

DATE: July 17, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-02974

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

A native citizen of the United Kingdom (UK), Applicant continued to possess two UK passports after he became a United States (US) naturalized citizen in October 1997. He used his foreign passports to travel to the UK and Middle East for business purposes in preference to his US passport. He has since surrendered the foreign passports, which have been cancelled by the UK consular authority. While he continues to collect a retirement pension from the UK for past military service, that foreign asset is minimal when compared to his US interests, which include his employment income, his residence and 401K account. The foreign citizenship and residency of family members, including his adult daughter, do not present an unacceptable risk of foreign influence. 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) on March 14, 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, in part, on foreign preference concerns (guideline C) related to dual citizenship with the UK and US; possession of a UK passport with use in preference to his United States passport when traveling on business; past service in a branch of the UK military with entitlement to monthly retirement pay of \$1,500.00 US; and maintenance of a bank account in the UK. Also alleged were foreign influence concerns (guideline B) due to the dual citizenship of his spouse and the foreign citizenship and residency of other family members (daughter, sister, stepfather, half-sister, and sister-in-law).

On April 1, 2002, Applicant, acting pro se, 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 April 26, 2002, and pursuant to formal notice

dated May 8, 2002, the hearing was scheduled for May 28, 2002. At the hearing held as scheduled, the Government's case consisted of four documentary exhibits. Applicant testified on his behalf and submitted six exhibits, which were entered without any objections. He also amended his answer, entering a denial to subparagraph 1.b. to reflect he was no longer maintaining dual citizenship to retain a foreign passport. With the receipt on June 6, 2002, of the transcript of the hearing, the case is ripe for a decision.

FINDINGS OF FACT

After a thorough review of the evidence, and on due consideration of the same, I render the following findings of fact:

Applicant is a 56-year-old director of business development, who has worked for a US defense contractor since December 1986. With multinational experience, including as a program manager on a NATO appointment, Applicant began working for the US firm as a project manager in systems engineering and air traffic control. In November 1994, he assumed the duties of international marketing manager. In June 1998, he was promoted to the position of director of business development, with direct responsibility for the company's air traffic control business in Europe, Africa, and some countries in the Middle East. He requires a security clearance for his duties.

Applicant was born in May 1946 in the United Kingdom (UK) to resident citizens of that nation. Raised and educated in the UK, Applicant obtained his first UK passport in 1964, which he continued to maintain until May 2002.

At the completion of his schooling, Applicant in September 1964 entered into a branch of UK military service. Granted high level security clearance by NATO as well as the UK, Applicant was allowed access to US classified defense information at sometime during his military career. In December 1986, Applicant retired from the military at the rank of wing commander. He has since been paid a pension, which he has directly deposited into a bank account in the UK which he opened back in 1964 when he was an officer cadet. There is no present or future obligation to the UK military attached to the pension funds, and he is entitled to the money regardless of citizenship.

In April 1971, Applicant married in the UK an Irish citizen. He and his spouse had two children born in the UK of their union, a daughter in May 1975 and a son in April 1978. As a member of the military, Applicant moved eleven times over the course of seventeen years. At the urging of his spouse who wanted some stability, Applicant in 1986 commenced a job search in the civilian sector. He responded to a job advertisement run by the US defense contractor in a major UK newspaper. Offered a position in the US at a very attractive salary, Applicant took the job and emigrated with his family to the US in late 1986. In arch 1987, Applicant and his family moved to their present home.

As a UK citizen permanently residing and working in the US, Applicant's salary earned in the US was not subject to UK taxation. His UK military pension was subject to UK taxation, which was at a low rate (less than 10 percent). Applicant continues to have his UK pension deposited in pounds sterling (£) in the UK banking institution, which converts the funds to US dollars on transfer to a US bank. The deposit account is tied to a "current" account in which Applicant keeps about \$500.00 US, from which he or his spouse withdraws funds for expenses when in the UK. Funds deposited in a US financial institution were transferred in significant amount to the UK over the 1993 to 1997 time frame to pay for his daughter's education, as she elected to pursue legal studies in the UK after graduating from public high school in the United States.

