DATE: November 26, 2001

In Re:

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

Applicant for Security Clearance

CR Case No. 01-04812

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Timothy DiGiusti, Esquire

STATEMENT OF THE CASE

On August 22, 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 September 13, 2001, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made after a hearing before a DOHA Administrative Judge. Attached to her response was a collection of documents. The case was assigned to me on October 9, 2001. A Notice of Appearance was issued on October 19, 2001 and the matter was heard on November 8, 2001.

At the hearing, Applicant testified on her own behalf and called three other witnesses. Also at the hearing, she introduced 15 exhibits, which were marked as for identification as Applicant's Exhibits (AX) A - O. Some of the documents attached to her response were duplicates of her hearing exhibits, so I have marked only the hearing exhibits. The Government introduced three exhibits, which were marked for identification as Government Exhibits (GX) 1 - 3. Without an objection, all of the Government's and Applicant's exhibits were admitted into evidence. The transcript was received at DOHA on November 19, 2001.

Along with the procedural guidance in the Directive, this matter is also governed by the provisions of an August 16, 2000 memorandum from Arthur L. Money, the Assistant Secretary of Defense (Command, Communications, Control, and Intelligence) (the Money Memorandum) (GX 3). The Money Memorandum clarifies "the application of Guideline C [of the Directive's Additional Procedural Guidance] to cases involving an applicant's possession or use of a foreign passport," specifically that failure to surrender a foreign passport mandates denial or revocation of an applicant's security clearance. Department Counsel provided a copy of the Money Memorandum, which was marked and admitted as GX 3.

By agreement between the parties, I also agreed to take official notice of two sets of documents, one dealing with the North American Aerospace Defense Command (NORAD), which was marked as Official Notice attachment (ON) 1 and a second set dealing with the Canadian Joint Delegation to NATO, which was marked as ON 2. Both attachments have been added to the case file.

FINDINGS OF FACT

Applicant is a 44-year-old employee of a major DoD aerospace defense contractor. She has been employed by the company since 1998 in a nonclassified position. The company is seeking a security clearance for Applicant so that she will qualify for a classified position more in line with her past military training and experience .

Applicant has been a naturalized U.S. citizen since September 18, 1999. Prior to that date, she was a native-born citizen of Canada. She married an American in 1982, when she was a member of the Canadian Forces (Air Force) (CF) and her husband was a member of the U.S. Air Force. From 1986 to 1991, she was part of a CF Training Command. From 1991 to her retirement in 1995, she served in a highly important and highly sensitive position dealing with AWACS aircraft (GX 1 and 2) These aircraft crews consisted of both American and Canadian military personnel under the authority of NORAD, which was established by treaty to protect the common interests of both the United States and Canada. These jointly staffed aircraft also provided services to NATO (ON 1 and 2).

Based on the totality of the record evidence, I also make the following findings of fact under each of the allegations in the SOR:

Guideline C (Foreign Preference)

SOR 1.a. - Applicant never exercised dual citizenship between the United States and Canada. As she understood the naturalization process, and as per her stated and demonstrated intent, she renounced her Canadian citizenship when she took her oath of allegiance to the United States in 1999 (AX G). Since 1999, she has not considered herself a Canadian citizen.[(1)]

SOR 1.b. - Applicant possessed a valid Canadian passport for most of her life, prior to becoming a United States citizen in 1999. During the U.S. naturalization ceremony, she offered the Canadian passport to the U.S. official and was told to keep it as a souvenir, a fact corroborated by two witnesses (Tr. at 34 - 37, 66 - 68 and AX A and B). She did so, never using it again for any purpose (Tr. at 36 - 38 and AX H). It expired in August 2001 and has not been renewed, since Applicant does not consider herself to be a Canadian citizen (Tr. at 50). Applicant now possesses, and uses, only her U.S. passport (AX J). Applicant is willing to again renounce her Canadian citizenship, this time directly to the Canadian government (Tr. at 39, 45).

