DATE: August 7, 2002

In Re:

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

Applicant for Security Clearance

ISCR Case No. 01-04426

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 49 year old native of FC. He came to the U.S. in 1977, graduated from college here, and has worked for a major U.S. defense contractor since 1983. He has held a DoD security clearance for most of the time since then. He obtained an FC passport in 1997 to use as identification while in FC, but used his US passport to enter and leave FC and for all other purposes. The FC passport was lost, and has expired. Applicant notified FC of his intent not to renew the passport. Applicant has stated a willingness to renounce the FC citizenship he may have. He has minimal ties with relatives in FC, and is clear about his intent to protect U.S. interests against any improper efforts by his relatives or anyone else. Mitigation is established. Clearance is granted

. **STATEMENT OF THE CASE**

On October 24, 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, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On December 23, 2001, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge based on the written record; i.e., without a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to Applicant on January 25, 2002. The FORM includes five exhibits, which have been marked and admitted as Government Exhibits (GX) 1 - 5. The Applicant was instructed to submit information in response to the FORM within 30 days of receipt of the FORM. Applicant submitted a response to the FORM on April 23, 2002, to which Department Counsel did not object. The cover letter is designated Applicant's Exhibit (AX) A and the attachments thereto are designated AX B - G. The matter was assigned to me for resolution on May 30, 2002.

FINDINGS OF FACT

Applicant is a 49-year-old Senior Systems Engineer for a defense contractor that is seeking to retain a Secret-level security clearance for him. After considering the totality of the evidence in the case file, including Applicant's responses to the SOR and the FORM, I make the following FINDINGS OF FACT:

Applicant was born in 1952 in a foreign country (FC). He left FC in 1974, came to the U.S., and began attending university in the U.S. in 1977. He graduated in 1980 and began working for his present employer in 1983. He first acquired a DoD security clearance in 1985 (AX B).

While his company is located in the continental U.S., he has been assigned, for most of his career, to a location in a second foreign country (FC 1), where his presence is deemed "critical" to the U.S. mission there, which is to support a joint U.S. - FC military effort (GX 3a).

GUIDELINE C - FOREIGN PREFERENCE

SOR 1.a. - Under FC law,[(1)] dual citizenship *is* recognized, "but permission must be granted by the government before the new citizenship is acquired. Dual citizenship is not recognized simply by default," the sole exception being that "special arrangements may be made for FC citizens by birth who wish to retain any foreign citizenship they have since acquired." There is nothing in the record indicating this occurred in the present case. Consequently, Applicant appears to have suffered the "involuntary loss" of his FC citizenship when he "voluntarily acquire[d U.S.] citizenship" in 1985.

SOR 1.b. - Applicant did acquire a FC passport in July 1997, 12 years after he became a U.S. citizen. The passport expired in July 2002, but was lost prior to that date and Applicant did not seek a replacement. He never signed the FC passport before it was lost. The totality of the evidence on this issue indicates that Applicant believed he was still a citizen of FC (or at least that FC authorities would so consider him) and that, under FC law, he had to possess some identification to prove this status, in order to move about FC. At the same time, Applicant used his U.S. passport to enter and leave FC, and for all other foreign travel.

SOR 1.c. - Applicant does not currently possess a FC passport, valid or not, and does not intend to obtain a new one.

GUIDELINE B - FOREIGN INFLUENCE

SOR 2.a. - Applicant's wife is FC born, but is presently a legal resident of the U.S. and is in the midst of the citizenship process.

SOR 2.b. - Applicant's six sisters are citizens of FC, and three of them reside in FC;

SOR 2.c. - Two of Applicant's brothers are citizens of FC and reside there. A third brother is a dual citizen of FC and the United States and resides in the U.S.;

SOR 2.d. - Applicant's mother-in-law and father-in-law are citizens of FC and reside in FC.

Applicant has infrequent communications with his relatives in FC and does not consider the relationships to be close (AX B). His contacts with relatives in FC have "been diminishing over time, especially after our parents passed way (my mother in 1981 and my father in 1985)" (AX B).

Applicant and his wife have maintained a bank account in State A since 1984 (AX D). He also has money in a retirement plan with his employer (AX E). Applicant's request to retain his security clearance is supported by one of his brothers, who works for a U.S. Government agency (AX G).

SOR 2.e. - Applicant did maintain contact with a military officer of a Middle Eastern country, as a result of his professional activities, but he no longer does (FORM and GX 3 - allegation is "outdated").

