



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



In the matter of:)
)
-----) ISCR Case No. 08-05035
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Candace Le'i, Esquire, Department Counsel
For Applicant: *Pro Se*

October 30, 2008

Decision

HARVEY, Mark W., Administrative Judge:

Applicant used and continues to possess a currently valid French passport, which she obtained to facilitate travel to France. She visited France in 2001, 2005 and 2006. Security concerns pertaining to foreign influence are mitigated; however, security concerns pertaining to foreign preference are not mitigated. Eligibility for a security clearance is denied.

Statement of the Case

On August 31, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or Security Clearance Application (SF 86) (Government Exhibit (GE) 1). On August 15, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her (GE 4), 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, modified and revised. The SOR alleges security

concerns under Guidelines B (Foreign Influence) and C (Foreign Preference).¹ 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 her, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On September 4, 2008, the Department of Defense Office of Hearings and Appeals (DOHA) received Applicant's response to the SOR allegations (GE 5). On September 29, 2008, Department Counsel indicated she was ready to proceed. The case was assigned to me on October 2, 2008.

At the hearing held on October 16, 2008, Department Counsel offered two exhibits (GEs 1-2) (Transcript (Tr.) 17). There were no objections, and I admitted GE 1-2 (Tr. 17-18). Applicant did not offer any exhibits (Tr. 7-8). Additionally, I admitted the Hearing Notice (GE 3), SOR (GE 4), and Applicant's response to the SOR (GE 5). I received the transcript on October 23, 2008. I admitted additional documentation on October 28, 2008, to support facts regarding the French Republic section of the Findings of Fact (Administrative Judge's Exhibit (AJ Ex.) I).

Administrative Notice

After the hearing, I decided it was appropriate to take administrative notice of some basic facts concerning France, as well as about France's relationship to the United States.² I emailed the parties, offering an opportunity to object to my consideration of the contents of AJ Ex. I for administrative notice. I did not receive any objections. The specific facts noticed are in the section of this opinion labeled "French Republic."

¹On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006. The revised Adjudicative Guidelines are applicable to Applicant's case.

²Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings, is to notice facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Requests for administrative notice may utilize authoritative information or sources from the internet. See, e.g. *Hamdan v. Rumsfeld*, 126 S.Ct. 2749 (2006) (citing internet sources for numerous documents). In this case the source for the facts is the U.S. Department of State, Bureau of European and Eurasian Affairs August 2008, "Background Note: France," available at <http://www.state.gov>.

Findings of Fact³

Applicant admitted the SOR allegations in SOR ¶¶ 1.a, 1.b, 1.c, 2.a and 2.b (GE 5). Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant was born in the United States in 1981 (Tr. 3, GE 1). Eight months after Applicant was born, she was declared a French citizen at the French embassy (GE 2 at 3). She has worked for a U.S. government contractor for the last 18 months (Tr. 32). She provides research and budgeting for a government contractor (Tr. 32). She does not require a clearance for her current position (Tr. 32). Her employer wanted her to perform other duties, which require a clearance (Tr. 32). She is not married and does not have any children (Tr. 25). She does not share her residence with anyone (Tr. 25). She attended college in Canada from 1999 to 2001 and in the United States from 2001 to 2006 (GE 1).⁴ She earned a master's degree in education in 2006 (Tr. 4, GE 1).

Applicant's mother was born in France in 1951, and her father was born in France in 1955 (GE 1). Her parents are naturalized U.S. citizens (GE 1). She talks to them probably every other day, and she sees them on a weekly or every other week basis (Tr. 22). Her grandmother, who was a French citizen and lived in France, passed away in 2006 (Tr. 22, SOR ¶ 2.c). Her brother is also a U.S. citizen (GE 1).

Applicant has five uncles on her father's side of the family who live in France (Tr. 23). She has other more distant relatives who live in France such as cousins (Tr. 23). She had occasional direct contact, or indirect contact through her parents, with her family members living in France. She was not aware of any of her relatives living in France working for the French government or serving in the French military (Tr. 23). The French embassy in the United States has employed Applicant's mother for the past twenty-five years (Tr. 23-24, SOR ¶ 1.b). Applicant's mother expects to retire in the next two or three years (Tr. 24). Her mother does not hold a security clearance (Tr. 24). Applicant's father works for a heating and air conditioning firm in the United States (Tr. 24).

