DATE: October 30, 2002

In Re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 00-0510

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, an expert in organic and polymer chemistry, has provided consulting services under formal agreements with both United States and foreign businesses since 1998. On contract with a United States defense contractor laboratory through at least March 2003 to provide services in support of polymeric synthesis and evaluation, Applicant continued to consult with foreign firms, including companies in the flat panel display industries in Taiwan and South Korea. His outside consulting work does not pose a conflict as it is commercial in nature and involves technology ten to twenty years behind the advanced work performed for the defense contractor. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated April 2, 2002, to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on involvement in outside employment or activities (guideline L) due to Applicant's consulting activities with foreign companies since 1998.

On April 22, 2002, Applicant responded to the allegations set forth in the SOR and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on May 21, 2002, and pursuant to formal notice dated July 15, 2002, the hearing was scheduled for July 15, 2002. At the hearing, which was held as scheduled, the Government submitted six documentary exhibits and called Applicant as an adverse witness. Applicant offered two exhibits, which were accepted into evidence, and testified on his behalf during the presentation of his case. On the Government's motion, SOR subparagraph 1.g. was amended to indicate Applicant had traveled to the People's Republic of China in July 2001 to give a technical presentation attended by a Chinese corporation from whom he anticipates potential future

employment and that he anticipates a potential contract with a Chinese firm which he believes receives funding from the Chinese government. A transcript of the proceedings was received by this office on August 15, 2002.

The record was left open until August 20, 2002, for Applicant to submit additional documentation. By facsimile on August 13, 2002, a senior security administrator at the defense contractor facility forwarded a document confirming his briefing of Applicant regarding various methods of information elicitation employed by foreign intelligence services. On August 15, 2002, Department Counsel indicated the Government had no objection to its admission. The security official's letter was marked and entered as Exhibit C. On August 15, 2002, four character reference letters were submitted directly from their authors to the undersigned for consideration. By facsimile on August 16, 2002, Applicant forwarded a copy of the Defense Security Service report of investigation (DSS ROI) for inclusion in the record. Fourteen additional character reference letters were received by the undersigned, one of which was drafted after the August 20, 2002, deadline for submission. Department Counsel having filed no objections to any of these documents by September 13, 2002, they were marked and entered into the record as Applicant Exhibits D through V, the DSS ROI being admitted as Exhibit H.

FINDINGS OF FACT

After a thorough review of the transcript, the six Government exhibits and the twenty-two Applicant exhibits, and on due consideration of the same, I render the following findings of fact:

Applicant is a 48-year-old-chemist with a doctorate degree, who has over fifteen years of experience as a chemist and contributing technical manager in the fields of organic and polymer chemistry. Since 1998, he has consulted with both United States (US) and foreign chemical companies in the areas of electronic and imaging chemicals. He seeks a Secret security clearance for his duties as a paid consultant with a defense contractor (company A) since June 1999.[(1)]

On earning his doctorate degree in polymer chemistry in August 1982, Applicant worked for the next fifteen months as a post doctoral research associate. In February 1984, Applicant commenced employment as a staff scientist in an optical materials group with a large US corporation. His work involved the design and synthesis of novel organic materials and polymers (primarily polymer liquid crystals) for optical applications. Circa September 1988, Applicant was lured by a former coworker to join his interconnect photo resist group at a multinational company (company B) involved with photo resist technology.[(2)] As a senior chemist serving as group leader for a newly formed core technology group to June 1992, Applicant was involved in the characterization and synthesis of polymers and their platforms. The co-inventor of a certain negative photo resist, Applicant was promoted to principal chemist. Over the next six years, he managed and directed the efforts of ten to twelve scientists responsible for the design, synthesis, and characterization of both polymeric materials and photoactive compounds for leading edge photo resist related projects.

