



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



In the matter of: )  
(Redacted) ) ISCR Case No. 15-03609  
Applicant for Security Clearance )

**Appearances**

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

06/13/2017

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**Decision**

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant is a dual citizen of France and the United States. After being raised in France, he moved to the United States in August 2012. He retains strong connections to France, both familial and personal, but they are normal and not unusual. Applicant renewed his French passport in January 2016, but there is no evidence that he used a French passport to enter the United States or that he retains dual citizenship to protect financial or business interests in France. Clearance is granted.

**Statement of the Case**

On November 11, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline C, Foreign Preference, and Guideline B, Foreign Influence, and explaining why it was unable to grant a security clearance to Applicant. The DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the DOD on September 1, 2006.

Applicant responded to the SOR on December 9, 2015, and he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On August 4, 2016, DOHA amended the SOR to add two allegations under Guideline B. Applicant responded to the new allegations on August 22, 2016. On September 29, 2016, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant a security clearance for Applicant. On September 30, 2016, I scheduled a hearing for October 20, 2016.

I convened the hearing as scheduled. Nine Government exhibits (GEs 1-9) were admitted into evidence without objection. Applicant submitted no exhibits, but he testified as reflected in a transcript (Tr.) received on October 26, 2016. In response to Applicant's testimony that he had renewed his French passport in January 2016, the Government moved to amend the SOR to add an allegation under Guideline C (SOR ¶ 1.f) that Applicant continues to possess a valid French passport that he renewed in 2016. Finding good cause, I amended the SOR under the authority of ¶ E3.1.17. The record was held open for 30 days for Applicant to submit evidence in response to the amendment. No documents were received by the deadline, and the record closed on November 20, 2016.

While this case was pending a decision, Security Executive Agent Directive 4 was issued establishing National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated Applicant's security clearance eligibility under the new AG.

### **Summary of SOR Allegations**

The amended SOR alleges under Guideline C that Applicant is a dual citizen of France and the United States (SOR ¶ 1.a); that he applied for and received a French passport in 2005 that was valid to July 4, 2015 (SOR ¶ 1.b); that he voted in French elections in 2012 (SOR ¶ 1.c); that he received medical benefits while employed in France from September 2007 to July 2012 (SOR ¶ 1.d); that he earned a retirement stipend from France that will be paid monthly beginning in November 2049 (SOR ¶ 1.e); and that he possesses a valid French passport that he renewed in January 2016 (SOR ¶ 1.f). Under Guideline B, the SOR alleges that Applicant's spouse is a French citizen residing in the United States (SOR ¶ 2.a); that his mother is a dual citizen of France and the United States residing in France (SOR ¶ 2.b); that his father is a resident citizen of France (SOR ¶ 2.d); that his brother is a dual citizen of France and the United States (SOR ¶ 2.d); that his mother-in-law is a resident citizen of France (SOR ¶ 2.e); that Applicant maintains a bank account in France with an approximate value of \$135,000 (SOR ¶ 2.f); that he has a connection to, and contacts with, two French nationals affiliated with a French national research institute (SOR ¶¶ 2.g and 2.h).

Applicant admits the Guideline C allegations and the Guideline B allegations concerning the foreign citizenship and/or residency of his family members. He denies that

he maintains a French bank account with an approximate value of \$135,000 or that he has close connections to two French researchers. He maintains that while he had a past connection, as both had served as advisors for his doctorate studies, he has only formal, very intermittent contact with them at present.

### **Findings of Fact**

Applicant's admissions to the Guideline C allegations and to the foreign citizenship and/or residency of his family members as alleged in Guideline B are incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 32-year-old computer scientist who has worked as a research engineer for a defense contractor since August 2014. He applied for a DOD security clearance in September 2014. (GE 1.)

A native French citizen from birth, Applicant acquired his U.S. citizenship through his mother, a dual citizen of her native United States and France. His father is a native French citizen. Applicant's birth abroad was registered with the U.S. Consulate in September 1985. Applicant has one sibling, an older brother, who was born in the United States in 1982 and has dual citizenship with the United States and France. (GE 1; Tr. 35.)

Applicant was raised and educated in France except for two years between ages 8 and 10 when he lived in the United States. (GE 1; Tr. 75.) He held both French and U.S. passports. His latest French passport was renewed in January 2016. (Tr. 33-34.) His latest U.S. passport of record was issued in August 2005 for ten years. (GE 1.)

