



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



In the matter of:)	
)	
)	ISCR Case No. 07-00254
SSN)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: Edward Irving, Personal Representative

February 27, 2008

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Foreign Preference and Foreign Influence. Clearance is granted.

History of Case

Applicant submitted his Security Clearance Application (SF-86), on November 30, 2005. On July 13, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) for Applicant. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on July 20, 2007. He answered the SOR in writing on July 30, 2007, and requested a decision on his security clearance application be made based on the written record. On August 20, 2007, pursuant to Paragraph E3.1.7 of the Additional Procedural Guidance of the Directive, Department Counsel requested this case be converted to a hearing to “adequately develop the facts.” Department Counsel was prepared to proceed on August 30, 2007, and the case was assigned to another administrative judge on November 2, 2007. On November 2, 2007, DOHA issued a notice of hearing scheduling the case to be heard on November 14, 2007. The case was reassigned to me on November 6, 2007. On November 7, 2008, DOHA issued a notice canceling the November 14, 2007 hearing. On November 16, 2007, DOHA issued a notice of hearing scheduling the case to be heard on December 20, 2007. The hearing was held as scheduled.

The government offered Government Exhibits (GE) 1 through 3, which were received without objection. Applicant testified on his own behalf, and offered Applicant Exhibit (AE) A, which was received without objection. I granted Applicant’s request to keep the record open until December 20, 2007, to submit additional matters. The Applicant timely submitted AE B through K, which were received without objection. The record closed on December 20, 2007. DOHA received the transcript of the hearing (Tr.) on January 4, 2008.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Malta contained in Exs. I through III. Applicant had no objection and I took administrative notice of the documents offered by Department Counsel, which pertain to Malta. Tr. 12-14.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings, is to notice facts that are either well known or from government reports. See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Various facts administratively noticed pertaining to Malta were derived from Exs. I through III as indicated under subheading “Malta” of this decision.

Findings of Fact

In his Answer to the SOR dated July 13, 2007, Applicant admitted all of the factual allegations in ¶¶ 1.a. through 1.d., and 2.a. through 2.e.

Applicant is a 59-year-old maintenance class 1 worker, who has been employed by the same defense contractor since January 1972, a period of 36 years. He has successfully held a security clearance since March 1995, a period of 13 years. AE B. He seeks to renew his security clearance. He also holds a courier certificate, which authorizes him to transport classified material from his place of employment to the U.S. Post Office. Tr. 44-45, AE K.

Applicant was born in 1948 in Malta to Maltese parents. He was raised in a rural agricultural community on the Island of Gozo, which is north of the main Island of Malta. After completing the 6th grade, he went to work on the family farm. Tr. 17-18. In 1971, at age 23, he left Malta and joined his sister in Canada, who was living there at the time. After joining his sister, he secured employment with the railroad for a brief period. In 1972, he immigrated to the U.S. to join his parents and two other siblings, who had recently left Malta and were residing in the U.S.

Applicant became a naturalized U.S. citizen in May 1984, and applied for a U.S. passport shortly after becoming a citizen. He renewed his most recent and current U.S. passport in January 2001. GE 1. As a result of his birth, Applicant is a dual citizen of Malta and the U.S. He holds a Malta passport issued in March 2002 with an expiration date in March 2012. He obtained a Malta passport for ease of travel within Malta and also to prove his Malta citizenship for inheritance purposes, discussed *infra*. SOR ¶¶ 1.a. through d.

Applicant married in August 1978. His wife, like him, was born and raised in Malta, and became a U.S. citizen. She was a career police officer in a major U.S. metropolitan city. Applicant and his wife separated in 2005. His estranged wife moved back to Malta in approximately June 2007, and filed for divorce before she left. Post-hearing, Applicant submitted a Judgment of Divorce reflecting his divorce was final in November 2007. AE J.

Applicant has two unmarried adult U.S.-born children, a 27-year-old son, and a 23-year-old daughter. Both children currently reside with Applicant. Tr. 23. Applicant has a married 49-year-old brother, who resides in the U.S. He maintains contact with his brother primarily by telephone, averaging once a month. Applicant also has a married 54-year-old sister, who resides in the U.S. and lives nearby. Applicant sees his sister and her family "once a week, sometimes every two weeks." Applicant also communicates with this sister frequently by telephone. Tr. 43, 52-53.

