



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



In the matter of:)
)
-----) ISCR Case No. 04-05330
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jennifer Goldstein, Esquire, Department Counsel
For Applicant: Kenneth M. Roberts, Esquire

January 29, 2010

Decision

WESLEY, Roger C., Administrative Judge:

Statement of Case

On March 17, 2009, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on April 20, 2009, and requested a hearing. The case was assigned to me on June 25, 2009. The case was scheduled for hearing on August 18, 2009. A hearing was held as scheduled, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, or deny Applicant's application for a security clearance. At hearing, the Government's case consisted of 11 exhibits (exs. 1-11); Applicant relied on seven witnesses (including

himself) and 23 exhibits (exs. A-W). The transcript (Tr.) was received August 25, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Besides its 11 exhibits, the Government requested administrative notice of two documents: *Background Note: Czech Republic*, U.S. Department of State (July 2008) and *Country Specific Information, Czech Republic*, U.S. Department of State (February 2009).

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 (App. Bd. April 12, 2007); ISCR Case No. 05-11292 (App. Bd. April 12, 2007). Administrative notice is appropriate for noticing facts or government reports that are well known. See *Stein*, Administrative Law, Sec. 25.01 (Bender & Co. 2006). For good cause shown, administrative notice was granted with respect to the above-named background reports addressing the geopolitical situation in the Czech Republic. Administrative notice was extended to the documents themselves, consistent with the provisions of Rule 201 of Fed. R. Evid. This notice did not foreclose Applicant from challenging the accuracy and reliability of the information contained in the reports addressing the Czech Republic's current status.

Additionally, I have taken administrative notice, *sua sponte*, of the following document: *2009 Investment Climate-Czech Republic*, U.S. Department of State (February 2009). This document is covered by the same administrative notice procedures as the previous documents, for which administrative notice was taken.

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Procedural Issues

Before the close of the hearing, Applicant asked for additional time to supplement the record with translation certifications. For good cause shown, Applicant was granted seven days to supplement the record. The Government was afforded three days to respond. Within the time permitted, Applicant supplemented the record with translation certifications and a letter from his facility security officer (FSO) accepting Applicant's surrender of his Czech Republic passport with reservations. The submissions are accepted as Applicant's exhibits X through Z.

By agreement, both parties were afforded time (to September 10, 2009) to file closing written briefs. Within the time permitted, each party filed a closing legal memorandum for consideration of the merits. Both closings were accepted and considered.

Summary of Pleadings

Under Guideline C, it is alleged that Applicant: (1) exercised dual citizenship with the Czech Republic and the United States; (2) applied for and was granted Czech Republic citizenship and issued a Czech Republic passport in about 2003, even though, he became a naturalized U.S. citizen in about 1977; and (3) disclosed his possession of

a Czech passport, issued in July 2003 and not to expire until July 2013, in a January 2009 answer to a DOHA interrogatory.

Under Guideline B, it is alleged that Applicant (a) has a spouse (married in 1984) who is a citizen of the Czech Republic; (b) owns property in the Czech Republic; (c) have two brothers who are citizens and residents of the Czech Republic; (c) has a sister-in-law who is a citizen and resident of the Czech Republic; (d) maintains a bank account in the Czech Republic; and (e) traveled to the Czech Republic in 2003 and 2007.

Under Guideline E, it is alleged that Applicant (a) informed others in 1972 that he had served in the Czechoslovakia army and trained North Vietnamese soldiers; (b) submitted a reimbursement request for official travel reimbursement totaling \$1,340 and later attempted to resign from federal government service following his interrogation by a special agent from the Naval Investigative Service regarding his falsification of his travel claim; (c) was denied a security clearance in May 1986 due to the presence of relatives in Czechoslovakia, and ultimately was terminated from federal service; (d) falsified the SF-171 he executed in September 1985, by omitting his separation from employment in 1983; (e) failed to report a contact with a suspected Czech intelligence agent when he was interviewed by a special agent for the Defense Security Service (DSS) in 1985 and 1987; (f) obtained Czech Republic citizenship and a Czech passport after obtaining a DoD top secret clearance in 1997; and (g) failed to report to appropriate personnel that he obtained Czech citizenship in 2003, in violation of paragraph 1.302c of the National Industrial Security Program Operating Manual (NISPO) of January 1995, as amended.

In his answer to the SOR, Applicant admitted most of the allegations without any explanations. He denied having a sister-in-law who is a citizen and resident of the Czech Republic, and he denied his failing to report a suspected Czech intelligence agent to DSS investigators when questioned in 1985 and 1987.

Findings of Fact

Applicant is a 62-year-old electrical engineer for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant was born in Czechoslovakia to a Czech mother and Russian father. He never met his father, who served in the Russian military and was shipped back to Russia shortly after he married Applicant's mother in 1946 (see ex. 5). Applicant was raised by his mother in Czechoslovakia. Russian authorities presented his mother with divorce papers in 1953 and threatened to ship her to Russia if she did not sign them (ex. 5). Under duress, she signed the divorce papers as instructed. With the Communist

Party's seizure of Czechoslovakia in 1948, Applicant was raised in a country that was subject to the controlling influence of the Soviet Union.

Applicant enjoyed a relatively normal childhood and graduated from high school in 1964 (see exs. 1 and 11). While a young school boy, Applicant recognized that he had superior soccer skills and began playing the sport in organized junior leagues. By the time he was 15, he was playing soccer at a level he considered to be more than professional (*viz.*, paid by his company). He played soccer throughout high school and graduated from high school at the age of 19 (Tr. 113).