In his work at company B, Applicant dealt with foreign vendors and customers, many from Japan. Due to his expertise in electronic and imaging chemicals, Applicant was approached by a vendor of company B to perform outside work directly for the vendor. Applicant left the employ of company B in August 1998 and started his own independent consulting business (company C) through which he contracted with a US subsidiary (company D) of a large Japanese company trading in energy and chemical textiles, including dyes, pigments, paper and chemicals.[(3)] Circa October 1998, Applicant entered into a one year contract (with a thirty-day termination clause) with company D to provide technical marketing input, identifying potential markets in the US for materials produced by company D's clients in Japan.[(4)] On an annual basis since October 1999, company D extended the consulting contract with Applicant. Under contract to at least October 2002 to perform consulting services for company D, Applicant has limited his consulting work for company D to commodity chemicals-those chemicals in the public domain which are not subject to US export control restrictions-that support the electronics industry and to commercial applications ten to twenty years removed from his advanced work with the defense contractor.[(5)] His consulting services for company D have included travel to Japan in January 1999, September 1999, August 2000 and January 2001, to meet with executives of the Japanese parent company and its customers. In conjunction with his January 1999 trip, Applicant conducted a seminar in chemical engineering at a Japanese university. As of August 2002, Applicant was devoting about five days per month to consulting for company D.

Circa January 1999, Applicant was approached by the principal owner of a small private Canadian company (company E) for consulting services in conjunction with a project with a foreign space agency.[(6)] Applicant had become acquainted with this individual at company B, where Applicant had been in charge of a program at the same Canadian university where this individual is a chemistry professor (*see* Ex. G). Applicant entered into a three month consulting agreement with company E's principal owner to provide technical advice in the development of a photo soluble membrane. When Applicant's contract expired, company E requested he be retained for an additional six months. Applicant traveled to Canada at least twice in 1999 for meetings with company E and the foreign space agency. After the space agency's project ended in 2001, because of his friendship with the principal owner, Applicant continued to provide advice on an informal basis to company E, on the design and marketing of a thickness measuring device for measuring films. Applicant traveled to Canada in July 2001 for business discussions with the company. As of August 2002, Applicant anticipated entering into a formal agreement with company E to market the company's measuring device in the US for compensation of a few thousand dollars per year.

In late fall 1998, Applicant and two partners (partners #1 and #2) established in the US a startup company (company F) concerned with nanoparticle technology and fully functionalized imaging materials for the flat panel display industry.[(7)]

Over the February 1999 to June 1999 time frame, Applicant was a paid consultant for a US-based subsidiary (company G) of a Japanese petrochemical firm.[(8)] Applicant's consulting services consisted of three reports for company G containing his findings and recommendations regarding marketing of the company's products in the US.

Circa June 1999, defense contractor A offered Applicant a consulting contract, which he accepted as it would allow him to continue to operate his independent consulting business (company C).[(9)] In June 1999, Applicant began work as a paid consultant to company A in the areas of nonlinear optics, molecular electronics, an advanced generation of photo resists, and nanoparticle programs. At the expiration of his original consulting contract, a new fixed cost expert, task based, contract in support of polymer or polymer synthesis and evaluation was generated.[(10)] His consulting services contract has been renewed through arch 2003. Under the terms of his task based consulting contracts with company A, Applicant has been required to provide company A with monthly reports outlining his findings and recommendations; to protect proprietary information as confidential in the same manner as the company maintains its propriety information; to not disclose information or any portion or copy thereof to a third party; to use information learned on the job only for the work assignment and no other purpose; to follow all security requirements as specified by the defense contractor and take the necessary steps to protect laboratory technical data, information and materials. Subcontracting of laboratory work to, or sharing of information that had not been approved for public release, with non-US citizens is expressly prohibited.

Shortly after Applicant commenced work as a consultant with company A, he traveled in July 1999 to Canada to meet with executives of a Canadian photochemical company (company H).[(11)] Applicant made a presentation, for which he was compensated, on the chemistry for a certain nanometer photo resist. Company H officials were unaware that Applicant had any relationship with defense contractor company A.