Applicant has two immediate family members, who are citizens and residents of Malta. The first is his 83-year-old widowed mother, and the second is his 61 year old sister. SOR ¶¶ 2.a. and 2.b. Applicant's mother lived in the U.S. from approximately 1972 to 1988, and returned to Malta approximately 20 years ago. She lives on the family farm in Malta. When she lived in the U.S., she worked as a cleaning lady for a major department store. She is not connected or associated with anyone in the Malta government. She supports herself on her U.S. social security, which she earned during her working life in the U.S. Tr. 30-32.

Applicant traveled to Malta primarily to visit his mother in August 1999, August 2000, August 2001, August 2002, August 2003, and December 2004. SOR ¶ 2.e. Although not alleged, Applicant visited his mother in Malta in July 2007. Tr. 33. Applicant stayed with his mother during his visits to Malta. Applicant communicates with his mother by telephone approximately three-to-four times per week. While visiting his mother in Malta, he visited his sister and her family. His sister and brother-in-law are not connected with or associated with the Malta government. His sister is a housewife and his brother-in-law is a retired plumber. They live off his brother-in-law's pension and raise goats. Tr. 34-37, GE 3. Applicant communicates with his sister "maybe once [a year] [at] Christmas." Tr. 37, 52. He does not visit his former in-laws because "[he does not] get along with them [any] more." Tr. 35.

As noted *supra*, Applicant holds a current Malta passport. Applicant used his Malta passport for the sole purpose of obtaining a less expensive domestic helicopter flight from the Island of Malta to the Island of Gozo, where his mother lives. After becoming a U.S. citizen, he used his U.S. passport when traveling to and from Malta. Tr. 25-28, 39, 51-52. In December 2007, Applicant surrendered his Malta passport to his Facility Security Manager in order to comply with the Guidelines. His Facility Security Manager secured Applicant's Malta passport in a company safe, and further stated he would make a Joint Personnel Adjudication System (JPAS) entry if Applicant requested the return of his Malta passport. Tr. 51, AE A. Applicant also believes holding a Malta passport would ease the process of inheriting his portion of the family farm in Malta when his mother passes away. Applicant anticipates splitting his inheritance with two other siblings. Tr. 28-30.

Applicant stated he would be willing to renounce his Malta citizenship. Tr. 50. Applicant further added that he would be willing to give up his Malta citizenship knowing that it would preclude him from obtaining his inheritance. Tr. 69-70.

Applicant's Facility Security Manager testified on Applicant's behalf. He stated he has known and worked with the Applicant for 25 years, and described him as an "outstanding" employee. He added Applicant is "very efficient" and has never had a security violation during his 36 years of employment with their company. He recommended Applicant's security clearance be renewed. Applicant is well known throughout the company and enjoys a reputation as "[v]ery respectful, very trustworthy." Tr. 57-58, 62-63, 67. Applicant's last five years of work performance evaluations document above average performance or performance that exceeds expectations. AE C through G.

All of Applicant's financial interests are in the U.S., which includes a home valued at \$800k, a 401(k) retirement account valued at \$360k, a checking account with a balance of \$5k and savings account with a balance of \$80k. He has no financial ties to Malta other than a savings account with a balance of approximately \$20k. Tr. 40-42, 59.

Applicant emphasized his loyalty to the U.S. He enjoys and appreciates his way of life in the U.S. and has embraced being a U.S. citizen. He exercises his rights as a U.S. citizen to include voting.

Applicant's attitude is best summarized, "I like it here (referring to the U.S.) My special connection is here." Tr. 66.

MALTA¹

No indigenous terrorist or extremist groups are known to be active in Malta, and no foreign terrorist organization has carried out an attack against U.S. interests in Malta in recent years. Malta has a low rate of crime. Under its 1964 constitution, Malta became a parliamentary democracy within the Commonwealth. Queen Elizabeth was sovereign of Malta, and a governor general exercised executive authority on her behalf, while the actual direction and control of the government and the nation's affairs were in the hands of the cabinet under the leadership of a Maltese prime minister.

On December 13, 1974, the constitution was revised, and Malta became a republic within the Commonwealth, with executive authority vested in a Maltese president. The president is appointed by parliament. In turn, he appoints as prime minister the leader of the party that wins a majority of seats in a general election for the unicameral House of Representatives. Two parties dominate Malta's polarized and evenly divided politics – the Nationalist Party and the Malta Labor Party.

