



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
 )  
 ) ISCR Case No. 07-08445  
SSN: )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government:  
Paul M. DeLaney, Esquire, Department Counsel  
For Applicant: John F. Mardula, Esquire

April 30, 2008

**Decision**

---

METZ, John Grattan, Jr., Administrative Judge:

On 25 October 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B and C.<sup>1</sup> Applicant answered the SOR 12 November 2007, and requested a hearing. DOHA assigned the case to me 26 December 2007, and I convened a hearing 12 February 2008. DOHA received the transcript (Tr.) 21 February 2008.

---

<sup>1</sup>DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

## **Findings of Fact**

Applicant admitted the SOR allegations. He is a 72-year-old theoretical physicist employed by a defense contractor since February 2003. When he was hired, his position did not require him to have access to classified information, but his hiring was conditioned on his obtaining U.S. citizenship. He has not previously held a clearance.

Applicant was born in Casablanca, Morocco in 1935, the son of two Italian expatriates living and working in Morocco. In 1935, Morocco was a French protectorate, and Applicant was born an Italian citizen. However, when his father died while Applicant was still a child, his mother became a French citizen, and Applicant derived French citizenship from her. Applicant grew up in Morocco and was educated there through high school.

In 1959, Applicant was drafted into the French Army, and served two years in Algeria, reaching the rank of sergeant. He is eligible, but has not applied, for a small military retirement based on this service. After completing his military obligation, Applicant attended college in France, obtaining an undergraduate degree in mathematics, a master's degree in theoretical physics in 1969, and a doctoral degree in theoretical physics in 1975. After obtaining his doctoral degree, he spent two years doing post-doctorate work at a prestigious university in the U.S., where, he met the woman he would later marry.

Applicant worked for France's Center for Scientific Research (CSC) from 1973 until his retirement in 2000, having served as a research director since the late 1980s. The CSC—like its U.S. counterpart, the National Science Foundation (NSF)—is a government-funded research organization. Although the projects Applicant worked on did not involve classified information, the modeling programs he ran required him to be cleared for access to the most sophisticated computers the French government used, which themselves contained classified data. Applicant draws an annual pension of \$50,000 from the French government for this 27 years of work. That income represents about one-third of Applicant's current income, but will be about 50 percent of his annual income once he retires from his current employment. He maintains a French bank account for direct deposit of his retirement pay, but otherwise has no financial interests in France. He has \$300,000 equity in his home in the U.S., and \$400,000 in U.S. investments.

Applicant married his wife—a U.S. born citizen—in July 1985, after she immigrated to France. After meeting French residency requirements, she became a naturalized French citizen in 1988 or 1989. She has both a French passport and a U.S. passport.

After he retired from the CSC, Applicant immigrated to the U.S. using his French passport. He renewed his French passport as required under U.S. immigration law in April 2002; it is valid until April 2012. He, and his wife, used their French passports to travel to France in 2001 and 2006, and to St. Maarten—part of the French overseas

department of Guadelupe—in 2007. Applicant stated an intent to renew his French passport to facilitate travel within the European Union (EU).

Applicant started work with his current employer in February 2003, conditioned on his obtaining U.S. citizenship. As the spouse of a U.S. citizen, he was eligible for U.S. citizenship after three years residence, and he became a naturalized U.S. citizenship in January 2004. It seems that he did not contemplate obtaining U.S. citizenship until it became an employment issue. He obtained his U.S. passport in June 2004.

Applicant maintains casual contact with many friends and professional colleagues from the scientific community around the world, and in France. In 2005, he voted in the French referendum—ultimately rejected—on ratifying the EU constitution. Applicant voted in the referendum (he was for ratification) because he thought it important for the EU. He did not think it would be a problem for the U.S., and he is willing to refrain from voting in France if it is an issue.

Applicant and his wife may consider living outside the U.S. after they retire, possibly in the Caribbean. They have no children together, and her children from an earlier marriage are all grown. Applicant is willing to surrender his French passport to obtain his clearance. His company has agreed to hold it if that is acceptable to the U.S. government. He claims that his loyalties are to the U.S. and does not believe the French government could exploit him. However, he is reluctant to renounce his French citizenship, because he believes he would lose his French pension if he did. Similarly, he would not have become a U.S. citizen if doing so would have put his pension at risk.

Applicant's supervisor—the man who hired him originally—considers him an excellent employee. Applicant has raised no security concerns while employed, and the supervisor has no reason to doubt Applicant's loyalty to the U.S. When he hired Applicant, the company's work did not require Applicant to have a clearance.

France is a democratic republic and close ally of the U.S. However, France is a known practitioner of industrial espionage, for both military and commercial purposes. Nevertheless, there is no evidence that France targets U.S. citizens for this information.

## **Policies**

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the

grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline B (Foreign Influence) and Guideline C (Foreign Preference).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>2</sup>

## Analysis

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications can and should consider the identity of the foreign country in which the foreign contact or financial interest is located—including, but not limited to, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.<sup>3</sup> Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk or foreign exploitation, inducement, manipulation, pressure, or coercion.<sup>4</sup> In addition, an individual's connections to a foreign government or country may create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign country by

---

<sup>2</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>3</sup>Revised Adjudicative Guidelines, ¶ 6.