After graduating from high school, Applicant was conscripted into the Czech army and achieved the rank of sergeant during his three-year service tenure. While in the Czech army he was never assigned to duties outside of Czechoslovakia, and was never involved in any military training exercises (see ex. 7). He combined his work in the electronics department of a railroad system with organized soccer (ex. 7; Tr. 114-15). As the result of his recognized superior soccer skills, he was assigned to the country's national soccer team (see ex.; Tr. 115). He was discharged from the Czech military in 1967 (see ex. 5).

In 1969, while traveling with his national Czech soccer team in Yugoslavia, Applicant defected (see ex. 5; Tr.115). He chose to settle in Germany where he pursued a contract to play soccer for a German team (Tr. 115-16). After playing soccer for a year in Germany, he was banned from playing professional soccer because of an angry outburst from the Czechs over his fleeing Czechoslovakia (Tr. 116). After declining multiple offers to come to the United States to play professional soccer, Applicant accepted an offer from a U.S. team to come and play for a U.S. soccer team (Tr. 116).

Applicant immigrated to the United States in May 1970. Following his defection, he separated from his wife, and divorced her in 1972 (see exs. 5 and 11). She claimed he fathered her child before their 1969 separation (ex. 5). After many years of paternity denial, he accepted his wife's child as his daughter in 1977 and mailed support payments to his ex-wife for many years (ex. 5).

Applicant applied for U.S. citizenship, and was naturalized as a U.S. citizen in March 1977 (see exs. 1 and 2). Once in the United States, he worked for several civilian companies pending his application for U.S. citizenship. After becoming a U.S. citizen, he applied to the Czechoslovakian government for renunciation of his Czechoslovakian citizenship (Tr. 138). Czech officials informed him that when he became a U.S. citizen, he automatically lost his Czechoslovakian citizenship (see ex. W; Tr. 137-39).

After becoming a U.S. citizen, Applicant entered a respected U.S. university and pursued a curriculum in electrical engineering. Upon transferring to another accredited university in 1979, he earned an electrical engineering degree in 1982 (see exs. 3 and 4).

In 1984, Applicant married a Czech citizen; he has one child (a son) from this marriage (see exs. 5 and 11). Their son is 25 years of age and resides with Applicant and his wife (Tr. 214). Applicant adopted his wife's two children. They are adults and reside in other states within the United States (Tr. 175). Like Applicant, his children became dual citizens of the United States and the Czech Republic (Tr. 174-76). They each possess a Czech passport in addition to their respective U.S. passports. His wife and children have traveled back and forth to the Czech Republic almost every year (Tr. 189). His children, though, do not travel anymore (Tr. 191).

Applicant's wife retains her Czech citizenship. She remains a very patriotic Czech, and did not emigrate to the United States to become a U.S. citizen, but to be with Applicant (Tr. 169). Fearful for the safety of Applicant (in Applicant's view), she never applied for U.S. citizenship (Tr. 168-69). She intends to return to the Czech Republic to live when circumstances permit. His wife is currently employed in the United States as a sales representative for a U.S. company and makes between \$10 and \$11 an hour (Tr. 170). She is trained as an economist and worked in that field in Czechoslovakia.

Applicant has two half-brothers who are citizens and residents of the Czech Republic. His youngest half-brother (age 59) owns a security service that provides guards for factories. He is independently wealthy and requires no financial assistance from Applicant (Tr. 185). His oldest half-brother (almost 60) works in electronics, and is very poor (Tr. 181-84). Applicant provides some financial assistance to this half-brother by giving him all of his sportswear clothing, which his brother, in turn, sells for a profit (exploiting Applicant's celebrity status).

Applicant's sister-in-law (previously a citizen and resident of the Czech Republic) recently expired (Tr. 129, 147). Before she passed away, she maintained periodic contact with Applicant's wife.

Since becoming a U.S. citizen, Applicant has worked for a variety of employers in the public and private sectors (see exs. 1, 3, and 4). Beginning in May 1982, he worked for the U.S. Air Force in a civilian capacity as an engineer (see ex. 2).

After a brief period of unemployment between June 1983 and January 1984, Applicant went to work for the Navy in a civilian role. Records show that he resigned from his Navy position in June 1984 to avoid adverse action against him (see ex. 11). His employer charged him with claiming false expenses in excess of \$1,000 (ex. 11). When later confronted with the charges by a Coast Guard investigator (investigating his Coast Guard clearance application), records indicate he admitted to making unauthorized overseas calls and filing improper travel claims. Coast Guard records indicate he agreed to make restitution (ex. 11).

In his 1987 DSS interview, Applicant assured that he never accepted the Navy's termination reasons and later denied falsifying travel expense forms, and resigning his Navy position under threat of adverse personnel action (see ex. 6; Tr. 128). However,

he has never provided any documentary proofs to support his denials (see exs. 5 through 8). Absent more probative evidence from Applicant on the circumstance of his Navy resignation, the Coast Guard's termination is accepted as the most reliable version of the covered events.

Following several months of unemployment, he joined a large defense contractor in January 1985, and stayed with this firm through June 1986 (see ex. 4; Tr. 128-30). His assignments, performance, and circumstances of departure are not documented.

Applicant returned to the public sector in February 1986. He accepted an engineering position with the Coast Guard. Records reveal, however, that he falsely represented in his application for Coast Guard employment that he had never been terminated from federal service, or resigned in lieu of termination (see ex. 11), obscuring the circumstances in which he resigned from his previous Navy service in lieu of adverse action. Because his engineering position required a security clearance, he was required to submit to another background investigation for his clearance. Based on investigation reports of his having family members residing in Czechoslovakia (still a Communist-ruled country in the 1980s). Applicant was denied a security clearance, and was terminated from his Coast Guard position in June 1986 (ex. 4).