Applicant has been employed by the U.S. government, or U.S. firms, off and on since she was 16 years old (Tr. 26). She has a 401K account with her U.S. company, which contains about \$3,000 (Tr. 30). She has four uncles on her mother's side of the family who live in the United States (Tr. 23).

³Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

⁴ During this period, she received some college credit from an internet-based educational institution while she lived overseas.

Foreign Preference

Applicant received a French passport shortly after she was born (Tr. 19). It was renewed every ten years and most recently in 1999 (Tr. 18-19; SOR ¶ 1.a). It expires in 2009 (GE 2). She spent her summers in France, when she was in elementary school (Tr. 31). She used her French passport when she visited France in 2001 for two weeks, in 2005 for two weeks and in 2006 for ten days (Tr. 20, 23, 26-27, GE 2; SOR ¶ 1.b). Her last visit to France was in 2006 for her grandmother's funeral (Tr. 23). Because of her French citizenship, she received reduced tuition expenses while attending college in Canada from 1999 to 2001 (Tr. 20, SOR ¶ 1.c).

Applicant has not voted in any French elections (Tr. 21). She does not own any property or have any investments in France (Tr. 21-22). Her parents do own some land in France (Tr. 31); however, Applicant does not believe it is likely she will inherit this property (Tr. 21). Her parents have never said anything about her or her 23-year-old brother inheriting this land (Tr. 21-22).

Applicant retained her French passport because of her deep sense of French heritage (Tr. 16, 25, GE 2). At her hearing, she was unsure about whether she would renounce her French citizenship and/or destroy or give up her French passport (Tr. 17, 25, GE 2). I explained the importance of surrendering or invalidating her French passport, if she wanted to have a security clearance (Tr. 28-29, 35-36).

Applicant did not provide evidence that she turned-in her French passport to her security officer, destroyed it in the presence of her security officer, or otherwise invalidated it. On October 27, 2008, she informed Department Counsel that she did not intend to renounce her French citizenship (AJ Ex. I).

French Republic⁵

France is a permanent member of the United Nations Security Council, North Atlantic Treaty Organization (NATO), the G-8, the European Union, the Organization for Security and Cooperation in Europe (OSCE), the World Trade Organization and various multilateral organizations. "France is also America's oldest ally; French military intervention was instrumental in helping Britain's American colonies establish independence." (AJ Ex. I at 8). More American soldiers have been killed on French soil (because of World Wars I & II) than on that of any other foreign country. France supports the U.S. initiative under Quartet for resolving Middle East problems. Since 2003, France has supported four U.N. Security Council resolutions in Iraq and provided funds as part of the European Union—Iraq contribution. Since 2006, France has joined the United States and others in actively discouraging Iran from pursuing nuclear weapons.

⁵ AJ Ex. I is the source for the facts in this section. See also Administrative Notice, *supra*.

The U.S. State Department describes the international relationship with France as “active and friendly” (AJ Ex. I at 10). “France and the United States share common values and have parallel policies on most political, economic, and security issues. Differences are discussed frankly and have not generally been allowed to impair the pattern of close cooperation that characterizes relations between the two countries.” *Id.* France has significantly increased participation in NATO’s military wing in recent years. *Id.* at 9. France ended conscription in 2002 and is modernizing its military forces. *Id.* at 9-10. Although France opposed the U.S. invasion of Iraq, France has 2,200 soldiers serving in Afghanistan, and assisted in assembling \$21 billion in pledges for economic assistance to Afghanistan. France is a close ally of the United States in the war on terrorism. In December 2007, France convicted five former Guantanamo detainees on terrorism charges. *Id.* at 10.

The United States and France have strong economic relationships with each other. The United States is France’s sixth-ranked supplier of imports. The United States is the top destination for French investments worldwide. The United States is the largest foreign investor in France, employing over 619,000 French citizens. France is the United States’ eighth trading partner for total goods.

Policies

When evaluating an Applicant’s suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge’s over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” 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 Government has the initial burden of establishing controverted facts alleged in the SOR by “substantial evidence,” demonstrating, in accordance with the Directive, that it is not clearly consistent with the

national interest to grant or continue an applicant's access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision."⁶ Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).⁷

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the 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.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968 (Aug. 2, 1995), Section 3.

Analysis

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 relevant security concern is under Guidelines C (Foreign Preference) and B (Foreign Influence).

Foreign Preference

Under AG ¶ 9 the security concern involving foreign preference arises, "[W]hen 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."