From September 2007 to February 2011, Applicant worked as a salaried doctoral student at a national government-funded scientific and technical research institute (hereafter French research institute), which was under the supervision of two ministries of the French government. (GEs 1, 4; Tr. 38.) Applicant worked with French research scientists, including with the institute's current executive officer for research and technology (French scientist X, identified in SOR ¶ 2.g) and with a permanent full-time researcher (French scientist Y, identified in SOR ¶ 2.h), both of whom served as advisors for his doctoral studies.<sup>1</sup> (GEs 1, 7.) At the time, the French research institute had a joint project with a Chinese university and a Chinese-French laboratory. (GE 5.) In September 2008, French scientist Y became the institute's permanent full-time researcher at a Chinese university. (GE 8.) Applicant traveled to China on his French passport to meet with French research scientist Y in November 2008, June 2009, November 2009, and June 2010. (GE 1; Tr. 39.) Applicant did not perform any technical work or publish papers with Chinese citizens or maintain any close friendships with people he met in China. (GEs 1, 2; Tr. 27, 29.)

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<sup>1</sup> French research scientist Y indicated on his curriculum vitae dated August 14, 2012, that he supervised Applicant's doctorate through a research grant from October 2007 to April 2011. He moved from France to China in September 2008, and in July 2012, he became the French research institute's permanent full-time researcher at an institute affiliated with the Chinese Academy of Sciences. (GE 8.)

Applicant worked as a post-doctoral researcher from April 2011 to August 2012 at a public French university. He received medical benefits and also earned a small retirement stipend valued at approximately \$10,000 from his employment in France. Payout of the retirement funds is expected to begin in November 2049. (GE 1.)

Applicant married his spouse, a French native citizen, in April 2012. In September 2012, they moved to the United States for Applicant's new job as an adjunct professor in computer science at a private university. (GE 1; Tr. 51.) His spouse obtained her U.S. permanent residency in approximately March 2013. (Tr. 75.)

In August 2014, Applicant began working for his current employer. (GE 1.) He had sought an academic position or research-oriented employment in either the United States or France. (GE 3; Tr. 53.) He was offered a position by a company in France, but he wanted to remain in the United States, and his work for the U.S. defense contractor would be more challenging. (GE 2; Tr. 31.)

On September 12, 2014, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). He disclosed his possession of then valid U.S. and French passports that were scheduled to expire in July 2015. He admitted that he had taken no action to renounce his French citizenship "due to [his] family ties to France (Paternal side and Spouse)." Applicant disclosed the French citizenship of his spouse, father, and mother-in-law and the French and U.S. dual citizenship of his mother and brother. He disclosed his parents' residency and employment in France. His father works at a medical center and his mother at a school, and he indicated that he has weekly contact with his parents. Applicant also has weekly contact with his brother, a U.S. resident, but he indicated that he did not know his brother's employer. Applicant reported weekly contact by telephone with his mother-in-law in France. In response to whether he had close or continuing contact with a foreign national within the last seven years with whom he or his spouse was bound by affection, influence, common interests, and/or obligation, Applicant listed five persons in Europe with whom he had personal relations. Among his references, he included his brother-in-law, who is a French citizen residing and working in Switzerland. (GEs 1, 2.)

Concerning foreign financial interests, Applicant indicated on his SF 86 that he and his spouse had about \$135,000 in wage earnings and inheritance in a bank account in France. He disclosed his former employment with the French national research institute; that he and his spouse had received medical benefits from France under its universal healthcare system during their residency and employment in France between September 2007 and July 2012; and that he has a future retirement benefit of approximately \$10,000 from past employment with the French government with payout to begin in November 2049. Applicant responded affirmatively to an inquiry concerning attendance or participation in any foreign conferences, trade shows, seminars, or meetings in the last seven years. He reported research collaboration with foreign computer scientists in November 2007 and his attendance at conferences abroad in September 2009, May 2011, June 2012, and July 2014. He reported that he had sponsored his spouse's immigration to the United States, and that he had voted in France's presidential election

in April 2012 when he was living in France, but explained that he was currently ineligible to vote in France. Among his foreign travels, Applicant listed a trip to France to see his parents in July 2014. (GE 1.)

