DATE: October 30, 2002

In Re:

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

Applicant for Security Clearance

ISCR Case No. 01-19949

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Department Counsel

FOR APPLICANT

Daniel C. Schwartz and Robert W. Tomilson

SYNOPSIS

The Applicant was born in Canada and is a dual U.S. Canadian citizen. He has surrendered his Canadian passport and has expressed a willingness to renounce his Canadian citizenship. His mother is a Canadian citizen residing in Canada. His wife is a Canadian citizen residing in the U.S. His sister is a dual U.S. Canadian citizen residing in the U.S. The Applicant has infrequent contact with his in-laws, who are Russian citizens living in Russia, because of language differences. These individuals are not agents of a foreign power nor are they in a position to be exploited by a foreign power. Clearance is granted.

STATEMENT OF THE CASE

On November 9, 2001, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding[(1)] it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On December 6, 2001, the Applicant answered the SOR and requested a hearing. On March 25, 2002, the Applicant elected to have his case decided on the written record in lieu of a hearing.

On April 3, 2002, the Applicant was sent the file of relevant material (FORM), dated April 1, 2002. On May 8, 2002, the Applicant's response to the FORM was received and on May 9, 2002, Department Counsel (DC) indicated no objection to the response. I was assigned the case on May 30, 2002. The DC presented ten exhibits (Items) and the Applicant submitted 25 exhibits (Exhibit). The record closed on May 30, 2002.

FINDINGS OF FACT

The SOR alleges foreign preference (Guideline C) and foreign influence (Guideline B). The Applicant admits all of the allegations except for SOR subparagraph 1.e. related to Canadian retirement benefits and medical coverage.

The Applicant is 33-years-old and is seeking a security clearance. He has been employed by a defense contractor since July 1997. He is a bright and dedicated worker. (Exhibit 25)

The Applicant is a dual U.S. Canadian citizen who was born and raised in Canada. His father was a U.S. citizen and his mother a Canadian citizen. His mother currently resides in Canada and is a retired home economics teacher who has never worked for the Canadian Government. His sister is a dual U.S. Canadian citizen residing in California. While growing up, the Applicant frequently visited his father's family in the U.S. The Applicant's great granduncle was a general in the U.S. Army.

In 1993 or 1994, at age 25, the Applicant became aware he was a U.S. citizen because of his father's citizenship. In January 1995, the Applicant received a U.S. passport. (Exhibit 12) In 1997, he completed graduate school, married, and moved to the U.S. to pursue employment opportunities. (Item 6) His wife is a Canadian citizen living in the U.S. as a permanent resident alien and intends on applying for U.S. citizenship once the residence requirement is met. (Item 6) Since 1997, he has voted in U.S. federal elections and pays U.S. taxes. Since moving to the U.S., he has not voted in any Canadian election, nor has he paid Canadian tax. In his answer to the SOR and in his FORM response, the Applicant indicated he would renounce his Canadian citizenship.

In October 1993, the Applicant obtained a Canadian passport (Exhibit 10) which expired in October 1998. In June 2000, he told a Defense Security Service (DSS) Special Agent he would renew the passport in the near future and did so in July 2000. The renewed Canadian passport was valid until July 2005. (Exhibit 11) In December 2001, he surrendered his Canadian passport to the Canadian Consulate. (Exhibit 9) The Applicant did not use his renewed passport. He had used his previously issued Canadian passport: in May 1995, to visit Europe; in June 1996, to travel to Singapore, Malaysia and Thailand; in November 1996, for travel to the United Kingdom; in July 1997, for travel to the Bahamas; and, he used it to travel to Canada in October 1997 and January 1998. January 1998 was the last time he used his Canadian passport when he entered Canada. The Applicant has no intention of obtaining another Canadian passport. The Applicant believed Canadian law required him to use his Canadian passport to enter Canada. Information from the Canadian Embassy, specifically the Consular Affairs Bulletin Board (Exhibit 13), states,

If you are a dual U.S./Canadian citizen you should always present yourself as a Canadian citizen when entering Canada. However, U.S. citizens should use their U.S. passports when entering or leaving the United States.

