



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)	
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)	
)	ISCR Case No. 19-00378
)	
Applicant for Security Clearance)	

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

01/22/2020

Decision

MASON, Paul J., Administrative Judge:

Applicant’s dual citizenship with the United Kingdom and the United States is not disqualifying. He has not engaged in any conduct or made statements that indicate he has a preference for a foreign country over the United States (U.S). He surrendered his U.K. passport over four years ago. Applicant provided sufficient evidence to overcome the security concerns arising from the foreign influence guideline. Eligibility for security clearance access is granted.

Statement of the Case

On July 6, 2016, Applicant signed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) application for a security clearance. The Department of Defense (DOD) was unable to make the preliminary affirmative findings required to grant a security clearance. DOD issued to Applicant a Statement of Reasons (SOR), dated February 19, 2019, detailing security concerns under the guidelines foreign

preference (Guideline C) and foreign influence (Guideline B). The action was taken under Executive Order (E.O.) 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 security Executive Agent Directive 4, establishing in Appendix A the *national Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a sensitive Position* (AGs), made effective in DOD on June 8, 2017. Applicant provided his notarized answer on March 5, 2019. The case was assigned to me on May 7, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 25, 2019, for a hearing on July 11, 2019. The hearing was held as scheduled. The Government's one exhibit (GE) 1 was entered into evidence without objection. The Government's administrative notice documents were marked as Hearing Exhibit (HE) 1. Within the time period permitted for post-hearing submissions, Applicant submitted nine character endorsements and a position statement that Department Counsel forwarded to me without objection. Those exhibits have been entered into evidence as Applicant's Exhibits (AE) A-J. DOHA received the transcript (Tr.) on July 19, 2019. The record closed July 26, 2019.

Administrative Notice

The Government requested I take administrative notice of Applicant's status as a retired British soldier drawing a military pension, his continuing relationships with active and retired British soldiers, and other ties to the United Kingdom, rather than the geopolitical characteristics of the United Kingdom. HE 1 contains administrative notice information and the Government's memorandum requesting administrative notice. Applicant had no administrative notice documents to present to the court. (Tr. 22)

Findings of Fact

The SOR alleges foreign preference under paragraph 1 based on Applicant's service in the British Army from January 1977 to October 2012 (SOR 1.a), and a yearly annual military pension of \$42,000 United States dollars (USD) (SOR 1.b).

The SOR alleges under paragraph 2 that: Applicant's brother is a citizen and resident of the U.K., and is employed by the British Army Air Corps at the Defense Helicopter Flying School (SOR 2.a); Applicant's two daughters are citizens and residents of the United Kingdom (SOR 2.b); Applicant has a bank account in the United Kingdom, with a \$2,000 balance (SOR 2.c); Applicant's military pension annuity account in the United Kingdom is valued at about \$200,000 (SOR 2.d); and, he receives an U.K. pension of \$42,000 a year as alleged in SOR 1.b (SOR 2.e). Applicant admitted all allegations set forth in SOR 1 and 2, with explanations. Some details have been excluded in the findings of fact to protect Applicant's right of privacy. (March 2019 answer to SOR)

Applicant, born a British citizen in Zimbabwe (formerly Rhodesia, a British colony) in 1957, is 62 years old. His mother and father are deceased. He has been married to his second wife (a naturalized U.S. citizen) since 2003. He has two adult-aged daughters (citizens and residents of the U.K.) from his first marriage that ended in divorce in 1997. Applicant's U.K. passport, which he received in January 2010, was scheduled to expire in 2020. Applicant entered the United States and received his permanent residence card in April 2010. In October 2012, he retired from the British Army. He became a U.S. citizen and received his U.S. passport in April 2014. He surrendered his U.K. passport to his employer's facility security officer (FSO) in April 2016. The record contains no evidence that Applicant used his U.K. passport after becoming a U.S. citizen. (GE 1 at 5-10, 35-40, 47-49, 63)