When interviewed by an authorized investigator for the Office of Personnel Management (OPM) on November 4, 2014, Applicant explained that he has maintained “circumstantial” dual citizenship since birth because he has never had a reason to renounce either his U.S. or French citizenship. He denied any allegiance to one country over the other. While he did not believe renunciation of French citizenship was possible and expressed a preference to retain it, he indicated that he would consider renouncing it if his foreign citizenship meant he would be ineligible for a security clearance. Applicant stated that he would relinquish his foreign passport to security officials at work if required. He recalled using his French passport to travel to China and France, but using his U.S. passport on a trip to Canada in June 2013 for tourism. Applicant verified the information on his SF 86 about his contacts with foreign nationals, and expressed his belief that no one outside of his family knew that he was under consideration for a national security position. Applicant related that he had not been asked by an unauthorized person to provide any sensitive or proprietary information. Applicant explained that his travel to China for the French research institute was for professional reasons, and he had only incidental contact with Chinese nationals. He reported no problems at the border or contacts with security, military, or police officials in China. Concerning his and his spouse’s reported \$135,000 in bank deposits in France, Applicant admitted that the financial interest was important to them, although if required, he would close his account and deposit the funds in a U.S.-based bank. As U.S. residents, Applicant explained that his and his spouse’s medical insurance in France had been cancelled. (GE 2.)

Applicant renewed his French passport for convenience (i.e., shorter lines at the airport, ease in entering European Union countries) in January 2016, although aware that he could travel to France on a U.S. passport as a dual citizen. (Tr. 33-34.) He believed that his security clearance had been denied, and assumed that he had only a small chance of success on appeal. Applicant testified that he understood the concerns about the United States’ inability to track travel on his French passport and indicated that he would “rescind” his French passport if granted security clearance eligibility. (Tr. 56-58.) He had not told his employer that he has a valid foreign passport. (Tr. 58.) After a discussion of the issues surrounding possession of a valid foreign passport, I held the record open for 30 days to provide Applicant an opportunity to determine what he wanted to do regarding his valid foreign passport. As noted above, he submitted no post-hearing matters.

Applicant travels to France approximately once every two years to visit his parents. (Tr. 33-34, 42, 54.) He has not been asked for any scientific or sensitive information during any of his trips to France. He testified that if approached for such information, he would not respond to inquiries, would not continue contact with them, and would report such attempts to his employer. (Tr. 43-45.) When asked what he would do if presented with a conflict between U.S. and French interests, he testified that he understands he cannot provide proprietary information about his work for the United States. However, he also

explained that his current DOD-sponsored work involves collaboration with foreign researchers, is not classified, and is not subject to export controls, so such restrictions do not apply to his current program. (Tr. 49-50.)

Applicant is in contact with his parents every one to two weeks. His mother currently teaches in a public high school in France. (Tr. 43.) His father works in a private medical facility and has no connection to the French government. He evaluates the ability of people to perform their jobs or transitions them to new employment. Applicant's brother is a graphic designer who designs video games. He has lived and worked in the United States for the past 12-15 years and has no involvement with the French government. (Tr. 45-46.) Applicant's parents own a home in the same U.S. state where Applicant's maternal grandmother and his brother currently reside. To Applicant's knowledge, his parents intend to move to the United States when they retire. (Tr. 74.)

Applicant's mother-in-law is a French resident citizen who does not work for the French government. Applicant speaks with his mother-in-law about once a month. His spouse has more frequent contact with her mother. (Tr. 46-47.)

Applicant has "very intermittent and at best professional and not heavily sustained" contact with French research scientists X and Y. Usually in response to their emails, Applicant updates them about his activities, including his research, about once a year. (Tr. 28-29, 69.) Applicant no longer has any official affiliation or work relationship with the French research institute or any employee of the institute. (Tr. 41-42, 48.)

After performing some cursory but he believes accurate research, Applicant understands that it is not possible for him to rescind his French citizenship as a native-born French citizen with family currently residing in France. (Tr. 31-32.) Applicant has not voted in a French election since 2012, and he does not intend to vote in any foreign elections in the future. (Tr. 34-35.) He has voted in every major U.S. election since 2005. (Tr. 73.) He expressed "every intention to stay in the United States indefinitely." (Tr. 74.)

As of October 2016, Applicant and his spouse had approximately \$110,000 in bank deposits in France, of which less than \$10,000 belonged to him. He and his spouse have a marriage contract that separates these assets. (Tr. 28, 47.) Applicant testified that "odds are good that [he] will eventually close [his one bank account in France] in the near future." (Tr. 48.) Applicant's spouse worked as a physical therapist in France. She is working as a massage therapist while she pursues validation of her credentials to work as a physical therapist in the United States. (Tr. 71-72.) Applicant and his spouse own no property in the United States. (Tr. 72.) He testified to his belief that his spouse intends to become a U.S. citizen when she becomes eligible. (Tr. 75-76.)

