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

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| In the matter of: | ) | |
| | ) | |
| | ) | ISCR Case No. 13-01028 |
| | ) | |
| Applicant for Security Clearance | ) | |

## Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

03/26/2014

## Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant is a dual citizen of his native United Kingdom and the United States. Foreign preference concerns raised by his renewal of a U.K. passport as a U.S. citizen are mitigated by his surrender of custody of his U.K. passport to his facility security office. Despite the foreign influence concerns that arise because of his ownership of substantial financial assets in the United Kingdom, and his retention until very recently of U.K. security clearance eligibility, I am persuaded that he can be counted on to act in U.S. interests. Clearance granted.

## Statement of the Case

On November 7, 2013, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline C, foreign preference, and Guideline B, foreign influence, and explaining why it was unable to grant a security clearance to him. The DOD CAF acted under Executive Order 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) effective within the DOD on September 1, 2006.

Applicant responded to the SOR on November 22, 2013, and he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On January 14, 2014, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On January 17, 2014, I scheduled a hearing for February 12, 2014.

At the hearing, one Government exhibit (GE 1) and one Applicant exhibit (AE A) were admitted without objection. Applicant and two of his co-workers testified, as reflected in a transcript (Tr.) received on February 20, 2014. On March 10, 2014, Applicant proposed corrections to the transcript, which were accepted.

At Applicant's request, I held the record open until March 12, 2014, for post-hearing submissions. Six exhibits (AEs B-G) were received by the deadline and admitted into evidence without objection. The record closed on March 19, 2014, on receipt of the Government's response to AE G.

## Summary of SOR Allegations

The SOR alleges under Guideline C, foreign preference, that Applicant exercises dual citizenship by maintaining a U.K. passport issued in February 2013 and valid until November 2023 (SOR 1.a); that he expects to receive a monthly pension benefit around $1,000 a month from the United Kingdom starting in January 2029 (SOR 1.b); and that he voted in U.K. elections held between 1979 and May 2010 (SOR 1.c). Guideline B, foreign influence, security concerns are alleged because Applicant's spouse (SOR 2.a) and children (SOR 2.b) are dual citizens of the United Kingdom and United States; his father, two of his brothers (SOR 2.c) and his parents-in-law (SOR 2.e) are U.K. resident citizens; and his other brother is a U.K. citizen residing in Spain (SOR 2.d). In addition, Applicant worked in intelligence systems for a U.K. defense agency from 1993 to 2001 (SOR 2.f), and he had security clearance eligibility in the United Kingdom from 1994 to at least 2008 (SOR 2.g). Also, Applicant is alleged to own, in the United Kingdom, bank deposits valued around $16,450 (SOR 2.h), foreign stocks with an approximate value of $195,000 (SOR 2.i), and a residential property worth around $360,000 (SOR 2.j), while Applicant's spouse owns another home in the United Kingdom valued around $212,000 (SOR 2.k).

In his Answer to the SOR, Applicant admitted that he held a valid U.K. passport as alleged, but he has not used it since his U.S. naturalization. He expressed his willingness to surrender his U.K. passport to his employer's security office, which he understands is required should he be granted a DOD security clearance. Applicant also admitted the future pension benefits from his previous employment in the U.K., but he does not expect to retire until 2029. Applicant explained that his voting in U.K. elections occurred before he acquired his U.S. citizenship, and he would not vote in any future

foreign election if required of his security clearance eligibility. Applicant acknowledged the foreign residency and citizenship of his three brothers and parents-in-law. His father had passed away. Applicant also admitted his previous civil service employment in the U.K. from 1993 until 2001, when the organization was privatized. He provided details of his U.K. security clearance, which was last updated in October 2008 at the Top Secret level. Applicant averred that he would terminate his U.K. clearance if required for U.S. clearance eligibility. Applicant also admitted the foreign financial assets as alleged, except for the value of his U.K. bank deposits. Due to a transfer of funds into his U.K. mortgage account to reduce his mortgage debt in the United Kingdom to around $75,000, he has only $750 on deposit.

