DATE: November 16, 2001

In Re:

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

Applicant for Security Clearance

CR Case No. 01-01490

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Department Counsel

FOR APPLICANT

William Weisberg, Esq.

SYNOPSIS

Applicant, a naturalized citizen of the US who was a citizen of Italy solely by virtue of his birth and has not actively pursued his dual citizenship with Italy since becoming a US citizen, extenuates and mitigates security concerns associated with his passive maintenance of a dual citizenship between Italy and the US. Applicant's spouse (a French citizen and resident of the US) and in-law family members who reside in France and Italy, respectively, are not shown to be at any potential risk to pressure or coercion sufficient to pose continuing foreign influence concerns. Clearance is granted.

STATEMENT OF CASE

On May 4, 2001, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on June 1, 2001, and requested a hearing. The case was assigned to this Administrative Judge on August 9, 2001, and scheduled for hearing on August 20, 200. A hearing was convened on September 10, 2001, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At hearing, the Government's case consisted of three exhibits; Applicant relied on one witness (himself) and one exhibit. The transcript (R.T.) of the proceedings was received on September 14, 2001.

STATEMENT OF FACTS

Applicant is a 49-year old coating manager for a defense contractor who seeks a security clearance at the level of secret.

Summary of Allegations and Responses

Applicant is alleged to (a) have exercised dual citizenship with Italy and (b) to have a spouse who is a permanent resident of the US and citizen of France, a mother-in-law who is a citizen of France and resident of France and Italy and three brothers-in-law and two sisters-in-law who are citizens of France and reside in France.

For his response to the SOR, Applicant admits each of the allegations and adds explanations. He claims to have given up his Italian citizenship when he became an American citizen, and only later added dual citizenship with Italy after Italy changed its policy and permitted former citizens who had renounced Italian citizenship to apply for dual citizenship. He claims preference for the US, not Italy. And he claims to never discuss classified information with his spouse or any of his family members, who are removed and have no influence on him.

Relevant and Material Factual Findings

Born in Italy to Italian parents, Applicant emigrated to the US in 1970 at the age of eighteen with his parents (*see* ex. 3; R.T., at 17). His mother passed away just three years after their move to the US; while his father expired in 1991.

Applicant applied for US citizenship shortly after establishing residence in the US and became a naturalized citizen in 1976. Before becoming a US citizen he returned to Italy on a couple of occasions and traveled to France in 1975 to get married (R.T., at 21). Later he returned to Italy with his wife on two occasions, with the most recent coming in 1994. On each occasion, he used his US passport (*see* R.T., at 22).

Because Italian law did not permit dual citizenship at the time, he renounced his Italian citizenship when he took his oath of US citizenship. But when Italy changed its policy over dual citizenship many years later (in 1995) and encouraged former Italian citizens like himself, who had previously renounced their Italian citizenship, to apply for dual citizenship, Applicant saw no harm in regaining his Italian citizenship and applied for it by simply filling out a form, sans any administered oath of allegiance (R.T., at 18). Applicant did so in 1995. His wife remains a French citizen and perforce ineligible to take Italian citizenship (R.T., at 24).

Since re-acquiring his Italian citizenship, Applicant has never obtained or used an Italian passport when traveling abroad. Nor has he ever taken advantage of any privileges of Italian citizenship: He has never served in Italy's armed services, voted in an Italian election, or held real estate or financial interests in Italy. He has not retained benefits privileges of Italian citizenship and has used only his US passport for travel from within or without the US (*see* R.T., at 22). Upon receiving the SOR, Applicant renounced his Italian citizenship (*see* ex. A).

Applicant has maintained irregular contact with his parents and other relatives residing in France and Italy, respectively, since becoming a US citizen. He has no siblings and has never been employed by a foreign government (Italy included). He assures he has no reason to believe his parents or any of his foreign relatives are at risk to being exploited, coerced, or influenced by a foreign power. His assurances are accepted.