SOR 2.f. - Applicant inherited 1.5 acres of land in FC from his father, but he has transferred it to a sister and no longer

has any interest in the property (GX 3 and AX B).

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood or continuation or recurrence (Directive, E.2.2. 1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Because each security case presents its own facts and circumstances, it should not be assumed that the factors cited above 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 financial judgment and conduct.

Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent to this case:

GUIDELINE C (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.

Condition that could raise a security concern and may be disqualifying:

1. The exercise of dual citizenship.

Conditions that could mitigate security concerns:

1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country;

4. Applicant has expressed a willingness to renounce dual citizenship.

GUIDELINE B (Foreign Influence)

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 obligation are not citizens of the United States or may be subject to duress.

Conditions that could raise a security concern and may be disqualifying include:

1. An immediate family member who is a citizen of, or resident or present in, a foreign country;

8. A substantial financial interest in a foreign country that could make the individual vulnerable to foreign influence.

Conditions that could mitigate security concerns include:

1. Based on the totality of the record, I make a determination that Applicant's family members are not agents of a foreign power and are not 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;

5. Financial interests are minimal and not sufficient to affect the individual's security responsibilities.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. In reaching the fair and impartial overall common sense determination based on the "whole person" concept required by the Directive, the Administrative Judge is not permitted to speculate, but can only draw those inferences and conclusions that 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.

In the defense industry, the security of classified information is entrusted to civilian workers

who must be counted on to safeguard classified information and material twenty-four hours a day.

The Government is therefore appropriately concerned where available information indicates that an applicant for a security clearance, in his or her private life or connected to work, may be involved

in conduct that demonstrates poor judgment, untrustworthiness, or unreliability. These concerns include consideration of the potential, as well as the actual, risk that an applicant may deliberately

or inadvertently fail to properly safeguard classified information.

An applicant's admission of the information in specific allegations relieves the Government

of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either

by the Applicant's admissions or by other evidence) and establishes conduct that creates security concerns 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 conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

CONCLUSIONS

This case is based primarily on information provided by Applicant during the investigation process, in his response to the SOR, and in his response to the FORM. The SOR contains three allegations under Guideline C: the first one relating to Applicant's being a dual citizen of the U.S. and FC; the second being his obtaining of a FC passport after he had become a U.S. citizen; and the third being his possession of a valid FC passport.

SOR 1.a. - The only evidence that Applicant is or may be a dual citizen of the U.S. and FC is the information he provided. Legally, his belief that may be incorrect since, under FC law, a person who voluntarily becomes a citizen of another country is deemed, in most cases, to have renounced his FC citizenship. In any case, to the degree that Applicant may be a citizen of FC, he believes he may be. In order to comply with the needs of the DoD security clearance eligibility program, he has renounced his FC citizenship to FC authorities, even though he does not know whether the renunciation will be accepted. "Voluntary renunciation of FC citizenship is permitted by law." It requires

(2)

the submission of a formal request, which must be approved by the FC Ministry of Justice.

The statement in the FORM, at Section IV - Argument, page 3 of 7, that it is "unlikely that [FC] will permit renunciation of his citizenship," is based on Applicant's statement, which as discussed above, is likely to reflect an incorrect understanding of FC law. In any case, it is an Applicant's state of mind and intentions that are most relevant and material to his eligibility. What is most persuasive in the present case is that Applicant has acted to mitigate the Government's concerns on this point?

SOR 1.b. - Applicant did obtain a FC passport in July 1997, to comply with his understanding of FC law on the need for such identification (as a native-born citizen of FC), while in that country. Department Counsel considered the limited use of the FC passport to be a matter of convenience, an excuse generally rejected by the DOHA Appeal Board. However, most DOHA cases on point deal with the use of a FC passport, rather than a U.S. passport, to enter and leave FC. Since he did not sign the passport and, more importantly, never used to enter or leave FC, any negative inference of a preference for FC over the U.S. is minimal. Overall, I cannot conclude that his conduct showed any preference for FC over the United states.