Required to travel with some frequency to Europe and the Middle East on behalf of his US employer, Applicant maintained two UK passports so that he could travel on one while being processed for a foreign visa on the other. The British Government authorized dual passports to those traveling to the Middle East so the traveler could avoid presenting a passport containing stamps from antagonistic nations. After moving to the United States, Applicant renewed his UK passports through the British Embassy. He was last issued UK passports in late April 1996 and in late October 1997, valid for ten year terms.

In mid-June 1996, Applicant's spouse became a naturalized United States citizen. She elected to maintain her Irish citizenship and passport out of convenience, as when traveling to Europe as a citizen of a European Union (EU) nation, her entry is expedited.

After his spouse became a United States citizen, Applicant realized he wanted to spend the remainder of his life in the

United States as a citizen of this country. He applied for US citizenship, aware that his UK military pension would become subject to US taxation on his naturalization. In October 1997, Applicant became a United States naturalized citizen, taking an oath to renounce all foreign allegiances, to support and defend the United States Constitution and its laws, and to bear arms or noncombatant service or civilian service on behalf of the United States if required. Since the acquisition of his United States citizenship, Applicant's foreign military pension has been taxed in the US as well as in the UK. Entitled to a foreign tax credit for the monies paid to the UK, Applicant receives only 10 percent of the taxes paid to the UK.

On acquiring his United States citizenship, Applicant was issued that very day in October 1997 a United States passport. Applicant elected to declare dual citizenship with the US and UK, as he wanted to maintain as well a UK passport for travel and identification purposes. Applicant thereafter always took his US passport on foreign travels, as he was required to present that document on his exit from, and re-entry into, the United States. Once abroad, he used a mix of his passports, presenting his UK passport to enter the UK and other European nations if there was an advantage, such as avoiding long lines. When traveling to at least one nation in the Middle East where he could get a visa on the spot as a UK citizen but had to apply ahead as a US citizen, Applicant presented his UK passport. Applicant often used his US passport to enter another country in that region where there was no advantage to using the UK passport.

Required to obtain a security clearance for his duties as business development manager, Applicant on April 30, 1999, executed a security clearance application (SF 86) on which he listed his birth in the UK, his past military service in the UK from September 1964 to December 1986, his dual citizenship with the US and UK since his US naturalization in October 1997, his possession of valid UK and US passports, and foreign financial interests in a UK bank account. Applicant also disclosed the dual citizenship of his spouse (Ireland and US) and children (both Ireland and UK), and the foreign citizenship and residency of other relations (sister-in-law, half sister, stepfather). He indicated extensive foreign travel for business since 1992, the details of which he would later provide during a personal interview. In May 1999, Applicant's son became a United States naturalized citizen.

On October 27, 1999, Applicant was interviewed by a special agent of the Defense Security Service (DSS) concerning his connections to the UK. Although Applicant indicated he declared dual citizenship on becoming a US citizen because he wanted to maintain his British passport and identification for travel and business purposes, he indicated he owed his national allegiance to the US. Citing his sacrifice of financial benefits offered by the UK when he became a US citizen, Applicant asserted his loyalty to the US. Regarding his possession of a UK passport, which was acquired before his US naturalization, Applicant gave several reasons for maintaining a valid UK passport, primarily the ease of travel (no long lines, a visa not required for UK citizens). Since he conducted a large amount of business for his US defense contractor employer in European and Middle Eastern countries, Applicant indicated his dual citizenship and possession of a foreign passport was of benefit to his employer. While he expressed his belief it would not serve the interests of the US or the Department of Defense to relinquish his foreign passport or renounce his foreign citizenship, Applicant indicated he would be willing to do so "under extreme circumstances." Applicant denied the exercise of dual citizenship to protect any foreign financial interest and indicated he would not use a position of trust with the US Government to serve the interests of the UK in preference to the US.

