



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



In the matter of:)	
)	
-----)	ISCR Case No. 15-06829
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel
For Applicant: *Pro se*

03/24/2017

Decision

HOWE, Philip S., Administrative Judge:

On December 4, 2014, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On May 4, 2016, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline C (Foreign Preference). 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 on September 1, 2006.

Applicant acknowledged receipt of the SOR on June 21, 2016. He answered the SOR in writing on June 1, 2016, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 9, 2016, and I received the case assignment on August 16, 2016. DOHA issued a Notice of Hearing on August 31, 2016, and I convened the hearing as scheduled on September 14, 2016. The Government offered Exhibits 1 and 2, which were received without objection. Applicant testified and

did not submit any exhibits. DOHA received the transcript of the hearing (Tr.) on September 27, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR Applicant admitted the sole factual allegation in Paragraph 1 of the SOR, which stated Applicant had a “current French passport with an expiration date of November 1, 2021.” He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 27 years old. He works for a defense contractor. He has three siblings, all of whom were born to his U.S. citizen father and French citizen mother. Only his oldest sister was born in the United States. His two other siblings were born in France and Germany. All of them are dual U.S. and French citizens. His father was in the U.S. Air Force and Applicant was born in France when his father was stationed there. (Tr. 13-18, 22; Exhibits 1 and 2)

Applicant has a French passport. It expires on November 1, 2021. Applicant grew up in France until he was 23 years old. While there he obtained a master’s degree in mechanical engineering. From September 2010 while studying for that degree he obtained a contractual job with a defense contractor. He came to the United States in 2013 to be with his American grandparents and work for his defense contractor employer. He stated he was hired for his engineering expertise. (Tr. 18, 19, 43, 53, 54; Exhibits 1, 2)

Applicant has a U.S. passport issued in 2009 and he used that passport to enter the United States. He obtained his first French passport in November 2011 when he wanted to travel to India and would have had to travel to the United States to obtain a visa on his U.S. passport to travel to India. It was easier for him to go to Paris to obtain a French passport and visa for the India trip. It was also convenient for him to use the French passport with a Cameron visa to travel to that country. (Tr. 20, 21, 24, 25)

Applicant’s father has dual U.S. and French citizenship, while his mother has only French citizenship. (Tr. 22)

Applicant stated in his security interview and confirmed at the hearing he was not willing to surrender his French passport. He also voted in a French election in 2008 and the French presidential election in 2012. Applicant also has voted in the United States, registering at his grandparents’ address. (Tr. 26-29, 40, 41; Exhibits 1 and 2)

Applicant testified he has equal allegiance to France and the United States, such that he could not choose between them should they be in conflict. He stated it would depend on the issue. When he travels back to France he uses either his French or U.S. passport in whichever line at the airport is shorter. He uses his French passport when

going to France and his U.S. passport when entering the United States. (Tr. 30, 31, 33, 34)

On his e-QIP Applicant could only name four people who knew him well in the past seven years, three of whom were in France. (Tr. 32, 33; Exhibits 1 and 2)

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 useful 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 (AG ¶ 2(a)). 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. 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, an "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 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

Under AG ¶ 9 the security concern involving foreign preference arises, “[W]hen 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 four conditions that could raise a security concern and may be disqualifying. Two may apply:

(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; and

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.¶

Applicant is a French citizen with a French passport that he refuses to surrender. His action of refusing to surrender that passport shows allegiance to France. AG ¶ 10(a)(1) and (d) are established.

AG ¶ 11 provides six conditions that could mitigate 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.

Of these six conditions only one is partially applicable. Applicant's birth occurred in France to a U.S. citizen who was in the U.S. Air Force and married to a French citizen. However, AG ¶ 11(a) is not fully mitigating because Applicant's dual citizenship can no longer be said to be "solely" attributable to his birth in France. Applicant has taken active steps to exercise his dual citizenship like obtaining a valid French passport and voting in French elections. These actions, along with his expressed intent to remain a dual citizen of both France and the United States, do not diminish the security concern present in this case.

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 an applicant's conduct and all the 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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 the facts and circumstances surrounding this case. Applicant considers himself a dual French and United States citizen. He is not willing to renounce his French citizenship or surrender his French passport because he travels to France to visit his family living there. It is more convenient for him to use his French passport when traveling to France.

Applicant stated he was hired by his defense contractor employer for his technical engineering expertise, not his citizenships. Applicant's motivation for the conduct is that he views himself as a true dual citizen of two democracies and does not perceive any conflict between them and his dual citizenship and his duties.

Applicant's duality on citizenship raises a substantial potential for pressure, coercion, exploitation, or duress. There is the likelihood of continuation or recurrence of

his use of both his French and U.S. passports as he determines their convenience to him in his travels.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his foreign preference.

Formal Findings

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

Paragraph 1, Guideline C:	AGAINST APPLICANT
Subparagraph 1.a:	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.

PHILIP S. HOWE
Administrative Judge