Possessing few indigenous raw materials and a very small domestic market, Malta has based its economic development on the promotion of tourism, accounting for roughly 30% of GDP, and exports of manufactured goods, mainly semi-conductors, which account for some 75% of total Maltese exports. Since the beginning of the 1990s, expansion in these activities has been the principal engine for strong growth in the Maltese economy.

Malta's diplomatic and consular representation includes accreditation to 143 foreign countries and international organizations. Malta is host to 20 resident diplomatic missions, and 118 countries have non-resident diplomatic representation. With its central location in the Mediterranean, Malta has long portrayed itself as a bridge between Europe and North Africa, particularly Libya, with whom it has enjoyed positive diplomatic and commercial ties. Malta is one of the southernmost points of the European Union. Malta continues to be an active participant in the United Nations, the Commonwealth, the Council of Europe, OSCE, and various other international organizations. Among these entities, Malta has frequently expressed its concern for the peace and economic development of the Mediterranean region. The Nationalist Party government is continuing a policy of neutrality and nonalignment but in a Western context. The government desires close relations with the United States, with an

¹The contents of this section are taken in whole or in part from Exs. I through III.

emphasis on increased trade and private investment. U.S. Navy ships resumed liberty calls in 1992 and currently visit on a regular basis.

Malta and the United States established full diplomatic relations upon Malta's independence in 1964; overall relations are currently active and cordial. The United States has been sympathetic to Malta's campaign to attract private investment, and some firms operating in Malta have U.S. ownership or investment. These include major hotels, manufacturing and repair facilities, and some offices servicing local and regional operations.

Policies

In an evaluation of an applicant's security or trustworthiness suitability, an administrative judge must consider the "Adjudicative Guidelines for Determining Eligibility For Access to Classified Information" (AG(s)). The AGs include brief introductory explanations for each AG, and provide specific disqualifying conditions and mitigating conditions.

These Guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these guidelines in conjunction with the factors listed in the adjudicative process. AG ¶ 2. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. AG ¶ 2(c).

Specifically, an administrative judge should consider the nine adjudicative process factors listed at AGs ¶ 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) 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.

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that "[a]ny doubt concerning personnel being considered for access to classified [or sensitive] information will be resolved in favor of national security." AG ¶ 2(b). 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.

In the decision-making process, the Government has the initial burden of establishing controverted facts by “substantial evidence,”² demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).³

A person seeking access to classified or sensitive 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. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to such information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified or sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of such information.

The scope of an administrative judge’s decision is limited. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. Executive Order 10865, § 7.

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

² “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

³The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

Guideline C (Foreign Preference)

AG ¶ 9 explains the Government's concern regarding Foreign Preference, "[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(a) indicates two conditions that raise potential security concerns and may be disqualifying 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; . . . and (5) using foreign citizenship to protect financial or business interests in another country."

SOR ¶¶ 1.a. through 1.d. alleged Applicant held dual citizenship with Malta and the U.S., that he applied for and possessed a valid Malta passport after becoming a U.S. citizen, and that he possessed a Malta passport for travel to Malta and to prove Malta citizenship for inheritance rights.

The Government produced substantial evidence of this disqualifying condition, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government.

Three Foreign Preference Mitigating Conditions under AG ¶ 11 are potentially applicable to these disqualifying conditions:

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

AG ¶ 11(a) potentially applies because Applicant derived his citizenship as a result of his birth, and heritage to Malta. However, it does not apply because he obtained a Maltese passport after becoming a U.S. citizen.

AG ¶¶ 11(b) and (e) fully apply. Applicant expressed a sincere willingness, without qualifications, to renounce his Malta citizenship, even if it meant the loss of family inheritance. Applicant's use of his Malta passport was limited to obtaining a domestic discounted helicopter ride from the Island of Malta to the Island of Gozo, where his mother and sister live. This discounted fare is apparently only available to citizens of Malta. After becoming a U.S. citizen, and obtaining a U.S. passport, he used

his U.S. passport for travel to and from Malta. Furthermore, Applicant surrendered his passport to his Facility Security Manager, where it is secured in a company safe. The Facility Security Manager stated he will make the appropriate notification to JPAS if Applicant requests the return of his Malta passport.