On August 16, 2000, the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASDC³I) clarified the foreign preference adjudication guideline pertinent to possession/use of foreign passports, making it clear that possession/use of a foreign passport raises doubts as to whether the person's allegiance to the United States is paramount and it could facilitate foreign travel unverifiable by the United States. Possession/use of a foreign passport could not be justified on the basis of factors such as personal convenience, safety, the requirements of foreign law, or the identity of the foreign country.

On reaching his 55th birthday in May 2001, Applicant's UK military pension increased to the maximum benefit of \$1,500.00 US per month. After payment of 122.23 in UK taxes, 897.11 UK is deposited in Applicant's bank account in the UK each month. For tax year 2001, Applicant's gross income from UK sources (excluding his pension) totaled \$600.00 US. With his UK pension income of \$12,709.00 US, Applicant and his spouse's joint adjusted gross income amounted to \$213,933.00 US.

During calendar year 2001, Applicant made thirty trips across the Atlantic. Primarily for convenience, Applicant used a

UK passport with some regularity in connection with this business travel.

On November 2, 2001, Applicant was reinterviewed by the special agent, primarily about his foreign connections and foreign bank account. Applicant indicated his spouse continued to maintain her Irish citizenship and passport after her US naturalization for ease of travel throughout Europe. Applicant related he and his spouse intend to reside permanently in the US, and to that end had already purchased a retirement residence in another US state. Applicant volunteered their daughter was still a dual citizen of the UK and Ireland, and as she was employed in the UK, he doubted she had any immediate intent to acquire US citizenship. He disclosed their son had acquired US naturalized citizenship since the October 1999 DSS interview. Applicant described his foreign contacts, including four to five times yearly correspondence with occasional visits with his sister, a resident citizen of the UK. Applicant expressed similar contact with his stepfather and half sister, who have been resident citizens of Germany since the 1960s. With regard to his spouse's sister, a lifelong resident and citizen of Ireland, Applicant speaks with her weekly by telephone and sees her twice yearly. Applicant related his foreign relatives support the "general policy goals of the US." Applicant also openly discussed his maintenance of a UK bank account for deposit of his military pension. Entitled to the pension for past service whether or not he was a UK citizen, Applicant denied he was maintaining dual citizenship to protect this foreign financial interest. Applicant provided documentation reflecting a loss of about \$3,600.00 US each year in foreign pension funds received due to US taxes paid on the pension. Sometime during the interview, Applicant was advised by the DSS agent that his possession of a UK passport presented a security problem.

Two weeks after his DSS interview, Applicant traveled to Africa. He used his US passport to enter and exit the foreign country.

On March 14, 2002, DOHA issued an SOR to Applicant alleging foreign preference concerns presented by his possession and use of a valid UK passport, past military service for the UK, and ongoing receipt of a military pension deposited in a bank account in the UK. Foreign influence issues were also alleged because of the foreign citizenship and/or residency of close family members. On receipt of the SOR, Applicant was apprised of the ASDC³I memorandum to the effect that clearance is to be denied or revoked unless an applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government. On March 20, 2002, Applicant appeared in person before an official at the British Consulate and he surrendered his UK passports, which were formally cancelled. Applicant does not intend to replace the UK passports.

Applicant is a member of a private club open to retired officers of the UK military. When in the UK, he and his spouse have stayed in club accommodations, at a very attractive rate. The week Applicant turned in his UK passports, he traveled on his US passport to the UK where he attended a UK professional organization's annual banquet. Applicant met several old friends with whom he maintains casual contact.

