

DATE: February 19, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-07895

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Marc Curry, Esq., Department Counsel

FOR APPLICANT

W. Robert Kemp, Esq.

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 October 9, 2001, to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on: 1) foreign preference concerns (guideline C) related to dual citizenship; possession of a foreign passport with renewal after acquiring United States citizenship; purchase of a house for his mother in the country of his foreign citizenship; and use of his foreign passport to secure a low interest loan on the house bought for his mother; and 2) foreign influence concerns (guideline B) due to the foreign citizenship and residency of his mother and brother, and foreign travel by Applicant to the land of his birth.

On November 1, 2001, 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 November 20, 2001, and pursuant to formal notice dated December 3, 2001, the hearing was scheduled for December 18, 2001.

At the hearing held on December 18, 2001, the Government submitted two documentary exhibits, which were entered into the record without objection. Nine exhibits were admitted into evidence and testimony was taken from Applicant and six witnesses on Applicant's behalf. Applicant's counsel submitted a hearing memorandum in supplement to oral closing argument. Department Counsel had the opportunity to respond to this hearing memorandum, but elected not to do so. With the receipt on January 4, 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 41-year-old mechanical engineer who has worked for a defense contractor (company A) since September 1985. Granted a Secret security clearance in April 1989 for his defense-related duties, Applicant seeks a Top Secret security clearance.

Born in Portugal in May 1960 to resident citizens of that nation, Applicant came to the United States in August 1977 to attend college at the invitation of United States naturalized citizens who had emigrated from Portugal with their daughter in February 1963. Applicant's parents and a younger brother remained resident citizens of Portugal.

Applicant resided with his American hosts while pursuing his bachelor's degree in mechanical engineering at a university in the United States. Applicant became romantically involved with his hosts' daughter, (U) who he met shortly after his arrival in the United States. A college graduate pursuing a career in banking, she moved to a distant state in 1981 in connection with her position as a vice president in commercial lending for a bank. Applicant joined her after he earned his B.S.M.E. degree in 1982, and he commenced graduate studies at a university in his new area. They were married in June 1984 while he was still in graduate school. On his marriage to this United States naturalized citizen, Applicant decided to acquire United States citizenship for himself. As soon as he became eligible, Applicant applied for naturalization.

After earning his master's degree in mechanical engineering in June 1985, Applicant and his spouse moved back near her parents. In September 1985, Applicant was hired by company A. Applicant's spouse continued to pursue her career in the banking industry. Applicant's spouse is currently a senior credit officer in the corporate banking unit of a large financial institution. Two children were born to Applicant and his spouse: a daughter in June 1987 and a son in December 1988.

As a Portuguese citizen studying in the United States, Applicant maintained his foreign passport for purposes of identification and voter registration for Portuguese elections. Applicant exercised his right to vote in Portuguese elections when he was a foreign student in the United States. On gaining permanent residence in the United States, Applicant no longer exercised any voting rights in Portugal.

In February 1989, 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. In his mind, Applicant considered himself to be no longer a citizen of Portugal, since he had taken an oath renouncing all foreign allegiance. He took no action to formally renounce his Portuguese citizenship or to determine the legal ramifications of his United States naturalization on his Portuguese citizenship. Applicant was granted a Secret clearance in April 1989 for his duties with company A. In late July 1990, Applicant acquired his United States passport. All subsequent foreign travel, to include trips to Portugal in December 1992, January 1993, December 1994, September 1995, and August 1997, was on his United States passport.

In approximately 1989/early 1990, the apartment in which Applicant's parents resided in Portugal was offered to his parents for purchase. Applicant's parents shared the premises with a commercial tenant located on the first floor. With the purchase not affordable for his parents and his father ill at the time, Applicant and his spouse decided to buy the premises for his parents. As a Portuguese born citizen who had emigrated abroad, Applicant was eligible for a low interest mortgage loan through a Portuguese banking institution. This loan was not available to resident citizens of Portugal, since the aim of the program was the infusion of foreign capital into Portugal. Benefits of the program included not only a lower interest rate, but also a twelve year tenure on the loan rather than the usual five, and semiannual rather than monthly payments. Applicant and his spouse decided to take advantage of this program, and they established a savings account in a commercial bank in Portugal into which they transferred United States currency. After the funds remained in the account for the mandatory six months, they acquired a mortgage loan with which they purchased in September 1990 Applicant's parents' home for \$46,214.00 US. Applicant had contact with the local Portuguese consulate in the United States as some documents had to be authenticated by the consulate in order for Applicant and his spouse to obtain the loan from the Portuguese bank.

