



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



In the matter of:)	
)	
-----)	ISCR Case No. 10-03427
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel

For Applicant: *Pro se*

April 8, 2011

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigative Processing (e-QIP) on January 19, 2010. (Item 5.) On September 20, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines C (Foreign Preference) and B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on September 29, 2010, and requested a decision be made without a hearing. Department Counsel submitted a File or Relevant Material (FORM) to Applicant on October 28, 2010. Applicant received the FORM on November 2, 2010, and was given 30 days to submit any additional information. Applicant did not submit any additional information. The case was assigned

to me on January 6, 2011. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 30 and married. He is employed by a defense contractor, and seeks a security clearance in connection with his employment in the defense industry. Applicant admitted the factual allegations in the SOR. Those admissions are deemed findings of fact.

Paragraph 1 (Guideline C - Foreign Preference)

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in a way that shows a preference for another country instead of the United States.

Applicant was born and raised in France. He went to school in France and received his Master's degree there. Applicant moved to the United States in 2005. He is married to a native-born American citizen. Applicant became an American citizen in August 2009. (Items 5 and 7.)

Applicant has a valid French passport, which was issued in November 2003 and valid through October 2013. He also has a valid United States passport, which was issued in December 2009 and valid through December 2019. (Item 6.) When answering a set of interrogatories propounded by DOHA dated June 2010, Applicant stated, "As I do not have a current obligation to give up my French passport, I wish to keep all my ID documents (including passport) up to date. (Item 6 at 3.) In his Answer to the SOR, Applicant states, "I do not plan on renewing it [French passport] once expires. I will only keep my US passport." (Item 4 at 1.)

During an interview with an agent from the Office of Personnel Management, held in February 2010, Applicant stated that he:

has not used this [French] passport since becoming a United States citizen. Subject [Applicant] plans to use this passport only to travel to France in the future. Subject would rather travel to France on his US passport, but subject does not know if French immigration will require subject to enter on his French passport. Subject would be willing to relinquish this passport for security reasons, provided that this would not mean relinquishing his French citizenship. (Item 7 at 3-4.)

No information was provided by Applicant showing that use of the French passport was approved by the cognizant security authority. In addition, no information was provided showing that the passport has been destroyed, surrendered to the cognizant security authority, or other wise invalidated.

Paragraph 2 (Guideline B - Foreign Influence)

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts and interests that could lead to the exercise of poor judgment, unreliability or untrustworthiness on the part of the Applicant.

Applicant's parents and sister are French citizens and live in France. None of them work for the French Government. (Item 7.)

Applicant has visited France five times since May 2006. His most recent trip to France was in 2010. For that trip he used his US passport. (Item 6 at 10.)

Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used as appropriate 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 overarching adjudicative goal is a fair, impartial, and commonsense 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. In addition, the administrative judge may also rely on his or her own common sense, as well as his or her knowledge of the law, human nature and the ways of the world, in making a reasoned 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.

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. Security clearance decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the applicant's conduct and the granting or continued holding of a security clearance. If such a case has been established, the burden then shifts to the applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

Paragraph 1 (Guideline C - Foreign Preference)

Applicant has not mitigated the Government's concerns about his continued holding of a current French passport. The concern is stated thus under this Guideline:

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.

In this case the Government has met its initial burden of proving by substantial evidence that Applicant has a French passport that will not expire until 2013. Accordingly, AG ¶ 10 applies to the facts of this case:

Conditions that could raise a security concern and may be disqualifying include: (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.

The Applicant has repeatedly stated that, while he will not renew his French passport when it expires, he wishes to retain it. AG ¶ 11(d) and 11 (e) do not apply to this case in that the “use of a foreign passport has not been approved by the cognizant security authority,” nor has “the passport been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.” None of the other mitigating conditions are applicable to this case. Guideline C is found against the Applicant.

Paragraph 2 (Guideline B - Foreign Influence)

The concern under Guideline B is styled as follows:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, 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.

The Applicant has family connections to France. He travels to Europe on a fairly frequent basis to visit his parents, sisters and friends.

The following Disqualifying Conditions apply to this case based solely on the facts:

AG ¶ 7(a) contact with a foreign family member . . . 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; (b) connections to a foreign person . . . 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 . . . by providing that information.

Applicant has not submitted any evidence to show that he has substantial family and financial ties in the United States that outweigh his relationship to any European country. Nor has he submitted any evidence showing that he does not have a conflict of interest between his loyalties to France, the country of his family and birth, and the United States.

Applicant has not provided compelling evidence to show that the following Mitigating Conditions apply to this particular case, given his particular background:

AG ¶ 8(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.; and (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.

Based on my analysis of the available information, the Applicant has not overcome the adverse inference of his family members' presence in France. Guideline B is found against the Applicant.

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. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. My Guideline B and C analysis is applicable to the whole-person analysis as well. The Applicant may very well be a

patriotic American citizen. The problem here is that he is knowingly and consciously retaining his French passport. In addition, he failed to present compelling evidence showing that his preference is for the United States and not France. It is the Applicant's burden to make such a case, and he has not done so. For those reasons, I cannot find that there is little or no "potential for pressure, coercion, exploitation, or duress" as set forth in AG ¶ 2(a)(8). Using the whole-person standard, the Applicant has not mitigated the security significance of his foreign preference and foreign connections. He is not eligible for a security clearance.

On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

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 THE APPLICANT
Subparagraph 1.a:	Against the Applicant
Paragraph 2, Guideline B:	AGAINST THE APPLICANT
Subparagraph 2.a:	Against the Applicant
Subparagraph 2.b:	Against the Applicant
Subparagraph 2.c:	Against the Applicant

Conclusion

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

WILFORD H. ROSS
Administrative Judge