Applicant's Service in the British Army

After completing a nearly year-long course at a British military academy, Applicant he qualified for an officer position. He served in the British Army from 1977 to his retirement in October 2012. (SOR 1.a) He was deployed to a number of locations and earned periodic promotions. He was a lieutenant colonel at the time of his retirement. (GE 1 at 16-17; Tr. 11, 29-30)

From 1996 until his retirement in 2012, Applicant held a British equivalent of a U.S. top secret security clearance. The clearance was essential for access to meetings in the United States with U.S. federal agencies, U.S. Army installations, and geographic data centers. As his military career evolved, Applicant's initial working relationship with U.S. counterparts began in 1996 when he worked in the intelligence community at the British Ministry of Defense. The ministry had a U.S. liaison office. While deploying to several destinations abroad, the information Applicant collected was shared only with counterparts in the U.S. intelligence community. (GE 1 at 227; Tr. 37-38)

In the 1999 to 2002 time period, Applicant transferred to operational-oriented deployments where he travelled to different countries to provide assistance at the various embassies. A substantial number of deployments were at various locations in Africa, which became his area of expertise. At the end of this deployment, he was promoted to lieutenant colonel. (Tr. 32, 36)

From 2002 to 2005, Applicant (employed as a British Army officer) was stationed at his first job in the U.S. working with American, British, Canadian, Australian, and New Zealand counterparts in the administration of several projects. He also traveled to various countries for conferences and workshops. (Tr. 32, 36)

From February to August 2006, Applicant attended the North Atlantic Treaty Organization (NATO) Defense College and received the equivalent of a master's degree in military-oriented international studies. Attendees of the program included NATO

personnel and American military officers. Applicant attended NATO conferences or field trips in various European countries while enrolled at the defense college. (GE 1 at 13, 156-173; Tr. 30-31)

From the end of 2006 to 2010, Applicant was assigned to an Army base (Fort Benning, Georgia) in the Southeastern United States, then a base (Fort Campbell, Kentucky) in the U.S. Midwest, then a base in the middle Atlantic (Fort Bragg, North Carolina), or all the bases on a staggered basis, where, as Senior British Liaison Officer, he would perform liaison duties by filtering information from the U.S. armor units, infantry units, and Special Forces to their counterparts in the United Kingdom. He also participated in pre-deployment training and technology development preparation for the U.S. departments and their U.K. counterparts. Applicant performed these liaison duties until 2010. He attended several joint business meetings with U.K. and U.S. personnel or with officials from the British Ministry of Defense during the period. Applicant submitted several character references from U.S. military officers who served with him at the U.S. Army bases during the period. (GE 1 at 22, 176- 187; Tr. 32-33)

In 2010, Applicant knew he would be retiring in 2012, so he decided to accept two back-to-back operational deployments. The first was the Chief of Operations for a U.S. joint task force located in Djibouti, Africa. Applicant was one of two foreign-based officers at that location where he served until July 2011. After receiving some supplemental training in the second half of 2011, Applicant (employed by the British Army) was deployed to South Sudan, Africa, to serve as Chief of Joint Operations to the United Nations (UN) Mission, and also a special representative to UN Secretary General. He served there from December 2011 to May 2012. In October 2012, Applicant (age 55) retired from the British Army as a lieutenant colonel. His British security clearance terminated upon his retirement. (GE 1 at 16-24, 196-210; Tr. 35-39, 59-60)

Following his military retirement in October 2012, Applicant was self-employed in the United States as a consultant in international risk and crisis management until April 2016. He had no clientele and earned no income. He devoted this period to researching and developing case studies related to international crisis management in Africa, his field of expertise. He and his wife paid their living expenses with his British military pension, the sale of his U.K. home in June 2012, and his wife's real estate earnings. (GE 1 at 15; Tr. 65-69)