Although no request was made for administrative notice of facts about France, the following facts about that country were obtained from the U.S. State Department's website.<sup>2</sup> Relations between the United States and France are active and friendly. The

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<sup>2</sup> See the U.S. State Department's *Fact Sheet U.S.-France Relations*, dated July 21, 2016; *France Quick Facts*, updated February 3, 2017; and *Europe Travel Alert*, updated May 1, 2017. The documents may be

two countries share common values and have parallel policies on most political, economic, and security issues. Differences have not generally been allowed to impair the pattern of close cooperation between the two countries.

France and the United States work closely on many issues, most notably in combating terrorism and stemming the proliferation of weapons of mass destruction. France is one of the North Atlantic Treaty Organization's (NATO) top five troop contributors and supports NATO modernization efforts.

Following the terrorist attacks in Paris in January 2015 and November 2015, the French government imposed a state of emergency that remains in effect until July 15, 2017, which allows the government to create zones of protection and security and to prevent the circulation of individuals. The French government has re-established border controls and movement may be restricted in some areas. The U.S. Department of State issued a travel alert on May 1, 2017, informing U.S. citizens of the continued threat of terrorist attacks throughout Europe. Recent, widely reported incidents in France, Russia, Sweden, and the United Kingdom demonstrate that the Islamic State of Iraq and ash-Sham (ISIS or Da'esh), al-Qa'ida, and their affiliates have the ability to plan and execute terrorist attacks in Europe. U.S. citizens are alerted to the possibility that terrorist sympathizers or self-radicalized extremists may conduct attacks with little or no warning.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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, which are required to be considered 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 overall 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain 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 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. 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern about foreign preference is articulated in AG ¶ 9:

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. Foreign involvement raises concerns about an individual’s judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. By itself, the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen’s exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

Applicant is a citizen of his native France (SOR ¶ 1.a) and of the United States based on his birth abroad to a U.S. citizen mother. Retention of foreign citizenship acquired from birth is not disqualifying in the absence of a conflict with U.S. national security interests (see AG ¶ 11(a), “the foreign citizenship is not in conflict with U.S. national security interests”) or any indicia of foreign preference (see AG ¶ 11(b), “dual citizenship is based solely on parental citizenship or birth in a foreign country, and there is no evidence of foreign preference”). During his OPM interview, Applicant professed no allegiance to one country over the other. He possessed dual passports (SOR ¶ 1.b) and voted in elections in both countries starting in 2005, including in the French presidential election in April 2012 (SOR ¶ 1.c). However, for the most part, his daily life was consistent



with his French citizenship before he came to the United States in August 2012. He was educated in France with his doctoral studies paid for by the French government through his work as a salaried doctoral student at a French government-funded scientific and technical research institute. He used his French passport in preference to his U.S. passport on four trips to China between November 2008 and June 2010 while he was working for the French research institute between September 2007 and February 2011. He then worked as a post-doctoral researcher at a public university in France from April 2011 to August 2012. He earned a retirement stipend from his employment with the French government, although the amount is relatively minimal, and he will not begin to receive it until November 2049 (SOR ¶ 1.e). He benefitted from universal health coverage as a French resident (SOR ¶ 1.d). After moving to the United States and becoming employed by a U.S. defense contractor, he renewed his French passport in January 2016 (SOR ¶ 1.f) for convenience of travel to France and other European Union countries.

Under the adjudicative guidelines in effect as of the date of the issuance of the SOR, possession of a current foreign passport was considered an exercise of foreign preference.<sup>3</sup> Possession of a current foreign passport is now potentially disqualifying under AG ¶ 10 in two circumstances, as follows:

- (b) failure to report, or fully disclose when required, to an appropriate security official, the possession of a passport or identity card issued by any country other than the United States; or

- (c) failure to use a U.S. passport when entering or exiting the U.S.

Neither disqualifying condition is established. Applicant disclosed that he held a French passport valid to July 2015 and that he used that passport on four trips to China. When asked at his October 2016 hearing about the status of his French passport, Applicant responded that he renewed it in January 2016. There is no evidence of any action taken on his part to inform his employer that he holds a valid French passport, but it was also not shown that he has an affirmative obligation to notify his employer. There is no indication that he acted to conceal his possession of a valid French passport either from his employer or the DOD or any evidence that he ever used his French passport to enter or exit the United States.

