



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



In the matter of:

ISCR Case No. 15-06242

Applicant for Security Clearance

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

January 25, 2017

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On April 16, 2016, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines B and C. The SOR further informed Applicant that based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on April 26, 2016, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on June 13, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 15, 2016, scheduling the hearing for July 13, 2016. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 and 2, which were admitted after Applicant testified on his own behalf. The record was left open until August 12, 2016, for receipt of additional documentation. Applicant presented documents, which I marked

Applicant's Exhibits (AppXs) A and B. DOHA received the transcript of the hearing (TR.) on July 21, 2016.

Findings of Fact

Applicant admitted to all the subparagraphs of the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 41-year-old employee of a defense contractor. He has been employed with the defense contractor since 2015. (GX 1 at pages 5 and 13.) He is married to a native born American citizen, and they have two children, the youngest is "one and a half years old," and the oldest "three and a half years old." (TR at page 21 line 5 to page 22 line 4, and GX 1 at page 19.)

Guideline C – Foreign Preference

1.a. Applicant was born in France, but immigrated to the United States in January of 2000. (TR at page 17 line 21 to page 20 line 4.) He became a U.S. citizen in September of 2012. (GX 1 at page 7.) Although he initially retained his French passport after becoming a U.S. citizen, he only used his U.S. passport when traveling outside the United States. (TR at page 39 lines 1~10.) In 2015, he renewed his French passport in hope of obtaining dual nationality for his two children. (TR at page 39 line 11 to page 43 line 21.) In August of 2016, however, he surrendered his French passport to his Facility Security Officer (FSO), as evidenced by a letter from his FSO. (AppX A.)

Guideline B – Foreign Influence

2.a. and 2.b. Applicant's 78-year-old father and 74-year-old mother are citizens and residents of France. (TR at page 23 line 2 to page 27 line 10.) They are both retired university professors. (TR at page 25 line 4 to page 26 line 4.) They both receive a pension from the French government, and Applicant provides no financial support to his parents. (TR at page 26 lines 5~9, and at page 27 lines 6~10.) Applicant contacts his parents every "two to three weeks." (TR at page 26 lines 13~23.)

2.c. Applicant's twin sisters are citizens of France. One, who also lives in France, is a hospital secretary. (TR at page 28 lines 5~14.) She has no connection with the French government, and Applicant does not provide her any financial support. (*Id.*) He contacts this sister "every two to three weeks." (TR at page 29 lines 5~8.)

Applicant's other sister "works for an oil company in Norway." (TR at page 29 lines 13~17.) She has no connection with the French government, but he is unsure if she has any connection with the Norwegian government through the oil industry. (TR at page 30 lines 10~21.) He does not provide her any financial support. (TR at page 30 lines 22~24.) He contacts this sister "every month and a half, two months." (TR at page 30 lines 1~4.)

2.d. Applicant has about \$75,000 in a bank account in France. (TR at page 30 line 25 to page 31 line 18.) His mother gave this “donation” to Applicant prior to his immigration to the United States. (TR at page 31 line 19 to page 32 line 16.) He plans to transfer these monies to a U.S. bank account. (TR at page 32 lines 7~16.) Applicant will also receive about \$95,000, as an inheritance, as the result of his deceased grandmother’s property, pending sale. (TR at page 32 line 20 to page 33 line 12, and at page 33 line 20 to page 434 line 10.) He has no “other property interest in France,” as alleged. (TR at page 33 lines 13~23.)

In the United States, Applicant has \$80,000 of equity in his \$500,000 home, and he and his wife have a combined annual income of about \$200,000. (TR at page 36 lines 1~23.) He also has about \$10,000 in savings, and about \$50,000 in a retirement account, both in the United States. (TR at page 36 line 24 to page 37 line 12.)

Policies

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 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it

grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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 guideline notes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable in this case:

- (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and
- (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 parents and one sibling are citizens and residents of France. The other French national sibling lives in Norway. He also has a French bank account, and a French inheritance that is in probate. The evidence is sufficient to raise these disqualifying conditions, although no evidence was presented that would support any

finding that conditions in France, or its relationship to the United States, would create a heightened risk of foreign influence or exploitation.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(a) the nature of the relationship 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.;

(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 interest is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

AG ¶¶ 8 (a), 8(b), and 8 (c) apply. Applicant's American born wife and children live with him in the United States. His contact with his French family is typical of that of a son and sibling, but clearly does not outweigh his affection for his immediate U.S. family. His foreign relatives, apart from his parents' pensions, have little or no connection with a foreign government. As to his potential net worth in France, it pales in comparison to his net worth in the United States, and he fully intends to transfer his foreign financial interests to the United States.

Guideline C, Foreign Preference

The security concern relating to the guideline for Foreign Preference is set out 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. The following is 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.

Applicant is a dual citizen of the United States and France. He exercised his French citizenship when he renewed the French passport, despite that fact that he was a United States citizen at that time and had a U.S. passport. The evidence is sufficient to raise the above disqualifying condition.

Conditions that could mitigate foreign preference security concerns are described under AG ¶ 11. One is potentially applicable:

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant surrendered his French passport to his facility security officer. It is no longer in his possession. The Department of Defense will be notified if and when the passport is returned to Applicant. AG ¶ 11(e) provides mitigation with respect to this guideline.

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 facts and circumstances surrounding this case. Applicant is well respected by his direct supervisor, who avers that Applicant is trustworthy and should be granted a security clearance. (AppX B.)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the Foreign Preference and Foreign Influence security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline C:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a.:	For Applicant
Subparagraph 2.b.:	For Applicant
Subparagraph 2.c.:	For Applicant
Subparagraph 2.d.:	For Applicant

Conclusion

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

Richard A. Cefola
Administrative Judge