In conjunction with his work as a consultant at company A, Applicant on July 15, 1999, executed a security clearance application (SF 86), EPSQ version. In response to question 13 ["Are you now or have you ever been employed by or acted as a consultant for a foreign government, firm, or agency?"] Applicant reported his consulting from January 1999 for Canadian company E. He was granted an Interim Secret clearance in early August 1999. On August 18, 1999, Applicant was briefed about the nature and protection of US classified information, including the procedures to be followed in ascertaining whether other persons to whom he may contemplate disclosure have been approved for access. By executing a security briefing statement in the presence of two defense contractor A employees, Applicant agreed not to divulge any classified information to an unauthorized person.

Involved in future technology photo resist work at company A, Applicant has taken care to protect all information as confidential and proprietary to company A. Applicant has coauthored several publications and filed for two patents. All of the publications and other technical data developed have been processed for review and approved for release by the appropriate governmental agency. Applicant also established a synthesis material science laboratory at company A, enabling the company to generate its own material rather than rely on an outside supplier. As of August 2002, Applicant

was spending forty to fifty percent of his work week at company A.

In conjunction with his background investigation for a Secret security clearance, Applicant was interviewed by a Defense Security Service (DSS) special agent on September 28, 1999, about his foreign connections. Applicant advised the agent he was consulting for company E on chemical related experiments for a foreign space agency. He indicated he had been consulting for company D for about a year, but he expected his consulting duties for the US subsidiary of the Japanese chemical company to be completed by the end of October 1999. Applicant volunteered he had provided technical expertise to company H, a photochemical company in Canada in July 1999, and planned to travel to Canada in October 1999 to introduce executives from company D to executives from company H, as company D was interested in opening markets in Canada. Applicant advised further he had consulted for four months from February 1999 to June 1999 for company G. He indicated that contract was completed and he had no additional dealings with that US subsidiary of a Japanese petrochemical company.

In late 1999, through his startup company F, Applicant began work as a paid consultant to a company located and managed in South Korea (company I).[(12)] Company I formally contracted for Applicant's services in conjunction with the design and building of a plant to create its own chemicals to be used in electronics manufacturing.[(13)] Applicant advised company I on the choice of a mechanical engineer and on the procedures to handle chemicals safely and efficiently within a plant environment. With the aid of company F's attorney, Applicant examined the technology export restrictions to South Korea and determined that none of the consulting topics were subject to US export restrictions or of strategic value to the US. His duties as a paid consultant took him to South Korea in at least September 1999, August 2000, and January 2001. Although the plant was never built, Applicant continued to provide consulting services on an infrequent basis via electronic mail on a contract scheduled to expire in October 2002.

Circa September 1999, Applicant and partner #1 in company F approached a Taiwanese company (company J), located and managed in Taiwan,[(14)] and offered their consulting services, including Applicant's technical expertise in the formulation of photo resists for the flat panel display industry. Applicant and partner #1, through company F, entered into in late 1999 a formal consulting agreement for five years covering several tasks, each task subject to a separate contract. Neither Applicant nor partner #1 made any effort to determine whether company J had any tie to the Taiwanese government before formally agreeing to provide consulting services. Through review of the US export restrictions, Applicant assured himself the technology involved in his consulting for the Taiwanese company was not restricted by regulation and was not related to his work for the US defense contractor. After he commenced his consulting, Applicant learned company J had a plant located in the People's Republic of China.

Circa late 1999/early 2000, Applicant received a request from DOHA for further information regarding his current contacts, if any, with Canadian company E and with company D, the US subsidiary of a Japanese trading company. Advised by department supervisors at company A that he would not require a security clearance because he was no longer pursuing full-time employ, Applicant sent the paperwork back to DOHA indicating he had no need for a security clearance. About six months later, company A security officials contacted Applicant, upset because he had not asked for their assistance. At that time, Applicant had several discussions with security personnel on how non-US entities might attempt to obtain classified or otherwise privileged information. Advised by security personnel that he should proceed with the clearance process, Applicant completed on July 26, 2000 interrogatories for DOHA in which he indicated his consulting contract with company E had expired, but that he had acquired other contracts with foreign commercial companies in Taiwan and South Korea since his September 1999 DSS interview. He admitted an ongoing consulting arrangement with company D to October 2000, and disclosed the names of those foreign nationals in the company with whom he was in active consultation.

