



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



In the matter of:	)	
	)	
	)	ISCR Case No. 16-03899
	)	
Applicant for Security Clearance	)	

**Appearances**

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

12/20/2017

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**Decision**

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COACHER, Robert E., Administrative Judge:

Applicant mitigated the security concerns under Guideline C, foreign preference, and the concerns under Guideline B, foreign influence, were either not established or were mitigated. Applicant’s eligibility for a security clearance is granted.

**Statement of the Case**

On February 9, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines B and C. The DOD CAF acted under Executive Order (EO) 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 (AG).<sup>1</sup>

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<sup>1</sup> I decided this case using the AGs implemented by DOD on June 8, 2017. However, I also considered this case under the previous AGs implemented on September 1, 2006, and my conclusions are the same using either set of AGs.

Applicant answered the SOR on March 6, 2017, and submitted a supplemental answer by email on August 11, 2017. He also requested a hearing before an administrative judge. On June 12, 2017, the case was assigned to me. On July 14, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 15, 2017. I convened the hearing as scheduled. Government exhibits (GE) 1 and 2 were admitted in evidence without objection. The Government's exhibit list was marked as hearing exhibit (HE) II. Applicant testified, presented the testimony of one witness, but offered no substantive exhibits. His written opening statement and closing argument were marked as HE I and III. DOHA received the transcript (Tr.) on August 22, 2017.

### **Findings of Fact**

In Applicant's answers to the SOR, he admitted all the allegations, with detailed explanations. Those admissions are incorporated into the findings of fact. After a thorough and careful review of the evidence, I make the following additional findings of fact.

Applicant is 53 years old. He was born in France. He was educated in France, including receiving his Ph.D. He moved to the United States and became a U.S. citizen in March 1996. He is married with two children. His children were born in the United States and are dual U.S.-French citizens due to Applicant's French birth.<sup>2</sup>

The SOR alleges that Applicant consulted for a foreign satellite agency from December 2015 to the present; that on five occasions between 2011 and 2015, Applicant traveled to France to work with the French military; that he exercised French citizenship by applying for a French passport in 2011, voting in French elections on two occasions in May 2012 and June 2012; that between 2009 and July 2015, on multiple occasions, he used his French passport, in lieu of his U.S. passport, to enter the United Kingdom, France, Spain, Italy, Greece, Germany, and Turkey.

Applicant has worked as a scientist for his current employer, a government contractor, since September 2012. Since 1996, Applicant has also worked as a scientist for an educational corporation, which is a consortium of more than 100 North American universities. This corporation is affiliated with the U.S. National Science Foundation. Applicant's work is in the field of meteorology. In 2015, he contracted with an international satellite agency to assist in managing weather satellites for several NATO countries. All the information involved in his work was in the public domain and unclassified. The weather information collected by these satellites is dispersed to operational meteorological centers, including the National Oceanic and Atmospheric Administration (NOAA). His contract lasted 18 months and has ended. He has no intent to engage in future contracts with this entity.<sup>3</sup>

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<sup>2</sup> Tr. at 6, 31-32; GE 1.

<sup>3</sup> Tr. at 37-38, 44-45; Answer, Supplemental Answer.

In his work for the educational corporation, his employer secured a five-year contract with the French Navy and Army to perform atmospheric research in approximately 2011. This contract was approved by the Department of State. All information associated with this work was in the public domain and unclassified. During the term of this contract, Applicant was required to travel to France on a number of occasions. The contract ended earlier this year and Applicant no longer performs those duties. It was during this time frame when Applicant used his French passport when entering or exiting European countries, however, he always used his U.S. passport to enter or depart the United States. In the future, he will only use his U.S. passport.<sup>4</sup>

The co-owner (Mr. X) of the defense contractor that Applicant works for testified for him. Mr. X has known Applicant for 10 years. Mr. X holds a security clearance and is also the company's facilities security officer (FSO). He described the company's mission as performing atmospheric research for the DOD. He was aware that Applicant also worked for the educational corporation described above, while he also worked for Mr. X's company. He never had a concern about Applicant facing a conflict of interest over any proprietary data. Mr. X opines that Applicant is trustworthy to access classified information. Because the company is small (just 13 employees), the need arose for Applicant to obtain a security clearance in 2015. In December 2016, Applicant turned over his French passport and national ID to Mr. X. Applicant investigated the possibility of renouncing his French citizenship, but found it was very difficult, if not impossible, to do. He considers himself a U.S. citizen only.<sup>5</sup>

The Government did not present any evidence concerning France, through administrative notice or otherwise. Applicant offered evidence that France has been a U.S. ally since 1778. I find, based upon the record evidence, that France does not create a heightened risk of foreign coercion.<sup>6</sup>

Applicant presented two statements attached to his first answer from U.S. Government employees who have worked with Applicant in the past. He has worked with representatives from both the U.S. Army and Air Force. He is supported in his effort to gain a security clearance.<sup>7</sup>

### **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

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<sup>4</sup> Tr. at 39-41, 51; Answer, Supplemental Answer.