## Findings of Fact

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 53-year-old technical fellow in engineering for a corporation (company A) engaged in U.S. defense work. Applicant started with a U.K. subsidiary of the corporation in 2004, and he transferred to his current facility in the United States in 2006. In mid-July 2012, company A was acquired by a larger U.S. defense firm. (Tr. 43-44.)

Applicant was raised and educated in his native United Kingdom. He has three younger brothers, who are U.K. citizens from birth. Applicant earned his bachelor's degree in June 1982 from a university in the United Kingdom. He was married to his first wife from March 1988 to July 2003. They had no children together. (GE 1.)

Applicant's first job out of college was with a company involved in infrared systems. He gained the experience and contacts that led to him being employed by the U.K. government. (Tr. 40.) From May 1993 to June 2001, Applicant was a business manager in the intelligence systems division of a U.K. defense agency. Applicant was involved in the procurement of sensitive systems and supported other programs, including some joint U.S.-U.K. programs subject to international traffic in arms regulations (ITAR). While Applicant was leading the technical support to the U.K. defense ministry on an airborne system, he was part of a team that was provided a classified briefing by company A on the same systems that he has been unable to support without a U.S. DOD clearance. (Tr. 24.) Applicant was granted a Secret clearance in the United Kingdom in October 1992, which was upgraded to Top Secret in April 1994. Around 1998 to 2000, he held eligibility for access to sensitive compartmented information (SCI). (Tr. 34.) His U.K. Top Secret clearance eligibility was last renewed in October 2008, when he was working full-time for his current employer in the United States as a U.K. citizen. (GE 1; AE A.)

Applicant's civil service employment with the U.K. government ended in June 2001 when the organization was split, and he began working for the unit that was privatized. (Tr. 27, 42.) He stayed with the company through May 2004, retaining a

"developed vetting TS clearance" (Tr. 42), while also pursuing his master's degree at a U.K. business school. In June 2004, he began working as a chief systems engineer for a U.K. subsidiary of company A. (GE 1; AE A; Tr. 35.) He spent six months running flight trials in the United States as an employee of the U.K. subsidiary around 2005. (Tr. 21-22, 35.)

In February 2004, Applicant purchased a home in the United Kingdom for $360,000. Sometime in 2004, he began a cohabitant relationship with his current spouse. She moved in with him and rented out her home, which she had purchased in November 2002 for around $212,000. Applicant spent four to five weeks a year in the United States on business and personal travel. (AE A.) In October 2005, Applicant became acquainted with the managing director (Mr. X) of company A's U.S. business unit focused on systems in which Applicant had some expertise. Impressed by Applicant's knowledge of the business and his talent from an engineering perspective, Mr. X pursued Applicant's transfer into his U.S. unit, despite the challenges of getting Applicant as a foreign citizen approved for access to U.S. ITAR-related information. (Tr. 62.)

Applicant came to the United States in April 2006. Over the next few months, he maintained an apartment in the United States while he traveled between the United Kingdom and United States to finish projects for the U.K. subsidiary. In late July 2006, the U.S. State Department approved Applicant's intra-company transfer, and Applicant began working full-time for company A in the United States. No action was taken at that time to terminate Applicant's U.K. security clearance eligibility, although once Applicant became a full-time employee of company A in the United States, he was not authorized to access classified information. (GE 1; Tr. 77-78.)

Applicant purchased his current residence in the United States in August 2006. (GE 1; AE A; Tr. 54.) In September 2006, Applicant and his current spouse wed in the United Kingdom. (GE 1.) They had temporary residency in the United States in October 2007, when their first daughter was born. By the time their younger daughter was born in June 2011, they had acquired U.S. permanent residency. Applicant and his spouse registered their daughters' U.S. birth with the United Kingdom. Although they intended to stay in the United States, they wanted to preserve their daughter's legal status with the United Kingdom in case they had to leave the United States before acquiring U.S. citizenship. Applicant and his spouse thought that their daughters would have more options for residency and employment when they became adults if they had dual citizenship. (GE 1; AE A; Tr. 25-26.)

In January 2010, Applicant finished his studies for his master's degree at the U.K. business school. The degree was conferred in June 2010, four years after he had moved to the United States. He had voted in every U.K. national election since 1979, and consistent with his obligations of his U.K. citizenship, he voted in the U.K.'s national election in May 2010. (GE 1.)

