

DATE: September 26, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0359

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Department Counsel

FOR APPLICANT

Joseph G. Canepa, Esquire

SYNOPSIS

The Applicant was born, raised, and educated in Italy, and served in the Italian Air Force, all prior to his moving to the US and becoming a naturalized US citizen. The Applicant believed his foreign citizenship continued after he became a US citizen, but he was mistaken. He lost his Italian citizenship when he took the oath of US naturalization, so he is not a dual citizen. The Applicant did have an Italian passport which was granted to him prior to his United States naturalization which has both expired and been annulled. The Applicant owns real estate and bank accounts in Italy but his foreign assets are not as significant as his US financial interests. Contacts with his cousins who reside in Italy are casual and infrequent. Clearance is granted.

STATEMENT OF THE CASE

On September 8, 2000, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On March 22, 2001, the Applicant answered the SOR and requested a hearing. The case was assigned to me on April 18, 2001. Notice of Hearing was issued on April 26, 2001, scheduling the hearing for May 15, 2001. The Applicant's counsel requested a continuance, which, for good cause, was granted. Notice of Hearing was issued on June 4, 2001 rescheduling the hearing, for June 20, 2001.

At the hearing on June 20, 2001, the Government's case consisted of two exhibits (Gov Ex). The Applicant relied on his own testimony and eight documents. (App Ex). A transcript (tr) of the hearing was received on July 23, 2001. Corrections to the transcript were received from Applicant's counsel on September 4, 2001, and Department Counsel's comments were received on September 5, 2001.

FINDINGS OF FACT

The SOR alleges foreign influence (Guideline B) and foreign preference (Guideline C). The Applicant admits some of

the allegations and denies the rest.

The Applicant is 65 years old and has worked for a defense contractor since May 1971. He is seeking to maintain a top secret security clearance. His recent performance evaluations have been outstanding. (App Ex F) He has a reputation for being honest, loyal, open, hard working, trustworthy, and for personal integrity and ethics above reproach. He is a valuable asset to his job, working long and hard hours with excellent results. (App Ex H)

The Applicant was born in Italy. His father was a civil engineer, his mother a school teacher and his brother had Down's Syndrome. All were Italian citizens. (tr 61) From August 1959 until February 1961, he served in the Italian Air Force as a lieutenant, which was required by Italian law. The Applicant received two Ph.D. degrees in Italy and studied in London and Germany before moving to the United States in January 1964. (App Ex C) Except for his military service time, the Applicant has never worked in Italy. In September 1977 he became a naturalized US citizen.

The Applicant had an Italian passport prior to 1977, which was expired for eight to ten years when he requested it be renewed in May 1994. (tr 44) The Applicant never used his Italian passport for travel. (tr 42) Not aware Applicant had taken the oath of citizenship in the United States, the passport was renewed, to expire in February 1999. (App Ex B) In March 2001, the Applicant sent his passport to Department Counsel. Department Counsel advised him to turn it into the Italian consulate, which he did. On May 4, 2001, the passport was annulled by the consulate (App Ex B) and returned to him. On May 11, 2001, the Consulate General made a declaration the Applicant was not an Italian citizen. (App Ex A)

In December 2000, after receiving the SOR, the Applicant investigated how to renounce his Italian citizenship and discovered he had not been an Italian citizen since 1977, when he became a naturalized US citizen. (tr 30) Under Italian law, Italian citizenship is automatically rescinded when foreign citizenship is acquired. The Applicant had operated under the mistaken belief his Italian citizenship continued to exist unless formally renounced. (tr 34) The Applicant formally rescinded his former Italian citizenship by contacting the Italian consulate in May 2001. (App Ex A)

When his parents died, ⁽²⁾ the Applicant inherited, with his brother, several acres ⁽³⁾ of unimproved real estate in the mountains of Italy which had been in his family for 700 years. Following his parents' deaths his brother continued to live in the apartment where the brother had been residing with his parents prior to their deaths. Following his brother's death in 1984, the Applicant continued to rent their apartment for \$300.00 per month. In 1996, the apartment was offered for sale by the quasi-national company that owed the building. The quasi-national company was replaced by a private association. (tr 65) In 1998, ⁽⁴⁾ the Applicant bought the apartment at a cost of \$110,000.00. (tr 26, 55) He also inherited a second apartment from his parents and brother. (tr 57, 58)