At the request of a former work associate at company B-an ethnic Chinese scientist employed by a local US company (company L) that develops, manufactures and sells chemicals and microelectronics worldwide[(15)]-Applicant traveled to the People's Republic of China in July 2001 where he gave a technical presentation on photo resist technology involving soldermask to representatives from a Chinese chemical reagents company (company K). Applicant was not paid for the presentation, although his travel expenses were covered by the foreign chemical firm. Before giving the presentation, Applicant made some checks to ensure himself that the company was a privately held business.[(16)] Since he understood the company to be privately held, Applicant did not report his planned travel to China to security officials at company A

before his trip or on his return. Following the presentation itself, Applicant attended a business dinner where he had personal discussions with, and exchanged business cards with, senior engineers as well as the director of the Chinese company. At the dinner, he met and was given the business card of the vice director for a Chinese municipal economic commission training department. While the Chinese company expressed interest in hiring Applicant as a consultant, no formal offer of such employment had been forthcoming as of August 2002. Applicant has not had any contact with the Chinese company since his trip to China in July 2001. Should the Chinese company contact him, Applicant does not plan on pursuing any formal business with company K due to the difficulty in obtaining guaranteed payment and tax issues.

On December 7, 2001, Applicant was reinterviewed by the DSS special agent who had conducted his September 1999 interview. During their December 2001 session, Applicant discussed his past and present consulting work for foreign entities. He volunteered that through his partnership in startup consulting company F, he was actively consulting for South Korean company I and Taiwanese company J. Applicant also related he had given in July 2001 a presentation to a Chinese company in the People's Republic of China wherein he discussed photo resist technology. Based on the export restriction information provided to him by the DSS agent during the interview, Applicant determined he had not violated any of the guidelines during his presentation. Applicant anticipated he could be hired in the near future as a consultant to Chinese company K, a worldwide distributor of chemicals, and he provided the agent with copies of those business cards given to him by the Chinese nationals at the business dinner in July 2001. Applicant denied there was any conflict with his consulting for defense contractor A, as the advanced photo resist technology he was working on for the defense contractor was two to three generations ahead of the photo resist technology involved in the flat panel display work for foreign companies I and J or in his presentation of July 2001. Applicant indicated company I had contracted for his services through October 2002 and company J until sometime in 2004. Applicant related he had not been approached by anyone who expressed a hostile interest in him or his work at company A, and that to the best of his knowledge, none of his consulting work for foreign companies involved defense, intelligence, foreign affairs or protected technology. Applicant disclosed all his foreign travel undertaken in the seven years preceding his DSS interview.

On April 2, 2002, DOHA issued an SOR to Applicant alleging that his consulting work for companies outside of company A conflicted with his security responsibilities with the defense contracting work and could increase his risk of unauthorized disclosure of classified information. Applicant chose to share the Government's concerns with company A's senior security administrator. On review of the SOR with Applicant, the security administrator clarified the Government's position and explained to Applicant various methods of elicitation employed by foreign intelligence services, issues of technology transfer, and reporting requirements. Applicant expressed to the security official that he had not been improperly approached. Based on his discussions with Applicant, company A's senior security administrator is of the opinion Applicant understands his responsibilities with regards to technology transfer and unclassified proprietary information.

Sometime between April 2, 2002 and May 6, 2002, because of the Government's concerns regarding Applicant's foreign consulting work, company F requested cancellation of the remainder of its consulting agreement with South Korean company I. Cancellation had to be by mutual agreement. By letter dated May 6, 2002, company I expressed its intent to cancel the agreement effective June 5, 2002. Applicant looked into cancelling the three task-based contracts remaining on company F's five-year consulting agreement with Taiwanese company J, traveling to Taiwan in May 2002 in an effort to shorten his involvement. The contract with company J stipulates that both Applicant and partner #1 consult, as both bring distinct expertise. With this contract work providing a major source of income for partner #1, it appeared unlikely as of August 2002 that Applicant would succeed in terminating his consulting work with foreign company J, although discussions were ongoing about shortening his involvement.