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list "binding" policy considerations to be made by Judges in the decision making process covering DOHA cases. The term "binding," as interpreted by the DOHA Appeal Board, requires the Judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the Judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E2.2 of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

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

Foreign Preference

The Concern: When an individual acts in such a way as to indicate 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.

Disqualifying Conditions:

DC 1: The exercise of dual citizenship

Mitigating Conditions:

MC 4: Individual has expressed a willingness to renounce dual citizenship.

Foreign Influence

The Concern: A security risk may exist when an individual's immediate family, including co-habitants, and other persons to whom he or she may be bound by affection, influence, or are 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.

Disqualifying Conditions:

DC 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.

Mitigating Conditions:

MC 1: A determination that the immediate family members are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the persons involved and the United States.

Burden of Proof

By dint of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make

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

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

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant is a naturalized US citizen who after being born and raised in Italy emigrated to the US in 1970 with his mother and father in search of better economic opportunities. By accepting US citizenship in 1976, he implicitly renounced his Italian citizenship under Italian law. This result was mandated by the organic law of Italy that preempted any US legal exceptions to the contrary covering matters of Italian citizenship. Proud of his Italian roots even after his grant of US citizenship, he accepted an opportunity presented by a 1975 change in Italian law that permitted re-applications for Italian citizenship by persons required to renounce their Italian citizenship when they accepted foreign citizenship. At the time, Applicant had no reason to believe his accepting Italian citizenship could jeopardize his US-issued security clearance. Made aware of the security implications of holding dual citizenship, he renounced his Italian citizenship this year.

Foreign Preference

Dual citizenship concerns necessarily entail allegiance assessments and invite critical considerations over acts indicating a preference for the interests of the foreign country over the interests of the US. In a different vein, the continued residence of his in-laws in France and Italy, respectively, raise some potential concerns about their being vulnerable to future pressure or duress that could result in the compromise of classified information. The issues, as such, raise concerns over Applicant's preference for a foreign country over the US and the potential for members of Applicant's immediate family being placed at risk to pressure or duress to induce Applicant to divulge classified information.

The primary issue is whether Applicant by renewing his Italian citizenship manifested a preference for his birthplace (Italy) over his adopted country (the US).

Without denying continuing affections for his birthplace, as well as the current place of residence of his in-laws, Applicant insists his preference remains for his adopted country (US), which he would never compromise under any circumstances, should competing geopolitical interests develop between the two countries. No question but that Applicant manifested his support for the US in several important ways since taking his oath of allegiance in 1976: He took no oath of allegiance to Italy when he took advantage of a special Italian law to reclaim his Italian citizenship in 1991 and acquired no Italian passport; he was university trained in the US, where he has resided for over 30 years since emigrating here in 1970; and he has voted only in US elections during his long tenure in the US.

Taking into account all of the evidence presented in the record, Applicant absolves himself of the security concerns raised by his passive holding of dual citizenship with another country (Italy), averts any risk of recurrent dual citizenship questions by his renouncement of his Italian citizenship and convinces that his acceptance of dual citizenship with Italy (however brief) does not expose him to future risks of providing information that could be harmful to the security interests of the US. His passive holding of dual citizenship over a five-year span since1995 (to include his never possessing or using an Italian passport after becoming a naturalized citizen in 1976) creates no competing allegiance concerns for Applicant clearance holders that manifest in active dual citizenship exercise cases. Favorable conclusions warrant with respect to the allegations covered by Guideline C.

Foreign Influence

Besides preference concerns, Government concerns over the risk of Applicant's spouse (a permanent resident of the US but French citizen) and in-laws who reside either in France or Italy might be subject to coercion or pressure. Because (a) Applicant's spouse remains a French citizen, even though she resides in the US with Applicant, and (b) his in-laws remain residents of either France or Italy, his immediate family members present security risks covered by disqualifying condition 1 of the Adjudication Guidelines for foreign influence. The residence status of these relatives in France and Italy pose some potential concerns for Applicant because of the risks of coercion or influence that could compromise classified information under Applicant's possession and/or control.