<sup>5</sup> Tr. at 19-28; Answer.

<sup>6</sup> Supplemental Answer.

<sup>7</sup> Answer (see pp. 6-7).

disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a careful weighing 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 national security eligibility will be resolved in favor of the 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 an 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 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**

AG ¶ 6 explains the security concern about "foreign contacts and interests" as follows:

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.

AG ¶ 7 indicates conditions that could raise a security concern and may be disqualifying in this case:

- (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; and
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

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 Applicant is vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member or friend is associated with or dependent upon the government, the country is known to conduct intelligence collection operations against the United States, or the foreign country is associated with a risk of terrorism. There is no evidence in the record of any of these conditions regarding France.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States."<sup>8</sup> Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields.

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<sup>8</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

AG ¶¶ 7(a) and 7(b) do not apply because Applicant's connection with the foreign satellite agency was based on information in the public domain and was shared with US agencies. He no longer consults with this foreign agency and does not intend to do so in the future. Likewise, his connection with the French military ended and he has no intentions of renewing it in the future.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns, including:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.; and

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, 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.

Even though I find that Applicant's actions are not disqualifying under AG ¶ 7, out of an abundance of caution, I will also analyze whether mitigating conditions under AG ¶ 8 apply. Applicant is no longer affiliated with the foreign groups that prompted the concern under this guideline and therefore it is unlikely that Applicant would be placed in a position of having to choose between the interests of these foreign groups and those of the United States. AG ¶ 8(a) applies.

Applicant has met his burden to establish his "deep and longstanding relationships and loyalties in the U.S." He is has been a U.S. citizen since 1996. He owns a home, has substantial assets here, and has raised his family here. He has worked for U.S.-based organizations including the Army and the Air Force. The evidence supports that Applicant has longstanding ties to the United States and would resolve any conflict of interest in favor of the United States. AG ¶ 8(b) applies.

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

AG ¶ 9 explains the security concern about "foreign preference" 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 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.

AG ¶ 10 indicates conditions that could raise a security concern and may be disqualifying in this case:

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

(d) participation in foreign activities, including but not limited to:

(1) assuming or attempting to assume any type of employment, position, or political office in a foreign government or military organization; and

(2) otherwise acting to serve the interests of a foreign person, group, organization, or government in any way that conflicts with U.S. national security interests.

In analyzing the Guideline C allegations in this case, it is important to note that the SOR was issued under an earlier version of the adjudicative guidelines (as cited on page 1 of this decision). Under the prior version, an Applicant's "possession of a current foreign passport" was a disqualifying condition. Similarly, Applicant's renewal of his French passport, and his use of that passport for international travel, were also disqualifying, since both actions occurred after he became a U.S. citizen in 1996.

Under the new AGs, however, an applicant's renewal, use and possession of a foreign passport is not disqualifying, as long as: a) it is properly disclosed to appropriate security officials; and b) an applicant uses his or her U.S. passport when entering or exiting the United States. There is no allegation (or evidence) that Applicant ever failed to disclose his French passport to proper U.S. security authorities at any time, and he disclosed it on GE 1.

Before Applicant sought a security clearance, he used his French passport to enter and depart the countries of the United Kingdom, Italy, France, Spain, Greece, Germany, and Turkey between 2009 and 2015. However, he always used his U.S. passport to enter and depart the United States. AG ¶ 10(c) does not apply. Applicant renewed his French passport in 2011 and voted in a French presidential and legislative election in 2012. AG ¶ 10(d) applies.

AG ¶ 11 lists conditions that could mitigate foreign influence security concerns, including:

(a) the foreign citizenship is not in conflict with U.S. national security interests;

(c) the individual has expressed a willingness to renounce the foreign citizenship that is in conflict with U.S. national security interests; and

(f) the foreign preference, if detected, involves a foreign country, entity, or association that poses a low national security risk.

Applicant surrendered his foreign passport to his security officer shortly after he began the clearance application process. He has no intention of using the French passport in the future and he has no intention of voting in future French elections. He believes it is impossible to renounce his French citizenship, but he considers himself a U.S. citizen only. France poses a low national security risk. All the above mitigating conditions apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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 the facts and circumstances surrounding this case. The factors tending to support granting Applicant's clearance are more significant than the factors weighing towards denying his clearance. I considered that he no longer is affiliated with any foreign entity, that he surrendered his French passport to his FSO, and the strong ties he has to this country, thereby demonstrating his longstanding loyalty to the United States and that there are no foreign preference concerns. Therefore, he provided sufficient evidence to mitigate the security concerns.

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 the security concerns arising under Guideline B, foreign influence, and Guideline C, foreign preference, were either not established or were mitigated.

### **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.f:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	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.

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Robert E. Coacher  
Administrative Judge