



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 12-02082  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

03/26/2014

**Decision**

DUFFY, James F., Administrative Judge:

Applicant mitigated the Guideline B (foreign influence) security concerns, but failed to mitigate the Guideline C (foreign preference) security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On August 20, 2013, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines B and C. DOD CAF acted under Executive Order (EO) 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 on September 1, 2006.

On September 9, 2013, Applicant answered the SOR and indicated that he did not wish to have a hearing. On September 23, 2013, the then-assigned Department

Counsel submitted a request for a hearing. The case was assigned to me on December 6, 2013.

The Defense Office of Hearings and Appeals (DOHA) first issued a notice of hearing in this case on December 20, 2013, scheduling the hearing for January 21, 2014. The hearing was postponed due to a shutdown of the Federal Government in the Washington DC metropolitan area on that date because of a snow storm. After coordinating with Applicant, a second notice of hearing was issued on January 23, 2014, and the hearing convened as scheduled on February 3, 2014. The Government offered exhibits (GE) 1 and 2 that were admitted into evidence without objection. Applicant testified and offered no exhibits. The record was held open until February 17, 2014, for Applicant to submit additional information. His email confirming that he did not submit any post-hearing documents is marked as Hearing Exhibit (HE) 1. DOHA received the hearing transcript (Tr.) on February 12, 2014.

### **Findings of Facts**

Applicant is a 34-year-old payroll consultant who works for a defense contractor. He has been working in that capacity since April 2006. After transferring some college credits from a school in France, he obtained a bachelor's degree from a university in the United States in December 2002. He has never been married and has no children. In the past, he held a security clearance without incident.<sup>1</sup>

The SOR alleged, under Guideline B, that Applicant's parents, sister, and brother are citizens and residents of France and that he maintained bank accounts in France totaling approximately \$18,000. Under Guideline C, the SOR alleged that Applicant currently held a French passport that was issued in March 2010 and will expire in March 2020 and that, although a U.S. citizen by birth, he exercised his French citizenship to obtain medical benefits in France. In his Answer to the SOR, Applicant admitted each allegation. His admissions are incorporated as findings of fact.<sup>2</sup>

Applicant is a dual citizen of the United States and France. He is a U.S. citizen by birth and acquired his French citizenship through his parents. He lived in France from 1990 to 1995 and from 1997 to 2000. He has also lived in Gabon and Norway. At the hearing, he stated that he has always had a French passport and has used it as a matter of convenience to expedite clearance through European immigration and customs. He most recently renewed his French passport in March 2010, and it will not expire until March 2020.<sup>3</sup>

Applicant testified that he was aware that possession of a foreign passport created a security concern, but was unaware of the possible option of surrendering the

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<sup>1</sup> Tr. 6-7, 26-29; GE 1.

<sup>2</sup> Applicant's Answer to the SOR.

<sup>3</sup> Tr. 19-25, 36-41; GE 1, 2.

foreign passport to a facility security officer. After a discussion of this issue, he indicated that he would be willing to surrender his foreign passport if he could retrieve it to travel to Europe. The record of the proceeding was left open for two weeks following the hearing to provide him an opportunity to determine what he wanted to do regarding his foreign passport. As noted above, he submitted no post-hearing matters.<sup>4</sup>

Applicant maintains a checking and savings account in France. Both accounts total about \$16,000. He indicated that these accounts are used when he vacations in Europe and are not important to his overall financial position. He also has exercised his French citizenship by receiving medical care in France. He obtained medical benefits while he was a student there. He has not obtained any medical benefits from France in over a decade. He is registered to vote in France, but has never voted there.<sup>5</sup>

Since about 2001, Applicant has primarily resided in the United States and indicated that he does not “plan on going anywhere.” He stated that he considers himself a U.S. citizen, but also declared that he “would not renounce [his] French citizenship for a job.”<sup>6</sup>

Applicant’s parents, sister, and brother are citizens of France. They reside in Paris. Applicant’s father is a retired engineer who worked for a private oil company. His mother was a homemaker. His brother owns a small mobile media company. His sister is an administrative assistant at a private airline. He communicates with his parents every couple of days, with his sister about twice a week, and with his brother once or twice a month. He traveled to France or French territories in 2003-2004, 2006-2007, 2009, and 2013. He indicated that he did not have any other connections in France.<sup>7</sup>

Although no request was made concerning the administrative notice of facts about France, the following facts about that country were obtained from a U.S. Department of State website.<sup>8</sup> The United States and France are longstanding allies. Relations between the United States and France are active and friendly. The two countries 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.

The U.S. and France work closely on many issues, most notably in combating terrorism, efforts to stem the proliferation of weapons of mass destruction, and on

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<sup>4</sup> Tr. 21-25, 33-34; GE 1, 2; HE 1.

<sup>5</sup> Tr. 25-26, 29-32; GE 1, 2.