Applicant owns no realty in the UK, having sold his residence when he emigrated to the US. He has 1,200 in trustee bank shares in the UK worth about \$12.00 US each on which he earned \$590.44 in ordinary dividends for tax year 2001. He also has less than \$1,000.00 US in monies saved through a building society in the UK. As of May 2002, Applicant had between \$6,000.00 and \$7,000.00 US in his deposit account in the UK bank. He plans to transfer the funds to the US to use for home improvement on his residence, which he and his spouse own, in the US. Their assets in the US include approximately \$500,000.00 US in combined funds for retirement through his 401K account with his employer and his spouse's 403B account through the school where she teaches children with special needs.

Applicant's contacts with those relatives residing abroad range from occasional to regular. Applicant's daughter is a lawyer working in insurance litigation for a law firm in the UK. Applicant talks to her once a week on the telephone, and he sees her four to six times per year when he is in the UK. She visits her parents in the US once or twice per year. Applicant's sister, also a resident citizen of the UK, worked as a bookkeeper for a local road haulage company in the UK before her retirement. He contacts her four to five times yearly by telephone, and visits her occasionally when he is in the UK.

Applicant sees his half sister and stepfather once a year in Germany. His half sister is a 53-year-old manager of accounts at a clothing store.

Applicant's sister-in-law, who remains a resident citizen of Ireland, works as the operations manager at an international airport in that nation. Applicant speaks with her once weekly by telephone and he visits her twice a year.

As of May 2002, Applicant's son had just earned his associate's degree. He was living at home with his parents in the US. As a citizen of the US, UK and Ireland, he has three passports. Applicant considers his son as "very Americanized."

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:

Foreign Preference

E2.A3.1.1. 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.

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

E2.A3.1.2.1. The exercise of dual citizenship

E2.A3.1.2.2. Possession and/or use of a foreign passport

E2.A3.1.2.3. Military service or a willingness to bear arms for a foreign country

E2.A3.1.2.4. Accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country

E2.A5.1.3. Conditions that could mitigate security concerns include:

E2.A3.1.3.1. Dual citizenship is based on parents' citizenship or birth in a foreign country

E2.A3.1.3.2. Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship

Foreign Influence

E2.A2.1.1. 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.A2.1.2. 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.A2.1.3. Conditions that could mitigate security concerns include:

E2.A2.1.3.1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question 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 person(s) involved and the United States

E2.A2.1.3.5. Foreign financial interests are minimal and not sufficient to affect the individual's 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 those who testified, I conclude the following with respect to guidelines C and B:

Guideline C is based on actions taken by an individual which indicate a preference for a foreign country over the United States. ⁽¹⁾ A citizen of the UK from birth, Applicant was a citizen solely of the UK until his comparatively recent US naturalization in October 1997. Applicant accepted benefits and privileges of his UK citizenship, including foreign travel on two UK passports. In return, he gave the UK 22 years of military service at some inconvenience to his family. On his retirement in December 1986, he started collecting a military pension. His conduct prior to October 1997, which was consistent with law abiding UK citizenship, does not fall within E2.A3.1.2.1. (exercise of dual citizenship). While military service for a foreign country is potentially disqualifying (*see* E2.A3.1.2.3.), this indicator of possible foreign

preference is mitigated by the fact it occurred before he acquired US citizenship. (*See* E2.A3.1.3.2.).

After residing with his family and working for a US defense contractor for almost ten years, Applicant became a United States naturalized citizen. Although he took an oath in October 1997 to renounce all foreign allegiances, Applicant elected to declare dual citizenship with the US and UK, as he wanted to maintain a UK passport for travel and identification purposes. Applicant thereafter always took his US passport on foreign travels, as he was required to present that document on his exit from, and re-entry into, the United States, but he also used his UK passport when it was an advantage for him to do so, such as to enter the UK or other European Union countries. In possession of a valid UK passport issued on renewal in April 1996 and a United States passport issued on the day he took the oath of US citizenship, Applicant was issued a second UK passport only four days after he became a US citizen. Applicant's acquisition and use of a foreign passport, in preference to his US passport for reasons largely related to convenience, constituted the active exercise of his foreign citizenship. Inimical intent or detrimental impact on the interests of the United States is not required, as the United States has a compelling interest in ensuring that those entrusted with the Nation's secrets will make decisions free of concerns for the foreign country of which one is also a citizen. As set forth by the ASDC³I in his August 16, 2000 policy clarification, possession and/or use of a foreign passport raises doubt as to whether the person's allegiance to the United States is paramount, and it could also facilitate foreign travel unverifiable by the United States. Under the adjudicative guidelines pertinent to foreign preference, disqualifying conditions (DC) E2.A3.1.2.1., the exercise of dual citizenship, and E2.A3.1.2.2., possession and/or use of a foreign passport must be considered in evaluating Applicant's security worthiness. Furthermore, his ongoing acceptance of a military pension from the UK falls within E2.A3.1.2.4. (accepting educational, medical or other benefits, such as retirement and social welfare, from a foreign country).