In January 2013, Applicant and his spouse were naturalized in the United States,[1] and Applicant obtained his U.S. passport. When he acquired his U.S. citizenship, he notified the U.K. clearance vetting authority of his dual citizenship. (Tr. 53.)

In February 2013, Applicant exercised his dual citizenship by renewing his U.K. passport, which is valid until mid-November 2023. (GE 1; Tr. 42-43.) Applicant explained his rationale for the renewal, as follows:

> The U.K. passport was renewed to allow the longest possible surrender duration without loss of an eventual ability to renew. With the ability to renew up to 10 years after expiry this would be expected to cover the period through to my retirement, hopefully before age 72.

(AE A; Tr. 49-50.) In late July 2013, Applicant traveled to the United Kingdom for two weeks when his father died. He went to the United Kingdom on business for three days in mid-December 2013. Nine days later, he traveled to the United Kingdom and Southern Europe for a two-week vacation. On his three trips abroad since his U.S. naturalization, Applicant traveled exclusively on his U.S. passport. (AE A; Tr. 18-19.)

At the request of his employer, Applicant applied for a DOD security clearance on June 20, 2013. On his Electronic Questionnaire for Investigations Processing (e-QIP), Applicant disclosed that he, his spouse, and his children hold dual citizenship with the United Kingdom and the United States; that his father (who died shortly thereafter), two of his brothers, and his spouse's parents are resident citizens of the United Kingdom; and that his youngest brother is a U.K. citizen living in Southern Europe. Applicant's mother was deceased. Applicant also reported his former employment with the U.K. government; his renewal of his U.K. passport in February 2013; and his and his spouse's ownership of financial assets in the United Kingdom. He and his spouse had joint banking deposits in the United Kingdom of $450, while he had $16,000 in a separate account.[2] He had taken out a $240,000 mortgage for his home in the United Kingdom, on which he owed about $95,000. Applicant's spouse owned her previous residence in the United Kingdom. Applicant had stock assets in the United Kingdom, which had an appreciated value of $195,000.[3] Applicant also indicated that he expected

[1] The evidentiary record does not reflect the date of Applicant's spouse's naturalization in the United States. Applicant has indicated that his spouse accompanied him when he transferred roles to the United States, and that she has been through the visa, permanent residency and naturalization process alongside him. (AE A; Tr. 26.)

[2] Applicant had sold some stock and deposited the funds into the account pending transfer of the funds to his mortgage account in the United Kingdom. (Tr. 28.)

[3] The stocks are residual shares that resulted from the privatization of his unit in the U.K. defense agency. (AE A.)

a retirement pension around $1,000 a month starting in January 2029 from his previous employment in the United Kingdom.[4] (GE 1.)

Applicant and his spouse still own their respective residential properties in the United Kingdom. Initially, Applicant had a temporary L-1 (intra-company transferee) visa in the United States, linked to his continued employment with company A. He could have been terminated without cause at any time, so he decided to rent out his U.K. property. Applicant's spouse had rented her U.K property to a personal friend, so selling it was not a consideration for her. In August 2010, Applicant's tenants vacated his U.K. property. By then, Applicant and his spouse had acquired U.S. permanent residency. Applicant attempted to sell his U.K. property without success. In April 2011, he took the home off the market and leased it to his current tenants. (AE A; Tr. 29, 41.)

As of February 2014, Applicant had about $1,000 in bank deposits in the United Kingdom. He had transferred funds from his individual account to his mortgage account, to reduce his mortgage debt on his U.K. property to $70,000.[5] He had considerable equity in the foreign real estate, which was valued around $425,000. The value of his U.K. stocks had increased to $225,000. He was in the process of gradually selling his shares, as market conditions and tax allowances permit, and using the funds to reduce his U.K. mortgage. Applicant estimated the value of his spouse's U.K. real estate at $230,000. Applicant intended to eventually sell all their U.K. assets and transfer the capital to the United States. (AE A; Tr. 28-30.) Applicant was given no guidance from his employer about his foreign financial assets or his future pension benefit in the United Kingdom. (Tr. 37.) Applicant was leaning toward spending his retirement in the United States, although he had no firm plans. (Tr. 38.) In the event of a conflict between U.S. and U.K. interests, Applicant testified that he would chose the U.S. position "because [he is] here." (Tr. 39.) Applicant's home in the United States was valued around $549,000. (Tr. 57.)