All of the facts and circumstances developed by the Coast Guard are covered in a 1986 termination letter that was attached and incorporated in a 1986 Merit System Protection Board decision affirming Applicant's denial of a security clearance based on his having relatives in a Communist-controlled country (Czechoslovakia). Because the Coast Guard's denial of Applicant's security clearance preceded its completion of its investigation into the circumstances of Applicant's Navy resignation, the Board declined to reach the merits of Applicant's challenges of his Coast Guard termination (see ex. 11).

After leaving the Coast Guard, Applicant returned to the private sector. Between January 1987 and the present, he has worked for a series of defense contractors (see exs. 1 and 4). Each of his positions required a security clearance, which he has held continuously since 1987.

Applicant's restoration of his Czech citizenship and passport

In 2003, Applicant learned from a friend that the Czech Republic was offering former citizens of Communist-ruled Czechoslovakia, who escaped the Iron Curtain between 1948 and 1990, the opportunity to regain their birthright citizenship by simply asking for it to be reinstated by the Czech Republic and forwarding their birth certificate and other pertinent documentation to the proper Czech authorities (see ex. V; Tr. 136).¹

¹ The law offering the opportunity to former Czech citizens to reacquire their Czech citizenship is identified in exhibit U as Law #193/1999. This law expressly affords former Czech citizens the opportunity of former Czech citizens of Communist-ruled Czechoslovakia who had lost their Czech citizenship by naturalization in the United States from 1957 to 1990, or whom acquired citizenship from another country with an international

Concerned about protecting his wife's property interests in the Czech Republic, and preserving his opportunities to return with his wife to live there in the future, Applicant exercised this option in July 2003 (see exs. 10 and 12; Tr. 141-44, 164). In addition to acquiring dual citizenship in the Czech Republic, he also obtained a Czech passport. Issued in July 2003, his Czech passport will not expire until 2013 (see exs. 10 and 12).

Applicant's in-laws passed away in 2004 (see exs. 9 and T; Tr. 144). While in the Czech Republic for his father-in-law's funeral, Applicant used his Czech passport to add his name to the title of property in the Czech Republic that he and his wife inherited from her father after his death (Tr. 166-67).

Once Applicant regained his Czech citizenship and Czech passport, he did not notify his facility security officer (FSO) or any authorized member of his employer's organization of his actions. He acknowledged the NISPOM procedures that governed his security clearance eligibility required clearance holders like himself to notify their FSOs when they acquired foreign citizenship and a foreign passport (Tr. 160). He worried, though, that "these people in JT3 are too incompetent to understand and I don't want to say anything" (Tr. 160). So, Applicant did not report to his FSO or other appropriate personnel within his employer's organization that he had obtained Czech Republic citizenship and a Czech passport.

Asked in a 2008 DOHA interrogatory whether he had any foreign passports in his possession, Applicant acknowledged having a Czech passport, which he left in the Czech republic (see ex. 9). He later volunteered information about his accepting an offer from the Czech government in 2003 to regain his Czech citizenship without having to forfeit his U.S. citizenship (ex. 9). Besides informing DOHA of his regained Czech citizenship and passport, he has let his supervisors know of his actions (Tr. 99-104). Applicant's explanations were made without any visible confrontation, and reflect voluntary, good-faith disclosures of his regained Czech citizenship and receipt of a Czech passport.

For some years after receiving his Czech passport, he kept it at his home, never using it to travel abroad. He took his Czech passport with him to attend his father-in-law's funeral in 2004, and left it in the Czech Republic for safe-keeping when he returned to the United States (Tr. 165-67). He assures he never used it to enter or exit the Czech Republic (Tr. 165-67). He admitted to needing his Czech passport, though, for acquiring or preserving inherited Czech property (Tr. 166-67, 177-78).

By placing his name on the house and property his wife inherited from her father in 2004, Applicant acquired joint ownership (Tr. 178). Since acquiring joint ownership in his wife's inherited property, he invested approximately \$20,000 towards the building of the house on the property (Tr. 179). He estimates the home and property to be worth

treaty with the Czech Republic prohibiting double citizenship between 1948 and 1990, to regain their Czech citizenship. Each application requires the applicant to fill out a declaration and forward it, along with a birth certificate and other documents (in some cases) to the appropriate Czech consulate (see ex. U).

approximately \$150,000 to \$200,000 in U.S. dollars (Tr. 180). Besides his home and property, Applicant maintains a bank account in the Czech Republic (Tr. 192). He uses this account to help defray the expenses of his family and their relatives (Tr. 148). He estimates the value of this account to be \$1,000 to \$1,500 in U.S. dollars (Tr. 193).

Asked whether he was willing to renounce his Czech citizenship, Applicant declined (Tr. 163). He indicated he will need his Czech citizenship when he relocates to the Czech Republic with his wife after he retires from his U.S. employment. Both he and his wife desire to return to the country of their birth, where they have their home, family, and friends (Tr. 178). Applicant still enjoys celebrity status in the Czech Republic and is very proud of his Czech roots.

When asked by Department Counsel whether he was willing to surrender his Czech passport, Applicant expressed reluctance to do so without assurances the passport would be returned to him when he retires (Tr. 161). Afforded an opportunity to further consider his surrender of his Czech passport after the conclusion of the hearing, Applicant submitted a letter from his FSO confirming Applicant's surrender of his Czech Republic passport and its placement in a secure container for safekeeping (see ex. X). Applicant placed restrictions on his passport surrender as follows: Should he request return of the passport at any time, the FSO is instructed to immediately notify Applicant's supervisors, the senior managers of JT3, LLC, and the government official responsible for coordinating security matters with the FSO (ex. X). Implicit in the surrender reservations is Applicant's right to request and obtain a release of his Czech passport at any time, subject to the noted restrictions. Under these circumstances, Applicant's passport surrender amounts to a bailment with no time limits placed on Applicant's right to the return of the passport.