In 1973 or 1974, the Applicant purchased two apartments in Italy (tr 25, 41) which were split into three apartments. The apartments together valued at \$90,000.00 are in long term leases. Two of the apartments are leased full time and one is leased part time. The Applicant receives \$5,000.00 yearly in rental income, which pays the real estate taxes on the properties. (tr 48, 57) These three apartments plus one inherited and the one purchased in 1998 makes five apartments owned by the Applicant in Italy. The five apartments have a combined value of \$200,000.00. (tr 47, 58)

In 1984, when his brother died, the Applicant received his brother's car. At Christmas time in 2000, the Applicant passed the title of the car to a demolition company. (tr 53)

The Applicant has two cousins, who are citizens of, live in Italy. His cousins are sisters ages 65 and 70, who he last saw five and a half years ago and last had telephone contact with three and a half years ago. He does not send them birthday or holiday cards. One sister had worked for a bank and his other sister was a housewife. (tr 61)

Since 1992, the Applicant has been a registered voter in the US. (App Ex D) He has never voted in Italy. (tr 24) The Applicant belongs to a local theater group, owns a car in the US and has a state driver's license. He owns no vehicles in Italy and does not have an Italian driver's license. He has \$425,000.00+ in a 401-K plan and two other accounts totaling almost \$8,000.00, all in the US. (App Ex G) He maintains a bank account of approximately \$6,000.00 in Italy into which he receives rent payments and pays the expenses of his foreign real estate. He also maintains a savings account of approximately \$35,000.00 in Italy. (tr 68) The Applicant owns no real estate in the US. He has no medical, welfare, social security, or other benefits in Italy. (Gov Ex 2, tr 25, 28) He has never participated in the Italian health program. He belongs to no organizations in Italy.

The Applicant has a US passport which he uses to travel abroad. The Applicant visits Italy approximately twice a year. In 1992, he went to Italy in January and June; in 1993, in June; in 1994 in June and December; in 1995, in June and December; in 1996, in February; in 1997, in January and July; in 1998, in September and December; in 1999, the Applicant's trip started in December 1998 ended in mid-January 1999; in 2000, in June and

December.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Foreign Preference (Guideline C) The Concern: 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.

Conditions that could raise a security concern and may be disqualifying include E2.A3.1.2.:

2. Possession and/or use of a foreign passport; E2.A3.1.2.2.
3. Military service or a willingness to bear arms for a foreign country; E2.A3.1.2.3.
4. Accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country; E2.A3.1.2.4.

Conditions that could mitigate security concerns include: E2.A3.1.3.

1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country; E2.A3.1.3.1.
2. Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship; E2.A3.1.3.2.

Foreign Influence (Guideline B) The Concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure. E2.A2.1.1.

Conditions that could raise a security concern and may be disqualifying include (E2.A2.1.2.):

1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country; E2.A2.1.2.1.
8. A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence. E2.A2.1.2.8.

Conditions that could mitigate security concerns include: E2.A2.1.3.

3. Contact and correspondence with foreign citizens are casual and infrequent. E2.A2.1.3.3.
5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities. E2.A2.1.3.5.

BURDEN OF PROOF

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the Applicant who must remove that doubt and establish his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly

consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the applicant.

CONCLUSIONS

Under Guideline C, the security eligibility of an applicant is placed into question when an individual acts in such a way as to indicate a preference for a foreign country over the United States; he or she may then be prone to provide information or make decisions that are harmful to the interests of the United States.