As a dual citizen raised in France, it is understandable that Applicant as a resident of France would actively exercise his French citizenship by holding a French passport, working in France, accepting educational and medical benefits from France, and voting in French elections. Consistent with that reality, the salient issues involving such foreign involvement are if they conflict with U.S. national interests, are in violation of U.S. law, or an individual acts to conceal his foreign involvement. In that regard, Applicant's past

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<sup>3</sup> ¶ 10(a)(1) of the foreign preference guideline provided:

- (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.

acceptance of educational and medical benefits and the future payout of a small retirement benefit from his work in France, do not raise a disqualifying concern under the current AG ¶ 10(d), “participation in foreign activities.” The educational and medical benefits were accepted when he was living and working in France, and he is no longer entitled to those benefits. His future retirement income is minimal and expected to be received so far in the future that it does not concern me. Applicant has not voted in a French election in over four years, and he has no intention to vote in a French election in the future. The SOR does not allege and there is no evidence indicating that Applicant’s employment with either the French research institute or the French university before he came to the United States was in conflict with national security interests, and Applicant was candid about his past employment for the French government.

As for any concerns of possible foreign preference that might arise from Applicant’s retention of dual citizenship and a French passport as a U.S. resident citizen, three mitigating conditions are implicated under AG ¶ 11:

- (a) the foreign citizenship is not in conflict with U.S. national security interests;
- (e) the exercise of the entitlements or benefits of foreign citizenship do not present a national security concern; and
- (f) the foreign preference, if detected, involves a foreign country, entity, or association that poses a low national security risk.

Applicant clearly places a high value on his French citizenship and wants to retain it. He indicated on his SF 86 that he does not wish to relinquish his French citizenship because of his paternal and spousal ties to France. He told an OPM investigator that he would prefer to not renounce his French citizenship, but that he would give it serious thought if it meant that he could not obtain security clearance eligibility. Subsequent research has led him to understand that renunciation of French citizenship is not currently possible for him. Even so, there is no evidence that his citizenship with France, a close NATO ally of the United States, is in conflict with U.S. national security interests. He is not required to renounce his French citizenship for security clearance eligibility.

## **Guideline B, Foreign Influence**

The security concern about foreign influence is articulated in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and

interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

Applicant's spouse is a French citizen with U.S. permanent residency. Applicant's brother and mother have dual French-U.S. citizenship. His father and his spouse's mother are French citizens. Applicant's parents and mother-in-law live in France. Applicant also has contact, once a year on average, with his former Ph.D. advisors, who hold prominent positions with a French national research institute. One of his former advisors, French research scientist Y, lists on his curriculum vitae that he supervised Applicant's doctorate under a research grant from October 2007 to April 2011. This researcher was posted to a Chinese university in September 2008, and in July 2012, he became a full-time researcher for the French institute at the Chinese Academy of Sciences. Applicant and his spouse also have a security significant financial tie to France in that they have approximately \$110,000 in French bank deposits.

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

- (a) contact, regardless of method, 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
- (f) substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business that could subject the individual to heightened risk of foreign influence or exploitation or potential conflict of interest.

Understandably, Applicant maintains close contact with his parents in France, and his spouse maintains close ties to her mother in France. 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, even if only one relative lives in a foreign country, and an applicant has frequent, non-casual contact 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).

Application of AG ¶¶ 7(a) or 7(f) depends on whether there is substantial evidence of a "heightened risk" of foreign influence or exploitation because of the respective foreign tie, contact, or interest. The "heightened risk" denotes a risk greater than the normal risk

inherent in having a family member living under a foreign government or owning property in a foreign country, but it is nonetheless a relatively low standard. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability 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 on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

The United States has had traditionally close ties to France. While the interests of even longstanding allies are not always completely aligned, it is unlikely that France would place Applicant in a position where he would be forced to choose between the United States and his or his spouse's family members living in France. With its democratic institutions and respect for human rights, France does not engage in coercive tactics against French citizens or dual citizens living in the United States in an attempt to gather valuable information from the United States. Despite France's counterterrorism efforts in alliance with the United States and other European countries, terrorist and other extremist elements have planned and executed terrorist attacks on French soil in recent years. As a result, the French parliament extended the state of emergency imposed in 2015, and the U.S. State Department is sufficiently concerned about the potential for future attacks to alert U.S. citizens about the risk of travel throughout Europe. The Government produced substantial evidence of Applicant's contacts with his and his spouse's family members in France, of his relationships with these family members, and of his and his spouse's bank assets to implicate AG ¶¶ 7(a) and 7(f). Although Applicant's brother has dual citizenship with France and the United States, given his longtime residency and employment in the United States, it is difficult to see where Applicant's relationship or contacts with his brother create a heightened risk. There also exists a risk of undue foreign influence under AG ¶¶ 7(a) and 7(b) because of his contact and connection to his former advisors, one of whom is now executive director of the French research institute and the other is posted by the institute to a position with an entity affiliated with the Chinese government.