⁶See Directive ¶ E3.1.14. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁷The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his [or her] burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

AG ¶ 10(a)(1) describes one condition that could raise a security concern and may be disqualifying in Applicant's case, "(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 includes but is not limited to: (1) possession of a current foreign passport." Applicant renewed her French passport after becoming a U.S. citizen. She continues to possess a French passport that will be valid until 2009, establishing AG ¶ 10(a).

AG ¶ 11 provides conditions that could mitigate security concerns:

- (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- (b) the individual has expressed a willingness to renounce dual citizenship;
- (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;
- (d) use of a foreign passport is approved by the cognizant security authority;
- (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and
- (f) the vote in a foreign election was encouraged by the United States Government.

None of the mitigating conditions apply. She did not invalidate or relinquish her French passport. Applicant was advised at her hearing that she could mitigate Foreign Preference concerns through AG ¶¶ 11(d) and 11(e), however, she did not take action to effectuate these provisions.⁸

Foreign Influence

AG ¶ 6 explains the security concern about "foreign contacts and interests" stating:

if the individual has divided loyalties or foreign financial interests, [he or she] may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is

⁸In the decretal paragraph, I find "For Applicant" with respect to SOR ¶ 1.c because her receipt of a partial reduction in tuition at a Canadian university is too minor a benefit under all the circumstances to establish a foreign preference. It is simply too inconsequential in this case to merit any weight under the foreign preference guideline.

vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline 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, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 indicates two conditions that could raise a security concern and may be disqualifying in this case:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

(b) connections to a foreign person, group, government, or country that 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 person, group, or country by providing that information.

Applicant has family members who are citizens and residents of France. When she was in elementary school she spent some of her summers in France. She visited France in 2001, 2005 and 2006. She has occasional contact with her family members living in France either directly or indirectly through her parents. She continues to possess a valid French passport. Applicant's grandmother, who lived in France, passed away in 2006. Foreign influence as a security concern is not established with respect to Applicant's grandmother (SOR ¶ 2.c).

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an Applicant has frequent, non-casual contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. France and the United States have been allies since the Revolutionary War. It is very unlikely that France would put Applicant into a position where she would be forced to choose between loyalty to the United States and her family members living in France. With its strong human rights record, and friendly political and military relationship with the United States, it is not conceivable that France would coercively target any French citizen or

former citizen living in the United States in an attempt to gather valuable information from the United States.

Applicant's connections to her extended family living in France do not create a potential conflict of interest because this relationship is not sufficiently close to raise a possible security concern about her desire to help her family living in France by providing classified information.

As indicated previously, the Government's burden of "substantial evidence" is very low. The Government produced substantial evidence of Applicant's contacts with her family living in France, her relationship with them, and her travel to France in 2001, 2005 and 2006 to raise the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

- (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;
- (c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;
- (d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;
- (e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and
- (f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

AG ¶¶ 8(a), 8(b) and 8(c) apply with respect to Applicant's relationship with her family members living in France because she does not have a sufficiently close emotional bond with them. She did not describe regular or frequent communications with them. No living relatives, who are citizens and residents of France, are listed in the SOR.

There is no evidence that her family members living in France have been political activists, challenging the policies of the French Government. There is no evidence that terrorists or the French Government have approached or threatened Applicant or her family in France because of her work in the United States. There is no evidence that her family living in France currently engages in activities which would bring significant attention to them or that they or other French elements are even aware that Applicant works for a government contractor or might have access in the future to classified information. As such, there is a reduced possibility that these relatives would be targets for coercion or exploitation.⁹

Applicant's deep relationship with her parents and brother and her strong connections to the United States tend to mitigate foreign interest security concerns. Applicant has "such deep and longstanding relationships and loyalties in the U.S., [she] can be expected to resolve any conflict of interest in favor of the U.S. interest." Her parents and brother are U.S. citizens, and reside in the United States. Applicant has lived in the United States for most of her life. She is fully inculcated with U.S. values. All of her investments are in the United States, and she has no property or investments in France. She has many friends and colleagues in the United States. She is a loyal, dedicated and trustworthy U.S. citizen.