The Applicant was born, raised, and educated in Italy, and served in the Italian Air Force. All of these events took place before he moved to the US in 1964 and becoming a naturalized US citizen in 1977. Mitigation Conditions (MC) 1-(5) and 2-(6) apply to these events. The Applicant did have an Italian passport granted to him prior to him becoming a US citizen, which he did not use. The passport expired in 1999 and was annulled by the Italian consulate in May 2001. The Applicant did have the mistaken belief his Italian citizenship continued to exist, after becoming a US citizen, until he renounced it. This was a mistake, the Applicant had actually lost his foreign citizenship in 1977, when he became a naturalized US citizen. (tr 30) Under Italian law, Italian citizenship is automatically rescinded when foreign citizenship is acquired.

The Applicant formally rescinded his former Italian citizenship. (App Ex A) In May 2001, the Italian Consulate General made a declaration the Applicant was not an Italian citizen. (App Ex A) The Applicant has done more than merely expressing a willingness to renounce dual citizenship, MC 4, (7) he took steps to ensure he is not a dual citizen. Since the Applicant does not maintain dual citizenship, and never used his Italian passport for travel after becoming a United States citizen, I find for him as to SOR subparagraphs 1.a., 1.b, and 1.c.

The Applicant own five apartments in Italy valued at approximately \$200,000.00. Some of the apartments are rented and the rental income received pays the real estate taxes owed on the properties. He also owns some undeveloped, mountainous real estate valued at less than \$500.00, which he inherited. The Applicant is not an Italian citizen and has not been one since 1977. Therefore, as a matter of law, he could not rely on Italian citizenship to afford him privileged protection of financial assets, including real estate interests, in Italy. I find for the Applicant as to SOR subparagraph 1.d.

The Government has satisfied its initial burden of proof under Guideline B, (Foreign Influence). Under Guideline B, the security eligibility of an applicant is placed into question when the person has immediate family members who are citizens of and/or residing in a foreign country. Additionally, although not alleged in the context of guideline B, it is noted that Applicant has financial interests in a foreign country which could raise his vulnerability to foreign influence.

A security risk may exist where the Applicant is bound by affection, influence, or obligation to individuals who are not citizens of the United States or may be subject to duress. The Applicant does have two cousins who are citizens of and reside in Italy whom the Applicant last saw five and a half years ago and last had telephone contact with three and a half years ago. He does not send them birthday or holiday cards. MC 3-(8) applies since the Applicant's contacts with his cousins are casual and infrequent.

The risk posed by the Applicant's foreign financial interests and contacts are balanced against the Applicant's financial interests and contacts in the US. The Applicant does own approximately \$200,000.00 worth of real estate and has \$31,000.00 in two bank accounts in Italy. In the US, he has \$425,000.00+ in a 401-K retirement plan and two additional accounts totaling approximately \$8,000.00. The Applicant is a registered voter in the US and has never voted in Italy. He owns a car in the US and has a state driver's license. He owns no vehicles in Italy and does not have an Italian driver's license. He has lived in the US since 1964--37 years--but does take trips to Italy every six months. The Applicant does not maintain a foreign citizenship to protect his financial interests. In balancing the Applicant's financial interests and contacts, I find his foreign financial interests, although not minimal, are insufficient to affect the individual's security responsibilities and find MC 5-(9) applies. I find for the Applicant as to the allegation of foreign

financial interests raised during the hearing but not listed in the SOR.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline C (Foreign Preference): FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Paragraph 2 Guideline B (Foreign Influence): FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

DECISION

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

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 as amended.
2. His father died in 1975 and his mother died in 1981. (tr 53)
3. The undeveloped land in the mountains, at high altitude, is between 5 and 20 acres and is valued at under \$500.00. (tr 49,60) Since it is valued at under \$500.00, the Applicant pays no real estate tax on the property. (tr 60)
4. The purchase was started in 1998 and concluded in March 2000. (tr 41)
5. MC 1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country. E2.A3.1.3.1.
6. MC 2. Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship. E2.A3.1.3.2.
7. MC 4. Individual has expressed a willingness to renounce dual citizenship. E2.A3.1.3.4.
8. MC 3. Contact and correspondence with foreign citizens are casual and infrequent. E2.A2.1.3.3.
9. MC 5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities. E2.A2.1.3.5.