Since April 2016, Applicant has been employed as a senior national security adviser with a U.S. defense contractor, working for the U.S. Defense Threat Reduction Agency. He was hired for the position because his employer was searching for an African expert with instructional capabilities and technical expertise. His primary responsibilities are to: (1) help guide programs with partner countries in Africa; (2) help those countries develop counter-proliferation strategies against weapons of mass destruction; and (3) work in his capacity as senior instructor with other U.S. agencies to deliver training to

mitigate the various threats in the partner countries. Applicant never had any security or disciplinary problems while in the British Army, or working with his American counterparts, or at his current employment. He has never been pressured or coerced because of his position. He has never received emails requesting information about his employment. In his current position, he receives regular training on how to handle outside contacts. Before he embarks on foreign duty travel, he submits pre-departure forms and on his return, he receives post-travel debriefings. Applicant's last trip to the United Kingdom was to see his two daughters in 2017; he has no plans to return. (GE 1 at 14; Tr. 38, 70-71, 87-89)

Applicant was asked about his listed British contacts (identified in his July 2016 e-QIP) who served with him while he was in the British Army. As senior British liaison officer, Applicant supervised a British warrant officer (currently a captain) while at Fort Benning in 2006. Applicant, who previously contacted this individual by email or social media once or twice a year, has had no contact for two years. Applicant speculated that he may have retired recently. (GE 1 at 25; Tr. 43-45)

Applicant provided yearly evaluations for a British major, who was an exchange officer with the U.S. Army and a technical staff writer at Fort Benning in 2010. This individual has retired from the British Army and joined a private company in the United Kingdom. Applicant described his social media contact with this individual as intermittent, with his last contact of the individual at a June 2019 charity event. (GE 1 at 27; Tr. 44-45)

Another British lieutenant colonel was part of Applicant's team in 2009 working as an instructor at the armor location in Fort Knox, Kentucky. Applicant contacted him by social media once or twice a year, with his last contact in 2018. The lieutenant colonel has been deployed to another duty location for the past two years. (GE 1 at 27; Tr. 45-46)

Another British major was Applicant's exchange officer assigned to a combat unit at Fort Campbell, Kentucky in 2009. Applicant has infrequent contact once or twice a year and last saw him on social media in June 2019. He is retired and currently employed as a motivational speaker for small businesses in the U.K. (GE 1 at 27-28; Tr. 46-47)

Applicant explained that his contact with the next British soldier began in 1992 when this soldier was his junior operations officer. Applicant believes he is still serving in the British Army. Applicant had infrequent email contact and last time Applicant saw him was at a restaurant four or five years ago. (GE 1 at 30; Tr. 48-49)

Applicant has known the next British officer since 1985. The individual was Applicant's junior operating officer and logistic lead. Applicant believes that he is still serving in the British Army at another location as a military advisor. Applicant emailed this individual one or two times a year. Applicant's last social media contact was one or two years ago. (GE 1 at 33; Tr. 49-50)

When Applicant arrived in Fort Benning, Georgia in 2006, another British officer was stationed there as an instructor to U.S. Army captains on a mid-level course. The officer is still in the British Army currently stationed at the British Embassy in a country in Eastern Europe. Applicant and this officer have remained friends, with Applicant contacting him quarterly. He is the only person that knows Applicant works for his present employer. He and his wife reside with Applicant during their yearly U.S. visits. None of the aforementioned British officers know Applicant is applying for a security clearance or have asked about his work in the United States. They have never asked him to disclose classified or sensitive information. (GE 1 at 117-120; Tr. 50-53)

While working at the British Ministry of Defense in the intelligence community Applicant in 1996, Applicant met a male British civilian analyst in 1997. This analyst is still employed by the British government. Though Applicant characterized their relationship as friendly, with Applicant contacting him quarterly in 2016, Applicant's contact has become less frequent because the analyst is married and raising a child. (GE 1 at 111-113; Tr. 54)

A female British civilian analyst and Applicant initially worked together at British Ministry of Defense in 1996. In 2016, the female analyst was still working at the ministry and Applicant saw her occasionally when he traveled through the United Kingdom. In 2016, Applicant contacted her quarterly through social media contact. The last time he saw her was at a dinner with a mutual friend (U.S. citizen) in 2018. This same mutual friend informed the two British civilian analysts that Applicant was contracting for the U.S. Defense Threat Reduction Agency (DTRA). Applicant surmised that the female analyst knew he was applying for a security clearance. The mutual friend (U.S. citizen) in the previous paragraph is currently working for a federal agency. She knows that Applicant is applying for a security clearance (GE 1 at 111-114; Tr. 53-57)

