DATE: January 27, 2003

In re:

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

Applicant for Security Clearance

CR Case No. 01-15154

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Henry Lazzaro, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 45-year-old married man and U.S. citizen who lived in Great Britain from age 14 until his return via his employment in 1998, and he has since settled permanently in the U.S. His family and financial connections are not of such extent and magnitude so as to create undue foreign influence. Despite his exercise of dual citizenship by obtaining British citizenship in May 2000, the totality of his actions--including applying to renounce his British citizenship--show a genuine preference for the U.S. Applicant has successfully mitigated and/or extenuated the foreign influence and foreign preference security concerns. Clearance granted.

STATEMENT OF THE CASE

On June 21, 2002, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.(1) On July 15, 2002, Applicant answered the SOR, and he requested a clearance decision based on a hearing record.

On August 8, 2002, DOHA assigned this case to me to conduct a hearing and issue a written decision. Thereafter, on August 21, 2002, a notice of hearing was issued to the parties scheduling the hearing for September 12, 2002, at a location near Applicant's place of employment.

At the hearing, Department Counsel offered three documentary exhibits admitted without objections; no witnesses were called. Applicant appeared, offered his own testimony and that of two witnesses, and offered 11 documentary exhibits (Exhibits A - K) admitted without objections.

After adjournment, the record remained open for Applicant to offer additional documentary exhibits. Applicant did so in a timely manner, and, Department Counsel having no objections, those documents are marked and admitted into the record as Exhibit L-a copy of *Renunciation of British Citizenship* handbook and Applicant's letter enclosing the

handbook. DOHA received the transcript on September 20, 2002, and the record closed on September 30, 2002.

The SOR alleges security concerns under Guideline B for foreign influence and Guideline C for foreign preference. In his Answer, Applicant admits to the SOR allegations, and he provides explanations intended to mitigate the security concerns. In addition, he enclosed eight documents with his Answer, which subsequently were marked and admitted as Exhibits A - H.

FINDINGS OF FACT

Applicant's admissions are incorporated into my findings, and after a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

1. Applicant is a 45-year-old married man seeking to obtain a security clearance at the secret level. He held an interim security clearance, without incident, from about April 2000 until the SOR was issued. He is the vice-president of finance and chief financial officer (CFO) for a defense contractor providing military simulation and training products and services. In that capacity, he also serves as treasurer for the board of directors. The defense contractor is a U.S. company that is part of a multinational corporation headquartered in Canada employing people in Canada, the U.S., and around the globe. The U.S. company, where Applicant is now employed, is a DoD cleared facility operating under a special security agreement with the U.S. Government.

2. Applicant testified during the hearing, and I accept his testimony as credible and true.

3. Born in 1956, Applicant is a U.S. citizen by birth. His father, now deceased, was a U.S. citizen, and his mother, also deceased, was a British citizen. Like many U.S. servicemembers, his father met his mother while stationed in the United Kingdom of Great Britain (U.K.). In 1957, Applicant's parents decided to move from the U.S. to the U.K. where they stayed until Applicant was about eight-years-old. The family then returned to the U.S. living in two different states until Applicant reached the age of 14 (approximately 1970 or 1971), when the family returned to the U.K. Applicant finished his schooling in the U.K. at the age of 16 and went to work as his family was of small means.

4. Applicant took a clerical job for a British company making industrial gases. During this time Applicant attended night classes where he obtained a business studies' qualification. After working there for about six to seven years, he accepted a job with a small public accounting firm. He worked there for a few years until moving to another accounting firm where he obtained his British accounting qualification, roughly equivalent to an American CPA. In about 1989, Applicant was hired as an internal auditor for a British-owned corporation engaged in the defense industry with locations around the globe, including the U.S. Although he was not a British citizen, he was granted a security clearance by the U.K. Defense Ministry in conjunction with this employment. He needed the clearance to enter certain facilities to perform his auditing work, although he never had access to U.K. classified information. Eventually, Applicant was promoted to the position of "head of audit."

5. The British defense contractor owned a U.S. company engaged in the defense industry under a special security agreement with the U.S. Government. That firm was struggling, and Applicant was asked if he would accept a temporary assignment to the senior-management team for the U.S. company. Having left the U.S. at the age of 14, Applicant was excited about a chance to live and work in the U.S., and so, he accepted the position. Knowing the assignment was temporary (two to three years), Applicant and his spouse decided to retain their U.K. real estate holdings consisting of their residence, which they rented out, and a rental property. In addition, Applicant decided to apply for U.K. citizenship a few days before moving to the U.S. in July 1998 since he was concerned how he would reenter the U.K. to resume his employment at the British company when the temporary assignment in the U.S. concluded.