Applicant's visits to the Czech Republic

Since becoming a U.S. citizen, Applicant has made five return visits to the Czech Republic between December 1982 and August 1986 while Czechoslovakia was still controlled by the Soviet Union and its Czech allies (see ex. 7). At the time of one of his visits, he was still employed by the U.S. Air Force and held a security clearance (Tr. 195). When he arrived in Czechoslovakia, he was met at the airport by over 2,000 adoring fans, who still remembered his celebrity soccer status (Tr. 122). At the Czech entry office, he was questioned by a Czech agent (Agent A). Applicant suspected this agent was a member of Czech intelligence (see ex. 7; Tr. 150). Applicant expressed confidence that the Czech agent possessed detailed intelligence about Applicant's background and Air Force employment (Tr. 150).

Records show Applicant returned to Czechoslovakia in the summer of 1983 for approximately 30 days (see ex. 7). While in the country, he was followed by uniformed authorities and individuals in plain clothes (see ex. 8). When Agent A met him, he inquired of Applicant what he would say if he were asked to work for the Czech government (ex. 8). Applicant showed a map of the island chain of his state of residence. This map revealed all sections of the state and listed military bases, the airport, and other landmarks, but was not a classified document (see ex. 7). At one

time, Applicant estimated that he may have obtained the map through his Air Force employment. However, he denied this possibility at hearing. At some point on this 1983 trip, Applicant recollects relinquishing his wrist watch to Agent A, after Agent A inquired of Applicant whether there was anything inside the watch (ex. 7). Based on the identifying information from his apartment manager, Applicant believed the Czechs searched his U.S. apartment as well (Tr. 156).

In February 1984, Applicant returned to Czechoslovakia to marry his wife and be present for the birth of his son (Tr. 124-25). He returned in September 1984 to move his wife and children to the United States (Tr.125-26). On each occasion he met with Agent A and was called to a Czech office to confirm in writing that he did not wish to work for the Czechoslovakian government (Tr. 157).

Applicant traveled again to Czechoslovakia in 1992 (months before the country was split in two by peaceful agreement, which paved the way for the establishment of the Czech Republic) to visit family members (Tr. 190). He made another trip to the Czech Republic in 2000, and again in 2004 for his father-in-law's funeral (Tr. 136). His last trip to the Czech Republic was in 2007 to attend his mother's funeral (see ex. U; Tr. 149).

Applicant was twice interviewed by DSS agents in the 1980s. When first interviewed by a DSS investigator (in April 1985), Applicant discussed his Czech heritage and his naturalization as a U.S. citizen. In this interview, he disclosed his four visits to Czechoslovakia between 1982 and 1984 (see ex. 5). He assured that if he were ever approached by persons seeking his assistance in doing harmful acts against the United States, he would file a proper report with federal authorities. However, Applicant did not disclose his multiple contacts with Agent A.

Asked what he would do if approached by representatives of a hostile power in a follow-up DSS interview in 1987, Applicant assured he would dismiss any attempts to pressure or influence him, and would notify the nearest FBI office in the event the person persisted in trying to influence him to engage in any adverse activity against the United States (see ex. 6). Once again, he did not disclose his contacts with Agent A.

Interviewed for a third time by a DSS agent (this one in March 1990), Applicant disclosed his contacts with Agent A for the first time (see ex. 7). It is not clear from his signed, sworn statement covering this interview whether he was confronted by the investigator in any way with information about Agent A. When later asked by the same DSS agent in a follow-up DSS interview why he did not disclose his contacts with Agent A earlier, he explained that he was advised by FBI personnel he interviewed with in 1983 while looking for work that Agent A's contacts were not important from an intelligence perspective.

Because no one from DSS or other U.S. Government sources ever asked him specifically about foreign contacts during his travels to Czechoslovakia, he never considered them significant enough to merit his disclosing them (ex. 8). While his

explanations are cause for concern, considering his experiences and knowledge of Czechoslovakia when interviewed between 1985-1987, his explanations were never challenged by the Government before this hearing, and are sufficiently plausible to warrant acceptance herein.

Czech Republic's Country Status

The Czech Republic was established in January 1993, and has a democratic government that is comprised of three branches: a president (chief of state), prime minister (head of government), cabinet, bicameral legislature, and a judiciary that includes a Supreme Court and a Constitutional court (*see Background Note: Czech Republic, supra*). The Czech Republic has a large diverse economy with a GDP of \$176.5 billion in 2007 (*id.*, at 2). The majority of its 10.3 million residents are ethnically and linguistically Czech.

Historically, the Czech Republic formed the western part of the Czech and Slovakia federal Republic. Once an independent state, the Czechs lost their national independence to the Hapsburgs Empire in 1620, and for the ensuing 300 years were ruled by the Austrian monarchy (*see Background Note: Czech Republic, supra*). The two republics were consolidated into a common state after WW I that comprised Czechs, Moravians, and Slovaks. Able to bridge longstanding cultural differences, the Czechs and Slovaks joined to form an independent country with President Wilson's support at the close of WW I (*id.*, at 2-3).

Germany invaded Czechoslovakia in March 1939 and established a German protectorate (*see Background Note: Czech Republic, supra*). By this time, Slovakia had declared its independence and had become a puppet state of the Germans.

Soviet troops overran all of Slovakia, Moravia, and much of Bohemia at the close of WW II (*see Background Note: Czech Republic, supra*, at 3). Most of Western Bohemia was liberated by U.S. forces. Despite their reunification efforts after the war (led by President Benes), their efforts were rebuffed by Soviet-backed forces. Through dubious claims of legality, the Communist Party seized power in February 2008 (*id.*).

