



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



In the matter of:)
)
) ISCR Case No. 12-06813
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: Steven C. Glassman, Esq.

05/01/2013

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated foreign influence and foreign preference security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On November 7, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B (foreign influence) and C (foreign preference). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on January 2, 2013, and requested a hearing before an administrative judge. The case was assigned to me on February 4, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 22, 2013, scheduling the hearing for April 9, 2013. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on April 17, 2013.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Applicant submitted a written request that I take administrative notice of certain facts about the United Kingdom. The request was not admitted into evidence but was included in the record as Hearing Exhibit (HE) I. Department Counsel did not object, and I have taken administrative notice of the facts contained in HE I. The facts are summarized in the Findings of Fact below.

Evidence

Government Exhibits (GE) 1 through 7 were admitted in evidence without objection. Applicant testified, called a witness, and submitted Applicant's Exhibits (AE) 1 through 40, which were admitted without objection.

Findings of Fact

Applicant is a 42-year-old owner and chief executive officer (CEO) of a defense contracting company. He is seeking to retain his security clearance, which he has held since about 2003. He has a bachelor's degree. He married in 1992 and divorced in 1997. He has an 18-year-old child from that marriage. He married again in 1998. He has a 15-year-old child and an adult stepchild.¹

Applicant's father is a native-born U.S. citizen who spent about 13 years in the U.S. military. He met Applicant's mother, who is a citizen of the United Kingdom, when he was stationed in the United Kingdom. Applicant's two older siblings were born in the United Kingdom. Applicant was born in the United States. Their family lived in the United States until Applicant was two years old, at which time Applicant's father was transferred to another foreign country. When Applicant was four years old, his father was discharged from the U.S. military and moved the family to the United Kingdom. Applicant's youngest sibling was born in the United Kingdom. Because their mother was a citizen of the United Kingdom, Applicant and his siblings had dual citizenship.²

Applicant spent almost all of his youth in the United Kingdom. When he was a teenager, he was a member of the British Army Cadet Force (ACF), an organization that is similar to the Junior Reserve Officer Training Corps (JROTC) in the United States. His mother obtained a British passport for him when he was about 16 years old, so that he could travel to another country with the ACF.³

Applicant joined the British military when he was 19 years old, and he was assigned to the military police. He served in the British military for four years. He worked

¹ Tr. at 21-22, 117-121; GE 1-2, 6, 7; AE 3.

² Tr. at 27-30, 74, 152; GE 1-2, 6, 7.

³ Tr. at 30-32, 95, 111-113; Applicant's response to SOR; GE 7.

miscellaneous jobs after his discharge until he obtained a job in 1996 as a civilian police officer in the United Kingdom. He also volunteered as an instructor for the ACF.⁴

Applicant's first wife is a British citizen. His 18-year-old child from that marriage is also a British citizen who lives in the United Kingdom. As a child of a U.S. citizen, she is eligible for U.S. citizenship. Applicant's first wife received custody of the child. Applicant has had limited contact with his child in the last 15 years.⁵

Applicant's older brother moved to the United States and joined the U.S. military. Applicant remarried in 1998, and he was looking for a change. He moved with his wife, child, and stepchild to the United States in 1998. He enlisted in the U.S. military in 1998 and served almost three years until 2001, when he was honorably discharged for medical reasons. He received his service's Commendation Medal, and he was twice awarded its Achievement Medal. He receives disability payments from the U.S. Department of Veterans Affairs (VA).⁶

After he was discharged from the U.S. military, Applicant went to work for a defense contractor in 2001, and he applied for a security clearance. He provided a statement for his background investigation in February 2002.⁷ He stated that his British passport expired in 1999 and that:

I have no plans to renew the passport. I will relinquish my British passport. I do not know how to relinquish the passport. I have taken no steps to relinquish the passport because I have had no reason to do so. I am willing to renounce my UK citizenship if required. I have not renounced it because I have had no reason to do so.⁸

Applicant was granted a DOD security clearance in about 2003. He worked for various defense contractors through 2007, and he had his own company for less than a year in 2003 and 2004. He applied for a top secret clearance in 2005, and he ultimately received that level clearance.⁹ He wrote on his security clearance application:

I currently hold du[a]l nationality with both the US and UK. I was born in the US and moved back in 1998. Since this time I have not traveled back to the UK, or renewed my passport. I am willing to renounce my British citizenship. If this is a l[e]gal requirement to achieve this level of clearance. When questioned for my last US clearance I was asked about

⁴ Tr. at 33-35, 113-117, 161-162; Applicant's response to SOR; GE 1, 6, 7.