During the June 2000 interview, the Applicant stated he intended to maintain his Canadian citizenship and had no plans to renounce his Canadian citizenship or to relinquish his Canadian passport. (Item 6, page 2) He stated, "At this point in time, I am not willing to renounce my Canadian citizenship and/or relinquish my Canadian passport as a condition of access to classified/sensitive information." (Item 6, page 2)

The Applicant currently is not entitled to full retirement benefits under the Canadian Old Age Security Act (Exhibit 24). However, once he reached the age of 65, if he lived in Canada, he would be entitled to some benefits under the Old Age Security Act (Exhibit 16) and the Canada Pension Plan account. (Exhibit 17) Between 1987 and 1992, the Applicant contributed approximately $1,000.00 Canadian to the pension plan. (Exhibit 15) He and his wife maintain two bank accounts registered under the Canadian Registered Retirement Saving Plan (CRRSP) with Canadian banks. The accounts appreciate free of U.S. or Canadian taxes and are similar to U.S. Individual Retirement Accounts (IRAs). (Exhibit 20) The accounts contain approximately $12,300.00 US, which is less than 10% of his family's net worth. The Applicant and his wife have a Canadian checking account (Exhibit 18) which contains $5.00 Canadian. The Applicant is a tenant in common with his mother on an account (Exhibit 14) in Canada worth approximately $36,000.00 US, which provides for his mother's needs.

The Applicant and his wife own a home (Exhibit 3) in the U.S., own two automobiles, have their checking and savings accounts in U.S. banks, and each have 401(k) retirement accounts. Their U.S. assets total $225,000.00. (Exhibits 2, 4-8) The Applicant's friends, acquaintances, co-workers, and professional contacts are with U.S. citizens.

Anyone living in Canada is entitled to medical coverage by the Canadian national health care plan. (Exhibit 16) The Applicant is not now entitled to benefits because he does not live in Canada. In 1987, when the Applicant was a student he had a summer job with a private company that required him to apply for a confidential security clearance from the Canadian Government.

The Applicant's wife was born in Russian and resided there until 1991, at which time she was 23 years old. While in Russia she was a student and had no work experience. When the Applicant met her she was a Russian citizen and a permanent resident of Canada. She became a Canadian citizen in March 1985. His mother-in-law, father-in-law, and brother-in-law are Russian citizens living in Russia. The Applicant has met his in-laws twice[(2)] in Russia. His wife speaks regularly with her parents by telephone. The Applicant does not talk with them because they do not speak English and he does not speak Russian. His mother-in-law is a retired mechanical engineer who worked for a forestry and logging company. She retired in 1993 and is now a full time homemaker. His father-in-law is a semi-retired petroleum engineer who worked for an oil company repairing and maintaining mechanical equipment and now works part-time for a construction firm. His brother-in-law is an unemployed pharmaceutical salesman. (Exhibit 23)

None of his in-laws were employed by the Russian Government or for any intelligence agency. None of his in-laws have held any political office or participated in foreign politics beyond voting in elections. None of these relatives are employed by or have contact with a foreign government and are not subject to threat or influence from a foreign government. The Applicant has no contact with his brother-in-law.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Foreign Preference (Guideline C) 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.A3.1.1.

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

1. The exercise of dual citizenship. E2.A3.1.2.1.

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

Conditions that could mitigate security concerns include:

4. Individual has expressed a willingness to renounce dual citizenship. E2.A3.1.3.4.

Foreign Influence (Guideline B) 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.A2.1.1.

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. E2.A2.1.2.1.

Conditions that could mitigate security concerns include:

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.A2.1.3.1.

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 that burden, the burden of persuasion then shifts to the Applicant who must remove that doubt and establish his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline 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." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline C, Foreign Preference. Under Guideline C, the security eligibility of an applicant is placed into question when the person acts in such a way as to indicate a preference for a foreign country over the US. Security concerns over the Applicant's possible foreign preference arise from his exercise of dual citizenship. The Applicant is a dual U.S. Canadian citizen having been born in Canada and lived there until 1997 when he moved to the U.S. Although a citizen of Canada and the U.S. by operation of law, the Applicant chose to exercise his dual citizenship by availing himself of the benefits of citizenship. Disqualifying Condition (DC) 1 [(3)] applies. The Applicant possessed a Canadian passport until December 2001, which he used for travel from May 1995 through January 1998. This use occurred after he had been issued a U.S. passport. DC 2 [(4)] applies. The Applicant may be entitled to some Old Age Benefit and some pension benefit should he reaches the age of 65 and if he chooses to live in Canada, both speculative events. DC 4 [(5)] does not apply for the condition requires more than mere entitlement to a benefit. It requires the Applicant to accept the benefit. The Applicant does maintain two CCRPS accounts in Canada. One must be a Canadian citizen to open or to contribute to such an account, but there is no showing one must be a Canadian citizen to maintain such an account and there is no evidence the Applicant is using his foreign citizenship to maintain these accounts. DC 6 [(6)] does not apply.

