



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



In the matter of:)	
)	
)	ISCR Case No. 08-05158
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Emilio Jaksetic, Esquire, Department Counsel
For Applicant: *Pro Se*

November 10, 2008

Decision

RIVERA, Juan J., Administrative Judge:

Applicant mitigated the foreign influence security concerns arising from her relationship and contacts with France and French citizens. She failed to mitigate the foreign preference security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted her security clearance application on May 9, 2007 (Electronic Questionnaires for Investigations Processing (e-QIP)) (GE 1). On July 14, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her.¹ The SOR alleges security concerns under Guideline C (Foreign

¹ The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended, modified, and revised (Directive), and the revised adjudicative guidelines (AG) promulgated by the

Preference) and Guideline B (Foreign Influence).² 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.

Applicant answered the SOR (Answer) on August 8, 2008, and requested a hearing before an Administrative Judge. The case was assigned to me on August 26, 2008. DOHA issued the notice of hearing on September 8, 2008. The hearing was convened as scheduled on October 2, 2008. The government offered exhibits (GE) 1 through 6, which were admitted without objection (Tr. 21). Applicant testified on her own behalf, and presented exhibits (AE) 1 through 11, which were admitted without objection (Tr. 32). DOHA received the transcript of the hearing (Tr.) on October 10, 2008.

Procedural Issue

On October 23, 2008, I called a post-hearing telephone conference call. Present during the telephonic conference were Applicant and Department Counsel. The purposes of the conference call were: (1) Make Applicant aware of the security concerns raised by her possession of a French identification card; (2) Ascertain Applicant's intentions with respect to her French identification card. Applicant promised to never use her French identification card to travel again. During the conference call, she stated she was not willing to surrender her French identification card because that would be equivalent to surrendering her French citizenship.

On October 27, 2008, I issued an Order summarizing my recollection of the conference call. Department Counsel and Applicant were served with a copy of the Order and allowed five days, from the date of the order, to submit comments. The Order and the parties' comments are attached to the record as Appellate Exhibit 1 (Order), Appellate Exhibit 2 (Department Counsel's comments, received October 30, 2008); Appellate Exhibit 3 (1st Applicant's comment - a one-page document faxed to me on November 1, 2008, dated October 30, 2008); and Appellate Exhibit 4 (Applicant's 2nd comment - a one-page document, dated October 31, 2008, faxed to me on November 3, 2008). All submissions were considered in my decision.

Findings of Fact

In her Answer, Applicant admitted all the SOR allegations. She explained her actions were motivated by practical considerations and denied her actions

President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

² On 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, modified and revised.

demonstrated any preference for France over the United States. Her admissions are incorporated herein as findings of fact. After a thorough review of all evidence of record, I make the following additional findings of fact.

Applicant is a 22-year-old research analyst working for a defense contractor. She was born in France to a U.S. born father and a French mother. She is a citizen of both the United States and France. She grew up and was educated in France. While in France, she enjoyed all the privileges and rights of a French citizen. She has never been married and has no children. She attended an international high school in France to cultivate and nurture her American identity (Tr. 37). After high school, she was qualified to attend one of France's most prestigious universities free of charge. Instead, she chose to attend a prestigious U.S. university at her own expense.

Applicant elected to attend a U.S. university because of her attachment to the United States, and her belief in the United States' strength, values, and its education system (Tr. 38). In August 2008, she received a Bachelor's degree in International Relations (Tr. 6, 80). While studying in the United States from August 2004 to August 2008, Applicant travelled to France every summer and fall vacations to visit her parents, relatives, and friends. During the 2005 summer vacation, she worked in France for a French gourmet food company. In the summer of 2006, she worked for what was then the French branch of a U.S. company (Tr. 39, AE 4). During the summer of 2007, she worked for a government contractor who detailed her to work for a U.S. government agency (AE 5).

From January to May 2008, she worked conducting sensitive research for a government contractor. Her employer considered Applicant a proficient and reliable employee who could be trusted with important projects. She never misused her access to sensitive information (AE 7). After college, Applicant was hired as a full-time employee by a U.S. government contractor. She is considered a trusted and valuable employee because of her job performance and her knowledge and familiarity with several foreign languages and cultures (Tr. 41).