Guideline B (Foreign Influence)

AG ¶ 6 explains the Government's concern about "foreign contacts and interests" stating:

If the individual has divided loyalties or foreign financial interests, [he or she] may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

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

(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

(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.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001). Applicant has frequent contact with his mother and his sister and her family in Malta. These close relationships with these relatives create a potential risk of foreign exploitation, inducement, manipulation, pressure, or coercion meriting a close examination of all circumstances.

The Government produced substantial evidence of these two disqualifying conditions primarily as it pertains to Applicant's contacts and relationship with his mother and sister, his travel to Malta, and his retaining a Malta passport to prove

citizenship to exercise his inheritance rights. The burden shifted to Applicant to produce evidence and prove a mitigating condition. As previously indicated, the burden of disproving a mitigating condition never shifts to the Government.

Three Foreign Influence Mitigating Conditions under Guideline ¶ 8 are potentially applicable to these disqualifying conditions:

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

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

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

AG ¶ 8(a) applies. Applicant's mother is elderly, lives on the family farm, is retired and derives her income from her U.S. social security. His sister and brother-in-law are also retired, and they too live on a farm. They derive their income from raising goats and also living off a pension. None of Applicant's immediate relatives living in Malta are connected with or associated with the Malta Government.

On the other hand, Applicant does have close emotional ties to immediate family members in Malta, as evidenced by his frequent telephone calls and visits to Malta. With regard to these family members, Applicant established "it is unlikely [he] will be placed in a position of having to choose between the interests of [his parents] and the interests of the U.S." If Malta had different environment and was like other countries hostile to the U.S., his frequent contacts with his immediate family members in Malta could potentially force him to choose between the United States and Malta. On balance, however, he met his burden of showing there is "little likelihood that [his relationship with his mother and sister] could create a risk for foreign influence or exploitation." Even if AG ¶ 8(a) did not apply, the two other mitigating conditions apply, especially AG ¶ 8(b).

AG ¶¶ 8(b) and 8(f) fully apply. Applicant has lived in the U.S. for 36 years. He married in the U.S. and has two adult U.S.-born children, who live with him. He is completely vested in the U.S. His former wife also became a U.S. citizen, and has since returned to Malta. Inasmuch as his divorce was final in November 2007, his connection

to his former in-laws in Malta is no longer applicable. Applicant has two siblings, who along with their families, live in the U.S. He maintains a close relationship with both siblings in the U.S., particularly with his sister and her family, who live nearby. He maintains substantial real and personal property in the U.S. as compared to his personal property in Malta and potential inheritance. Appellant has developed a sufficient relationship and loyalty to the U.S., as he can be expected to resolve any conflict of interest in favor of the U.S. interest. He became a U.S. citizen in May 1984. Applicant has been employed by his defense contractor employer since January 1972, shortly after arriving in the U.S. and is very highly regarded at work. Applicant's contacts and linkage to the U.S. are much greater than his linkage to Malta. Furthermore, based on the source documents the Government submitted, Malta and the U.S. enjoy a cordial relationship. The Government's evidence pertaining to Malta does not provide a basis to be concerned with Malta as a Government hostile to the U.S. Applicant is heavily vested in the U.S., financially and emotionally. His loyalty lies clearly with the U.S.

“Whole Person” Analysis

In addition to the enumerated disqualifying and mitigating conditions as discussed previously, I have considered the general adjudicative guidelines related to the whole person concept under Directive ¶ E2.2.1. “Under the whole person concept, the Administrative Judge must not consider and weigh incidents in an applicant's life separately, in a piecemeal manner. Rather, the Judge must evaluate an applicant's security eligibility by considering the totality of an applicant's conduct and circumstances.”⁴ The directive lists nine adjudicative process factors (APF) which are used for “whole person” analysis. Because foreign influence does not involve misconduct, voluntariness of participation, rehabilitation and behavior changes, etc., the eighth APF, “the potential for pressure, coercion, exploitation, or duress,” Directive ¶ E2.2.1.8, is the most relevant of the nine APFs to this adjudication.⁵ In addition to the eighth APF, other “[a]vailable, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.” Directive ¶ E2.2.1. Ultimately, the clearance decision is “an overall common sense determination.” Directive ¶ E2.2.3.