In any case, viewed in the context of the total record, I find Applicant's possession and limited use of the FC passport does not show a preference for FC over the U.S. I have considered the applicability of the August 16, 2000 Memorandum from Assistant Secretary of Defense Arthur Money, as cited in the FORM at page 4. I find that the earlier loss of a valid passport and the failure to obtain a new one passport complies with the intent of the Memorandum. To conclude otherwise would require a meaningless act, i.e., to request and obtain a new passport for the sole purpose of returning it. Since the FC passport has expired, and Applicant has informed the FC Embassy of his intent to cancel the FC passport and to rely only on his U.S. passport, I conclude there is no present security significance in his past possession of the FC conduct.

SOR 1.c. - Considering the above discussion and what has happened to Applicant's FC passport, I conclude that Applicant does not have a valid FC passport and he does not intend to obtain a new one. The letter Applicant sent to the FC Embassy (Response to FORM, at AX G, including return receipt), is considered adequate documentation.

Guideline B - Foreign Influence

There is always a possibility that relatives and/or friends in a foreign country might attempt to influence an applicant to act on behalf of that country against U.S. interests. However, there is nothing in the Directive or DOHA precedent to require that such ties be an automatic basis for disqualification, as is the possession of a valid foreign passport. Rather, such ties must be considered in the context of the entire record, under the Directive's whole person concept.

It is helpful in this process to consider the overall picture of Applicant, his family, and the risk that he might act against his adopted country's interests. Throughout the case file, Applicant stresses his strong feelings for the United States, why he came and stayed here and why he left FC. I find most relevant the following factors:

* He has been a resident of the United States for about 25 years, half his life.

* He is a product of American higher education.

* He has worked on increasingly sensitive U.S. defense-related matters involving an important U.S. ally since the early 1980s, and first held a DoD security clearance in 1983. The record does not suggest the existence of any security-related problems at any time during his employment or that Applicant has been anything but conscientious and dedicated to United States interests.

* He has been married for many years and has seven children, who were raised, or are being raised, as Americans in an American school in the third country in which he is stationed.

* His goal is to achieve the financial resources to protect his family's future in the United States. He has considerable financial assets in the United States and none in FC.

It is in this context that the continuing presence of family members in FC and other countries must be evaluated. Department Counsel correctly argues that relatives in a foreign country are a security concern. However, since so many Americans have relatives in foreign countries, that fact alone cannot be decisive, but must be viewed in the context of the overall record. The core issues are whether there is a risk that those relatives *might* ask a person to act against U.S. interests and, even more importantly, whether the Applicant *would* even consider complying with such a request.

Proving a negative is always difficult. In the present case, there is no evidence that any of Applicant's relatives abroad are aware of what he does, have ever asked him to do anything improper, or are likely to do so in the future. As to the second issue, I conclude that Applicant has adequately demonstrated the nature of his character over a quarter of a century in the United States and his immersion in American society. Based on the totality of the evidence, I conclude he would reject any effort to persuade him to violate the trust placed in him by the United States for so long.

DOHA decisions are not an evaluation of a person's loyalty to the United States but of the risks that result from a person's conduct, if that conduct violates one or more of the Guidelines in the Directive. In the present case, the two cited Guidelines deal with foreign preference and foreign influence, which are interrelated concepts. The underlying concern of both Guidelines is that the Applicant's conduct and/or relationships *may* show questionable judgment, unreliability, and/or untrustworthiness.

I have considered the evidence in light of the appropriate legal standards and factors, and have assessed Applicant's credibility, based on the written record. Overall, I conclude that the evidence does not support the present accuracy of SOR 1.a ., 1.b., and 1.c. In fact, the Government has not clearly established that Applicant actually is a citizen of FC. While Applicant, like many Americans, may wish to maintain ties to his relatives in FC, the record does not contain any indication that he has said or done anything to suggest he "prefers" FC over the United States or that he would allow himself to be influenced to do anything contrary to U.S. interests.

FORMAL FINDINGS

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

Guideline C (Foreign Preference) For the Applicant

Subparagraph l.a. For the Applicant

Subparagraph 1.b. For the Applicant

Guideline B (Foreign Influence)

Subparagraph 2.a For the Applicant

Subparagraph 2.b. For the Applicant

Subparagraph 2.c. 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.

BARRY M. SAX

ADMINISTRATIVE JUDGE

1. *Code of [FC] Nationality*, dated September 6, 1958, found in a Department of Defense publication, *Administrative Desk Reference (ADR)*, abstracting the foreign citizenship laws for 206 countries; on internet at<www.dss.mil/training/adr/forpre/country3.htm>

2. Code of [FC] Nationality, *supra.*