With the change of ownership, the commercial tenant in the property in Portugal was allowed by law to remain in the premises at the rent agreed at original occupancy, with some minor adjustments for inflation. The rental obligation was minimal, between \$10.00 and \$20.00 US per month. Since they had the loan through the Portuguese bank and there

were issues with the commercial tenant, Applicant and his spouse thought Applicant needed a valid Portuguese passport for identification purposes in dealing with the Portuguese bureaucracy in legal matters involving the property. (2) Through the Portuguese consulate in the United States, Applicant renewed his Portuguese passport in December 1992, valid for a term of ten years. Applicant was unaware at that time that his possession of a foreign passport was in any way inconsistent with holding a security clearance or fulfilling his obligations in that regard. The passport remained in a bedroom drawer and was not used for foreign travel. Applicant traveled to Portugal in January 1993 on his United States passport to attend his father's funeral. Following the death of his father, Applicant's mother remained in the house.

In February 1998, Applicant traveled to Portugal on his United States passport to attend a hearing to evict the commercial tenant for non-payment of rent for two years. Applicant brought his Portuguese passport with him in the event he needed to produce it in court. He cannot recall whether he had to produce it for identification before the court. Applicant and his spouse were successful in proving that the commercial tenant had abandoned the premises by moving his store to another location and letting the space to another commercial entity without their knowledge. The commercial space has been vacant since, and Applicant and his spouse have no intent to rent it out to another tenant.

In May 1998, Applicant and his spouse traveled to Brazil for pleasure. Applicant entered Brazil on his United States passport, having to acquire a visa which he would not have needed had he traveled on his Portuguese passport.

In November 1999, Applicant's employer requested a clearance upgrade for Applicant to Top Secret for his duties as a principal mechanical engineer performing hardware systems integration on a surveillance program. Applicant met with the security manager for the program and advised him he had a foreign passport for financial dealings related to the home he and his spouse own in Portugal. Convinced Applicant did not consider his possession of the passport to be evidence of dual citizenship, the security manager advised Applicant just to report the possession of his foreign passport on his security clearance application. On November 3, 1999, Applicant executed a security clearance application (SF 86) on which he listed his birth in Portugal but responded negatively to whether he was currently or had been a dual citizen of the United States and another country. He disclosed the Portuguese citizenship and residency of his mother and brother. With regard to foreign property, Applicant indicated he owned a house in Portugal purchased as a residence for his mother, and he possessed a Portuguese passport since September 1977 "[i]n order to facilitate dealing with the Portuguese bureaucracy in legal matters regarding this property . . . It also facilitates access to immigrant (sic) loans at Portuguese banking institutions at lower interest rates than those available to non-immigrants (sic)." Applicant related the passport was to identify him as a Portuguese immigrant and not used to travel. He listed foreign travel to Portugal in December 1992, January 1993, December 1994, September 1995, August 1997, and February 1998, and to Brazil in May 1998.

On January 18, 2001, Applicant was interviewed by a special agent of the Defense Security Service (DSS) concerning his connections to Portugal. Although born in Portugal, Applicant told the agent he considered himself solely a citizen of the United States. He explained his purchase of the home in which his mother resides in Portugal, and the renewal of his foreign passport, valid until December 2002, to use for identification purposes in dealing with financial institutions in Portugal about the mortgage on his Portuguese real estate. Applicant denied any intent to renew the foreign passport when it expires, as his mortgage will be satisfied in February 2001, and he expressed a willingness to relinquish the Portuguese passport if it posed a problem with regard to him having a security clearance. Applicant indicated all his foreign travel since his United States naturalization had been on his United States passport, and he denied any voting in Portuguese elections after he became a United States citizen.

The mortgage loan on the residence in Portugal was satisfied in Spring 2001. The current value of the foreign property is about \$53,600.00 US, which represents about 4 percent of Applicant and his spouse's net worth of \$1,338,755.00 US. Applicant does not intend to retain the foreign property once his mother no longer needs it.

Sometime during Summer 2001, Applicant and his family traveled to Portugal to see family members there.