Applicant's maternal grandmother was raised in the United States and spoke English to Applicant's mother as a child. She still communicates with Applicant in English. Applicant's mother is a citizen and resident of France. She lived three years in the United States as a legal resident alien. In 1976, she married Applicant's father in the United States (Tr. 43). Applicant's mother is a professor at a French institution. Applicant's mother maintains strong ties with her extended family members in the United States. While growing up in France, Applicant frequently travelled to the United States, to visit her parent's family members living in the United States (Tr. 85).

Applicant's father was born in the United States. He has lived in France for over 20 years and works as a professor at both a prestigious French institute and a school of business (Tr. 44, 68). He never applied for French citizenship, cannot vote in French elections, and votes in U.S. elections. Since her arrival to the United States in August 2004, Applicant has maintained frequent contact with her parents. Her parents call her

twice a week and they exchange e-mails two to three times a week (Tr. 64). Applicant has two uncles, two aunts, a grandmother, numerous extended family members, and high school friends who are residents and citizens of France. She has infrequent contact when them, visiting them when she travels to France (Tr. 62-63, 87). She last traveled to France to visit her parents in March and June 2008 (Tr. 76).

As of the day of the hearing, Applicant had a French bank account with an approximate value of \$1,200 (Tr. 41). Her father opened the bank account for her when she was a minor (Tr. 62, 72). She continues to use the bank account for practical reasons, i.e., to access money when she is in France while avoiding paying bank fees. She funded the account with money given to her by her parents and grandparents. She intends to close the bank account when it runs out of money (Tr. 72).

In December 2006, at age 20, Applicant applied for her first French passport (Tr. 51-55). Prior to December 2006, she only possessed and used her U.S. passport. She explained she applied for the French passport for practical reasons, and not because she has a preference for France over the United States (Tr. 35). As part of her U.S. university's curriculum, she participated in a student exchange program with another foreign country. While preparing for the trip, she realized her U.S. passport would expire while she was abroad. Knowing she would have to surrender her U.S. passport to have it renewed, and that it would take approximately one month for her to receive the new U.S. passport, Applicant applied for a French passport. She received her French passport in March 2007. She used her French passport for a period of approximately 18 months. During that time, she used her French passport to travel to Israel, Jordan, and to travel in and out of France from other European countries. On June 23, 2008, Applicant surrendered her French passport to her company's security officer because of the security clearance concerns it raised (AE 2).

Between August 2004 and the day of her hearing, Applicant used the French health care system because it was less expensive than the American health care system. She used the French health care system (her family doctors) while visiting her parents in France during her fall and summer vacations (Tr. 34, 60). The last time she used the French health care system was June 2008 (Tr. 74).

Applicant voted in the 2007 French presidential elections and in the 2008 French local elections (Tr. 56). She voted in French elections for several reasons: her parents live in France and they are affected by French government's policies; she believes that the political orientation and foreign policy agenda of a French president carries repercussions on world politics; and she considers important to her what happens in France (Tr. 65, GE 3 at item 14). To register and to vote in France, and to use the French health care system, Applicant had to establish her French citizenship by presenting her French identification card.

The French identification card was issued to Applicant by the French government as proof of her French citizenship. As of the hearing day, Applicant was in possession of a valid French identification card (Tr. 56). She has used her French identification card to

travel in and out of France, as well as to travel in and out of other European countries (Tr. 57-59). At her hearing, Applicant testified she intended to continue using her French identification card in her future trips to visit her family in France (Tr. 59).

On October 23, 2008, I called a post-hearing telephone conference call.³ Present during the telephonic conference were Applicant and Department Counsel. The purposes of the conference call were to make Applicant aware of the security concerns raised by her possession of a French identification card, and to ascertain her intentions with respect to her French identification card. During the conference call, Applicant promised to never use her French identification card as a travel document again. She indicated she was not willing to surrender her French identification card because that would be equivalent to surrendering her French citizenship.⁴ At the time, she did not consider it to be practical to surrender her French identification card, because she will need to use it in her future travels to France to visit her parents (Tr. 59).⁵

France is one of the United States' oldest allies and is one of the world's premier democracies. France and the United States share common values and have parallel policies on most political, economic, and security issues.⁶ Relations between the United States and France are active and friendly. Differences are discussed frankly and have not generally been allowed to impair the pattern of close cooperation that characterizes relations between the two countries. France has significantly increased participation in NATO's military wing in recent years. 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.

