

DATE: October 18, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-20081

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq., Department Counsel

FOR APPLICANT

Mark E. Pelosky, Esq.

SYNOPSIS

Applicant is a dual citizen of Poland and the United States since his United States naturalization in September 2000. A native citizen of Poland, Applicant renewed his Polish passport during a trip to Poland to visit family members in September 1997. Applicant, who has traveled exclusively on his United States passport since its acquisition in September 2000, surrendered his Polish passport to the Polish consulate in late July 2002. Willing to renounce his foreign citizenship, he has not filed an application for renunciation because of the burdensome process. Any foreign financial interest is limited to a potential small inheritance in his parents' home in Poland while his United States assets are considerable. The Polish citizenship and residency of his parents, sister, and in-laws do not present an unacceptable risk of foreign influence. Clearance is granted.

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 May 10, 2002, 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 foreign preference concerns (guideline C) related to dual citizenship with the United States and Poland; possession of a valid Polish passport as of August 2001; and potential inheritance of property in Poland. Also alleged were foreign influence concerns (guideline B) due to the Polish citizenship and residency of his parents, sister, and in-laws, including a sister-in-law.

On May 23, 2002, Applicant 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 July 15, 2002, and pursuant to formal notice dated July 17, 2002, the hearing was scheduled for August 5, 2002. At the hearing held as scheduled, the Government's case consisted of two

documentary exhibits. Applicant, through legal counsel, presented six exhibits, which were entered without any objections from the Government. Testimony was taken from Applicant and a coworker. A transcript of the hearing was received by this office on August 14, 2002.

Following the hearing, Applicant's counsel on August 15, 2002, forwarded documentation which Applicant received from the Consulate General of Poland. Inasmuch as the documentation from the consulate is entirely in Polish, Applicant's counsel was notified by letter dated August 20, 2002, that he had until September 4, 2002, to provide an accurate English translation or to justify its inclusion in the record absent the translation. On September 2, 2002, Applicant, through legal counsel, offered his "rough translation," waiving any rights under the Privacy Act should Department Counsel seek to verify the accuracy of his translation. ⁽¹⁾ The Government was given until September 20, 2002, to file any objections and to indicate whether the Government intended to provide a translation. At Department Counsel's request, a brief extension was granted, and by facsimile on September 24, 2002, the Government filed its analysis of the Polish language documents. The Government having no objection thereto, the originals of the document in Polish along with Applicant's translation were marked collectively and entered into the record as Applicant Exhibit G. ⁽²⁾

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 38-year-old manufacturing engineer, who has worked for a United States (US) defense contractor (company A) since April 2001. He seeks a Secret security clearance for his duties.

Applicant was born in May 1964 in Poland to resident citizens of that nation. Raised and educated in Poland, Applicant pursued graduate studies at an engineering institute in his native country. While he was a university student, Applicant married a Polish citizen. He and his spouse had a daughter in January 1990. In December 1991, he was awarded his master's degree in mechanical engineering.

At the completion of his graduate studies, Applicant was scheduled to complete a year of basic military training. With the Polish government in transition at the time, those scheduled for basic training that year were not called to serve.

With the assistance of a friend who was attending a university in the US, Applicant in 1992 elected to enter the "green card" lottery in the US, primarily because of the employment opportunities in the US and to fulfill long held dreams of freedom. Applicant was selected in the lottery, and he and his spouse and daughter emigrated to the US in 1992. ⁽³⁾ Applicant entered the US with a valid Polish passport. Immediate family members left behind in Poland included his parents and sister and his in-laws (spouse's parents and her two siblings).

Shortly after his arrival in the United States, Applicant got a job working in auto restoration. He had experience working with old cars in Poland, as his father in the past owned a private shop restoring old cars. In April 1995, Applicant traveled to Poland on his Polish passport to visit family members.

In January 1996, Applicant and his spouse had a son born to them in the United States. Applicant has made no effort to acquire Polish citizenship for his son, although under Polish law, a child born to Polish citizens acquires Polish citizenship by descent. ⁽⁴⁾ Circa August 1996, Applicant and his spouse purchased their present residence in the US. ⁽⁵⁾

In September 1997, Applicant and his spouse and children traveled to Poland and other European countries for pleasure. At the Polish border, Applicant was informed by Polish border officials that his Polish passport was about to expire. As a consequence, he would be allowed to enter but not exit Poland. Applicant renewed his Polish passport for the standard term of ten years as he felt he had no choice if he wanted to return to the US where he owned real property and had work responsibilities as a manager/engineer. In June 1998, Applicant returned to Poland to visit, entering on the Polish passport scheduled to expire in September 2007.