As of his security clearance hearing, Applicant had not been asked by his FSO to surrender custody of his U.K. passport to his employer's security office. (Tr. 81.) Applicant was willing to comply with DOD requirements, which he and his FSO understood mandated the surrender of his foreign passport if, rather than before, he was granted a security clearance. (AE A; Tr. 36-37, 47-48, 82, 86.) Applicant also had not been informed of any need to terminate his U.K. Top Secret security clearance eligibility. (Tr. 28, 41-42, 52.) Applicant indicated that he would terminate his foreign clearance eligibility "if it is a requirement to support the grant of a U.S. clearance." (AE A.) On February 13, 2014, Applicant turned over custody of his U.K. passport to his employer's security office. (AEs B, D.) Applicant's FSO understands that he must contact the DOD if Applicant asks for his U.K. passport. (AE D.) With Applicant's

[4] Applicant explained that he has a frozen defined benefit pension from his previous employments in the United Kingdom. In light of his daughters' ages, he is unlikely to retire before 2029. (AE A.)

[5] Applicant testified that the mortgage is $70,000. Funds deposited into this current account are applied to his mortgage. (Tr. 58-59.)

knowledge and agreement, the FSO directed his counterpart in company A's U.K. facility to immediately terminate Applicant's U.K. security clearance eligibility. (AEs B, C.) As of February 27, 2014, Applicant's clearance access in the United Kingdom had "lapsed." He remains eligible for reinstatement of his U.K. security clearance for one year from that date. (AEs F, G.) Applicant does not intend to seek reinstatement of his security eligibility in the United Kingdom. He and his FSO understand that any request by him to reactive his U.K. clearance eligibility would result in the FSO notifying DOHA immediately. (AEs E, G.)

Applicant has not voted in a U.K. election since becoming a U.S. citizen. He does not intend to vote in a foreign election going forward, now that he understands it is a perceived by the DOD as a lack of commitment to the United States. He is registered to vote in the United States and intends to exercise that right of his U.S. citizenship. (AEs A; Tr. 21.) He has filed his tax returns and paid his taxes in the United States every year since moving here. (Tr. 59.)

Applicant has contact with his brothers who live in the United Kingdom once every six months or so. His contact with his brothers was more frequent in 2013 because of the death of their father in early August 2013. (Tr. 40.) The middle of Applicant's three brothers works as a prison warden in the U.K. civil service. (GE 1; Tr. 56-57.) Applicant's youngest brother was employed by a computer company in Southern Europe as of June 2013. Applicant was unaware of the nature of his other brother's employment, other than it was not government-related. (GE 1; Tr. 56.) Applicant and his three brothers have gotten together only three times since 1979: at Applicant's weddings and at their father's funeral. (AE A; Tr. 27.)

Applicant has monthly contact with his spouse's mother and stepfather in the United Kingdom. His spouse's stepfather has his own farm in the United Kingdom while her mother is a self-employed hair stylist. (GE 1.) Because his in-laws are his daughters' only grandparents, Applicant intends to continue to have regular contact with them. Applicant denies that his family ties to the United Kingdom could influence him or pose a threat to protected information. (AE A; Tr. 27.)

Applicant's spouse is currently not working outside of the home. She was a fitness instructor in the United States with a franchise from 2010 until mid-2013, when she sold the business. (T. 54-55.)

Mr. X, who facilitated Applicant's transfer from the United Kingdom to his U.S-based division in 2006, attests to Applicant having been a key contributor to company A's business. With his wide-based knowledge of systems from an engineering perspective, Applicant has proposed fresh solutions to the benefit of company A's U.S. and foreign customers. (Tr. 64.) Company A has programs subject to reciprocal agreements between the U.S. and U.K. defense establishments. Provided Applicant is granted DOD classified access, he would have access to classified information in the United States that can be shared with the United Kingdom to the benefit of both countries. (Tr. 67.) In his seven years of working directly with Applicant, Mr. X has found

him "to be a very credible and high ethical standard individual." Applicant is well respected within their industry in the United States and in the United Kingdom. He is considered an expert in their field. (Tr. 68-69.)