On October 9, 2001, DOHA issued an SOR to Applicant alleging foreign preference concerns related to Applicant exercising dual citizenship with the United States and Portugal; his possession of a Portuguese passport, renewed after he became a United States citizen; his purchase of a residence in Portugal for his mother; and his use of his foreign passport to obtain a low interest mortgage loan on that foreign property. The Government also alleged foreign influence

concerns because of the Portuguese citizenship and residency of Applicant's mother and brother as well as Applicant's travel to Portugal to see these family members and to begin eviction proceedings against the commercial tenant in his house in Portugal. With the SOR, Applicant was apprized of the August 16, 2000, memorandum from the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence [ASD(C³I)] with respect to possession and/or use of foreign passports making it clear that clearance 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.

In response to the SOR, Applicant on November 1, 2001, indicated he did not consider himself to be a dual citizen and he expressed a willingness to surrender his foreign passport to "the appropriate agency." Denying any affiliation with Portuguese institutions, Applicant detailed his integration into his community in the United States and exclusive use of his United States passport for foreign travel. Regarding his purchase of a home for his mother in Portugal, Applicant maintained he had been unaware that his purchase of a modest property in Portugal would have a negative impact on his security status, especially since Portugal was a member of NATO. Applicant denied any use of his foreign passport since he secured the low interest loan for the property, which has been paid off. Applicant countered potential foreign influence concerns with the fact that his mother and brother were both law abiding, gainfully employed citizens of a stable democratic country which is a staunch ally of the United States.

By letter dated November 1, 2001, Applicant surrendered his Portuguese passport to the Portuguese Consul General, indicating that as a naturalized citizen of the United States, he had no further need of the passport. On December 13, 2001, the Consul General confirmed the surrender.

On surrender of his foreign passport, Applicant was advised by consular authorities that surrender of his Portuguese passport was not considered as an act of renunciation of Portuguese citizenship. In light of the sensitivity of his defense-related employment, Applicant expressed to the consular authorities his intent to pursue renunciation. He is currently awaiting correspondence from the consulate on his request.

Applicant's mother continues to reside in the house Applicant and his spouse own in Portugal. She works as an executive secretary for a tobacco company which was recently purchased by a large United States corporation involved in cigarette manufacture and distribution. Applicant's brother is a computer software programmer currently assigned to a labor statistics office of a regional government in Portugal. He is on loan from a regional government sponsored vocational technical school geared toward the needs of the local populace. Applicant's brother works on developing statistical programs tracking the skills of persons in the labor pool.

Applicant is considered by his coworkers at company A to be a very gifted mechanical engineer who can be counted on to perform his duties with integrity and to abide by security regulations.⁽³⁾ Acquaintances outside the workplace confirm Applicant does not discuss his work with company A and a review of his personnel and security records disclosed nothing adverse. Considered to be one of the "top notch" employees for company A, Applicant has significant responsibility not only for the projects he is involved with, but also for the mechanical engineering process in the company's efforts to ensure all programs are performed in the same manner. He was recently promoted to Level 5 engineer, indicative of his status as a division asset. In 2000, Applicant was recognized by company A for outstanding innovation. Nominated by his program manager for "a heck of an engineering feat," Applicant took a system occupying the size of a room and reduced it in size to something that could fit in an aircraft. Applicant has given his coworkers no reason to doubt his allegiance to the United States.

Applicant intends to continue to pursue his life and career in the United States. He enjoys visiting family and friends in Portugal about once every other year, but he has no intent to reside there. Assimilated in their local community in the United States, Applicant and his spouse own their home. Applicant is involved in youth soccer and in seeing to the religious formation of their two children.⁽⁴⁾ He and his spouse support local charities, including their church. With running as an avocation, Applicant since 1985 has been a member of an athletic association and a regular volunteer in the marathon sponsored by the organization. Applicant and his spouse vote in local, state and national elections in the United States.