6. Until that time, Applicant had lived in the U.K. as a legal resident. He held a U.S. passport, and he identified himself as an American when asked or required. His status in the U.K. was "indefinite leave to remain,"[(2)] which Applicant believed he would surrender if he was out of the country after a substantial absence from the country. In preparation for the move to the U.S., he contacted the U.S. Embassy in London and learned that dual citizenship is legal in the U.S.[(3)] He also asked the attorneys in the U.S. who were handling his spouse's resident alien application and was told that it was

legal for a U.S. citizen to hold dual citizenship.[4] His "prime concern" was to avoid giving up his U.S. citizenship.[5] Applicant considered the U.K. citizenship an insurance policy allowing an easy return to the U.K.[6] He did not think to ask, and was not told, how dual citizenship might affect his ability to obtain a security clearance issued by the U.S. Government.

7. After receiving this information and advice, Applicant obtained the necessary paperwork and submitted it a few days before departing for the U.S in July 1998. He qualified for U.K. citizenship based on his mother's status as a British citizen. Thereafter, the application was eventually approved in May 2000 when he received the "certificate of naturalisation"[7] in the mail at his U.S. address.

8. In July 1998, Applicant moved to the U.S. with his wife and child and went to work at his new position. In April 2000, Applicant submitted his security-clearance application (SF 86),[8] answering in the affirmative questions about foreign employment and property. He also revealed the citizenship status of his spouse and child, his foreign relatives, and that he held a security clearance issued by the U.K. Because the U.K. citizenship application was pending that information was not disclosed. In March 2001, Applicant provided a sworn statement during his background investigation disclosing his recently obtained U.K. citizenship.[9] He also indicated he and his spouse were planning on liquidating their assets in the U.K. transferring the proceeds to the U.S. as soon as practical.

9. Sometime during 2000, Applicant and his family made the decision to remain permanently in the U.S. Their decision was prompted when Applicant's U.S. employment became permanent, and they prepared to sell their two houses in the U.K. In about September 2000, after accepting the permanent position, Applicant learned the company was to be sold by the parent-British company.[10] Exercising caution, he held off selling not knowing if he'd have a job when the new owners took control as new owners often bring in their own senior-management team. The change of ownership took place in April 2001 when it was bought by the Canadian corporation. In about June 2001, Applicant learned he would remain as vice-president of finance and CFO.

10. Since that time, he liquidated the vast majority of the U.K. financial interests. The sale of the family home was completed in July 2001, and the proceeds were transferred to the U.S.[11] The sale of the rental property (owned by his spouse) was completed in August 2001, and the proceeds were transferred to the U.S.[12] All personal property in the U.K. was either sold or moved to the U.S. Other than his spouse's interest in a family business in the U.K. discussed below, Applicant has no other financial interests in the U.K. or any other foreign country.

11. The exception is that Applicant's spouse has a non-participatory interest in her family's business in the U.K. valued at roughly $15,000. Like the rental property, this financial interest is owned by Applicant's spouse.

12. Based on his employment with the British defense contractor, Applicant has vested a retirement pension, which is a defined employee benefit. The pension is worth about $40,000 annually when he reaches the age of 60.[13] The pension is based solely on Applicant's employment, primarily while a U.S. citizen, for the British-owned corporation.

13. In July 1999, Applicant and his spouse bought a home in the U.S. for a contract sales price of approximately $270,000.[14] Its present market value is about $350,000. In July 2001, Applicant and his spouse bought about 10 acres of land near their current residence. The contract sales price was $250,000.[15] The couple's intent is to build a substantial residence on the land.

14. Applicant participates in his state's prepaid college program for his daughter's benefit. As of the December 28, 2001, Applicant had paid approximately $10,500 into the plan with an additional $11,500 balance remaining.[16]

15. Applicant also participates in his company's 401(k) plan and the balance is approximately $30,000. In addition, he has stock options with his company, although with the current stock market, the options are essentially worthless.

16. Applicant has one brother and four sisters. His brother and three sisters are British citizens residing in the U.K. The fourth sister is a U.S. citizen also residing in the U.K. Applicant's family is not a close-knit family and his relationships with his siblings are distant. Essentially, he left home at the age of 19 and did not look back. For example, he has not spoken with his brother for seven or eight years and he was uncertain if the brother was married.[17] For another example, he did not know if a certain sister was employed.[18] To cite a third example, when one sister recently visited the U.S. the extent of the contact was meeting for dinner on one occasion.[19]

17. There is no evidence his siblings are connected to British law enforcement, the military, or a national governmental agency. Likewise, there is no evidence that his siblings are involved in political, scientific, commercial, or other activities where they might benefit from obtaining U.S. national security information.