Following brief periods of token reforms by the Communist party, the party replaced their head (Novotny) with a Slovak, Alexander Dubcek in January 1968 (*see Background Note: Czech Republic, supra*, at 3-4). Under Dubcek's leadership, Czechoslovakia initiated political-military changes in the Soviet-dominated Warsaw Pact and expressed desires to improve relations with the West. Dubcek's modernization efforts fueled discord among other Warsaw governments, though, and prompted the invasion by Warsaw Pact forces in August 1968 (*id.*). Dubcek and his party reformers were replaced by another Slovak, Gustav Husek. Throughout the 1970s and 1980s (an era termed the period of normalization), apologists of the 1968 soviet-led invasion backed their conservative regime.

Human rights activism was responsible for the 1989 Civic Forum movement that seized power during the so-called “Velvet Revolution” under the leadership of a dissident playwright: Vaclav Havel (see *Background Note: Czech Republic, supra*, at 4). Civic Forum and its Slovak counterpart (Public Against Violence) energized millions of Czechs and Slovaks and were instrumental in the repudiation and collapse of the Communist party in Czechoslovakia.

With an increasing number of democratic groups seeking influence in Czechoslovakia following the Soviet retreat, Slovak calls for more autonomy impeded the functioning of the federal government in Czechoslovakia. Federalists could not stem the growing pressures for a split between the Czechs and Slovaks. With President Havel’s resignation in July 1992, party leaders for the Czechs (Vaclav Klaus) and the Slovaks (Vladimir Meciar) reached an agreement that the two republics would separate and become independent states by the end of 1992 (see *Background Note: Czech Republic, supra*, at 4-5).

Klaus remains the president of the Czech Republic. He was re-elected in February 2008. The country’s chamber of deputies split roughly 200 seats between three center-right parties and two parties on the left (see *Background Note: Czech Republic, supra*, at 5). The chamber currently operates under a fragile three-party coalition that has survived several challenges since 2006 (*id.*).

The Czech Republic adhered to the foreign policy of the former Soviet Union from 1948 until 1989, but since independence, the Czechs have made integration with Western institutions their major priority. Today, the Czech Republic is a member of NATO (since March 1999) and the European Union (since May 2004). Membership in both of these organizations represent major advances in the Czech Republic’s Western-leaning foreign policy.

United States-Czech bilateral relations have improved considerably since the onset of the Velvet Revolution in 1989. Relations between the two countries are strong and reflect common interests and understandings about the challenges facing the world, from Afghanistan to the Balkans.

The Czech government is generally receptive to foreign investment, and continues to offer incentives for certain types of foreign direct investment on a non-discriminatory basis (see *2009 Investment Climate-Czech Republic, supra*, at 1-2). The 1993 United States-Czech bilateral investment treaty contains specific guarantees of national treatment and most-favored nation treatment for U.S. investors in all areas of the economy other than insurance and real estate (*id.* at 2, 7-8).

Acquisitions and other transactions involving real estate in the Czech Republic by foreign persons are controlled by Czech law, however, which limits purchasing and financing of Czech real estate to Czech residents and non-resident Czech citizens. These real estate limitations are contained in the Czech Republic’s foreign exchange act (no. 219/1995 coll.).

The Czech Republic has a good human rights record and a demonstrated commitment to the rule of law. While civil disorder is rare in the Czech republic, U.S. citizens traveling to the country are advised by the State Department to remain vigilant about their personal security (see *Country Specific Information, Czech Republic, supra*, at 2).

Endorsements

Applicant has excellent character references to his credit. Air Force civilians who currently supervise or work with Applicant, or have done so in the past, credit him with unique engineering and linguistic skills. They consistently characterize Applicant as conscientious, dedicated, reliable and trustworthy (see exs. D through S) Consistently, they stress his conscientious work habits and recommend him to a position of trust. Most of them, however, do so without any detailed knowledge of his retirement intentions or specific circumstances associated with his regaining his Czech citizenship and passport (see exs. H, D, F, J, K, and S; Tr. 62-64, 69-75; 48-55, 87-90, and 94-98). One of his character witnesses expressed his understanding that Applicant intended to retire to the Czech republic when he reaches the retirement age of 65 (Tr. 83-84). His Department head expressed her belief that Applicant might one day want to return to the Czech Republic, but could offer no details of any specific retirement plans (Tr. 99-103). She cited her government customer's awareness of his Czech citizenship and passport issues (Tr. 104).

Policies

The revised Adjudicative Guidelines (AGs) list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in reaching at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments about whether the applicant is an acceptable security risk. When evaluating an applicant's

conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Foreign Preference

The Concern: When an individual acts in such a way as to indicate 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. See AG ¶ 9.

Foreign Influence

The Concern: Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism. See AG ¶ 6.

Personal Conduct

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. AG ¶ 15.

Burden of Proof

Under the Directive, a decision to grant or continue an applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record,

the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove by substantial evidence any controverted facts alleged in the SOR; and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or his security worthiness through evidence of refutation, extenuation or mitigation of the Government's case. Because Executive Order 10865 requires that all security clearances be clearly consistent with the national interest, "security-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Born and raised in the old Communist-ruled Czechoslovakia, Applicant (a nationally renowned soccer player) defected in 1969 and immigrated to the United States in 1970. Over the course of the next 35 plus years he obtained an engineering degree from an accredited U.S. university, worked in various jobs in the public and private sectors that required security clearances, married a Czech citizen, and raised three children (two of whom he adopted).

Trust concerns relate to both foreign preference and foreign influence associated with Applicant's longstanding ties to the Czech Republic and its predecessor Czechoslovakia, his regaining his Czech citizenship and a Czech passport with the intention of retiring in the Czech Republic in a home he and his wife recently inherited and developed.