Upon his retirement at age 55 from the British Army in October 2012, Applicant began receiving a military pension (SOR 1.b) based on his military service. After conducting a review of the pension system in 2005, the British Ministry of Defense changed the payout structure of the system by providing active Army service personnel the option of remaining in the existing pension system or transferring to a new system. Applicant opted for the new system allowing him to collect a tax-free amount of money at retirement and taking a reduced pension for 10 years, then receiving another lump sum at age 65 (SOR 2.d), followed by a full pension. The lump sum amount to be distributed in 2022 will be approximately \$200,000 (SOR 2.d). His wife's 60% survivorship interest is doubled under the new pension system. (GE 1 at 146-150; Tr. 40-42)

The SOR alleges under SOR 2.a that one of Applicant's brothers (66 years old) is a citizen and resident of the United Kingdom and is employed by the British Army Air Corps at the Defense Helicopter Flying School. Applicant contacts his brother monthly through social media, and sees him once a year. In 2017, this brother, who is married

with two daughters, retired from the British Army as a major. He collects a military retirement pension from the British Army and still resides in the United Kingdom. (GE 1 at 42-47, 151; March 2019 answer to SOR; Tr. 78-80)

Applicant's unlisted 72-year-old brother was born in the United Kingdom. He immigrated to Canada and became a citizen. He used to work for a financial services company in the country, but has moved to the United States. Applicant's unlisted 71-year-old brother is a citizen and resident of the United Kingdom, and works for a helicopter company as a test pilot and a senior helicopter instructor at a flight school. (GE 1 at 42-47, 151; March 2019 answer to SOR; Tr. 78-80)

Applicant has two adult-aged daughters who are citizens and residents of the United Kingdom (SOR 2.b). Neither have any affiliation with the U.K. government or military. The 30-year-old is currently taking some time off from her human relations job. She is engaged to a U.K. resident. Applicant's 26-year-old daughter recently received her bachelor's degree in business and is considering immigrating to the United States. Applicant has weekly contact with his daughters through social media. He has face-to-face contact with them about two or three times a year. Both daughters are self-sufficient. (GE 1 at 47-49; Tr. 82-86)

Applicant has a bank account (checking) located in the United Kingdom with a balance of approximately \$2,000 USD (SOR 2.c). He opened the account in 1975. Applicant deposits his monthly military retirement pension into this account before it is transferred a few days later to his U.S. account. He has no other investments in the United Kingdom. (GE 1 at 144; March 2019 answer to SOR; Tr. 72-73)

Applicant admitted that he has a pension annuity account in the United Kingdom worth approximately \$200,000 USD (SOR 2.d). He will receive this amount at age 65 (2022) when his pension annuity reaches maturity depending on the monetary exchange rate. In addition, he will begin receiving a U.K. pension that is similar to U.S. Social Security. (GE 1 at 147, 151; March 2019 answer to the SOR; Tr. 41-43)

While still residing in the United Kingdom, Applicant and his first wife purchased an annuity valued at about \$15,000 in 1987. When he cashed out the annuity in 2003, it was worth only \$15,000. He cashed out another annuity valued at \$30,000 at the time of maturity in May 2012, shortly before his retirement. Applicant's current wife acquired stock options in 2000 in a foreign company. In 2007, she sold the stock options, valued at \$35,000, back to her employer. In 1987 Applicant purchased a home in the United Kingdom. He sold that property for \$350,000 in June 2012, and owns no other real property in the United Kingdom. (GE 1 at 143, 148; Tr. 72)

Applicant's U.S. assets include a home that he purchased in 2013. The home is currently valued a \$750,000 to \$800,000. He has a retirement account with his employer

valued at \$25,000. He has no other U.S. investments. Applicant has approximately \$5,000 in his checking account and \$25,000 in a savings account. (GE 1 at 11; Tr. 73-75, 92-93)