18. Applicant's daughter is a dual citizen of the U.S. and U.K. She obtained her U.S. citizenship after arriving in the U.S. based on Applicant's

father's prior residence in the U.S. Applicant's spouse is a permanent resident alien (a green card holder), and she has applied to obtain U.S. citizenship via naturalization. The long-term plan is for Applicant and his family to remain at their current location in the U.S.

19. In his July 2002 Answer, Applicant said he was prepared to renounce his British citizenship. After being contacted by Department Counsel to arrange a hearing date, he realized the government's concern with his dual citizenship.[(20)] Subsequently, in September 2002, Applicant submitted the necessary paperwork to renounce and is waiting for a response from the British Home Office.[(21)] If his renouncement is approved, it appears most unlikely that Applicant would be allowed to resume his U.K. citizenship in the future.[(22)] Applicant decided to renounce his U.K. citizenship because it was more important for him to be viewed as an American than to have a safety net or insurance policy allowing easy return to the U.K. [(23)]

20. Applicant has never sought, possessed, or used a U.K. passport, has never served in the British military, has never sought or held political office in the U.K., and has never voted in a British election. Applicant possesses a U.S. passport and has always traveled on the same thereby holding himself out as an American citizen.

21. The company's chairman and chief executive officer (CEO), a retired Army three-star general, vouches for Applicant's security suitability.[(24)] The same is true for the former chairman and CEO, a retired Navy vice admiral.[(25)] In addition, the current and former company president,[(26)] as well as the current general counsel,[(27)] vouch for Applicant's security suitability and his invaluable service to the company. Finally, other than the two most recent members who are not well acquainted with Applicant, the company's board of directors are unanimous in their opinion that Applicant is suitable for a security clearance.[(28)]

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security-clearance eligibility. Chief among them is the disqualifying and mitigating conditions for each applicable guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1. through ¶ 6.3.6. of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline B for foreign influence[(29)] and Guideline C for foreign preference,[(30)] with their respective disqualifying and mitigating conditions, are most relevant here.

BURDEN OF PROOF

The only purpose of a security-clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.[(31)] The government has the burden of proving controverted facts.[(32)] The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than the preponderance of the evidence.[(33)] The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.[(34)] "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."[(35)] Once the government meets its burden, an applicant has the burden of presenting evidence of refutation, extenuation, or mitigation sufficient to overcome the case against them.[(36)] In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.[(37)]

As noted by the Court in *Egan*, "it should be obvious that no one has a 'right' to a security clearance," and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."[(38)] Accordingly, under *Egan,* Executive Order 10865, and the Directive, any reasonable doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

CONCLUSIONS

Section 1-Foreign Influence

Under Guideline B for foreign influence, a security concern may exist when certain situations create the potential for foreign influence that could result in the compromise of classified information. A potential security concern exists whenever a person is bound by ties of affection, influence, or obligation to immediate family, close friends, or business associates in a foreign country, or to persons residing in the U.S. who may be loyal to a foreign country. Financial interests in other countries are relevant to security determinations if they make a person potentially vulnerable to coercion, exploitation, or pressure.

Here, based on the record as a whole, the government has established its case under Guideline B. Disqualifying Condition (DC) 1[(39)] applies given that Applicant has a spouse, a child, and siblings who are British citizens, or residents or present in the U.K. And DC 8[(40)] applies based on Applicant's financial interests in the U.K., which have been nearly eliminated except for his spouse's interest in her family's business valued at about $15,000. Together, his family and financial connections could create a potential to make Applicant vulnerable to coercion, exploitation, or pressure by undue foreign influence.[(41)] On the other hand, I conclude that Applicant's pension with his former employer, a British-owned corporation with global operations, is not a foreign-financial interest for purposes of Guideline B since the Applicant is entitled to receive the pension at age 60 just as any other company employee, regardless of nationality, working around the globe. In any event, the pension is not alleged in the SOR.