The Applicant may, at some future date, be entitled to Canadian retirement benefits and medical coverage should live in Canada and should he reach 65 years of age. These are both speculative events. Even if these events occur, the potential value is *de minimis* compared to the Applicant's other assets. I find for the Applicant as to SOR subparagraph 1.e. The Applicant and his spouse have two accounts in Canadian banks and the spouse maintains a joint account with his mother for her benefit. These accounts are less than 10% of the Applicant's joint assets and, as such, are *de minimis* when compared to the Applicant's total financial picture. I find for the Applicant as to SOR subparagraph 1.f.

In the Summer of 1987--15 years ago--the Applicant, then age 18, had a summer job which required him to apply for a confidential level security clearance from the Canadian Government. The summer job and its clearance are sufficiently

remote in time as to no longer be a security concern. I find for the Applicant as to SOR subparagraph 1.g. The fact the Applicant came to the U.S. in July 1997 for employment opportunities is not a security concern. I find for the Applicant as to SOR subparagraph 1.d.

The issues of the Applicant exercising dual citizenship and possessing and using a Canadian passport requires a more in-depth review. Mitigating Condition (MC) 1[(7)] does not apply because there was more to the Applicant's actions than simply his father's citizenship or the Applicant's birth in a foreign nation. The Applicant lived in Canada until 1997, was educated there, received a Canadian passport and used that passport for numerous trips until 1998. MC 2[(8)] does not apply because the Applicant lived, worked, went to school in Canada, and used his Canadian passport after 1993/1994 when, at age 25, he realized he was a U.S. citizen because his father was a U.S. citizen. After moving to the U.S. in 1997, he used his Canadian passport six months later in January 1998, to enter Canada even though he had been issued a U.S. passport in January 1995. MC 3[(9)] does not apply because there is no indication the U.S. Government has sanctioned[(10)] his exercise of dual citizenship.

Until 1995, the only passport the Applicant possessed was his Canadian passport, at which time he was issued a U.S. passport. He continued using his Canadian passport because he was living in Canada and had not yet moved to the U.S. After moving to the U.S. in 1997, his only use of his Canadian passport was to enter Canada, which he believed was required by law. Guidance provided by the Canadian Embassy states a Canadian passport should be used by dual U.S. Canadian citizens to enter Canada. In December 2001, when the Applicant realized possession of a Canadian passport was of concern, he surrendered his Canadian passport to the Canadian Consulate.

The Applicant has surrendered his Canadian passport and repeatedly stated a willingness to renounce his Canadian citizenship. MC 4[(11)] requires a willingness to renounce and does not require the actual renouncement of foreign citizenship. However, the Applicant's stated willingness to renounce is reenforced by other factors. Although he grew up and was educated in Canada he had relatives in the U.S. which he visited while growing up.

Since 1997, when he moved to the U.S., he has no longer contributed to the Canadian pension system, benefitted from the Canadian medical system, or made payments into a Canadian retirement program. Since moving to the U.S. he has voted in U.S. elections but not in Canadian elections. His wife is a permanent resident alien and is waiting the required time before applying for permanent status. The Applicant owns a house, two cars, has checking accounts, saving accounts, and retirement accounts in the U.S. His assets in Canada are *de minimis*. The only contact he still has with Canada are two retirement accounts located there to which he can no longer make contributions and the fact his mother lives there.

The Applicant's stated willingness to renounce his Canadian citizenship, coupled with looking at the Applicant's entire picture, is sufficient to apply MC 4. I find for the Applicant as to SOR subparagraphs 1.a., 1.b., and 1.c.