And, trust concerns arise over documented misstatements of Applicant in the past about his travel claim submissions, work history claims in employment applications, omissions of pertinent information about foreign agents of the former Czechoslovakia in DSS interviews, and his failure to report his obtaining Czech citizenship to appropriate personnel in violation of paragraph 1.302.c of the NISPOM, as amended. Applicant's recurrent actions raise concerns about pattern dishonesty and rule violations that are covered by the personal conduct guideline.

Foreign Preference

Dual citizenship concerns necessarily entail allegiance assessments and invite critical considerations over acts indicating a preference for the interests of the foreign country over the interests of the United States. The issues, as such, raise concerns over Applicant's preference for a foreign country over the United States. By virtue of his taking advantage of a special window of opportunity afforded by the Czech government in 2003, he acquired Czech citizenship and a Czech passport. He continued to retain and use his Czech citizenship and passport to vest and protect his acquired real estate in the Czech Republic, where he hoped to reside following his eventual retirement from his U.S. job.

Not until after the hearing did he surrender his Czech passport to his FSO, and he did so with the understanding he would not be renouncing his Czech citizenship, and would be entitled to recover his passport upon request. Although subject to government-reporting conditions should he ever request return of his passport, his arrangement clearly does not represent an irrevocable surrender, and reflects a qualified understanding more indicative of a bailment-type arrangement or conditional surrender.

While Applicant's surrender of his Czech passport may be sufficient to satisfy the technical surrender requirements of MC ¶ 11(e) of the AGs for foreign preference (see *discussion infra*), it does not in of itself resolve the larger preference question raised in this case. Whether Applicant's collective actions reflect an overall preference for his birth country (the Czech Republic), or formulated retirement plan that is not incompatible with his imposed fiduciary duties to the United States, are issues that require reconciling with the security requirements demanded of those who are afforded access to classified information.

Since becoming a naturalized U.S. citizen, Applicant has taken several actions and exercised Czech privileges that reflect active indicia of dual citizenship. Specifically, he regained his Czech citizenship in 2003 that he implicitly renounced under Czech law when he accepted U.S. citizenship in 1977. Applicant also obtained a Czech passport that he used to secure his name on Czech realty his wife inherited from her father in 2004. He has expressed his unwillingness to renounce the Czech citizenship he obtained under special circumstances in 2003, and has surrendered his Czech passport on the implicit condition he can have it back when he retires from his U.S. job, and returns to the Czech Republic to live with his Czech spouse.

In assessing split-preference cases, the Appeal Board has looked to indicia of active exercise of dual citizenship. Where the subject applicant has relied on his foreign citizenship and passport to own and service property in a foreign country that restricts ownership to residents and individuals with citizenship in that country, the Board has considered such actions to constitute important considerations of preference. See ISCR Case No. 16098 at 2 (App. Bd. May 29, 2003).

So, too, in cases where there is record evidence of a dual-citizen applicant's having substantial real property interests in a country that are not available to non-residents or citizens on the same terms, the Appeal Board has considered such interests to represent special benefits or privileges that reveal a preference to that particular country. See ISCR Case No. 08-02864 at 4 (App. Bd. Dec. 29, 2009).

Here, Applicant used his prior Czechoslovakian birth and citizen status to restore his Czech citizenship and obtain a Czech passport that enabled him to qualify for placing his name on his wife's inherited real estate in the Czech Republic. His regaining his Czech citizenship and passport enabled him to qualify for acceptance of prospective inheritance benefits following her father's death. His actions represent material indicia of a preference for the Czech Republic that cannot be easily reconciled with the split preference he has shown for many years for his adopted country, the United States.

Preference questions require predictive judgments about how an applicant can be trusted in the future to honor his fiduciary responsibilities to the Government. In Applicant's case, he was manifestly aware of the security significance of his obtaining Czech citizenship and a Czech passport while continuing to hold a U.S. security clearance. For he admittedly failed to report to appropriate personnel that he obtained his Czech citizenship and passport, in violation of paragraph 1.302.c of the NISPOM. And, he acknowledged his acute mistrust in the JT3 people responsible for processing his foreign citizenship information. While his choices may be understandable, they also reflect a current and ongoing preference for his roots in the Czech Republic over his longstanding preferences for the United States.

Because Applicant regained his Czech citizenship and Czech passport while still holding a U.S. security clearance (without notifying appropriate officials), the Government may apply certain provisions of disqualifying condition (DC) ¶ 10(a) of AG ¶ 9, "exercise of any right, privilege or obligations of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This DC includes but is not limited to:

- (1) possession of a current foreign passport;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country; and

(7) voting in a foreign election.”

Specifically, DC ¶ 10(a)(1)(3) and (5) both apply to the established facts and circumstances herein. By regaining his Czech citizenship and passport, Applicant was able to accept special real estate and mortgage borrowing benefits in the Czech Republic that are not currently available to non-Czech residents and citizens. The Czech Republic’s foreign exchange act (Act No. 210/1995) restricts the acquisition of real estate in the country to residents and non-resident Czech citizens.

Were Applicant to renounce his Czech citizenship and unconditionally surrender his Czech passport, he risks a potential forfeiture of his property and his inability to regain his Czech citizenship status once he assumed retirement status in the country. His election to retain the Czech citizenship he acquired and reserve his right to retrieve the Czech passport he turned over for safekeeping represent entirely rational and understandable choices on Applicant’s part. They also reflect clear preferences for his home country of the Czech Republic, where he hopes to retire with his wife in a few years.

Applicant surrendered his Czech passport in August 2009, in accordance with established procedures for surrendering a foreign passport to a cognizant security authority. In doing so, he does forfeit the short-term flexibility of unfettered and undocumented travel. Applicant is quite right on this point. And, he may, accordingly, claim the benefits of another mitigating condition under Guideline C. MC ¶ 11(e), “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated,” is fully applicable as well to Applicant’s situation. Because his dual citizenship status is not based solely on his parent’s citizenship, he may not claim the benefits of MC ¶ 11(a), “dual citizenship is based solely on parent’s citizenship or birth in a foreign country.” Nor are any of the other potential mitigating conditions available to Applicant based on the developed record.

Whole person precepts are certainly helpful to Applicant in surmounting the Government’s preference concerns herein. The strong trust impressions he has forged with his supervisors, coworkers and friends who have worked with him add support to his claims that during his more than 25 years of faithful service to the defense industry he has demonstrated undivided loyalty and preference for U.S. institutions and this country’s core values.

Overall, though, Applicant is not able to persuade that his current preference is still with the United States. Because he made considerable use of Czech privileges associated with his regaining his Czech citizenship and passport in 2003 during a narrow window of opportunity bestowed on former citizens of Czechoslovakia who defected before 1990, he manifested a preference for the Czech Republic under the criteria as established by the Appeal Board. Applicant fails to absolve himself of foreign preference concerns associated with the presented issue of whether his preference lies with his adopted country (United States), or the country where he was born and raised (currently the Czech Republic) before he defected in 1969 to escape Communist rule.

Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.d of Guideline C.

Foreign influence

Applicant and his family have deep roots in the Czech Republic, a country rich in history and socio/political traditions, and Communist domination during the post WW II years. Since the collapse of the Soviet Union and the Communist Party in 1989, the reconstituted Czech Republic has flourished under well-established constitutional government and institutional respect for human rights, and benefits from strong bilateral relations with the United States. As a member of NATO and the European Union, the Czech Republic has been able to forge strong political, military and economic ties with Western Europe, as well as the United States. Foreign ownership of real estate in the Czech Republic remains one of the few areas of disagreement between the Czech Republic and this country.

The Government urges trust concerns over risks that Applicant might use his Czech contacts to exploit his real estate and other interests in the Czech Republic as he prepares himself and his family for retirement in that country. Because he still has two brothers and his wife's family members residing in the Czech Republic, he might be subject to undue foreign influence by Czech government authorities to access sensitive proprietary information in Applicant's possession or control. As such, he and his family present potential heightened security risks covered by disqualifying condition (DC) ¶ 7(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," of the AGs for foreign influence. The citizenship/residence status of these family members in the Czech Republic, combined with Applicant's own demonstrated preference for the country, do pose some potential concerns for Applicant because of the risks of undue foreign influence that could potentially affect his use of his acquired real estate in the Czech Republic.

Applicant has no immediate family members resident in the Czech Republic, except for his two brothers (only one of whom he has provided any financial support). And neither of his brothers have any known relationships with the Czech government or military. Moreover, his wife's parents and sister are all deceased, and she has no relatives who have contacts with Applicant. Any potential conflict that might be associated with her deceased husband's pension benefits is small and not likely to pose any conflicts of interest for Applicant in the foreseeable future. And, from all that is known, Applicant's spouse does not have any identified prior military or government service that could create potential conflicts of interest.

Because none of Applicant's living family or his wife's family have any identified family members that could place any of them in any foreseeable conflict situation, no consideration of DC 7(b), "connection 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," is warranted herein.

Applicant and his immediate family members (*i.e.*, his younger brothers) residing in the Czech Republic have deep family roots in their country of birth. Their citizenship status and presence in the Czech Republic does not by itself create a heightened risk. Applicant's contacts with his family members are manageable risks, and clearly not of the magnitude that could make them subject to a heightened security risk of pressure or compromise under Guideline B. As a country, the Czech Republic has a lengthy history of constitutional government and generally recognized respect for human rights and the rule of law. It maintains a strong bilateral relationship with the United States in the important areas of trade and investment. The Czech Republic continues to be a country with emerging strategic relationships with the United States in the War on Terror, and is a country that at present does not present a heightened risk under Guideline B.

The AGs governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens/residents of foreign countries in general. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing in the supplied materials and country information about the Czech Republic. Unlike the old AGs, the new ones do take into account the country's demonstrated relations with the United States as an important consideration in gauging whether the particular relatives with citizenship and residency elsewhere create a heightened security risk. The geopolitical aims and policies of the particular foreign regime involved do matter.

Based on his case-specific circumstances, MC ¶ 8(a), "the nature of the relationships with foreign persons, the country in which these persons are located, or the persons or activities of these 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." is available to Applicant. Neither Applicant, his wife, nor his immediate or extended family residing in the Czech Republic pose heightened security risks that could subject them to potential pressures and influence from Czech Republic government and military officials.

Of benefit to Applicant, too, is MC ¶ 8(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 United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest." Applicant's demonstrated loyalty, patriotism, and professional commitments to the United States, is well demonstrated and sufficient under these circumstances to neutralize all potential conflicts that are implicit in his relationships with his relatives. MC ¶ 8(c), "contact or communication with foreign citizens is so casual and infrequent that there is little

likelihood that it could create risk for foreign influence or exploitation,” has some applicability, too, based on Applicant’s infrequent contacts with his younger brothers.

MC ¶ 8(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.” is not available to Applicant. His financial interests in the Czech Republic are considerable and account for major reasons why he has been unwilling to renounce his Czech citizenship and surrender his Czech passport unconditionally.

Not available to Applicant either is MC ¶ 8(e), “the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country.” Applicant was slow to recognize the importance of his contacts with Agent A and acknowledge his meetings with Agent A several years later when he was re-interviewed by a DSS agent. And, Applicant failed to promptly notify appropriate personnel of his acquiring Czech citizenship and a Czech passport in accordance with NISPOM requirements.

Whole person assessment is available to minimize Applicant’s exposure to any potential conflicts of interests with his Czech family members residing in the Czech Republic. His supervisors and coworkers who have worked with him for many years and consider him very reliable and trustworthy. Moreover, Applicant is not aware of any risks of coercion, pressure, or influence that any of his family members might be exposed to. So, in Applicant’s case, the potential risk of coercion, pressure, or influence being brought to bear on him, his wife, or any of their family members residing in the Czech Republic is minimal and mitigated. Applicant has no immediate family members resident in the Czech Republic

Overall, any potential security concerns attributable to Applicant's having property interests and family members residing in the Czech Republic are sufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand any Czech risks of undue influence. Favorable conclusions warrant with respect to the allegations covered by Guideline B.

Personal Conduct

Personal conduct concerns over Applicant’s judgment, reliability and trustworthiness are raised under Guideline E as the result of his exhibited past failures to promptly and properly report his travel expense claims while employed by the Navy, the reasons for his Navy resignation, the circumstances surrounding his contacts with Agent A in the early 1980s, and his regaining his Czech citizenship and passport in 2003 (after being issued a top secret security clearance). His actions reflect serious lapses in judgment and trust for which ¶ 16(d)(3), “a pattern of dishonesty or rules violations,” of the AGs for personal conduct is applicable.

Most of Applicant's judgment lapses are quite aged and were well known to the Government by 1990. By this time, Applicant had already held a security clearance with the defense contractors who employed him. His disclosures to DSS investigators in 1990 of his contacts with Agent A during his prior visits to Czechoslovakia does not appear to have adversely affected his security clearance status in any visible way.

Applicant has continued to hold security clearances with defense contractors for the ensuing 19 years he has worked in the defense industry. During this period, he has impressed his supervisors and coworkers with his engineering and linguistic skills, his conscientious work habits, and his exhibited trustworthiness. He is credited with following all of his employers' administrative and security guidelines in his numerous tasked assignments and has not been cited with any other security breaches.

Applicant's failure to promptly notify appropriate personnel of his obtaining his Czech citizenship (in violation of paragraph 1.302.c of the NISPOM) is more recent and was undertaken with Applicant's clear knowledge of the reporting requirements for clearance holders like himself. But Applicant has since told his department head, who notified her company's government customer. Applicant is also on record as fully disclosing his obtaining Czech citizenship and a Czech passport in his 2008 answers to DOHA interrogatories.

Mitigating conditions are available to Applicant based on the age of his cited misrepresentations and omissions that occurred in the 1980s and have long been known to the Government. MC ¶ 17(c), "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," is applicable to Applicant's situation.

True, recurrent action, such as Applicant's initial non-disclosure of his Czech citizenship and passport as a clearance holder, can, if not separately mitigated, create a recurrent pattern of breaches of recognized employment norms, rules and regulations that could require continued scrutiny. However, more recent citizenship and passport non-disclosures are mitigated by corrective actions. Without a recurrent pattern to evaluate, Applicant's older judgment lapses are mitigated by the passage of time and positive input from his supervisors and coworkers who have worked with him for many years.

Based on Applicant's documented disclosures of most of the judgment and trust lapses that have been attributed to Applicant, MC ¶ 17(d), "the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur," has some application as well. And Applicant may take some advantage of MC 17(e), "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress."

Holding a security clearance involves a fiduciary relationship between the Government and the clearance holder. Quite apart from any agreement the clearance holder may have signed with the Government, the nature of the clearance holder's duties and access to classified information necessarily impose important duties of trust and candor on the clearance holder that are considerably higher than those typically imposed on government employees and contractors involved in other lines of government business. See *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980). By his actions demonstrated in these proceedings and over the course of his past 20 plus years of employment in the defense industry, Applicant recognizes his trust responsibilities.

From a whole person standpoint, Applicant documents favorable assessments from his supervisors, coworkers, and former colleagues, who know him and have worked with him throughout his professional career in the defense industry. The cumulative effects of past and recent judgment lapses are outweighed by the sum of his prior disclosures and documented positive contributions to the defense industry over the past 20 plus years.

Based on a consideration of the applicable guidelines for personal conduct and a whole person assessment, Applicant mitigates the personal conduct specifically associated with his aged terminations, misstatements and omissions, and more recent non-disclosure of his Czech citizenship to appropriate personnel in a timely way. Taking into account all of the facts and circumstances developed in the record, favorable conclusions warrant with respect to the allegations covered by the personal conduct guideline.

The remaining allegation covered by the personal conduct guideline (subparagraph 3.a) was disputed by Applicant and not substantiated by the evidence presented in the record. This allegation is mitigated for lack of substantiating proof.

In reaching my decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in AG ¶ 2(a).

Formal Findings

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE C (FOREIGN PREFERENCE):	AGAINST APPLICANT
Subpara. 1.a:	Against Applicant
Subpara. 1.b:	Against Applicant
Subpara. 1.c:	Against Applicant
Subpara. 1.d:	Against Applicant

GUIDELINE B (FOREIGN INFLUENCE):	FOR APPLICANT
Subpara. 2.a:	For Applicant
Subpara. 2.b:	For Applicant
Subpara. 2.c:	For Applicant
Subpara. 2.d:	For Applicant
Subpara. 2.e:	For Applicant
Subpara. 2.f:	For applicant

GUIDELINE E (PERSONAL CONDUCT):	FOR APPLICANT
Subpara. 3.a:	For Applicant
Subpara. 3.b:	For Applicant
Subpara. 3.c:	For Applicant
Subpara. 3.d:	For Applicant
Subpara. 3.e:	For Applicant
Subpara. 3.f:	For applicant
Subpara. 3.g:	For applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