Circa late June 2002, Applicant was hired by company L to identify a small US chemical company which company L could acquire. As of August 2002, company L was leasing laboratory space to partner #1 in Applicant's nanotechnology company F. Through company F, Applicant and his partners signed a contract with a Swiss company (company M) in July 2002 to license black matrix technology to the foreign firm. Company F had purchased the base patents to black matrix technology, which involves the black layer used in flat panel screens, and added company F proprietary technology to it over the past few years. As of August 2002, Applicant was not actively soliciting any further business from foreign companies.

Applicant intends to engage in consulting outside of his work at company A in the future. He does not have a set procedure for evaluating the nature of the companies who seek his consulting services, relying heavily on others familiar with the companies to advise him in that regard. He makes an effort to identify whether there is foreign government stake or ownership in the foreign entity, but admits information is not always publicly available. With his expert services in electronic and imaging chemicals in demand internationally, especially in the Far East, Applicant is fully aware of export control issues and he steers clear of those technologies, dissemination of which is restricted to foreign entities. Careful to avoid conflict of interest issues with his work at company A, Applicant was asked at company A through an organization of international semiconductor companies if he would consult independently for a visiting Taiwanese chemical company. Applicant declined to meet with the consortia's representatives as it would appear he used his position at company A to gain outside business and the chemical company was a competitor with company J, with whom he was still under contract.

Applicant is well respected by his peers for his scientific expertise and personal integrity.

Applicant's group leader at company A from June 1999 to at least December 2001, aware that Applicant has extensive foreign contacts because of his expertise, including an ongoing contact with a Japanese company, has no reason to believe Applicant ever used company A resources or time to further his independent consulting business. Company A benefitted from Applicant's connection to the Japanese company in receiving chemicals from the foreign firm. In this supervisor's opinion, Applicant is not vulnerable to undue influence, notwithstanding his extensive foreign contacts. A senior staff member at company A, who had been a coworker of Applicant's at company B from 1989 to 1997, was instrumental in bringing Applicant's talents to company A. This coworker finds no conflict of interest between Applicant's defense contractor duties and his other consulting activities, as his work for company A is far more advanced than the nature of Applicant's other work. Applicant having demonstrated a knowledge of the restrictions related to the release of proprietary information outside of company A, this coworker does not believe Applicant would share the advanced technology with his outside clients.

Applicant enjoys a similar reputation for scientific accomplishment, "patriotism" and personal integrity among scientific colleagues and friends outside of company A, many of whom have been acquainted with Applicant for twenty years or more. Those who have kept abreast of Applicant's professional accomplishments and personal endeavors over the years, including his activities in an old boys rugby football club, express no reservations about Applicant's contributions to the Nations's defense or his ability to maintain the highest level of security.

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. See Directive 5220.6, Enclosure 2, Section E2.2.4.

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

Outside Activities

E2.A12.1.1. The Concern: Involvement in certain types of outside employment or outside activities is of security concern if it poses a conflict with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information.

E2.A12.1.2. Conditions that could raise a security concern and may be disqualifying include any service, whether compensated, volunteer or employment with:

E2.A12.1.2.2. Any foreign national

E2.A12.1.2.3. A representative of any foreign interest

E2.A12.1.3. Conditions that could mitigate security concerns include:

E2.A12.1.3.1. Evaluation of the outside employment or activity indicates that it does not pose a conflict with the individual's security responsibilities

E2.A12.1.3.2. The individual terminates the employment or discontinues the activity upon being notified that it is in conflict with his or her security responsibilities

* * *

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

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 its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion 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." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. *See* Enclosure 2 to the Directive, Section E2.2.2.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of the Applicant, I conclude the following with respect to guideline L:

An expert in photo resist technology and polymeric synthesis, Applicant started his own consulting company in 1998. In addition to his own company, Applicant and two partners in late fall 1998 started a nanotechnology consulting business, wherein they offered expertise in the area of flat panel display and photo resists. He has since entered into formal consulting agreements as an independent consultant, or in some cases through his partnership in the nanotechnology business, with both United States and foreign companies. Circa October 1998, Applicant entered into a one year

consulting contract with a US subsidiary (company D) of Japanese company trading in energy and chemical textiles. With the renewal of his consulting contract on an annual basis, Applicant was devoting about five days per month to consulting for company D as of August 2002. From January 1999 to November 1999, Applicant provided technical consulting services to a Canadian company (company E) involving the development of a photo soluble membrane, in conjunction with a project sponsored by a non-US space agency. From February 1999 to June 1999, Applicant was a paid consultant for a US-based subsidiary of a Japanese petrochemical company (company G). In June 1999, Applicant began to consult in the areas of nonlinear optics and advanced generation photo resists for defense contractor A. He remains under agreement to consult for company A through March 2003. Shortly after he started work for company A, Applicant made a compensated presentation in July 1999 to executives of a Canadian photochemical company (company H). While actively consulting for defense contractor A, and after he had been granted an Interim Secret security clearance for his duties at company A, Applicant in fall 1999 began consulting relationships with chemical companies in South Korea (company I) and Taiwan (company J) involved in the flat panel display industry. In July 2001, Applicant gave a presentation on photo resist technology to employees of a Chinese (PRC) chemical reagents company in China in July 2001, and he occasionally provided marketing advice to Canadian company E-services not under any formal consulting agreement.

Independent consultancy brings with it a varied clientele and the potential for conflicting interests. Although Applicant had been granted an Interim Secret clearance in August 1999, and was briefed on his security responsibilities shortly thereafter, he has not had access to classified information in his consulting work for defense contractor A. To date, his consulting work has not jeopardized any classified information. However, the Government has a legitimate interest in ensuring that Applicant's consulting activities for other parties do not pose a risk to his duties for the defense contractor. Under Guideline L of the Directive, any service or employment, whether compensated or volunteer, with a foreign country (E2.A12.1.2.1.), any foreign national (E2.A12.1.2.2.), a representative of a foreign interest (E2.A12.1.2.3.), or any foreign, domestic or international organization or person engaged in analysis, discussion, or publication of material on intelligence, defense, foreign affairs or protected technology; could create an increased risk of unauthorized disclosure of classified information (E2.A12.1.2.4.).[(17)]

The evidentiary record does not sustain a finding of foreign government involvement in any of the businesses for which Applicant has engaged in active consulting or volunteered uncompensated advice. Applicant had no direct relationship with the foreign space agency when he consulted on the development of a photo soluble membrane for Canadian company E. Even with respect to his presentation to the Chinese chemical reagents company in July 2001, Applicant checked to ensure the company was a privately owned enterprise. Moreover, Applicant testified credibly, unrebutted by the Government, that his consulting outside of company A has been limited to commodities and technology in the public domain with commercial application. However, his consulting activities have brought him into contact with foreign nationals and with representatives of a foreign interest. In his work for the US subsidiary of the Japanese trading company, Applicant traveled to Japan where he met with executives of the parent company. Applicant's paid consulting activities and his recent uncompensated marketing advice to Canadian company E are largely due to the personal relationship Applicant has with the principal owner-a non-US national-of the Canadian company. Applicant gave presentations on photo resist technology to executives of a Canadian photochemical company (compensated) in July 1999 and to employees of a Chinese chemical reagents company (unpaid but travel reimbursed) in July 2001. His consulting through his nanotechnology company has been directly with foreign companies located and managed in the Far East. Disqualifying conditions (DC) E2.A12.1.2.2. (service for a foreign national) and E2.A12.1.2.3. (service for a representative of a foreign interest) must be considered in evaluating whether his outside activities present an unacceptable security risk.