Applicant has the burden of overcoming the security concerns engendered by his acceptance of benefits of his foreign citizenship after he became a United States naturalized citizen. Foreign preference concerns may be mitigated if the dual citizenship was based solely on birth or the foreign citizenship of one's parents (MC E2.A3.1.3.1.), the indicators of possible foreign preference occurred before obtaining United States citizenship (MC E2.A3.1.3.2.), the activity is sanctioned by the United States (MC E2.A3.1.3.3.), or the individual has expressed a willingness to renounce dual citizenship (MC E2.A3.1.3.4.). Whereas Applicant's foreign citizenship is derived from his birth in the UK, MC E2.A3.1.3.1. applies in this case. ⁽²⁾ However, the presence or absence of a given factor, for or against clearance, is not necessarily dispositive. The foreign preference concerns engendered by his possession and use of a foreign passport are not adequately addressed by E2.A3.1.3.1. The risk of unverifiable travel can only be completely eliminated by making it impossible through surrender of the foreign passport, or giving the Government some oversight authority over the use of a foreign passport. ⁽³⁾

Whereas Applicant no longer has his foreign passports, having very recently surrendered them to the British Consulate, the risk of unverifiable travel addressed in the policy clarification issued by the ASDC³I no longer exists.

Surrender of his UK passports demonstrates a willingness on his part to comply with Department of Defense requirements, but it does not compel a favorable outcome. Applicant has taken no affirmative steps to renounce his UK citizenship, apparently since the Department of Defense does not require such renunciation as a condition of access. ⁽⁴⁾ The United States Government does not encourage its citizens to remain dual nationals because of the complications that may ensue from obligations owed to the country of second nationality. Mitigating of foreign preference concerns (*see* E2.A3.1.3.4), an expressed willingness to renounce foreign citizenship is nonetheless not required in order to gain access. Yet, there must be adequate assurances that a dual citizen will not actively exercise or seek rights, benefits or privileges of that foreign citizenship. There is no evidence Applicant is using his foreign citizenship to protect financial or business interests in the UK. While Applicant is collecting a foreign military pension, he earned this pension before he became a United States citizen, and he would be entitled to it whether or not he remained a UK citizen. There is nothing to suggest UK citizenship is a prerequisite for having a bank account in the UK or holding the 1,200 trustee bank shares worth approximately \$14,400.00 US, which Applicant acquired prior to his emigration to the US.

Indeed, apart from the possession and use of the foreign passport, Applicant's conduct since his emigration has been largely consistent with his US citizenship. Employed and domiciled in the US since late 1986, Applicant in about 1996 applied to become a US citizen, knowing as he did so that his UK military pension would be subject to taxation in the