Applicant's 74-year-old sister was born in the United Kingdom, but became a citizen of Australia. She married an Australian. She is a retired college professor and currently is an information technology (IT) lecturer with her husband. (GE 1 at 41-42; Tr. 81)

Applicant's wife was born in the United Kingdom in 1966. She is dual citizen of the United States and the United Kingdom, having acquired her U.S. citizenship through adoption as her stepfather was serving in the U.S. military. She is currently a real estate agent. Her 80-year-old mother is a naturalized U.S. citizen residing in the same region as Applicant and his wife. Applicant's wife has no siblings. Her deceased father has siblings who have several children. However, Applicant and his wife contact these relatives infrequently; the last face-to-face contact with them was at her father's funeral. The date of his funeral is not indicated, but it had to be before Applicant submitted his July 2016 e-QIP where he mentioned the father's funeral. (GE 1 at 41-51; Tr. 58, 64, 76-78)

Applicant decided to immigrate to the United States for several reasons. He has always loved this country. His wife is an American citizen. His 80-year-old mother-in-law, a U.S. citizen, lives in the same vicinity. Over his professional career, he has accumulated unique practical experiences that he feels can be better applied in the United States. Applicant's long-term plan is to keep working in his position beyond age 65 when he receives his U.K. lump sum pension annuity. A security clearance will provide him greater access to job opportunities. (Tr. 63-65, 90-91)

The last time Applicant voted in an election in the United Kingdom was in 2001, about 13 years before becoming a U.S. citizen. He has voted in all U.S. local and national elections since becoming an American citizen in 2014. Applicant is a member of a boating club. (GE 1 at 155; Tr. 105)

Character Evidence

Applicant submitted nine post-hearing character references, all U.S. citizens. (AE A) Reference B, a U.S. citizen and a senior program manager with Applicant's employer, has held a security clearance for 30 years. He interviewed and hired Applicant in April 2016. With his wealth of experience garnered from his assignments in Africa, reference B believed he was the best candidate for the subject matter expert (SME) position. As Applicant's supervisor since April 2016, and watching him in professional and social settings, reference B has no reservations in recommending Applicant for a security clearance. The senior program manager states:

All this performance background simply points to the kind of person [Applicant] is. He is what all managers seek to find – the model employee. He scrupulously adheres to company policies. He is absolutely committed to the national security missions and objectives of the US in general, and our clients in particular. In fact, our clients, who all have high-level clearances, routinely request [Applicant] by name to assist them with planning or to accompany them on missions. This is a clear reflection of their trust in his judgment and value. (AE B)

Reference C, a retired 3-star general in the U.S. Army, with 35 years of service, is currently the chief executive officer of a military support organization serving injured service members. In late 2006, when he was Deputy Commander of the U.S. Army at Fort Benning, Georgia, he met Applicant, the Senior British Liaison Officer to the U.S. Army Infantry, who was assigned to the same base and other bases in the Midwest and Northeastern part of the United States. Applicant consistently demonstrated exceptional ability as a leader in executing his job responsibilities. Reference C strongly believes that Applicant qualifies for a security clearance. (AE C)

Reference D, a U.S. citizen, has been friends with Applicant for about 20 years. As Applicant was nearing retirement from the military, he repeatedly mentioned his affinity for the United States and the privilege of applying his expertise to mission projects for the U.S. Government. (AE D)

Reference E, a retired U.S. Army colonel, has known Applicant since serving with him in 2008 at Fort Benning. As Applicant was reaching military retirement, his thoughts about becoming a U.S. citizen increased. He encouraged his two daughters to consider U.S. citizenship. Reference E recommends Applicant for a security clearance. (AE E)

Reference F, a retired Federal Bureau of Investigation (FBI) special agent, who retired in October 2017, began working for Applicant's employer in the same month as a senior instructor for the DTRA International Counterproliferation Program (ICP). Applicant's effectiveness as an instructor persuaded reference F to prepare his course material in a similar fashion. When reference F was an FBI agent, she worked in counterintelligence and counterterrorism division. She worked with counterparts from several allied countries, with the U.K. being America's closest ally. The FBI counterparts had dual citizenship and also U.S. security clearances. In recommending Applicant for a security clearance, Reference F writes:

As an FBI Special Agent, I've worked extensively in Counterintelligence and Counterterrorism. In that capacity[,] I have worked bi-laterally with services from the UK, Canada, Australia, and New Zealand; the UK being our closest ally. There are many individuals who are Special Agents, born in foreign countries, of which hold TS/SCI (top secret/sensitive compartmented

information) security clearances. These individuals also still have family in those countries and have dual citizenship; and yet hold the highest US security clearance. These individuals, like [Applicant] enhance the FBI just as [Applicant] enhances the DTRA/ICP. (AE F)

Reference G, a retired colonel from the U.S. Army, has spent 30 years in the military. He met Applicant in August 2007 at Fort Benning, Georgia. Reference G and Applicant were both liaison officers to the commanding general of the infantry school. They interacted daily to weekly until reference G was reassigned in 2009. They continued their friendship through social media. Applicant is a loyal American citizen who has no preference for another country. Reference G endorses Applicant's security clearance application. (AE G)

Reference H, a colonel in the U.S. Army, has known Applicant since 2007 when he was the Senior British Liaison Officer at Fort Benning, Georgia. Applicant earned a reputation of providing detailed advice in the coordination of British and U.S. staff to ensure integration of priorities for the U.K. and U.S. staffs. His participation with the instructional programs of U.S. Army's Officer Candidate School (OCS) was invaluable. Reference H believes Applicant qualifies for a security clearance. (AE H)

Reference I is a retired colonel with 31 years of service in the U.S. Army. As with several of the above references, he met Applicant in 2008 at the U.S. Army base in Fort Benning, Georgia. Applicant was the Senior British Liaison Officer and reference I was part of a training unit. They worked together occasionally in Infantry Center events to ease the transition for newly commissioned officers, new infantry officers, and new officer candidates. Reference I learned that Applicant developed a reputation for attention to detail and dedication to mission projects. Reference I has kept in contact with Applicant through social media. He considers Applicant trustworthy and a loyal American who merits a security clearance. (AE I)

Applicant's wife since 2003 and a naturalized U.S. citizen, believes that Applicant is an honorable person with high integrity. In addition to his retirement account with his employer, he has an income retirement account (IRA). He received the U.S. Meritorious Service Medal in 2011. He donates to several U.S. charitable organizations. Applicant's wife has been living in the United States since 2002. (AE J)

Administrative Notice – United Kingdom

The United Kingdom, a constitutional monarchy, has a foreign policy that emphasizes close collaboration with the United States, its strongest ally. The United Kingdom and the United States have been the allies in almost every regional or worldwide conflict except Vietnam. The two countries have similar cultures, a common language, and democratic principles that have helped sustain their longstanding and friendly

relationship. Both countries share extensive links in their international relations that extend from commercial contacts to political and defense cooperation. The two countries belong to several international organizations advocating world peace and security. The two countries consistently consult each other on foreign policies and objectives while promoting mutual security policy goals. The United Kingdom was a founding member of NATO.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines, which are flexible rules of law, apply together with common sense and the general factors of 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."

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 in seeking a favorable security decision.

Analysis

Foreign Preference

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 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. Conditions that could raise a security concern and may be disqualifying include:

- (a) applying for and/or acquiring citizenship in any other country;
- (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;
- (c) failure to use a U.S. passport when entering or exiting the U.S.;
- (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;
- (e) using foreign citizenship to protect financial or business interests in another country in violation of U.S. law;
- (f) an act of expatriation from the United States such as declaration of intent to renounce U.S. citizenship, whether through words or actions.

Applicant's dual citizenship to the United Kingdom and the United States establishes AG ¶ 10(a). He was born in Rhodesia, a U.K. colony in southern Africa. His service in the British Army from 1977 to October 2012 falls within the scope of AG ¶ 10(d)(1). However, AG ¶ 10(d)(2) does not apply as there is no evidence his British military service ever conflicted with U.S. national security interests before or since his retirement from the British military in October 2012. Neither AG ¶¶ 10(b) nor 10(c) apply because Applicant surrendered his U.K. passport in April 2015, and there is no record evidence indicating that he used his U.K. passport after he was issued U.S. passport in April 2014.