Applicant was never informed by a representative of DoD about the Money Memorandum until this office spoke with her several weeks prior to the hearing (Tr. at 38, 39 and AX O). She then mailed the expired passport, along with a statement that she considered herself to be only an American citizen, to the nearest Canadian Consulate General on October 9, 2001 (AX I and Tr. at 51). While she did possess the Canadian passport after she became a U.S. citizen, in 1999, she did so only at the direction or suggestion of a U.S. official. She clearly made an effort to dispose of the Canadian passport many months prior to the issuance of the Money Memorandum and without any knowledge of the restrictions imposed by that memorandum.

SOR 1.c. - Applicant served in the Canadian Armed Forces from 1977 to August 1995 (Tr at 23). She retired as a Warrant Officer working with U.S. troops under the NORAD treaty (*Id*.). She retired about four years prior to her becoming a U.S. citizen. Logic precludes any issue about her showing a preference for Canada over the United States prior to 1995, since she owed no allegiance to the U.S. prior to becoming a citizen in 1999.

This allegation also cites the Canadian military pension to which she is entitled by long service and a separate retirement plan (similar to U.S. social security) available to her under Canadian law. Both of these benefits are established and fixed by law, and cannot be changed because of Applicant's becoming an American citizen and renouncing her allegiance to Canada (AX D, E, F, and K). In addition, these benefits amount to only a small fraction (less than 10 %) of

her assets and benefits within the United States (Tr at 60). I find no risk that the relatively small amount of potential future benefits might persuade her to violate her oath of allegiance to the United States.

Guideline B (Foreign Influence)

2.a. - The information set forth in SOR 1.c., above. The cited allegation refers to both Applicant's service in the Canadian Forces and her Canadian military pension and retirement plan from the Canadian government. As discussed in 1.c., above, I find the impact of the present and future Canadian benefits is too small to produce a risk of foreign influence on a person of Applicant's demonstrated character.

Her Commanding Officer (an American), when she was a Canadian member of a joint U.S. - Canadian AWACS operation (1991 - 1995) clarifies that Applicant actually had a Top Secret clearance that was granted by Canada, but which was recognized and accepted by the U.S. He retired the same year she did, in 1995, is now her boss in her present position, and is the driving force behind seeking her clearance so that she can be promoted and so her expertise can best be used to the U.S.'s advantage (AX C and Tr at 22 - 23). In addition, Applicant has submitted an application to join the U.S. Air Force Reserve so that her expertise can be use to the advantage of her new country (Tr at 39). She also received high praise and recommendations from her husband and from two friends and colleagues (Tr at 53 - 74).

POLICIES

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, 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 foreign countries or financial interests in other countries are also relevant to security determinations if they make the individual potentially vulnerable to coercion, exploitation, or pressure.

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

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;

8. A substantial financial interest in Canada.

Conditions that could mitigate security concerns include:

1. A determination that the immediate family member(s) 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 U.S.;

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

GUIDELINE C - Foreign Preference

The Concern: When a individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

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

2. Possession and/or use of a foreign passport - only true in the past tense;

3. Military service or a willingness to bear arms for a foreign country;

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

Conditions that could mitigate security concerns:

2. Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining U.S. citizenship;

3. Activity is sanctioned by the United States;

4. Individual has expressed a willingness to renounce her Canadian citizenship. Applicant has, in fact, renounced her Canadian citizenship on one occasion and is willing to do it again.

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." As I understand the Money Memorandum, a failure to surrender a foreign passport establishes such a doubt. At the same time, a surrender of the passport, while certainly a positive step, does not automatically guaranty the granting of a security clearance, but simply becomes a positive factor to be added to the mix of evidence being considered.

CONCLUSIONS

Applicant is 44. She has lived and worked in the United States, on and off, for many years as part of a joint U.S. - Canadian military effort, moving here permanently after her retirement in 1995. At one point, when she was working on a counter drug program, she was granted "a Top Secret clearance with special access" by the U.S. Department of Defense (Tr at 25 - 26). She often operated under American, and not Canadian, flight orders, sanctioned by the U.S. State Department (Tr at 26).

Her personal and military history, as shown by the totality of the record, establishes that Applicant knew what she was doing when she took the oath of allegiance to the United States in 1999, and that she intended to renounce her Canadian citizenship (Response to the SOR). Her words and conduct when she took her oath of allegiance to the United States are both credible and documented by others (AX A and B). Since we are concerned with a possible preference by Applicant, the crucial question is how Applicant views herself. Although she retains family in Canada, her immediate family ties and conduct over at least 20 years makes a strong statement as to Applicant's dedication to this country.