⁵ Tr. at 117-120; GE 1, 6.

⁶ Tr. at 22, 36-39, 122-123, 150, 154; GE 1-2, 6; AE 4.

⁷ Tr. at 39-42, 123-124; GE 1; AE 5-7; AE 5.

⁸ GE 7.

⁹ Tr. at 42-43, 48, 124-127; GE 1, 6; AE 3.

the above and my allegiance to another country. I would like to again state that I hold allegiance to the US and no other country.¹⁰

Applicant started a defense contracting company in 2008. He owns 51% of the company, and his wife owns the remaining 49%. He is the CEO of the company. His company was granted a facility security clearance (FCL) by the Defense Security Service (DSS).¹¹

Applicant's and his wife's parents lived in the United Kingdom. They were getting older and had health issues, particularly his wife's mother who passed away after a protracted illness. Applicant's wife has a medical condition coupled with a pathological fear of flying that makes it almost impossible to travel by plane. Applicant and his wife decided to relocate their home to the United Kingdom. Applicant knew that he would be traveling frequently back and forth between the United Kingdom and the United States. He contacted U.S. and British customs and immigrations offices. He was told that because he was a dual citizen, he would have to enter and exit the United States with his U.S. passport, and enter and exit the United Kingdom with a British passport. He obtained a British passport in January 2008 to facilitate the move. The passport had a 2018 expiration date.¹²

Applicant bought a house in the United Kingdom and moved his family by ship to the United Kingdom in 2010. Applicant maintained an apartment in the United States and commuted to both locations until he gave up the apartment and moved to the United Kingdom in September 2011.¹³

Applicant maintained his company in the United States. He decided that he could handle the company by telecommunications from the United Kingdom, with frequent visits to the United States. All his employees and business remained in the United States, but he hoped to expand the company to have contract work with U.S. military bases in Europe.¹⁴

In October 2011, Applicant sought guidance from the DSS about his British passport.¹⁵ He received the following information:

¹⁰ GE 6.

¹¹ Tr. at 44-49, 53-55; GE 1; Applicant's response to SOR; AE 3, 17, 19, 20.

¹² Tr. at 97-98, 128-131, 141-143, 165-167; Applicant's response to SOR; GE 1-3; AE 12.

¹³ Tr. at 23, 51-52, 133, 140-141; Applicant's response to SOR; GE 1, 5; AE 7.

¹⁴ Tr. at 82-86, 141; AE 26.

¹⁵ Tr. at 99-100; GE 1, 3.

Please see the below guidance on surrendering a foreign passport:

(11/20/09) Foreign Passport: Disposition Influences Personnel Clearance Eligibility: DISCO will not grant or continue a personnel clearance if the clearance applicant or cleared individual possesses a current foreign passport. In instances where the foreign passport is the sole potential disqualifying factor in the personnel clearance adjudication, DISCO will send a Joint Personnel Adjudication System (JPAS) message to the Facility Security Officer (FSO) stating that if DISCO receives reliable documentary evidence that the foreign passport has been destroyed, invalidated, or surrendered, DISCO will grant or continue the clearance. The passport holder may surrender the foreign passport to the FSO for safekeeping, but the FSO is not required to perform this service. If the FSO does accept the surrendered passport and the FSO subsequently returns the passport to the cleared individual while the passport is current, the FSO must submit an incident report in JPAS with details concerning the return of the passport. Reasons for the return of the employee's foreign passport should be provided in the incident report, even if the reasons are compassionate (e.g., when the passport is returned because the individual states that he or she needs it in order to visit a sick relative in another country). An incident report must be submitted even if the passport is returned at the time of the individual's employment termination.