Concerning potential factors in mitigation, AG ¶ 8(a) provides:

(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.

The country involved is France, a close ally. No evidence was presented that Applicant's family members in France are politically active or are affiliated with the French government other than perhaps his mother, who as a public school teacher may be a

state or municipal employee. There is no evidence that his family members living in France currently engage in activities which would bring significant attention to them or that they have been targeted. They are aware that Applicant works for a government contractor and has applied for DOD security clearance eligibility, but there is no evidence that they have disclosed information about Applicant's employment outside of the family. As for the risk of terrorism, in that regard a distinction must be made between countries that sponsor or condone terrorism against Western targets and countries like France that are victimized by such attacks. There is no evidence that his parents or mother-in-law are at higher risk than other similarly situated citizens in France who neither hold prominent positions nor are actively involved in the French government, intelligence, or military. AG ¶ 8(a) applies in mitigation of the risks presented by his routine contacts, whether independent or through his spouse, with family members living in France.

Applicant's former employment with a French national institute was not specifically alleged as raising a foreign influence concern. To the extent that Applicant's contacts with his former advisors could lead to a conflict of interest situation, it was not shown that Applicant currently has a sense of loyalty or obligation to them. He has limited contact with them, once a year by email, in response to their inquiries about his research and other activities. Applicant's contacts are professional and courteous. AGs ¶ 8(b) and ¶ 8(c) apply in mitigation of his contacts to French researchers X and Y:

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(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.

AG ¶ 8(c) does not apply to Applicant's contacts with his parents and, albeit primarily through his spouse, to his mother-in-law. They cannot reasonably be considered as casual or infrequent. He contacts his parents weekly. His spouse calls her mother weekly as well, and Applicant speaks to his mother-in-law monthly.

Concerning AG ¶ 8(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 admitted in November 2014 that his and his spouse's foreign financial assets, then valued \$135,000, were important to them. At his hearing, he clarified that of the \$110,000 currently on deposit, less than \$10,000 belongs to him, and that his spouse controls the rest pursuant to a prenuptial agreement. By virtue of their marriage contract, it may reasonably be inferred that those assets are not considered so routine or of such little value to his spouse. At the same time, Applicant has his employment income in the United

States. He is not likely to jeopardize his income and career by succumbing to any undue influence or pressure.

### **Whole-Person Concept**

In evaluating the whole person, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).<sup>4</sup> The analyses under Guidelines B and C are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) warrant additional comment.

Applicant has lived and worked in the United States for the past four years. He spent most of his formative years in France, although the choice to raise him in France was made by his parents. Applicant and his spouse came to the United States in August 2012 for his position as an adjunct professor at a private university. When his contract was ending, he looked for employment in both the United States and France. He declined a job offer in France to work for his current employer because of the prospect of challenging research. He sponsored his spouse for U.S. permanent residency, and she intends to apply for U.S. citizenship when she is eligible. Applicant expressed his intention to remain in the United States. He testified that he understands his reporting responsibilities and would comply if approached by an unauthorized person for sensitive or classified access. While the Government need not wait to see what he would do in such a situation, and, as acknowledged by the Appeal Board in ISCR Case No. 08-10025 (App. Bd. Nov. 3, 2009), "people may act in unpredictable ways when faced with choices that could be important to a loved-one, such as a family member," Applicant has not acted to conceal any of his foreign contacts or activities from the DOD. For the reasons noted, I conclude that it is clearly consistent with the national interest to grant security clearance eligibility for Applicant.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the amended 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.f:	For Applicant

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<sup>4</sup> The factors under AG ¶ 2(d) are as follows:

(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.

Paragraph 2, Guideline B:

FOR APPLICANT

Subparagraphs 2.a-2.h:

For Applicant

### **Conclusion**

In light of all of the circumstances, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Elizabeth M. Matchinski  
Administrative Judge