Conditions under AG ¶ 11 that could mitigate security concerns include:

- (a) the foreign citizenship is not in conflict with U.S. national security interests;
- (b) dual citizenship is based solely on parental citizenship or birth in a foreign country, and there is no evidence of foreign preference;

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

(d) the exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen;

(e) the exercise of the entitlements or benefits of foreign citizenship do not present a national security concern;

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

(g) civil employment or military service was authorized under U.S. law, or the employment or service was otherwise consented to as required by U.S. law; and

(h) any potentially disqualifying activity took place after receiving the approval by the agency head or designee.

Applicant's dual citizenship is not in conflict with U.S. national security interests and there is no evidence that Applicant has acted in a way that indicates a preference for a foreign country over the United States. AG ¶¶ 11(a) and 11(b) apply. Applicant has not expressed a willingness to renounce his U.K. citizenship. However, there is no objective evidence that his foreign citizenship is in conflict with U.S. national security interests. AG 11(c) applies.

Applicant's 35 years of military service entitled him to a military pension after his discharge in October 2012. When he reaches 65 years of age, he will be entitled to the U.K.'s version of U.S. Social Security. The current and future military pension payments were activated in October 2012 based on Applicant's service in the British Army. Both the military pension and Applicant's future entitlement to the British retirement fund occurred before he became a U.S. citizen and do not present a national security concern. AG ¶¶ 11(d) and 11(e) apply. Lastly, the Government's administrative notice documents and record evidence show that the foreign preference poses a negligible national security risk. AG ¶ 11(f) applies. Finally, based on GE 1, Applicant's testimony, and the character endorsements, it is reasonable to infer that Applicant's military service with his American counterparts, including assignment to U.S. installations, during a large portion of his military career was authorized under U.S. law. AG ¶ 11(g) applies.

Foreign Influence

AG ¶ 6 sets forth the security under Guideline B:

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.

Conditions under AG ¶ 7 that could raise a security concern and may be disqualifying include:

(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 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; and

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

Conditions under AG ¶ 8 that could mitigate security concerns include:

(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 United States;

(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;

(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;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, organizations from a foreign country; and

(f) the value of 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.

Assessments of foreign contacts under AG ¶ 6 should include the type of government in the foreign country where the contacts are located. The risk of coercion is significantly greater in a country with an authoritarian government, or when the country targets U.S. citizens for protected information, or when the country is associated with terrorism. The distinction between friendly and unfriendly nations should be made carefully because friendly nations have committed espionage against the United States. The United Kingdom, a constitutional democracy, does not target U.S. citizens for protected information and, like the United States, is a victim and not a sponsor of terrorism.

The Government's position (as presented in their administrative notice memorandum, HE 1) in this case is that the heightened risk of foreign influence concern (AG ¶ 7(a)) emanates from Applicant's status as a retired British military officer with a foreign bank account, a military pension and pension annuity, his continuing contacts with his brother (a retired British officer) and other active and retired British officers, including two high-ranking officers, rather than the specific conditions of the United Kingdom. The Government's position appears in ISCR Case No. 17-03026 at 3-4 (App. Bd. Jan. 16, 2019). However, in that case Applicant's contacts to other retired and active British military officers were substantive allegations in the SOR. The only substantive allegation in this case regarding military contacts is Applicant's brother who retired in 2017 as a British military officer (SOR 2.a). Applicant's continuing contacts with active and retired British officers, other than his brother, were not alleged in the SOR, and may not be an independent basis for denying his application for a security clearance. These continuing contacts may be considered to assess Applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence in extenuation, mitigation, or changed circumstances; or in the whole person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted). I have considered the unalleged contact with active and retired British officers for these limited purposes.