An example of the documentary evidence sufficient to establish surrender of the passport (when the passport is surrendered to the FSO), includes a statement signed by the FSO on company letterhead, stating that the applicant has surrendered his or her passport, providing details about the passport [i.e., identifying the issuing country, passport number, date of issuance and expiration date], and stating that the company will report any return of the passport to the passport holder, by submission of an incident report explaining the action.

Please provide written documentation as soon as possible stating what reconciliations have been made to resolve this issue.¹⁶

Applicant surrendered his British passport to his facility security officer (FSO) in October 2011. Applicant contacted the British border agency about entering and leaving the United Kingdom with his U.S. passport. He was informed that he could have a Certificate of Entitlement to the Right of Abode in the United Kingdom placed in his U.S. passport. The Right of Abode certificate permits the holder to enter the United Kingdom without the permission of an immigration officer and to live and work in the United

¹⁶ AE 12. This same information is available on the DSS web site at http://www.dss.mil/disco/indus_disco_news.html.

Kingdom without restriction.¹⁷ He was told that he should send his British passport to the passport agency with an explanation that due to work-related conditions, he needed to surrender his British passport and that he would be requesting a “Right to Abode” certificate.¹⁸

Applicant obtained the passport from his FSO to surrender it to British authorities. In December 2011, he surrendered his British passport to the British passport office and requested a Right of Abode certificate for his U.S. passport. He was granted a Certificate of Entitlement to the Right of Abode in January 2012, which does not expire until January 2018. His torn and voided British passport was returned to him.¹⁹

Applicant’s oldest sibling and numerous aunts, uncles, and cousins on his father’s side live in the United States. Most of his remaining immediate family and almost all of his wife’s family live in United Kingdom. His wife became a U.S. citizen in 2010. His father is a U.S. citizen who Applicant claims has a Right of Abode certificate.²⁰ He is retired. Applicant’s mother worked for a local government in the United Kingdom for a period, but she is also retired. Applicant’s wife, younger child, and siblings are dual citizens. The remaining family members are British citizens. Applicant’s mother-in-law is deceased. She worked for the British Ministry of Defense at one point. Applicant’s father-in-law served more than 20 years in the British military. He is retired. Applicant’s brother-in-law also served in the British military.²¹

Applicant’s only significant property in the United Kingdom is his house and his car. He bought his house in the United Kingdom in about 2010. Applicant estimates its current value at \$950,000, with about \$250,000 to \$300,000 equity in the property. He has a bank account in the United Kingdom that he uses for living expenses. The

¹⁷ Right of Abode certificates appear to be limited to:

- British citizens; and
- Commonwealth citizens who had the right of abode before 1 January 1983 and who have not, since then, ceased to be Commonwealth citizens.

A Right of Abode certificate may not be placed in:

- a non-British passport if the person holds a current British citizen passport
- a British citizen passport.

See <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/ecg/roa1/#header2>.

¹⁸ Tr. at 101-103, 135; Applicant’s response to SOR; GE 1, 3, 4; AE 6, 12-15.

¹⁹ Tr. at 103-104, 136-140; Applicant’s response to SOR; GE 5; AE 6, 15, 16.

²⁰ As discussed above, Applicant’s father does not appear to currently qualify for a Right of Abode certificate. He may be grandfathered in, or he may have some other status that permits him to live and work in the United Kingdom that does not require British citizenship. See Settling in the UK at <http://www.ukba.homeoffice.gov.uk/visas-immigration/settlement/>.