Under the Directive, the security concerns presented by outside activities involving foreign entities may be mitigated where the employment and/or activity has been discontinued (*See* E2.A12.1.3.2.), or where it can be determined that the outside employment or activity does not pose a conflict with his security responsibilities (*See* E2.A12.1.3.1.). There is no evidence Applicant has engaged in any consulting for, volunteered any advice to, or had any business-related contacts with, the US subsidiary company G of a Japanese petrochemical company since June 1999, the Canadian petrochemical company H since July 1999, or the Chinese chemical reagents company K since July 2001. Moreover, largely due to the Government's concerns about foreign consulting, his nanotechnology company F terminated its relationship with South Korean company I in June 2002. Applicant having no present relationship with these foreign entities, and no intent to pursue further dealings with them, favorable findings are warranted with respect to

subparagraphs 1.a., 1.b., 1.e. and 1.g. of the SOR.

As of the hearing, Applicant was devoting five days per month to consulting for company D, identifying potential markets for its commodity chemicals. Although he had made an effort to terminate his consulting activities for Taiwanese company J, he had met with no success by August 2002. As the contract stipulated both he and partner #1 consult for the company, and as the contract provides a major source of partner #1's income, the likelihood is that Applicant will remain under contract with the foreign firm for the near future. Although Applicant is not providing any formal consulting services for Canadian company E, he occasionally advises the principal owner on issues relating to the marketing of a scientific measuring instrument developed by the company. Applicant anticipates entering into a formal consulting agreement with the company for his marketing services at compensation of a few thousand dollars per year. Very recently, Applicant's nanotechnology company, of which he is an owner/principal officer, signed a contract to license black matrix technology to a Swiss company. Applicant has the burden of demonstrating that these ongoing services for foreign companies do not pose a conflict with his security responsibilities for the US defense contractor.

Applicant's task-based work at company A involves "wet chemistry," designing and synthesizing chemicals involved in an advanced generation of photo resist technology. Applicant testified to taking great care to ensure that his outside consulting activities do not conflict with his work at company A. The principal owner of Canadian company E indicates he has collaborated with Applicant since 1989 in the development of thin films for specific technical applications and the instrumentation to study these materials. (*See* Ex. G). Most recently, Applicant's services on behalf of company E have consisted of informal advice on the marketing of a laboratory instrument within the US. Applicant testified to his knowledge, defense contractor A purchased one of these measuring tools. Should Applicant enter into a formal contract to market the instrument within the US, his work for the defense contractor is sufficiently different to raise little concern of conflict. Similarly, although Applicant has a financial stake in company F's contract with the Swiss company to license black matrix technology, the licensing of the black panel technology used in flat panel screens is unrelated to his defense work. His work with the flat panel industry in the Far East includes photo resists used in current commercial applications, which is two to three generations behind his work for defense contractor A. Applicant testified that with each generation of photo resist, a new set of scientific techniques and a different chemical platform is needed. The Government presented no evidence to counter Applicant's testimony, taken under the advisement of Title 18, Section 1001, that his work for defense contractor A involves nanometer technology which will never be used in flat panel manufacturing due to its physical chemical restraints. (Transcript p. 123). Applicant's outside consulting activities to date do not pose a conflict with his security responsibilities at company A.

The Government submits Applicant has not been able to indicate that his future work will not pose a conflict, citing his lack of knowledge as to the technologies he will be involved with if granted access to classified information. There is nothing in Applicant's consulting contract with company A which prohibits him from consulting with outside entities, including foreign companies. Moreover, the Directive does not bar consulting with foreign companies or representatives of a foreign interest, provided the services do not conflict with defense-related work. The issue is whether Applicant can be counted on to act consistent with his security responsibilities, should his outside consulting work present a conflict in the future.