Company A's FSO met Applicant around 1996, when the U.K. defense agency was a customer. Applicant has not given the FSO any reason to doubt his loyalty to the U.S. (Tr. 72-73, 87.)

Consistent with my obligation to make accurate and timely assessments of the political landscape in foreign countries when adjudicating Guideline B cases (*see* ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007)), I reviewed the U.S. State Department's latest Fact Sheet concerning bilateral relations between the United States and the United Kingdom,[6] which provides in pertinent part:

> 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.

[6] Applicant cited the close relationship and high level of ongoing intelligence sharing between the United States and the United Kingdom in support of his position that the United Kingdom is unlikely to target U.S. citizens for protected information. (AE A.) Neither he nor the Government requested that I take administrative notice of any facts pertinent to the United Kingdom and its relations with the United States. Administrative or official notice is the appropriate type of notice used for administrative proceedings. *See* ISCR Case No. 02-24875 (App. Bd. Oct. 12, 2006). The most common basis for administrative notice at ISCR proceedings is to notice facts that are either well known or from government reports. *See* Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing 15 types of facts for administrative notice). Requests for administrative notice may utilize authoritative information from the Internet. *See*, *e.g.*, *Hamdan v. Rumsfeld*, 126 S. Ct. 2479 (2006). In this case, the source for the facts is the U.S. Department of State's Fact Sheet, *U.S. Relations with United Kingdom*, dated September 5, 2013, which is available at http://www.state.gov.

The United Kingdom and the United States belong to a number of the same international organizations, including the United Nations, North Atlantic Treaty Organization, Euro-Atlantic Partnership Council, Organization for Security and Cooperation in Europe, G-20, G-8, Organization for Economic Cooperation and Development, International Monetary Fund, World Bank, and World Trade Organization. The United Kingdom is also an observer to the Organization of American States.

## Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall 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 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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

extrapolation as to potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline C—Foreign Preference

The security concern relating to the guideline for foreign preference is articulated 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.

Applicant is a dual citizen of the United States and his native United Kingdom, who has expressed no intent or willingness to renounce his U.K. citizenship.[7] Retention of foreign citizenship acquired from birth out of respect for one's ethnic heritage, for example, is not disqualifying in the absence of an exercise of a right, privilege, or obligation of that citizenship. *See* AG ¶ 11(a), "dual citizenship is based solely on parents' citizenship or birth in a foreign country. Applicant was educated in the United Kingdom and spent all but the last seven years of his employment there. For about eight years, he was an employee of a U.K. defense agency. After his unit was privatized, he spent three more years serving the interests of the U.K. Shortly after Applicant acquired his U.S. citizenship and passport, he renewed his U.K. passport in February 2013 for another 10 plus years. Applicant has used his U.S. passport exclusively for foreign travel since then, including to the United Kingdom. Nonetheless, his renewal and possession of a valid U.K. passport after his U.S. naturalization raises security significant issues of foreign preference under AG ¶ 10(a)(1):

> (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.

With the understanding that he would be required to surrender his foreign passport to his employer if granted a DOD clearance, Applicant renewed his foreign passport so that on his retirement from his U.S. employment around 2029, he would still be eligible to renew his U.K. passport. In short, he wanted to keep his options open with regard to reestablishing permanent residency in the UK after he retires, should his

[7] Foreign preference mitigating condition AG ¶ 11(b), "the individual has expressed a willingness to renounce dual citizenship," does not apply in this case.

daughters choose to live and work in the United Kingdom as adults. This active exercise of his U.K. citizenship as a U.S. citizen is not mitigated by AG ¶ 11(a).