⁹ Contacts with relatives living in a foreign country are presumed to be "not casual." See ISCR Case No. 04-12500 at 4 (App. Bd. Oct. 26, 2006). In the analysis of countervailing evidence, it is legal error to give significant weight to any of the following facts or factors: applicant's ties to the United States (ISCR Case No. 02-13595 at 5 (App. Bd. May 10, 2005)); lack of prominence of relatives living in a foreign country (*Id.*); "family members' low-key and noncontroversial lifestyle, and the fact that the [foreign] government has not contacted them about Applicant" (ISCR Case No. 04-12500 at 4 (App. Bd. Oct. 26, 2006)); one relative living in a foreign country may be sufficient to negate FIMC 1 (ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006)); a foreign relative's fragile health (ISCR Case No. 02-29403 at 4 (App. Bd. Dec. 14, 2004)), advanced age (ISCR Case No. 02-00305 at 7 (App. Bd. Feb. 12, 2003)), financial independence (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)), or lack of financial dependency upon applicant (ISCR Case No. 03-15205 at 4 (App. Bd. Jan 21, 2005)); foreign relatives spend part of each year in the U.S. (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)); the lack of any connection between the foreign relative and the foreign government in question (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)); the absence of any attempt at exploitation in the past (ISCR Case No. 03-15205 at 4 (App. Bd. Jan. 21, 2005)); a foreign country's friendly relationship with the U.S., its stable, democratic government, or its extensive foreign military agreements with the United States (ISCR Case No. 02-22461 at 5-6 (App. Bd. Oct. 27, 2005)), an applicant's "refusal to travel to [the foreign country]" and "meticulous work habits and practice of strictly following the rules relating to his work" (ISCR Case No. 03-15205 at 3 (App. Bd. Jan. 21, 2005)). Notwithstanding the Appeal Board's position, I conclude that many of these attributes are pertinent to the analysis in this case under the whole person concept. Moreover, there is persuasive case law urging broad consideration of numerous factors in the whole person concept, which overrides these restrictive decisions.

Whole Person Concept

In all adjudications, the protection of our national security is the paramount concern. The adjudicative process is a careful weighing of a number of variables in considering the “whole person” concept. It recognizes that we should view a person by the totality of his or her acts, omissions, and motivations as well as various other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances and applying sound judgment, mature thinking, and careful analysis. Under the whole person concept, the Administrative Judge should consider the nine adjudicative process factors listed at Directive ¶ E2.2.1:

- (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.

Under Directive ¶ E2.2.3, “The ultimate determination of whether the granting or continuing of eligibility for a security clearance is clearly consistent with the interests of national security must be an overall common sense determination based upon careful consideration” of the guidelines and the whole person concept.

A Guideline B decision concerning France must take into consideration the geopolitical situation in France, as well as the dangers existing in France.¹⁰ France’s relationship with the United States has changed over the decades and is likely to change again in the future. France is and has been an important U.S. ally; however, on some occasions, such as the U.S. invasion of Iraq, has contested U.S. policy. France currently has an excellent human rights record. France has weapons of mass destruction, is an important trading partner and vigorously suppresses terrorism.

There are significant factors supporting approval of Applicant’s access to classified information. Applicant has lived in the United States for most of her adult life. She was born in the United States. Her parents are U.S. citizens and residents of the United States. Her assets are in the United States and she has no assets in France. Applicant is a law-abiding U.S. citizen, and there is no evidence of any performance or work-related problems. I found her statements to be honest, candid and credible.

Applicant’s direct contacts with her family in France and her indirect contacts with her family in France through her parents, who are dual citizens of France and the United

¹⁰ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole person discussion).

States, as well as her visits to France raise some foreign influence security concerns. Theoretically, she might be vulnerable to French coercion and non-coercive measures because of her French citizenship, background and family in France. However, there is no evidence that France engages in such conduct. There is no reason to believe the French government and/or French intelligence personnel would violate French, United States or international law, by using improper and/or illegal means to obtain classified information from Applicant. The key rationale for denying Applicant's clearance is her retention of a currently valid French passport, and her use of that passport to visit France. Of course, if she had "expressed a willingness to renounce dual citizenship," this would have mitigated some foreign preference concerns under AG ¶ 11(b), *supra*.

After carefully weighing the evidence of her connections to France and to the United States, I conclude Applicant has mitigated foreign influence security concerns; however, she failed to carry her burden of mitigating the foreign preference security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors"¹¹ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. For the reasons stated, I conclude she 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 APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a to 2.c:	For 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 eligibility for a security clearance for Applicant. Clearance is denied.

Mark W. Harvey
Administrative Judge

¹¹ See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).