Applicant has demonstrated his ability to protect as confidential the proprietary information he generates in his work at company A. Those who have had the opportunity to observe his handling of sensitive technology since June 1999 and are aware that he consults with foreign firms have confidence in his ability to appropriately handle classified material. As an individual with considerable expertise in organic and polymer chemistry, Applicant has the knowledge to recognize if outside activities pose a risk to his defense-related consulting work. Recently asked by a consortia to consult for a Taiwanese company, Applicant declined to meet with representatives of the foreign company as he wanted to avoid even the appearance that he was using his position at company A to further his own interests. Furthermore, the security clearance proceedings have led to a greater appreciation on Applicant's part of the potential risks of outside consulting and the methods of elicitation employed by foreign intelligence services, foreign governments, and foreign industries. While Applicant admitted he was not always aware in the past whether the companies with which he consulted had any involvement in protected technologies for foreign governments, it was because such information was not publicly discoverable. Not wanting to deal with any foreign governments, Applicant made reasonable efforts to confirm the commercial nature of his work and the public status of the corporation before he began any consulting work. Although not controlling, Applicant's reputation for professional and personal integrity among his peers provides

some assurance that he is likely to abide by his security responsibilities. Applicant having taken care to ensure that his outside activities pose no conflict to his defense-related duties, he is likely to subject any future consulting work to the same scrutiny. Favorable findings are also warranted with respect to subparagraphs 1.c., 1.d., and 1.f. of the SOR.

FORMAL FINDINGS

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

Paragraph 1. Guideline L: 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

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: 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 Applicant.

Elizabeth M. Matchinski

Administrative Judge

1. Applicant was granted an Interim Secret security clearance in early August 1999. Eleven days later, he was briefed regarding his security responsibilities. There is no indication Applicant has ever accessed classified information at company A, however.

2. Per Applicant's testimony, imagable materials known as photo resists are distinguishable from liquid crystals, which are not usually in a patterned format. As light sources change, the chemical interaction differs such that an entirely new set of scientific techniques are needed for each generation of photo resists. (*See* Transcript pp. 39-40, 48).

3. *See* SOR subparagraph 1.d. According to Applicant, the foreign parent is a $35 billion per year trading company headquartered and managed in Japan. (Ex. 2).

4. Applicant testified company D did not possess the technical expertise to recognize how a chemical might be applied in a given industry. (Transcript p. 90).

5. Applicant indicated his work for company D, which involves dyes, color chemistry, pigments, biopolymers and paper chemicals, is in a different field than his work for the defense contractor. While he markets some electronic chemicals which are for the generations of photo resist chemicals in production today, this technology is several generations back from what he is working on for the defense contractor. (Transcript pp. 92-94).

6. *See* SOR subparagraph 1.c.

7. According to Applicant, ten percent of company F's shares have been sold to company D, the US subsidiary of a Japanese chemical company. (Transcript p. 115).

8. See SOR subparagraph 1.b.

9. Applicant came to company A at the request of some employees there. He was offered a full-time staff position, which he declined, as the position was not commensurate with his experience or his benefit expectations in terms of vacations.

10. Under the terms of the consulting contract in effect from August 17, 2001 through March 31, 2002, Applicant was paid $47,250.00 plus $3,000.00 in travel costs for expert services in support of polymeric synthesis and evaluation. (Ex. 5).

11. *See* SOR subparagraph 1.a.

12. *See* SOR subparagraph 1.e. Applicant made no effort to determine whether the company had any links to the South Korean government before he entered into a formal contract for his consulting services.

13. Applicant testified, unrebutted by the Government, the technology to be used in the plant was old technology as the new technology did not exist at a scale which would allow the company to manufacture in commercial quantities. (Transcript pp. 110-13).

14. See SOR subparagraph 1.f.

15. Applicant hired this ethnic Chinese person to work in his group at company. He knows she has been in the US for about six years and still has friends in the People's Republic of China. He is otherwise unaware of her background, to include her present citizenship status. (Transcript pp. 130-31).

16. Applicant believes the Chinese chemical reagents company may have been recently privatized by the Chinese government. He als testified the company may still receive some financial subsidy from the Chinese government. (Transcript p. 163).

17. Nothing in the language of Guideline L requires that the foreign national or entity intends detrimental or inimical impact on the interests of the United States.