<sup>4</sup>Revised Adjudicative Guidelines, ¶ 7.(a).

providing that information.<sup>5</sup> Finally, an individual's substantial financial interest in a foreign country could subject an individual to a heightened risk of foreign influence or exploitation.<sup>6</sup>

In this case, the government established a case for disqualification under Guideline B regarding his direct, continuing contacts with friends and colleagues in France, and his financial reliance on the French government for a significant portion of his annual income. Considering first the foreign country involved, France and the U.S. enjoy generally good foreign relations. Although France is not associated with a risk of terrorism or known to target U.S. citizens to obtain protected information, the fact that France is a known collector of U.S. intelligence or sensitive economic information presents security concerns. Applicant spent 80 percent of his adult life as a French citizen, most of it working for the French government. His retirement is so recent that he is likely to still be remembered at his agency. Certainly he is well-known and well-regarded in the scientific community in which he moves. Applicant's situation raises the risk of foreign exploitation, inducement, manipulation, pressure, or coercion by both positive and negative means because of appeals to his friendships and loyalties to France, coupled with hints about consequences for his pension. Applicant stated his own concern that renouncing his French citizenship would cost him his pension, and indicated that he would not have obtained U.S. citizenship if it risked losing his pension. The scenario for foreign influence is neither speculative nor fanciful. I resolve Guideline B against Applicant.

The government established a case for disqualification under Guideline C by showing that Applicant has been a U.S. citizen only since January 2004, became a U.S. citizen largely for employment reasons, and possesses, uses, renewed, and intends to renew a French passport. He served in the French military and government, retains his French citizenship to preserve his pension, and has voted in French elections since becoming a U.S. citizen.<sup>7</sup> Applicant has not mitigated the Guideline C security concerns. He has been a dual citizen of France and the United States only since January 2004. His dual citizenship cannot reasonably be said to be based solely on his parents' citizenship or birth in a foreign country where all but four years of his life were spent as a citizen of either Italy or France. The circumstances of his acquiring U.S. citizenship also suggest a preference for a foreign nation over the United States. Further, 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

---

<sup>5</sup>Revised Adjudicative Guidelines, ¶ 7.(b).

<sup>6</sup>Revised Adjudicative Guidelines, ¶ 7.(e).

<sup>7</sup>Revised Adjudicative Guidelines, ¶ 10.(a) exercise of any right, privilege, or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This included but is not limited to: (1) possession of a current foreign passport; (2) military service . . . for a foreign country; (3) accepting . . . retirement . . . or other such benefits from a foreign country; (5) using foreign citizenship to protect financial . . . interests in another country; (7) voting in a foreign election; (b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

compelling interest in ensuring those given public trust positions will make decisions free of concerns for the foreign country of which they may also be a citizen.

Applicant's information supports none of the mitigating conditions (MC) for foreign preference. His dual citizenship is not based solely on his parents' citizenship, but is based on his active exercise of dual citizenship after becoming a naturalized U.S. citizen.<sup>8</sup> He has not expressed a willingness to renounce his foreign citizenship.<sup>9</sup> While the vast majority of his exercises of French citizenship occurred before he became a U.S. citizen,<sup>10</sup> significant exercise of dual citizenship occurred after he obtained U.S. citizenship, while he was an adult.<sup>11</sup> Applicant's use of his French passport has not been sanctioned by the U.S.<sup>12</sup> He stated only conditional willingness to invalidate his passport, and had previously stated an intent to retain it.<sup>13</sup> While Applicant has a legal right to maintain his dual citizenship with its attendant benefits and responsibilities, he has not demonstrated that he can be counted on to always act in preference to the United States. I resolve Guideline C against Applicant.

### **Formal Findings**

#### **Paragraph 1. Guideline B: AGAINST APPLICANT**

Subparagraph a:	Against Applicant
Subparagraph b:	Against Applicant
Subparagraph c:	Against Applicant
Subparagraph d:	Against Applicant
Subparagraph e:	Against Applicant
Subparagraph f:	For Applicant

#### **Paragraph 2. Guideline C: AGAINST APPLICANT**

Subparagraph a:	Against Applicant
Subparagraph b:	Against Applicant
Subparagraph c:	Against Applicant

---

<sup>8</sup>Revised Adjudicative Guidelines, ¶ 11.(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

<sup>9</sup>¶ 11.(b) the individual has expressed a willingness to renounce dual citizenship;

<sup>10</sup>However the exercise of French citizenship over more than 40 years of his adult life, and the resulting pension, tie him permanently to France in ways most naturalized U.S. citizens do not experience.

<sup>11</sup>¶ 11.(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

<sup>12</sup>¶ 11.(d) use of a foreign passport is approved by the cognizant security authority;

<sup>13</sup>¶ 11.(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated;

Subparagraph d: Against Applicant  
Subparagraph e: Against Applicant  
Subparagraph f: Against Applicant  
Subparagraph g: Against Applicant  
Subparagraph h: Against Applicant

### **Conclusion**

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 denied.

---

JOHN GRATTAN METZ, JR  
Administrative Judge