<sup>6</sup> Tr. 19-23, 33-34; GE 1, 2.

<sup>7</sup> Tr. 32-36; GE 1.

<sup>8</sup> See <http://www.state.gov/r/pa/ei/bgn/3842.htm>

regional problems, including in Africa, the Middle East, the Balkans, and Central Asia. France is a member of the European Union and is the United States' third-largest trading partner in Europe (after Germany and the U.K.). Trade and investment between the United States and France are strong. On average, over \$1 billion in commercial transactions, including sales of U.S. and French foreign affiliates, take place every day. U.S. exports to France include industrial chemicals, aircraft and engines, electronic components, telecommunications, computer software, computers and peripherals, analytical and scientific instrumentation, medical instruments and supplies, and broadcasting equipment. The United States is the top destination for French investment and the United States is the largest foreign investor in France. The United States and France have a bilateral convention on investment and a bilateral tax treaty addressing, among other things, double taxation and tax evasion.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions that are to be used 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, administrative judges apply the guidelines 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.

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.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B, Foreign Influence**

AG ¶ 6 expresses the security concern regarding foreign influence:

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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. Three are potentially applicable here:

- (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;
- (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; and
- (e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant's immediate family members are citizens and residents of France. Understandably, he maintains close contact with them. He resided in France for eight years in the 1990s, maintains bank accounts there, and travels there frequently.

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 first became allies in the American Revolution. It is very unlikely that France would put Applicant in a position where he would be forced to choose between loyalty to the United States and his family members living in France. With its strong human rights record, and its friendly political and military relationship with the United States, it is not conceivable that France would coercively target any French citizen or dual citizen living in the United States in an attempt to gather valuable information from the United States.

AG ¶¶ 7(a) and 7(e) require substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk of greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant's family ties to a foreign country as well as each individual family tie must be considered.

Additionally, the Government's burden of "substantial evidence" is very low. The Government produced substantial evidence of Applicant's contacts with his family living in France, his relationship with them, and his French bank accounts to raise the issue of potential foreign influence. AG ¶¶ 7(a), 7(b), and 7(e) apply.

AG ¶ 8 provides conditions that could mitigate foreign influence security concerns. Four are potentially applicable in this case.

(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; 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.

Applicant's contacts and interests in France are not minimal, infrequent, or casual. On the contrary, his close family ties there are significant. AG ¶ 8(c) does not apply.

No evidence was presented that Applicant's family members living in France are politically active or are affiliated with the French Government. There is no evidence that terrorists or the French Government have approached or threatened Applicant or his family in France because of his work in the United States. There is no evidence that his 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 as a consultant for a government contractor or might have access in the future to classified information. As such, it is unlikely that Applicant 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. AG ¶ 8(a) applies.

Applicant's financial holding in France, while not negligible, are unlikely to create a conflict of interest or be used as a means to exploit or pressure him. He is a U.S. citizen by birth. He has resided in the United States for most of the past 13 years. He graduated from college in the United States and has been employed primarily in the United States. He considers himself a U.S. citizen and intends to reside in the United States permanently. However, he is not inclined to renounce his French citizenship. AG ¶ 8(f) applies and ¶ 8(b) partially applies.

### **Guideline C, Foreign Preference**

Under AG ¶ 9 the security concern involving foreign preference is 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.

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying. Two are potentially applicable in this 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; (2) military service or a willingness to bear arms for a foreign country; (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country; (4) residence in a foreign country to meet citizenship requirements; (5) using foreign citizenship to protect financial or business interests in another country; (6) seeking or holding political office in a foreign country; (7) voting in a foreign election; and

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

Applicant obtained a French passport in 2010 that will not expire until 2020. He has used that passport to travel to France and other European countries. While residing in France, he also obtained medical benefits from France. AG ¶¶ 10(a) and 10(b) apply.

AG ¶ 11 provides conditions that could mitigate foreign preference 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. At the hearing, Applicant was advised that the security concern arising from an individual's possession of a foreign passport could be mitigated under AG ¶ 11(e). Nonetheless, Applicant provided no proof that he



destroyed or surrendered his foreign passport to an appropriate security official. His possession of a valid foreign passport remains a security concern.

### **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 relevant 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.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

By all accounts, Applicant appears to be a hardworking, law-abiding, responsible U.S. citizen. Nonetheless, he has failed to mitigate the security concern arising from his possession of a valid foreign passport.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. Considering all the evidence, I conclude Applicant mitigated the security concerns arising under the foreign influence security guideline, but failed to mitigate the security concerns arising under the foreign preference guideline.

### **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 B:	FOR APPLICANT
Subparagraphs 1.a – 1.d:	For Applicant

Paragraph 2, Guideline C:                   AGAINST APPLICANT  
Subparagraphs 2.a – 2.b:               Against 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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James F. Duffy  
Administrative Judge