The Government has satisfied its initial burden of proof under Guideline B, (Foreign Influence). Under Guideline B, the security eligibility of an applicant is placed into question when the person has immediate family and other persons to whom he is bound by affection are not citizens of the United States, reside in a foreign country, or may be subject to duress. The Applicant's wife is a Canadian citizen living in the U.S. as a permanent resident alien intent on applying for U.S. citizenship when able to do so. His mother--age 72--is a Canadian citizen, residing in Canada, and his sister is a dual U.S. Canadian citizen residing in the U.S. The Applicant's father-in-law, mother-in-law, and brother-in-law are Russian citizens, residing in Russia. Thus, DC 1[(12)] applies.

The burden is on the Applicant to demonstrate that his wife, mother, sister, and in-laws 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 the persons involved and the U.S. The Applicant's wife is a Canadian citizen living in the U.S. with the only negative aspect being her relatives live in Russia. She is a permanent resident who intends to apply for U.S. citizenship when able to do so. She was once a Russian citizen and obtained Canadian citizenship when she was able to do so, which does lend support to her expressed intent to become a U.S. citizen. She left Russia when she was a student and had no employment prior to her departure. She has lived in the U.S. since 1997, her children live here, she owns a house, two cars, retirement accounts, and bank accounts in the U.S. She is not an agent 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 1[(13)] applies. I find for the Applicant as to SOR subparagraph 2.a.

The Applicant's mother, a retired home economics teacher, does not work for the Canadian or any other foreign government, has never worked for the Canadian or any other foreign government, has never served in the Canadian or any other foreign military, and is not an agent of a foreign power. His sister is a dual U.S. Canadian citizen living and working in California. The mere fact the Applicant's mother is a Canadian citizen living is in Canada is not disqualifying to the Applicant holding a security clearance. Nor is the fact that his sister, a dual U.S. Canadian citizen, lives and works in California. His mother and sister are not in a position to be exploited by a foreign power in a way that could force the individual to choose between the persons involved and the United States. The security concerns engendered by the foreign citizenship of his mother and sister are mitigated and MC 1[(14)] applies. I find for the Applicant as to SOR subparagraph 2.b.

The Applicant has limited contact with his in-laws who are Russian citizens living in Russia.

His wife has telephone contact with them, but, because they do not speak English and he does not speak Russia, the Applicant does not talk with them. It cannot be said the Applicant's in-laws are persons whom the Applicant has close ties of affection or obligations. His mother-in-law has been retired from a forestry company since 1993. His brother-in-law is an unemployed pharmaceutical salesman with whom he has no contact. His father-in-law worked for an oil company repairing and maintaining mechanical equipment and now works part time for a construction firm. None of his in-laws were employed by the Russian Government or for any intelligence agency, have held any political office or participated in foreign politics beyond voting in elections. None of these relatives are employed by or have contact with a foreign government and are not subject to threat or influence from a foreign government.

The Applicant's contact with his wife, mother, sister, and the minimal contact with his mother-in law and father-in-law present an acceptable security risk.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

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

Paragraph 1Guideline C (Foreign Preference): FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Paragraph 2 Guideline B (Foreign Influence): 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 the Applicant.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.

2. In September 1998, he returned from visiting has wife's relatives. There is no indication which passport was used for the trip nor is there an indication as to the date of the other trip.

3. DC 1. The exercise of dual citizenship. E2.A3.1.2.1.

4. DC 2. Possession and/or use of a foreign passport. E2.A3.1.2.2.

5. DC 4. Accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country. E2.A3.1.2.4.

6. DC 6. Using foreign citizenship to protect financial or business interests in another country. E2.A3.1.2.6.

7. MC 1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country. E2.A3.1.3.1.

8. MC 2. Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship. E2.A3.1.3.2.

9. MC 3. Activity is sanctioned by the United States. E2.A3.1.3.3.

10. Sanctioning requires positive action and is no mere allowance or acquiesce.

11. MC 4. Individual has expressed a willingness to renounce dual citizenship. E2.A3.1.3.4.

12. DC 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.A2.1.2.1.

13. MC 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.A2.1.3.1.

14. MC 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.A2.1.3.1.