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.A3.1.2.4. 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.A3.1.3.4. Individual has expressed a willingness to renounce dual 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.A2.1.2.3. Relatives, cohabitants, or associates who are connected with any foreign government

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. (5) A citizen of Portugal by virtue of his birth there, Applicant came to the United States in 1977 to attend college at the invitation of United States naturalized citizens who had emigrated from Portugal in 1963. Applicant in June 1984 married their daughter, who herself a native of Portugal, had become a United States citizen in December 1970. Following completion of his graduate education, Applicant in September 1985 began working as a mechanical engineer for a United States defense contractor in this country. In February 1989, 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. While Applicant took that oath seriously, he continued to maintain a Portuguese passport, renewing it in 1992, after he gained his United States citizenship. He did not use this foreign passport for travel, electing to enter Portugal on several occasions on his United States passport. However, he used the passport, a benefit of his foreign citizenship, to prove his eligibility for a low interest mortgage loan which he used to purchase a home for his parents in Portugal. His act of renewal of the foreign passport after he became a United States citizen and use of that passport to acquire a financial benefit not available to resident citizens of Portugal constituted the active exercise of his Portuguese citizenship. (6) As set forth by the Assistant Secretary of Defense for Command, Control, Communications and Intelligence 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, with respect to Applicant's acquisition of the low interest mortgage loan, Applicant testified the program was available to those born in Portugal who had emigrated to a foreign country. Absent formal renunciation, a Portuguese native apparently retains his or her Portuguese citizenship despite subsequent emigration and acquisition of a foreign citizenship, such as United State citizenship.⁽⁷⁾ Given the rarity of formal renunciation, the program may well have been open only to those individuals residing abroad who could prove Portuguese citizenship. Indeed, a Portuguese passport as retained by Applicant would suffice as proof of Portuguese citizenship as well as of residency abroad. Yet, it was not clearly established that present Portuguese citizenship was a requirement for initial or continued eligibility for the low interest loan. There is insufficient evidence of record to hold that Applicant was using his foreign citizenship to protect a financial interest in Portugal. However, in taking advantage of a mortgage loan with favorable terms not available to resident citizens of Portugal, Applicant in a sense accepted a benefit from Portugal. Although different from the retirement or educational benefits contemplated in DC E2.A3.1.2.4., this mortgage loan, which came through a commercial bank, was sanctioned by the Portuguese government as a way to bring fresh foreign capital into Portugal.

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 Portugal, MC E2.A3.1.3.1. applies in this case.⁽⁸⁾ 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 of a foreign passport and acquisition of a mortgage loan from a Portuguese bank at terms unavailable to the general public in Portugal find inadequate redress in MC E2.A3.1.3.1. To his credit, Applicant did not use his Portuguese passport for travel after he became a United States citizen, but 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.⁽⁹⁾

Whereas Applicant no longer has a foreign passport, having very recently surrendered it to the Portuguese consulate, he satisfies the concerns addressed in the policy clarification issued by the ASD(C³I), which requires the denial of security clearance where one continues to hold a foreign passport without official approval from an agency of the United States Government.

Applicant's surrender of his Portuguese passport in November 2001 is evidence of his willingness to comply with Department of Defense requirements. While surrender of the foreign passport in and of itself is viewed favorably, more telling of Applicant's primary allegiance are his acquisition of United States citizenship, maintenance of a lifestyle consistent with his United States citizenship, and his willingness to relinquish his foreign citizenship. The acquisition of his United States citizenship, unlike his Portuguese citizenship, required affirmative actions on his part. Applicant intends to remain in the United States, as evidenced by his ownership of his home here, pursuit of his career here and assimilation in the local community. Since 1985, Applicant has contributed admirably to the defense of the United States, performing his duties as a mechanical engineer with integrity and excellence. As evidenced by the testimony of coworkers, Applicant is held in high regard at his workplace. Applicant has been active in youth soccer in his local community and he has volunteered for more than fifteen years for an amateur athletic organization that sponsors a major marathon. Applicant regularly exercises his right to vote in the United States. He has not voted in a Portuguese election since he gained status as a permanent resident in the United States, which was sometime before his naturalization. Applicant and his spouse, both emigres from Portugal, have made no effort to ensure that their two children learn Portuguese, and they are not involved in any Portuguese affiliated organizations in the United States. Although Applicant renewed his foreign passport in 1992 after he became a United States citizen, he did not regard it as a travel document. Since July 1990, Applicant has used his United States passport exclusively for foreign travel, even when it

required obtaining a visa to enter Brazil which he would not have needed had he elected to present his Portuguese passport.