In response to the DOD's concerns about his possession of a foreign passport, Applicant expressed his willingness in November 2013 to surrender custody of his U.K. passport to his employer's security office. He had not done so by his security clearance hearing on February 12, 2014, because he did not understand it to be a precondition for his DOD clearance. The FSO confirmed that he had not directed Applicant to turn over his passport preemptively. With the surrender of his U.K. passport to his employer on February 13, 2014, Applicant mitigated the foreign preference concerns that arise because of his renewal and possession of the foreign passport. AG ¶ 11(e), "the passport has been destroyed, surrendered to the cognizant security officer, or otherwise invalidated," applies.

Applicant candidly disclosed that starting January 2029, he expects to receive a $1,000 monthly pension benefit from his previous employment in the U.K. To the extent that Applicant's vested interest in a pension implicates AG ¶ 10(a)(3), "accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country," the security concerns are minimal, given the absence of any current or recent actions on his part to ensure that he maintains those future benefits. There is no evidence that he is currently accepting any of the benefits contemplated within AG ¶ 10(a)(3) or that his future entitlement is contingent on him maintaining his U.K. citizenship.

As alleged, Applicant has voted in every U.K. national election from 1979 to May 2010. Voting in a foreign election can raise issues of foreign preference under AG ¶ 10(a)(7), "voting in a foreign election." Yet, as Applicant aptly pointed out, he was not eligible to vote in the United States before January 2013 because he was not a U.S. citizen. Consistent with democratic principles, he was exercising a civic responsibility of his only citizenship when he voted in U.K. national elections. The Directive provides for mitigation of an exercise of foreign citizenship when one is not a citizen of the United States. AG ¶ 11(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," applies. Applicant credibly asserts no intent to vote in a U.K. election for as long as he is employed by a defense contractor. Applicant's acquisition of U.S. citizenship as soon as he was eligible, and his use of his U.S. passport for foreign travel, including to the United Kingdom, reflect a preference for the United States. The Guideline C concerns are mitigated.

**Guideline B—Foreign Influence**

The security concern relating to the guideline for foreign influence is articulated 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.

Applicant and his spouse have close family members who are resident citizens of the United Kingdom. Applicant's youngest brother also has U.K. citizenship, and he resides abroad. The DOHA Appeal Board has held that if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. *See generally* ISCR Case No. 03-02382 (App. Bd. Feb. 15, 2006). AG ¶ 7(a) is implicated if Applicant's contacts with the foreign family members create a heightened risk of foreign influence:

> (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.

The "heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability to government coercion. Even friendly nations may have interests that are not completely aligned with the United States. As noted by the DOHA Appeal Board, "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." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). 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 on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 (App. Bd. Dec. 7, 2006).

Applicant was with his brothers at their father's funeral in early August 2013. Generally, his contacts with his siblings have been limited to once every six months. Even so, the fraternal bond makes it difficult to characterize the contacts as casual.[8]

[8] Applicant and his spouse's contacts with foreign citizens cannot reasonably be characterized as casual and infrequent. AG ¶ 8(c), "contact or communication with foreign citizens is so casual and infrequent that

Applicant described his contact with his spouse's mother and stepfather as "regular." They are his daughters' only living grandparents, so he understandably intends to maintain close relations with his in-laws. However, there is nothing untoward about his contacts with these foreign family members or about his relatives' occupations. Applicant's middle brother is a civil servant in the United Kingdom, but his duties as a prison warden are not likely to raise a risk of undue pressure or coercion. Applicant's father-in-law and his mother-in-law are self-employed in the United Kingdom, as a farmer and a hairstylist, respectively.

The United Kingdom is not known to conduct intelligence operations against the United States. On the contrary, the United States has no closer ally than the United Kingdom. The two countries share intelligence and coordinate on the development of military systems. When Applicant worked for the U.K. defense agency, he was briefed about a U.S. classified system by his current employer. Like the United States, the United Kingdom is a victim of terrorism rather than a state sponsor of terrorism. Considering the close alliance between the United States and the United Kingdom, it is difficult to envision that Applicant's contacts with his foreign family members would create the heightened risk of foreign influence contemplated within AG ¶ 7(a).

Applicant's spouse and children are dual citizens of the United States and the United Kingdom, and they have their own contacts with these foreign family members, which must be considered under AG ¶ 7(d):

> (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.