How she has been, and is viewed by others, is also clear from the record. For her last four years of Canadian military service, from 1991 to her retirement in 1995, although a Canadian citizen, she was found eligible to hold a U.S. Top Secret clearance and was given access to Sensitive Compartmented Information (SCI). There is no suggestion she has committed any misconduct since 1995, nor is there any indication of a stricter set of standards and/or guidelines under which evidence that remains substantially the same was acceptable then but is not now. How she could considered eligible when she was a Canadian citizen, but not when she is an American, is not supported by anything in the record evidence. In fact, I conclude it makes no sense.

The Government's position is that her "possession of this foreign passport, her military service, and her retirement pension and financial interests in Canada" places her at risk of unauthorized disclosure of classified information (Tr at 14). Applicant presently receives about $765.00 per month from her Canadian military pension.[(2)] Her present earnings in State B are about $2,050 per month (Tr at 29). Her U.S. 401(k) plan is worth about $14,000.00, and she and her husband have assets of about $315,000.00. Given the circumstances under which Applicant retained her Canadian passport after becoming an American citizen, the fact that Appellant promptly surrendered that passport after learning of the Money Memorandum, her expressed and intended renunciation of her Canadian citizenship, and the relatively small size and percentage of her financial interests in Canada, I conclude the Government's position is not supported by the totality of the record.

Specifically, under SOR 1.a., I conclude that Applicant never exercised, and never intended to exercise, Canadian citizenship after becoming an American citizen. SOR 1.b. is not proven, since Applicant attempted to surrender her Canadian passport when she took her oath of allegiance to the United states AND has documented she has now actually

done so. Under SOR 1.c., any negative effect of Applicant's Canadian military service is minimized by such service having ended four years prior to her becoming an American citizen AND her serving with distinction in a joint U.S.-Canadian command.

The financial issues raised under SOR 1.c. and 2.a. are found in Applicant's favor for several reasons.[(3)] The amounts involved are relatively small and not subject to being reduced by Canadian authorities. Nothing in the totality of the record evidence establishes, or even suggests, the current existence of a preference for Canada over the United States. "The vast majority of her [and her husband's] assets are in the United States" (Tr at 18). In addition, given Applicant's demonstrated character and conduct, I conclude there is no risk of Applicant's acting against the interest of the United States because of the existence of a future pension from the Canadian government. Overall, the quantity and quality of her conduct and statements in support of the United States is close to overwhelming and any evidence to the contrary so minuscule as to be indiscernible.

Based on the totality of the record, I conclude Applicant is a person of the highest integrity,

and that she demonstrated her dedication to U.S. interests for many years, even when she was Canadian. Now, she is an American and has renounced her citizenship in and allegiance to Canada. Nothing in the record even suggests the possibility of her acting in any manner other than with unequivocal allegiance to, and a preference for, the United States. It makes little sense for the United States to have trusted her with its secrets when she was a Canadian, and now to distrust her because she has become an American and renounced her Canadian citizenship. It is difficult to imagine a clearer demonstration of her unequivocal preference for the interests of the United States.

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

Subparagraphs 1.a., 1.b., and 1.c. For the Applicant

GUIDELINE B (Foreign Influence) For the Applicant

Subparagraphs 2.a. For the Applicant

DECISION

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

BARRY M. SAX

ADMINISTRATIVE JUDGE

1. Her husband is a U.S. citizen, who retired from the U/S. Air Force in 1995, works in the private sector, and now holds a DoD Secret clearance.

2. This military pension is protected by Canadian law from any reduction by virtue because of her U.S. citizenship (AX D and K). In any case, the bulk of her immediate family are U.S. citizens and reside in the U.S. Bot children are in, or were in, the U.S. military (Tr at 33, 34).

3. Applicant's counsel mentions Applicant's parents, who are native-born Canadian citizens and live in Canada (Tr at 17). Since the SOR, under Guideline B - Foreign Influence, cites only financial concerns, I find that the status of Applicant's parents is not an issue that has to be resolved.