²¹ Tr. at 74-82, 138-139, 143-144, 152-161; Applicant’s response to SOR; GE 1-2, 7.

balance at the time of the hearing was about \$7,000. He receives a salary of about \$200,000 from his company. The salary is direct deposited into a U.S. bank. He estimates the value of his company at about \$3 million.²²

Applicant owns a condominium in the United States. The property is rented. He estimates his equity in the property at \$50,000. He has about \$110,000 in a U.S. 401(k) retirement plan through his company. He wife has about \$35,000 to \$40,000 in her 401(k) through the company.²³

Applicant does not obtain any direct benefits from his British citizenship. The United Kingdom has socialized medicine. He has private medical insurance that he uses. Everybody in the country is required to see a general practitioner (GP) before they see a specialty doctor. Applicant's visits to a GP are paid by the British government, but the payments are not contingent upon his British citizenship.²⁴

Applicant pays for his children to attend private schools. He has refused a child benefit that would be available from the British government. As a resident of the United Kingdom, in accordance with a reciprocal agreement between the United States and the United Kingdom, Applicant pays British income taxes. He does not pay U.S. federal income taxes, but he pays other incidental U.S. deductions to his pay, such as Social Security and Medicare.²⁵

Applicant voted by absentee ballot in a British election when he was in the British military. He has not voted in any British elections since he moved to the United States in 1998. He has voted in U.S. elections.²⁶

Applicant has no plans to obtain another British passport. He is willing to renounce his British citizenship. He intends to eventually move back to the United States. At one point he stated that he planned to stay in the United Kingdom for about eight to ten years, but he indicated at the hearing that he did not have an exact time frame for the move.²⁷

Applicant's chief operations officer (COO) testified on his behalf. She noted that Applicant is actively involved in the company's day-to-day operations and that there was little change in how he ran the company when he moved to the United Kingdom. They talk about five to ten times a day. Applicant submitted several letters and documents

²² Tr. at 22-27, 145-146, 163, 174; Applicant's response to SOR; GE 1, 2, 22.

²³ Tr. at 50-52, 55-56, 145; AE 21-23.

²⁴ Tr. at 105-109; Applicant's response to SOR.

²⁵ Tr. at 107, 148-150, 164-165; AE 22.

²⁶ Tr. at 151-152; Applicant's response to SOR; GE 2.

²⁷ Tr. at 91-95, 143, 188; Applicant's response to SOR; GE 2.

attesting to his business professionalism, honesty, reliability, trustworthiness, ethics, leadership, integrity, and loyalty to the United States.²⁸

United Kingdom

The United States has no closer ally than the United Kingdom, and British foreign policy emphasizes close coordination with the United States. Bilateral cooperation reflects the common language, ideals, and democratic practices of the two nations. Relations were strengthened by the United Kingdom's alliance with the United States during both World Wars, in the Korean conflict, in the Persian Gulf War, in Operation Iraqi Freedom, and in Afghanistan, as well as through its role as a founding member of the North Atlantic Treaty Organization (NATO). The United Kingdom and the United States continually consult on foreign policy issues and global problems and share major foreign and security policy objectives.

The United Kingdom is a member of the European Union and a major international trading power. The United Kingdom is one of the largest markets for U.S. goods exports and one of the largest suppliers of U.S. imports. The United States and the United Kingdom share the world's largest bilateral foreign direct investment partnerships. The United Kingdom is a large source of foreign tourists visiting the United States. It participates in the Visa Waiver Program, which allows nationals of participating countries to travel to the United States for certain business or tourism purposes for stays of 90 days or less without obtaining a visa.²⁹

Under the terms of the 1946 UKUSA Agreement, as later added to and amended, the United States and the United Kingdom share intelligence.³⁰

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all

²⁸ Tr. at 168-187; AE 31-38.

²⁹ HE I. See also <http://www.state.gov/r/pa/ei/bgn/3846.htm>.

³⁰ HE I. See also http://www.nsa.gov/public_info/declass/ukusa.shtml.

available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.”

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

(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;

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

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; and

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

The United States has a "special relationship" with the United Kingdom. The United States has no closer ally than the United Kingdom, and British foreign policy emphasizes close coordination with the United States. The two countries also share intelligence.