It is reasonable to infer that Applicant's spouse is in regular contact with her parents in the United Kingdom. Applicant's children are too young to establish contacts on their own. Assuming that Applicant's spouse has very close bonds of affection to her parents, there is nothing about her parents' situation in the United Kingdom that creates a heightened risk. AG ¶ 7(d) is not established. The potential for undue foreign influence is minimal, for the reasons contemplated within mitigating AG ¶ 8(a):

> (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.

Applicant's foreign contacts go beyond having a family member living under a friendly foreign government, however. Applicant was previously employed as a business manager in the intelligence systems division of a U.K. defense agency from May 1993 until June 2001. As a technical lead, he was granted access to classified U.K. defense

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there is little likelihood that it could create a risk for foreign influence or exploitation," would not apply in this case.

information, and around 1998 to 2000, he had access to SCI. Applicant did not have access to SCI after his unit was privatized in 2001, but he remained eligible for classified access to the level of Top Secret. The U.K.'s clearance vetting agency last renewed Applicant's Top Secret clearance eligibility in October 2008. AG ¶ 7(b) is implicated:

> (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.

Applicant also has security significant financial assets in the United Kingdom. In addition to his vested pension benefit, he has stock interests worth around $225,000 in the private company that served as his employer following the split of the U.K. defense organization. Applicant and his spouse each own residential properties in the United Kingdom, which are respectively valued around $425,000 and $230,000. With the transfer of funds to reduce his mortgage debt in the United Kingdom to its present $70,000, Applicant has only around $1,000 in bank deposits in the United Kingdom, and his pension is a future interest. Yet, his substantial foreign stock and property interests establish AG ¶ 7(e):

> (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.

Applicant retains considerable ties to the United Kingdom through his citizenship and property ownership. Two mitigating conditions are potentially applicable in this case under AG ¶ 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 U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and
>
> (f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant's renewal of his U.K. passport in February 2013, to retain passport renewal rights following his retirement from his U.S. defense contractor employment, makes it difficult to conclude that his loyalty or obligation to the United Kingdom is "so minimal." His substantial foreign financial assets are a product of his years of productive employment in the United Kingdom, including as a government employee. Applicant has about $355,000 in equity in his property in the United Kingdom, and his stock

investments in his previous employer are now worth around $225,000, well in excess of his initial investment. In addition, his spouse owns a home in the United Kingdom worth around $230,000. Applicant attempted to sell his property between August 2010 and April 2011, but future plans to sell are contingent on his tenants vacating the premises. His spouse leases out her home to a personal friend with a young child, so at least in the short term, she also intends to retain ownership of her U.K. property. Applicant indicates that he is slowly selling off his foreign stock as economic and tax conditions allow. Applicant is not likely to divest himself of these assets in the near future. Yet, they are routine assets that one would expect of an educated immigrant with a relatively recent history of well-compensated employment abroad.

The record contains little information about the extent of Applicant's U.S. assets. His home is valued around $549,000. He presented no information about the profit, if any, his spouse realized from the sale of her fitness business, or about his salary with company A. Presumably he is being well compensated for his expertise. He plans to stay in the United States at least until he retires, and there is no evidence that he is retaining his U.K. citizenship to protect his foreign financial assets. Given the routine nature of the assets and the fact that they are in the United Kingdom, a staunch ally of the United States, I conclude that 8(f) applies.

