



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 10-00357
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Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

February 28, 2011

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns raised by his status as a dual citizen of the United States and France. Based upon a review of the pleadings, exhibits, and transcript, Applicant's request for a security clearance is granted.

On April 13, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his job with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant two sets of interrogatories¹ to clarify or augment information obtained in his background investigation. After reviewing the results of the background investigation and Applicant's responses to the interrogatories, DOHA adjudicators were

¹ Authorized by DoD Directive 5220.6 (Directive), Section E3.1.2.2.

unable to make a preliminary affirmative finding² that it is clearly consistent with the national interest to grant Applicant's request for access to classified information. On August 6, 2010, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which, if proven, raise security concerns addressed in the adjudicative guidelines (AG)³ for foreign preference (Guideline C).

Applicant timely answered the SOR and requested a decision without a hearing. On September 16, 2010, Department Counsel requested a hearing.⁴ The case was assigned to me November 10, 2010, and, pursuant to a Notice of Hearing issued on November 16, 2010, I convened a hearing on December 9, 2010. Applicant appeared as scheduled. The Government presented four exhibits that were admitted without objection as Government Exhibits (Gx.) 1 - 4. Applicant testified in his own behalf. DOHA received a transcript (Tr.) of the hearing on December 28, 2010.

Findings of Fact

Under Guideline C, the Government alleged that Applicant, a U.S. citizen by birth, obtained French citizenship in 2001 (SOR 1.a); that he used his French citizenship to work in France (SOR 1.b); that in August 2001, he obtained a French passport (SOR 1.c); that he maintains a French identification card, which was issued in February 2002 and expires in January 2012 (SOR 1.d); and that he received unemployment benefits from the French government (SOR 1.e).

Applicant admitted SOR 1.a, 1.b, 1.d and 1.e. He denied that he obtained a French passport as alleged in SOR 1.c. Applicant's admissions are incorporated in my findings of fact. Having reviewed the pleadings, the transcript, and exhibits, I make the following additional findings of relevant fact.

Applicant was born and raised in the United States. He is now 37 years old and employed by a defense contractor as an armed security guard. He has held that job since March 2009. Since January 2007, Applicant has worked as an armed security guard for three other employers, but this is his first application for a security clearance. (Gx. 1; Tr. 6)

From 1993 until 1995, Applicant attended college on a Division 1 basketball scholarship. After graduating, he was recruited to play professionally in Europe. From October 1996 until October 2006, he lived in France and played on several French professional basketball teams. Because league rules prohibited French teams from carrying more than two American players on their roster, American players obtained

² Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

³ The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006). Pending official revision of the Directive, they take precedence over the guidelines listed in Enclosure 2 to the Directive.

⁴ Authorized by Directive, Section E3.1.7.

French citizenship for work purposes after residing there for five years. Applicant became a French citizen in 2001 to improve his chances of keeping a spot on a team roster. (Gx. 2; Gx. 3; Tr. 36)

When Applicant became a French citizen, he was issued an identification card, but he did not obtain a French passport. The only passport he has ever held is a U.S. passport issued to him in April 2005. He used that passport for travel in Europe and when he last traveled to France in December 2007. (Gx. 1; Gx. 2; Tr. 27 - 30 - 32)

Applicant was interviewed for his clearance by Government investigators in November 2008 and June 2009. In summaries of those interviews, Applicant is reported to have stated that he had a French passport. However, in response to DOHA interrogatories, Applicant provided a copy of his French identification card, which was issued in 2002 and expires in 2012. Applicant has turned in the identification card to his employer's Facility Security Officer (FSO), who punched holes in it to invalidate the card. (Answer to SOR; Gx. 3; Gx. 4; Tr. 30 - 31)

While living in France, Applicant met and married a French citizen in April 2000. They have two children, ages 10 and 3, who are dual citizens of France and, by virtue of Applicant's American citizenship, the U.S. Applicant and his wife are estranged and have been separated since his return to the United States in October 2006. Applicant is living with a girlfriend, but he still supports his children and intends to visit them when he is able. (Gx. 3; Tr. 31)

Applicant retired from professional basketball in 2006 after undergoing a fifth knee operation. At times when he was injured, his French team did not pay him if he could not play. After he became a French citizen, his team arranged for him to receive unemployment benefits from the French government. (Gx. 3; Tr. 29, 33 - 34)

Applicant has not received any benefits from the French government since 2006. He never voted in any foreign election, has no financial or other interests in any foreign country, and has never served in a foreign military. Applicant's access to his children and his support for them is not conditioned on his status as a French citizen. He has not actively exercised any aspect of his French citizenship since he left France in 2006.

Applicant is well-trained and highly qualified for his job as an armed guard. He is also continuing his education to obtain a degree in criminal justice. (Gx. 4)

Policies

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

material information,⁶ and consideration of the pertinent criteria and adjudication policies in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors 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 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.

The presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR.⁷ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁸ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her 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.⁹

Analysis

Foreign Preference

Applicant admitted the allegations at SOR 1.a, 1.b, 1.d, and 1.e. Accordingly, it was established that Applicant was born and raised as a U.S. citizen, but obtained and exercised French citizenship in connection with his employment as a professional athlete in France. It was also established that he received unemployment benefits from

⁶ Directive. 6.3.

⁷ Directive, E3.1.14.

⁸ See *Egan*, 484 U.S. at 528, 531.

⁹ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

the French government while he was injured and unable to work. In 2002, the French government issued him an identification card, which was to expire in 2012.

Because Applicant denied SOR 1.c, the Government retained the burden of proving that Applicant had obtained a French passport. According to the summaries of his two interviews with Government investigators, Applicant stated that he had received a French passport. This information is sufficient to support the allegation. However, in response to the SOR and at the hearing, it became clear that Applicant was referring to the French identification card issued in 2002. Nonetheless, available information raises the security concern about possible foreign preference articulated at AG ¶ 9 as follows:

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.

More specifically, the record requires application of the disqualifying condition at 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 but is not limited to: (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country*). Applicant received unemployment benefits from the French government at various times through October 2006 when injury prevented him from working.

By contrast, none of the mitigating conditions at AG ¶ 11 specifically applies to these facts and circumstances. Applicant obtained foreign citizenship as an adult and has not expressed a willingness to renounce his French citizenship. However, his French citizenship was obtained for a limited purpose under unique circumstances. Applicant has not exercised that citizenship since he left France in 2006. Even when he was living in France, he used his U.S. passport to travel. Moreover, Applicant's French identification card, initially thought to be a French passport, has been relinquished and altered with the intent to render it invalid. Applicant has no property or financial interests outside of the United States, and aside from his children and estranged wife, has no further connection to that country. On balance, Applicant's status as a dual citizen of France and the United States does not present an unacceptable security risk.

Whole-Person Concept

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guideline C. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 37 years old and has been steadily employed in the United States since 2006. All of his property interests are in the United States. Despite the fact that his children live in France and he may visit them occasionally, since 2006, he has not established or maintained any connection to France through his status as a citizen of that country. Applicant is studying here and lives with his girlfriend here. The only reason for him to exercise his French citizenship – his ability to play professional basketball – no longer exists. A fair and commonsense

assessment of all of the available information shows that Applicant has mitigated the security concerns about his French citizenship.

Formal Findings

Formal findings 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: FOR APPLICANT

Subparagraphs 1.a - 1.e: For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest to grant or continue Applicant's access to classified information. Request for security clearance is granted.

MATTHEW E. MALONE
Administrative Judge