In mitigation, Applicant's spouse and daughter present an insignificant security concern. The daughter has obtained U.S. citizenship and the spouse is in the process of doing so. Moreover, both are present in the U.S. and will in all probability remain here permanently. Given these circumstances, the chance of undue foreign influence is remote. Likewise, Applicant's siblings also present an insignificant security concern for at least two reasons. First, none of them are employed by or connected with the British military, law enforcement, or a governmental agency involved in security or intelligence. Nor are there any indications they are involved in political, scientific, commercial, or other activities where they might benefit from obtaining U.S. national security information. And so, the likelihood that Applicant could be placed in a potentially compromising position by coercive or non-coercive means is unlikely. Under these circumstances, mitigating condition (MC) 1[(42)] applies in Applicant's favor. Second, Applicant's ties to his siblings in the U.K. are distant, if not nearly nonexistent, and so, MC 3[(43)] applies in his favor.

In addition, Applicant has liquidated all of his family's financial interests in the U.K. except for his spouse's small holding valued roughly at $15,000 before any applicable taxes. This asset is minimal compared with Applicant's U.S. financial interests, which are substantial. Undoubtedly, Applicant and his spouse could walk away from the U.K. asset without materially harming or affecting their overall financial position. Accordingly, the remaining U.K. asset is not of such magnitude to affect Applicant's security responsibilities, and so, MC 8[(44)] applies in his favor.

Finally, I note the foreign country at issue is the U.K., a democratic country governed by the rule of law and a longtime, close ally of the U.S.[(45)] Of course, in every security-clearance case an applicant's family and financial connections to any foreign country deserve careful examination.[(46)] Such connections do not deserve the same level of scrutiny, however, as a foreign country whose interests are hostile or inimical to the U.S., or a foreign country with an authoritarian or totalitarian government. Iraq, Iran, and North Korea--the so-called "axis of evil"[(47)]--are a few examples of foreign countries deserving more scrutiny. I have merely reviewed Applicant's family and financial connections to the U.K., along with the other record evidence, with these commonsense principles and realities in mind. To conclude, considering the record evidence as a whole, the foreign influence security concerns raised by Applicant's family and financial connections to the U.K. are mitigated. Guideline B is decided for Applicant.

Section 2-Foreign Preference

Under Guideline C for foreign preference, a security concern may exist when a person acts in such a way as to indicate a preference for a foreign country over the U.S. In particular, the exercise of dual citizenship raises a security concern because the active exercise of foreign citizenship may indicate a preference for that foreign country. Mere possession of dual citizenship by itself, however, is not automatically a security concern. It depends on whether an applicant shows a preference for a foreign country through the active exercise of dual citizenship or through other actions.[(48)]

Here, based on the record evidence as a whole, the government has established its case under Guideline C. A U.S. citizen by birth, Applicant demonstrated a foreign preference by applying for British citizenship in July 1998 and by obtaining British citizenship in May 2000. As an adult, he lived and worked in the U.K. until moving to the U.S. in 1998. And he obtained U.K. citizenship for the purpose of returning to his previous employment and home in the U.K. once his temporary assignment in the U.S. concluded. Undeniably, it is a serious security concern whenever an adult U.S. citizen obtains foreign citizenship.[(49)] Likewise, Applicant obtained his British citizenship to protect his business interest, his previous employment, in the U.K. Given these circumstances, DC 1[(50)] and 6[(51)] apply and raise security concerns.

Turning to the mitigating conditions under Guideline C, MC 4[(52)] is applicable, but the others do not apply on their face. Of course, MC 4 is a significant condition, and Applicant has gone beyond the plain language of the condition by applying to renounce his British citizenship, an action not required by the condition. By doing so--essentially negating the insurance policy he sought to create--Applicant has demonstrated a strong preference for the U.S., and it is substantial evidence in mitigation.

In addition, when assessing the security significance of his exercise of British citizenship, it is proper to consider Applicant's motivation.[(53)] He was not motivated by a desire to exhibit nationalistic zeal for the U.K. Had he truly desired to do so, he could have at any point during his adult life in Great Britain. Instead, he applied for British citizenship as a back-up plan on the eve of his temporary assignment. While his actions justify scrutiny, the record evidence shows his motivation was fairly benign--to find a practical solution for a rather complicated career and personal

situation. Given these circumstances, and considering he never applied for, possessed, or used a British passport, Applicant's motive extenuates the security concerns somewhat and it deserves some weight.