From what is known from Applicant's own statement, none of Applicant's immediate family residing in Italy have current working/non-working relationships with Italy's government or have any history of being subjected to any coercion or influence to date, or appear to be vulnerable to the same. Taking Applicant's explanations about his parents and sibling at face value, any risk of foreign duress or influence on Applicant and/or his immediate family would appear

to be insubstantial and clearly manageable. Italy is a NATO ally with a democratic government and a history of respect for human rights and the rule of law.

The Adjudicative Guidelines governing collateral clearances do not dictate p*er se* results or mandate particular outcomes for applicants with relatives who are citizens/residents of foreign countries in general. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing. Personnel security investigations continue to be governed by the same Change 2 requirements of DoD Regulation 5200.2-R for appraising the security risks associated with the individual's having family abroad: These investigatory requirements of the Regulation as they pertain to hostage situations were never deleted or replaced and retain their applicability according to the dictates of individual cases. *See* 32 C.F.R. Sec. l54.8 (1998) (corresponds to DoD Regulation 5200.2-R, Sec. 2-403).[(1)] And Section 6.1 of the Directive (under procedures) provides that industrial security clearance applicants be investigated in accordance with the standards in the governing DoD regulation.

So, under these investigatory guidelines, while an applicant with family members of demonstrated affections in an unfriendly country might not be able to neutralize material risks of exploitation of these family members residing in that country, another hypothetical applicant might if the subject family members were domiciled in a friendly country that poses no risks of a hostage situation. Italy is not such a country that has been the subject of concluded studies of friendly countries practicing industrial espionage in recent years. *Cf.* G. Gilder, *Geniuses from Abroad* (Wall Street J. December 18, 1995); S. Wood & C. Chandler, *Selected Economic Espionage Incidents Against the United States, 1980-1994*: *An Open-Source Research Project* (Defense PSRC), cited with approval in DoD's Adjudicative Desk reference (ADR). Italy can be classed as a friendly NATO country who is not currently known to pose unacceptable hostage risks.

Whatever potential security risks arise as the result of Applicant's having extended family of demonstrated affection in France and Italy, they are by every reasonable measure mitigated. Applicant's situation is in marked contrast to a situation where an applicant's family have interests inimical to those of the US. Neither France nor Italy is a hostile country or a country whose democratic institutions are incompatible with our own traditions and respect for human rights and the rule of law. While the foreign influence provisions of the Adjudicative Guidelines are ostensibly neutral as to the nature of the subject country, they should not be construed to ignore the geopolitical aims and policies of the particular foreign regime involved. And in Applicant's case, both France and Italy are countries with no known recent history of hostage taking or disposition for exerting pressure or influence.

Because of the presence of Applicant's immediate family members in Italy (a country whose interests have recently been and continue to be friendly to those of the US), any potential risk of a hostage situation becomes an acceptable one, for which the mitigation benefits of MC 1 (presence of immediate family in host country poses no unacceptable security risk) of the Adjudicative Guidelines are fully available to Applicant. Applicant may also claim the mitigation benefits of MC 5 (minimal foreign financial interests). Overall, any potential security concerns attributable to Applicant's having family members in Italy are sufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand risks of exploitation and pressure attributable to his familial relationships in Italy. Favorable conclusions warrant with respect to sub-paragraph 2.a of Guideline B.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS and the FACTORS and CONDITIONS listed above, this Administrative Judge makes the following separate FORMAL FINDINGS with respect to Appellant's eligibility for a security clearance.

CRITERION C (FOREIGN PREFERENCE): FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

CRITERION B: (FOREIGN INFLUENCE): FOR APPLICANT

Sub-para. 2.a: FOR APPLICANT

Sub-para. 2.b: FOR APPLICANT

Sub-para. 2.c: FOR 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 Applicant's security clearance.

Roger C. Wesley

Administrative Judge

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