The Appeal Board requires the whole person analysis address “evidence of an applicant's personal loyalties; the nature and extent of an applicant's family's ties to the U.S. relative to his [or her] ties to a foreign country; his or her ties social ties within the

⁴ ISCR Case No. 03-04147 at 3 (App. Bd. Nov. 4, 2005) (quoting ISCR Case No. 02-01093 at 4 (App. Bd. Dec. 11, 2003)); ISCR Case No. 05-02833 at 2 (App. Bd. Mar. 19, 2007) (citing *Raffone v. Adams*, 468 F.2d 860 (2nd Cir. 1972) (taken together, separate events may have a significance that is missing when each event is viewed in isolation).

⁵ See ISCR Case No. 02-24566 at 3 (App. Bd. July 17, 2006) (stating that an analysis under the eighth APF apparently without discussion of the other APFs was sustainable); ISCR Case No. 03-10954 at 5 (App. Bd. Mar. 8, 2006) (sole APF mentioned is eighth APF); ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006) (remanding grant of clearance because Judge did not assess “the realistic potential for exploitation”), *but see* ISCR Case No. 04-00540 at 6 (App. Bd. Jan. 5, 2007) (rejecting contention that eighth APF is exclusive circumstance in whole person analysis in foreign influence cases).

U.S.; and many others raised by the facts of a given case.” ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I have carefully considered Applicant’s family connections and personal connections to Malta. He lived in Malta during his formative years, moved to Canada when he was 23 years old, and approximately one year later moved to the U.S. He was educated in Malta until the 6th grade, and after he finished school, he worked on the family farm. His mother and sister, and brother-in-law are citizens and residents of Malta. He has frequent, non-casual contact with his mother and sister and her family in Malta. Applicant traveled to visit his family seven times since 1999. He held a Malta passport.

Substantial mitigating evidence weighs towards grant of Applicant’s security clearance. Applicant has lived in the United States for the past 36 years, and he has been a naturalized citizen over 23 years. The only passport he has used since becoming a U.S. citizen is his U.S. passport. His use of his Malta passport was limited to domestic travel within Malta to obtain a discounted helicopter ride. When he became aware that possession of a foreign passport was a concern, he surrendered his Malta passport to his Facility Security Manager.

He has strong ties to the U.S. His two U.S.-born children live in the U.S. as well as two of his siblings and their families. Applicant, without hesitation, expressed a willingness to renounce his Malta citizenship knowing that it would in all likelihood preclude him from his family inheritance in Malta. Applicant stated his position succinctly, “I like it here (referring to the U.S.) My special connection is here.” His mother in Malta is elderly and lives off of her U.S. social security. None of his immediate family members overseas are in positions placing them as likely targets as a means to exploit Applicant. He has limited financial ties overseas in contrast to his significant U.S. financial ties. There is no evidence he has ever taken any action which could cause potential harm to the United States. Particularly noteworthy is the fact he has successfully held a security clearance over 13 years and has held a courier certificate which authorizes him to transport classified information.

Applicant’s employer’s confidence and trust in him is so high as to warrant recommending him for a clearance. This was clearly demonstrated by his company Facility Security Manager testifying on his behalf. Applicant takes his loyalty to the United States very seriously, and he has worked diligently for his employer for 36 years. His work performance evaluations provide a resounding assessment that characterizes him as loyal, trustworthy, conscientious, responsible, mature, and of high integrity. In short, he has an excellent, well-deserved reputation as a loyal, trustworthy, U.S. citizen. His witness and documentary evidence recommend and support grant of a security clearance. Although the Government does not have an evidentiary burden, it is noteworthy that the Government did not produce any derogatory information about him nor did anyone come forward recommending denial of his security clearance.

Although the Government has no obligation to present evidence that Applicant and/or his family members are foreign agents, Applicant's family members are not, and never have been, foreign agents. Malta is a developed, stable, democratic nation with a modern economy. Malta has very favorable relations with the U.S.

This case must be adjudged on his own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. This Analysis must answer the question whether there is a legitimate concern under the facts presented that the Malta Government or its agents might exploit or attempt to exploit Applicant's immediate family members in such a way that this U.S. citizen would have to choose between his pledged loyalty to the U.S. and those family members. I conclude that no legitimate concern of this nature exists.

After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude Applicant has mitigated the security concerns pertaining to foreign influence and preference.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors"⁶ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated or overcome the government's case. For the reasons stated, I conclude he is eligible for access to classified information.

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. – d.:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a. – 2.e.:	For Applicant

⁶See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

Decision

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Robert J. Tuidor
Administrative Judge