To sum up under Guideline C, Applicant lived and worked in the U.K. for many years, and he obtained British citizenship in May 2000. Nevertheless, his American citizenship is much more than paper citizenship or an accident of birth. In my view, his ties or significant connections to the U.S. are substantial as demonstrated by the following examples:

- Born in the U.S. in 1956.
- Possessing and using a U.S. passport at all times relevant to this case, including while living and working in the U.K.
- Jumping at the chance to live and work in the U.S. in 1998, and moving his wife and daughter to the U.S. from overseas.
- Accepting a permanent position with his U.S. employer.
- Liquidating all substantial financial interests in the U.K.; selling or moving all personal property.
- Buying a home, buying land for a future home, and participating in his state's prepaid college plan; his U.S. financial assets are substantial.
- Obtaining U.S. citizenship for his child; his spouse's application is pending.
- Applying to renounce his British citizenship.

These ties or significant connections show a genuine preference for the U.S. It is my commonsense assessment that Applicant's ties or connections to the U.K., while significant at one time, are no longer part of his renewed or reestablished life in the U.S. Any remaining ties or connections to the U.K. are outweighed by his significant connections to the U.S. Considering the record evidence as a whole, the foreign preference security concerns raised by Applicant's actions are extenuated and mitigated. Guideline C is decided for Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline C: For the Applicant

Subparagraph a : For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

Subparagraph f: For the Applicant

Subparagraph g: For the Applicant

SOR ¶ 2-Guideline B: For the Applicant

Subparagraph a : For the Applicant

Subparagraph b: For the Applicant

Subparagraph 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.

Michael H. Leonard

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended (Directive).

2. Transcript at p. 79

3. Transcript at p. 80.

4. Transcript at pp. 80-81.

5. Transcript at p. 81.

6. Transcript at p. 82.

7. Exhibit 3.

8. Exhibit 1.

9. Exhibit 2.

10. Transcript at p. 84.

11. Exhibit A.

12. Exhibit B.

13. Transcript at p. 99.

14. Exhibit C.

15. Exhibit D.

16. Exhibit E.

17. Transcript at p. 102.

18. Transcript at p. 103.

19. Transcript at p. 109.

20. Transcript at p. 92.

21. Exhibit I.

22. Exhibit L.

23. Transcript at p. 87.

24. Exhibit J.

25. Exhibit H.

26. Transcript at pp. 26-49; Exhibits F and G.

27. Transcript at pp. 50-68.

28. Transcript at pp. 44-45, 63.

29. Directive, Enclosure 2, Attachment 2.

30. Directive, Enclosure 2, Attachment 3.

31. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

32. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

33. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

34. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

35. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

36. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

37. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

38. *Egan*, 484 U.S. at 528, 531.

39. "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."

40. "A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence."

41. *See* ISCR Case No. 99-0511 (December 19, 2000) at pp. 10-11 (foreign influence issues are not limited to situations involving coercive means of influence; rather, they can include situations where an applicant may be vulnerable to non-coercive means of influence); ISCR Case No. 98-0507 (May 17, 1999) at pp. 10-11 (discussing various facets of security significance of family ties in a foreign country).

42. "A determination that the immediate family member(s), (spouse, father, 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."

43. "Contact and correspondence with foreign citizens are casual and infrequent."

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

45. These are matters known to this agency through its expertise in deciding security-clearance cases involving foreign influence and preference.

46. *See* ISCR Case No. 97-0699 (November 24, 1998) at p. 3 (Nothing in Guidelines B or C "requires that the foreign country in question have interests that are inimical to the interests of the United States.").

47. DeYoung, Karen, Analysis: Foreign Affairs, *Bush Lays Down A Marker for 3 'Evil' States*, washington.post.com, Wed., Jan. 30, 2002, at p. A01 ("By singling out Iran, Iraq and North Korea as an "axis of evil" whose efforts to acquire and export weapons of mass destruction could no longer be tolerated, President Bush last night appeared to sharply increase both the immediacy and the gravity of the threat they pose, along with his own determination to do something about it sooner rather than later.").

48. ISCR Case No. 98-0252 (September 15, 1999) at p. 5 ("[T]he issue is not whether an applicant is a dual national, but rather whether an applicant shows a preference for a foreign country through actions.").

49. ISCR Case No. 98-0507 (May 17, 1999) at p. 9 ("[A]n applicant who, as an adult, voluntarily assumes the responsibilities of foreign citizenship has a heavier burden to overcome than does someone who has foreign citizenship by birth.").

50. "The exercise of dual citizenship."

51. "Using foreign citizenship to protect financial or business interests in a foreign country."

52. "Individual has expressed a willingness to renounce dual citizenship."

53. Directive, ¶ 6.3.4.; and Enclosure 2, Item E2.2.1.7. (both mention motivation).