As a relatively recent immigrant to the United States, Applicant has a more difficult burden to satisfy AG ¶ 8(b). Applicant asserts that in the event of a conflict, he would take the U.S.'s position, and his actions to establish roots in the United States carry considerable weight in that regard. Applicant accepted a job transfer to a U.S.-based unit with his employer. Twenty-two days after receiving U.S. State Department approval for his intra-company transfer, Applicant bought his home here. His and his spouse's decision to register their daughters' U.S. births with the United Kingdom was primarily motivated by concerns for their daughters' legal status, given he and his spouse were not yet U.S. citizens. When he took the oath of naturalization in the United States in January 2013, he manifested his patriotism, loyalty, and fidelity to the United States over all other countries. There is no evidence that Applicant continues to work on behalf of the U.K. government, except to the extent that he may support systems of mutual benefit to the United States and the United Kingdom with the authorization and approval of the U.S. government through contract work provided to his U.S.-based employer. He recently requested through his employer that the U.K. terminate his security clearance eligibility, and as of February 27, 2014, his U.K. clearance had lapsed. While he is eligible for reinstatement for 12 months from that date, he does not intend to request that his security clearance eligibility in the United Kingdom be reinstated. Neither Applicant's manager nor his FSO doubt Applicant's loyalty to the United States based on their direct observations. While Applicant has not yet voted in the United States, Applicant has paid taxes in the United States every year since he immigrated. Although more appropriately addressed under Guideline C, his use of his U.S. passport in clear preference to his U.K. passport for his foreign travel in 2013, including to the United Kingdom, is consistent with his U.S. citizenship. Applicant surrendered possession of his U.K. passport to the custody of his security office, showing compliance with DOD requirements. While his ties to the United States are

comparatively brief when compared to his native United Kingdom, they demonstrate his commitment to the United States. These bonds to the United States are significant in evaluating his DOD security eligibility under the whole-person concept, even if AG ¶ 8(b) is not fully satisfied.

**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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).[9] In weighing these whole-person factors in a foreign influence case, the Appeal Board has held that:

> Evidence of good character and personal integrity is relevant and material under the whole person concept. However, a finding that an applicant possesses good character and integrity does not preclude the government from considering whether the applicant's facts and circumstances still pose a security risk. Stated otherwise, the government need not prove that an applicant is a bad person before it can deny or revoke access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control.

*See* ISCR Case No. 01-26893 (App. Bd. Oct. 16, 2002). With that in mind, Applicant has demonstrated that he can be counted on to act in the interests of the United States.

As the technical lead for the United Kingdom on a joint U.S.-U.K. program, Applicant was given a classified briefing on the same systems that he cannot now access because he lacks a DOD clearance. His work for his employer's U.K. subsidiary led to his intra-company transfer to the United States with the approval of the U.S. State Department. Over the past seven plus years since Applicant has been a full-time employee in the United States, he has bought a home in the United States; acquired his U.S. citizenship and passport; traveled abroad as a U.S. citizen; had two daughters, who are U.S. citizens from birth; and tried to divest himself of his former residence in the United Kingdom. His recent surrender of his U.K. passport, and his request to terminate his U.K. security clearance eligibility, are evidence of his willingness to comply with DOD requirements. Applicant does not intend to re-establish residency in the United

[9] The factors under AG ¶ 2(a) are as follows:

> (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.

Kingdom before he retires around 2029 and perhaps not even then. Applicant's candid disclosures of his foreign connections to the DOD suggest that he cannot be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in the U.S. interest. The very close relationship shared by the United States and the United Kingdom weighs in Applicant's favor when considering the potential security risk of granting a DOD security clearance to Applicant, who had high clearances in the United Kingdom in the past. While recognizing that people may act in unpredictable ways when faced with choices that could be important to a loved-one, such as a family member, Applicant and his spouse have chosen a new life in the United States. Under the whole-person concept, I am persuaded that it is clearly consistent with the national interest to grant a DOD security clearance to Applicant.

## 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:

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| Paragraph 1, Guideline C: | FOR APPLICANT |
| Subparagraph 1.a: | For Applicant |
| Subparagraph 1.b: | For Applicant |
| Subparagraph 1.c: | For Applicant |
| Paragraph 2, Guideline B: | FOR APPLICANT |
| Subparagraph 2.a: | For Applicant |
| Subparagraph 2.b: | For Applicant |
| Subparagraph 2.c: | For Applicant |
| Subparagraph 2.d: | For Applicant |
| Subparagraph 2.e: | For Applicant |
| Subparagraph 2.f: | For Applicant |
| Subparagraph 2.g: | For Applicant |
| Subparagraph 2.h: | For Applicant |
| Subparagraph 2.i: | For Applicant |
| Subparagraph 2.j: | For Applicant |
| Subparagraph 2.k: | For Applicant |

## Conclusion

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

Elizabeth M. Matchinski
Administrative Judge