Despite the close relationship between the United States and the United Kingdom, Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States."³¹ The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

I have considered the totality of Applicant's family and financial ties to the United Kingdom. If this case involved almost any other country, I would find a heightened risk

³¹ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

of foreign exploitation, inducement, manipulation, pressure, or coercion, and a potential conflict of interest. However, because of the unique and special relationship between the United States and the United Kingdom, I do not find those concerns. There are no applicable foreign influence disqualifying conditions.³²

Guideline C, Foreign Preference

The security concern for foreign preference is set out in 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 be prone to provide information or make decisions that are harmful to the interests of the United States.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. The following are potentially applicable in this case:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

- (1) possession of a current foreign passport;
- (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;
- (7) voting in a foreign election; and

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

Applicant possessed and used a British passport while a U.S. citizen; he was a member of, and later a volunteer instructor for, the ACF; he served in the British military; he voted in a British election; he receives medical benefits from the British government; and he has a Right of Abode certificate that permits him to enter the United Kingdom without the permission of an immigration officer and to live and work in the United

³² Had I found Guideline B disqualifying conditions to be applicable, I would have found the security concerns mitigated under AG ¶ 8:

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

Kingdom without restriction. AG ¶ 10(a) is applicable. The renewal of his British passport while a U.S. citizen could raise concerns under AG ¶ 10(b), as an action to obtain recognition of his British citizenship.

Conditions that could mitigate foreign preference security concerns are provided under AG ¶ 11. The following are potentially applicable:

- (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- (b) the individual has expressed a willingness to renounce dual citizenship;
- (c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor; and
- (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant first received a British passport and participated in the British ACF while he was a minor. AG ¶ 11(c) is applicable to the actions Applicant took while a minor.

Applicant exercised his British citizenship by obtaining and using a British passport while a U.S. citizen. Therefore, his dual citizenship is not based solely on his parents' citizenship or birth in a foreign country. AG ¶ 11(a) is not applicable.

Applicant surrendered the British passport to his FSO and later to the British passport agency. He is willing to renounce his British citizenship. AG ¶¶ 11(b) and 11(e) are applicable.

Unlike Guideline B cases where the identity and the nature of the foreign country can and should be considered, Guideline C cases are more country-neutral. That does not mean that the country is irrelevant. While not a mitigating condition, I pay specific attention to the security concern identified under Guideline C that “[w]hen an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.” (AG ¶ 9) Because of the special relationship between the United States and the United Kingdom, I do not find that Applicant's connections and ties to the United Kingdom make him “prone to provide information or make decisions that are harmful to the interests of the United States.”

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's

conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant grew up in the United Kingdom because his father, a U.S. servicemember, met and married a British citizen and moved the family to the United Kingdom after his discharge. Applicant served in the British military and worked as a civilian police officer. He remarried after a divorce and followed his older brother to the United States. Like his father and older brother, he enlisted in the U.S. military, where he served honorably.

Applicant built a life in the United States. He worked for several defense contractors after his discharge from the military, until he started a successful defense contracting company. He has a top secret clearance, and his company was granted a facility security clearance.

Applicant's and his wife's parents were getting older, and his mother-in-law became ill. Because of his wife's medical condition and pathological fear of flying, she could not fly home when necessary to see her family. A cross-Atlantic sea voyage is not a realistic substitute to an eight-hour flight when a loved one is dying. Applicant's decision to relocate the family to the United Kingdom and telecommute would not have been possible 20 years ago. He is now able to run the day-to-day operations of his company remotely. I am satisfied that the decision was one of convenience to bring his wife closer to her family, rather than a true preference for the United Kingdom over the United States.

I am mindful that the protection of the national security is the paramount consideration, and that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." I conclude that Applicant's connections and ties to the United Kingdom do not make him "prone to

provide information or make decisions that are harmful to the interests of the United States;"(AG ¶ 9) and that they cannot be used to manipulate or induce him to help the British government in a way that is not in U.S. interests. (AG ¶ 6)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated foreign influence and foreign preference security concerns.

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.i:	For Applicant
Paragraph 2, Guideline B:	For Applicant
Subparagraphs 2.a-2.n:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge