenship, her statement belies that assertion. Applicant is proud of her U.S. citizenship, but wants to maintain an active assertion of certain foreign citizenship rights for her daughter. A detrimental impact on the interests of the United States is not required before the Government may deny access under Guideline B and C. Applicant has not mitigated the security concerns under Foreign Influence and Foreign Preference in this case.

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 APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Paragraph 2. Guideline B AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against 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.

Noreen A. Lynch

Administrative Judge

1. The government submitted nine items in support of its contentions.
2. Item 3 (Applicant's Answer, dated September 16, 2005) at 1-2.
3. Item 4 (Security Clearance Application (SF 86), dated March 2004) at 3.
4. *Id.* at 1.
5. *Id.* at 2.
6. Applicant's Response to FORM, dated December 6, 2005 at 1.
7. *Id.* at 2.
8. *Id.*
9. Item 6 (Applicant's Response to Interrogatories), dated May 20, 2005.
10. Item 8 (U.S. Department of State Background Note France) dated August 2005 at 8.
11. Item 7 (National Counterintelligence Center, *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage 2000*,

undated) at 1-17.

12. *Department of Navy v. Egan*, 484 U.S. 518, 517 (1988).

13. Executive Order 10865, § 7.

14. ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).

15. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

16. ISCR Case No. 98-0419 at 5 (App. Bd. Apr 30, 1995).

17. ISCR Case No. 03-26176 at 5 (App. Bd. Oct. 14, 2005).

18.