US. The decision to acquire US citizenship was made well before Applicant knew he would need a security clearance for his job. Applicant intends to remain a resident citizen of the US, as evidenced by his purchase of a retirement home in the US. Although Applicant has financial assets in the UK, they are minimal in comparison to his US assets. In compliance with US income tax laws, he and his spouse report their foreign income to the Internal Revenue Service. Even with respect to his use of the UK passport, it is noted that Applicant did not intend his use to reflect a preference for the UK. By not having to acquire a visa for travel or not having to wait in long lines at the airport, Applicant thought he was saving his US employer as well as himself some time and/or money. On those occasions where there was no advantage to use his UK passport, Applicant presented his US passport. Applicant testified credibly he has no intent to replace those UK passports recently relinquished, as he now understands the security implications of possession/use of a foreign passport. While Applicant continues to have ties to the UK through financial interests as well as the residency and citizenship of close family members, he has exhibited a clear preference for the US. Favorable findings are warranted with respect to subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f. and 1.g. of the SOR.

Under guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation are not citizens of the United States or may be subject to duress. Applicant's spouse is a dual citizen of Ireland and the US. His son holds citizenship with the UK, US, and Ireland. Their US naturalization and residency greatly reduce the risk of their being susceptible to undue influence. Although Applicant's spouse retains the citizenship of her native Ireland, her love for the US prompted her to pursue US naturalization. The first in the family to acquire US citizenship, Applicant's spouse motivated Applicant to become a US citizen. Applicant's son, a resident of the US since age eight, is oriented to the US.

Applicant's daughter, in contrast, elected to pursue her college studies and her career in the UK after graduating from public school in the US. Applicant's daughter, who is a young lawyer in private insurance litigation practice, and his sister, who is now retired, are resident citizens of the UK. His half sister, who works for a clothing store, and his elderly stepfather are resident citizens of Germany. His sister-in-law is the operations manager at a major international airport in her native Ireland. Applicant understandably has weekly telephone contact with his daughter, and in-person contact with her seven to eight times per year. While his contacts with his siblings and stepfather are not as frequent and the bond not as strong as with his daughter, he makes an effort to see them at least once a year. DC 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, applies because of these relationships.

The security concerns engendered by the foreign citizenship of close family members may be mitigated where it can be determined that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question 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 person(s) involved and the United States (MC E2.A2.1.3.1.). There is no evidence any of those relatives residing and working abroad has ever come under any undue influence by foreign authorities. Given their occupational endeavors, there is little likelihood of future exploitation by a foreign power. In the unlikely event Applicant's relatives abroad were to fall subject to undue duress or pressure, I am persuaded Applicant would report to proper authorities in the United States any contacts, requests or threats by foreign authorities or individuals. He has been candid with the United States about his foreign connections, and understands his obligations. Subparagraphs 2.a., 2.b., 2.c., 2.d. and 2.e. are resolved in his favor.

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 C: 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

Paragraph 2. Guideline B: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: For the Applicant

Subparagraph 2.d.: For the Applicant

Subparagraph 2.e.: 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. Dual citizenship is recognized by the United States, and a decision to deny or revoke security clearance based solely on one's status as a dual citizen would raise constitutional issues. As the DOHA Appeal Board articulated (ISCR Case No. 99-0454, October 17, 2000), dual citizenship in and of itself is not sufficient to warrant an adverse security clearance decision. Under guideline C, the issue is whether an applicant has shown a preference through his actions for the foreign country of which he is also a citizen. Among the specific behaviors which raise significant guideline C issues is possession/use of a foreign passport.

2. The DOHA Appeal Board, in a rather expansive reading of the adjudicative guideline, has held that MC E2.A3.1.3.1. applies in cases where dual citizenship is based on birth.

3. In his memorandum of August 16, 2000, the ASDC³I stated, in pertinent part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government.

4. Whereas Applicant remains a dual citizen of the US and UK, his surrender of the foreign passports did not operate as a revocation of his UK citizenship. In October 1999, Applicant expressed a willingness to not only surrender his foreign passport, but also to renounce his foreign citizenship if necessary to obtain access. When it became clear to Applicant that he had to give up his UK passports, he did so. With renunciation of foreign citizenship not mandated, Applicant has elected to remain a dual citizen, as evidenced by his lack of any action on his part to formally renounce his UK

citizenship.