Regarding his use of the foreign passport for identification purposes in connection with his transactions with the commercial bank in Portugal, Applicant was not aware back in 1990 when he acquired the mortgage loan, or indeed in 1992 when he renewed his foreign passport, that retention of his Portuguese passport for identification was inconsistent with holding a security clearance. Concerning the mortgage loan itself, it was to purchase his parents' home for them since they could not afford it. The mortgage loan has since been satisfied, and Applicant is not currently accepting any benefit from the Portuguese government. Although Applicant and his spouse continue to own the home his mother lives in, this financial interest represents only about four percent of their financial assets. Applicant testified credibly he does not intend to retain the property once his mother no longer needs it. There is no evidence he intends to hold himself out as a Portuguese citizen to that nation's authorities in the future. Willing to renounce his foreign citizenship, Applicant inquired of the Portuguese consulate about the process and expressed to these foreign officials his intent to pursue formal renunciation of that country's citizenship. After considering all the facts and circumstances, there is little likelihood of Applicant acting in preference for Portugal over the United States in the future. Accordingly, subparagraphs 1.a., 1.b., 1.c. and 1.d. are resolved in his favor.

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 mother and brother are resident citizens of Portugal. Unquestionably, Applicant is bound by affection to his mother and brother, as he visits them when he travels to Portugal, which is generally on the order of once every other 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 in evaluating Applicant's security worthiness. Since Applicant and his spouse have managed to evict the commercial tenant they inherited on purchase of the property, and they have no intent to rent commercial space in the future, the concerns regarding a tenant no longer exist. Applicant and his spouse continue to serve as landlords for his mother, who still resides in the property they purchased in September 1990 for her (and Applicant's father who died in 1993). With the current market value of the property at about \$53,600.00 US, this foreign asset is viewed as not sufficient to affect Applicant's security responsibilities, given his substantial financial assets in the United States.

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.). Applicant's mother works for a commercial tobacco company which was purchased by a United States corporation. While his brother is on loan to the regional government in Portugal from his work at a vocational technical school, there is no evidence this sibling has ever come under any undue influence by foreign authorities or that he is an agent of the foreign government. His work as a software programmer involves labor statistics and has no military implications. The risk of possible foreign influence because of Applicant's foreign relations is countered by the United States citizenship and residency of those family members closest to Applicant (spouse and two children). Those who know Applicant best testified to his exemplary character and integrity. After considering the extent of Applicant's contacts with his mother and brother (the record is silent as to the frequency of correspondence by telephone, email or letter), the professional pursuits of his mother and brother in Portugal, and Applicant's proven compliance with security regulations to date, a favorable outcome is warranted with respect to guideline B, foreign influence. In the unlikely event Applicant's relatives abroad would 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. Subparagraphs 2.a., 2.b., and 2.c. 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

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

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. She became a United States naturalized citizen in December 1970, around the time she was applying for college.
2. Applicant testified the Portuguese passport facilitated his dealings with the Portuguese financial institution in that it confirmed Portugal as his country of origin and his residence outside of Portugal ("It's a form of, because it's registered in the Portuguese Consulate and so forth, it's a form of preventing citizens of Portugal residing in Portugal from taking advantage of, of a program that's not meant for them."). Applicant indicated he was not certain that a birth certificate would suffice because that document could not confirm the foreign residency required for eligibility. (Transcript pp. 140-42).
3. Those coworkers who testified on Applicant's behalf describe him as intellectually honest and a very conscientious individual. (Transcript pp. 30-50).
4. Applicant testified the community in which he resides with his family does not have a significant Portuguese influence. (Transcript p. 115). As confirmed by a friend who testified at the hearing, Applicant and his spouse have made no effort to have their children learn to speak Portuguese. (Transcript pp. 55-56).
5. 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.
6. Applicant maintains he did not consider himself to be a Portuguese citizen after he took the oath of naturalization in the United States. Absent proof that Portugal allows former citizens to hold a valid Portuguese passport, Applicant, a well-educated individual, is held to have known that his renewal of his foreign passport was an exercise of his foreign citizenship. By issuance of the passport on renewal, it is clear Applicant was still regarded by Portugal as a citizen of that nation. That the passport was used by Applicant for identification purposes and not for travel does not change that fact.
7. Applicant testified he learned from Portuguese consular officials that Portugal not only does not consider the surrender of a Portuguese passport to be a renunciation of that nation's citizenship, but that formal renunciation was "an extremely unusual process to go through unless the country happens to be in a state of war with the United States." See Transcript p. 138.

8. 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.

9. In his memorandum of August 16, 2000, the ASD(C³I) 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.