Policies

The purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.⁷

³ See Appellate Exhibits 1-4.

⁴ In her October 30, 2008 comments (Appellate Exhibit 3) to my Order, Applicant promised never to use her French identification card as a travel document again, and stated practical reasons for her to keep the French identification card. In her October 31, 2008 comments (Appellate Exhibit 4), Applicant stated her willingness to surrender her French identification card. She indicated she had conferred with the French Embassy in the United States and was informed that by surrendering her French identification card she would not be renouncing her French citizenship, but renouncing her ability to exercise her rights as a French citizen.

⁵ *Id.*

⁶ Adjudication of security concerns under Guideline B require the consideration of the foreign country involved and its relationship with the United States (AG ¶ 6). The source the facts in this paragraph is the U.S. Department of State, Bureau of European and Eurasian Affairs August 2008, "Background Note: France," available at <http://www.state.gov>. I marked the document Appellate Exhibit 5.

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 controlling 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 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."⁸ 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

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

⁷ See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁸ *Egan*, *supra*, at 528, 531.

applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline C, Foreign Preference

Under Guideline C the government’s concern is that “[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.” AG ¶ 9.

Applicant was born in France to a French mother and a native born U.S. father. She is a dual citizen of the United States and France. She was raised and educated in France. Up to her hearing date, Applicant has enjoyed all the privileges and rights of French citizens. Applicant’s possession and use of a French passport in preference of her U.S. passport, as well as her use of the French education, healthcare, and banking system shows she is exercising her French citizenship and preference for France. She worked in France, voted in French elections, and retained a French identification card, all constituting an exercise of French citizenship and raising security concerns under Guideline C.

At her hearing, during the October 23, 2008 conference call, and in her October 30, 2008 comments, Applicant declined to surrender her French identification card because she believed that would be tantamount to renouncing her French citizenship. In her October 31, 2008 comments, she indicated: “I would in fact be willing to surrender it.” However, Applicant provided no evidence she had surrendered her French identification card.

Applicant’s behavior raises security concerns under foreign preference disqualifying condition AG 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 includes . . . (1): possession of a current foreign passport . . . , (3) accepting educational, medical, retirement, social welfare, or other such benefits, and (7) voting in a foreign election.”

In 2004, at age 18, she travelled to the United States to attend college and since then she has made the United States her home. She also has worked for U.S. government contractors. All of Applicant’s financial and economic ties (except for a small French bank account) are in the United States. She has no other financial, economic, or proprietary interests in any foreign country. Applicant averred all her actions (requesting and using a French passport, holding a French bank account, her use of the French healthcare system, voting in France, and keeping her French identification card) were motivated by practical reasons and do not reflect a preference for France over the United States. She surrendered her French passport to her security officer on June 23, 2008.

These facts warrant partial application of foreign preference mitigating conditions AG ¶¶ 11(a): “dual citizenship is based solely on parent’s citizenship or birth in a foreign country;” 11(c): “exercise of the rights, privileges, or obligations of foreign citizenship occurred . . . when the individual was a minor;” and 11(e): “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.”

Notwithstanding, these mitigating conditions do not fully apply. Applicant’s security concerns were raised by her exercise of her French citizenship after she became an adult. Applicant requested and used a French passport in preference to her U.S. passport in 2006. She surrendered her French passport and that mitigated the passport specific issues. However, Applicant continues to exercise her French citizenship. As of October 2008, she still had a French bank account and possessed a valid French identification card. In 2008, she used the French healthcare system and voted in French elections. Applicant’s French identification card allows her to travel in and out of France, and other European countries. Considering the record as a whole, Applicant’s continued exercise of her French citizenship fails to mitigate the foreign preference security concerns.