On March 4, 2019, the administrative judge found in his decision after remand of the above-cited case that a heightened risk of foreign influence under AG ¶ 7(a) was not established. “The amicable and cooperative relationships between the United States and the United Kingdom and their armed forces and shared ideals and democratic practices are inconsistent with the manipulative measures contemplated by AG ¶ 7(a).” See, ISCR Case No. 17-03026, Remand Decision at 9. I agree with the judge’s conclusion and adopt it in this case. Applicant’s status as a retired British military officer, and his continuing contacts with his brother, a British military officer (SOR 2.a) who has been retired for two years, do not create a heightened risk of foreign influence under AG ¶ 7(a). Even though Applicant maintains infrequent to regular contacts with retired and active duty British military officers, I find those contacts raise no security concerns given the close relationship the United States has to the United Kingdom. In addition, I conclude that Applicant’s British financial interests do not subject him to a heightened risk of foreign influence under AG ¶ 7(f).

Applicant’s continuing regular contacts with his brother, a retired British military officer (SOR 2.a), create a potential conflict of interest under AG ¶ 7(b) between his desire to safeguard protected information and technology and his desire to help his brother. The potential conflict is sufficiently mitigated with his brother’s retirement in 2017. There is nothing problematic about Applicant’s contacts with his two British daughters. The oldest daughter is on a sabbatical from her human relations job, and the youngest daughter has just received her bachelor’s degree in business. There is no evidence indicating that they are affiliated with any foreign government.

Applicant’s British bank account of about \$2,000 (SOR 2.c) and his British pension annuity of \$200,000 (SOR 2.d) are his remaining British financial interests. The bank account receives and temporarily holds Applicant’s monthly military pension payments (SOR 1.b) until he transfers the payment to a U.S. bank account a few days later. The pension annuity represents a lump sum payment under the British military pension system revised in 2005, authorizing him to draw a reduced pension benefit until 2022 (age 65), when he receives a lump sum. The U.K. financial interests could subject Applicant to a heightened risk of foreign influence as defined by AG ¶ 7(f). Though the total amount of foreign financial interests are not insignificant, the combined value of the British bank account and pension annuity is less than 24% of Applicant’s total financial assets in the United States. In sum, the foreign financial interests do not result in a conflict of interest that could be used to successfully influence or pressure Applicant. Because the financial interests are located in the United Kingdom, a longstanding and close ally of America, AG ¶ 8(f) applies.

In his July 2016 e-QIP, Applicant disclosed the names of nine British military officers (including two high-ranking officers) that he served with during his career. Applicant complied with the reporting requirements regarding the reporting of contacts. AG ¶ 8(e) applies.

Whole-Person Concept

I have examined the evidence under the foreign influence and foreign preference guidelines in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

From 1977 to October 2012, Applicant served in the British Army. As indicated in the factual findings, from 1996 to 2012, he participated in joint operations in some capacity with American counterparts. Between 2002 and 2005, he was stationed at his first job in the United States working with western allies on various projects. Between 2006 and 2010, he was the senior British liaison officer at several Army forts in the Eastern and Midwestern United States. Based on their interaction with Applicant during those years, five retired and active military officers recommended him for a security clearance. (AE C, E, G, H, I, J)

Applicant decided to immigrate to the United States in 2010. Following two operational deployments from 2010 to 2011 (Chief of Operations of a U.S. task force), and from 2011 to 2012 (Chief of Joint Operations at the UN Mission), Applicant retired in October 2012.

After becoming a U.S. citizen in April 2014, Applicant's employment supervisor since he was hired in April 2016, described Applicant as the "model" employee. The supervisor directed special attention to Applicant's dedication to national security and his unswerving commitment to the mission. Applicant's supervisor recommends him for a security clearance. (AE B) A colleague and former FBI agent, recommends Applicant for a security clearance based on his organizational skills, as well as his expertise as a subject matter expert on Africa issues. Considering the evidence from an overall commonsense point of view, Applicant has met his burden of mitigating the security concerns based on the guidelines for foreign preference and foreign influence.

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
Subparagraphs 1.a-1.b:	For Applicant
Paragraph 2 (Guideline B):	FOR APPLICANT
Subparagraphs 2.a-2.e:	For Applicant

Conclusion

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

Paul J. Mason
Administrative Judge