Guideline B, Foreign Influence

Under Guideline B, the government’s concern is that:

Foreign contacts and interests may be a security concern 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 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 ¶ 6.

AG ¶ 7 sets out two conditions that could raise a security concern and may be disqualifying in this case, including:

(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.

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 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.⁹ Applicant has frequent contacts and a close relationship of affection and/or obligation with her parents and grandmother who are citizens and residents of France. The closeness of the relationship is shown by Applicant's frequent e-mail, telephone contacts, and trips to France. This contact creates a risk of foreign pressure or attempted exploitation because there is always the possibility that French agents or terrorists may exploit the opportunity to obtain information about the United States. Her connection to her parents also creates a potential conflict of interest because her relationships are sufficiently close to raise a security concern about her desire to help them by providing sensitive or classified information.

The government produced substantial evidence raising these two potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the government.

One Foreign Influence Mitigating Condition under AG ¶ 8 is applicable to these disqualifying conditions:

(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.

I do not believe Applicant's close relationships create a heightened risk of foreign pressure or attempted exploitation because the nature of the relations between the United States and France (active and friendly). France and the United States share common values and have parallel policies on most political, economic, and security issues. France is considered one of our oldest allies, and its government does not have a history of abusing or exploiting their citizens or U.S. citizens.

Since 2004, Applicant has made the United States her home. She attended an American university and has worked hard for defense contractors for approximately two years. All of Applicant's financial and economic ties (except for a small French bank

⁹ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

account) are in the United States. She surrendered her French passport. She has promised to use her skill and abilities to protect and promote United States' interests.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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 extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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 AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

Applicant is 22 years old and has only lived in the United States four years. She credibly asserted her desire to help protect and promote the United States interests. Applicant lived in France because she was a minor under the control of her parents. She attended an international high school and spoke English at home with her parents and grandmother, who provided her with a strong American influence. When she turned 18 in 2004, she moved to the United States and has lived in the United States thereafter.

In a short period, she has established herself in the United States. She has worked hard for government contractors earning their trust. There is no evidence she has ever taken any action which could cause potential harm to the United States, or that she lacks honesty and integrity. Her family is not likely to be vulnerable to coercion or exploitation by a foreign power or terrorist organizations in France.

Considering the evidence as a whole, numerous circumstances weigh against Applicant in the whole person analysis. Applicant's security concerns were raised by her exercise of her French citizenship after emancipation. Applicant requested and used a French passport in preference to her U.S. passport in 2006. As of October 2008, she still had a French bank account and possesses a valid French identification card. In 2008, she used the French healthcare system and voted in French elections. Applicant received credit for surrendering her French passport. However, she possesses a valid French identification card that allows her to travel in and out of France, and other European countries. Although she is willing to surrender her French identification card,

Applicant presented no evidence she surrendered it. Her exercise of her French citizenship creates doubt as to whether she would have a preference for France over the United States.

I considered the longstanding, active and friendly relationship between France and the United States, and that both countries share common values, and have parallel policies on most political, economic, and security issues. Notwithstanding, a friendly relationship is not determinative. Friendly countries may have profound disagreements with the United States or have engaged in espionage against the United States especially in economic, scientific, military, and technical fields. Even friendly countries can attempt to gain unauthorized access to classified information. ISCR Case No. 08-0592 (App. Bd. May 4, 1999). Nothing in Guidelines B or C requires that the foreign country in question have interests that are inimical to the interests of the United States. ISCR Case No. 97-0699 (App. Bd. Nov. 24, 1998).

“Because of the extreme sensitivity of security matters, there is a strong presumption against granting a security clearance. Whenever any doubt is raised . . . it is deemed best to err on the side of the government’s compelling interest in security by denying or revoking [a] clearance.” *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990).

On balance, after weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude she has mitigated the security concerns pertaining to foreign influence, but failed to mitigate the foreign preference security concerns.

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, 1.b, and 1.d - 1.f:	Against Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a - 2.h:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant's security clearance. Eligibility for access to classified information is denied.

JUAN J. RIVERA
Administrative Judge