Circa 1998, Applicant and his spouse applied for naturalization in the US, Applicant submitting his application about two weeks after his spouse. Applicant had to resubmit his application due to a fee increase. ⁽⁶⁾ In June 2000, Applicant's

spouse became a naturalized US citizen. In early September 2000, Applicant became a naturalized US 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. Applicant no longer considered himself a citizen of Poland on acquisition of his US citizenship, as he understood from taking the oath of US citizenship, he was breaking all connections to the Polish state. ⁽⁷⁾ On Applicant's naturalization, his Polish born daughter acquired US citizenship as well. ⁽⁸⁾

On August 16, 2000, the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASDC³I) clarified the foreign preference adjudication guideline pertinent to possession/use of foreign passports, making it clear that possession/use of a foreign passport raises doubts as to whether the person's allegiance to the United States is paramount and it could facilitate foreign travel unverifiable by the United States. Possession/use of a foreign passport could not be justified on the basis of factors such as personal convenience, safety, the requirements of foreign law, or the identity of the foreign country.

In late September 2000, Applicant was issued his United States passport, which is valid until late September 2010. With no direction from United States or Polish authorities as to what he should do with his Polish passport, Applicant placed his Polish passport in a drawer in his home. Applicant traveled exclusively on his US passport thereafter, including on trips to Italy in October 2000 and to Poland in June 2001.

Selected for the position of manufacturing engineer with a US defense contractor, Applicant on March 13, 2001, executed a security clearance application (SF 86), EPSQ version, on which he listed his birth in Poland, his dual citizenship with Poland and the US since he acquired US citizenship in September 2000, his possession of a Polish passport scheduled to expire in September 2007, ⁽⁹⁾ and his foreign travels since April 1995. Applicant indicated his spouse and children were US citizens. He also disclosed the Polish citizenship and residency of his parents, sister, mother-in-law, father-in-law, and sister-in-law, unintentionally omitting his brother-in-law from the list of his foreign relations. Assuming his foreign passport was no longer valid, Applicant did not consider the foreign passport to pose a problem as long as he disclosed the vital statistics of the passport. Sometime after the SF 86 was submitted by his employer, Applicant was granted an Interim Secret clearance for his duties.

In August 2001, Applicant was interviewed by a special agent of the Defense Security Service (DSS) about his foreign citizenship and foreign connections. Applicant acknowledged his dual citizenship (US and Poland) status, based on his understanding that the Republic of Poland still considers him a citizen of that nation. He admitted possessing a Polish passport, renewed in September 1997, but denied any travel on that passport since acquiring his US passport or any intent to travel on his Polish passport in the future. Applicant expressed a willingness to take affirmative steps to renounce his Polish citizenship and/or invalidate his Polish passport if necessary to gain access to classified information. He maintained his loyalties and allegiance are exclusively to the US, and related he would never use his position in the US to advance the interests of a foreign country. He denied acceptance of any benefits from Poland, or the exercise of any rights of his Polish citizenship, including voting. While he volunteered he could inherit family property in Poland should his parents predecease him, he indicated he would not retain foreign citizenship to retain inheritance rights. Applicant detailed his contacts with close family and some friends who remain resident citizens of Poland, but he denied any of these foreign nationals harbored hostility or militant attitudes toward the US.

A couple of days later, on August 13, 2001, Applicant met with the special agent to sign a statement which the agent had prepared based on their earlier interview. Asked by the agent to bring with him his foreign passport, Applicant showed his Polish passport to the DSS agent when they met on August 13, 2001. Given the agent's questioning him about the passport, Applicant understood his possession of a foreign passport could cause a problem with acquiring a security clearance, but the agent gave him no guidance as to what to do with the foreign passport. In his mind, Applicant considered the travel document to be useless.

On May 10, 2002, DOHA issued an SOR to Applicant alleging foreign preference concerns presented by his exercise of dual citizenship with Poland and the US, his possession of a valid Polish passport, and his expectation of inheriting his parents' property in Poland on their demise. Foreign influence issues were also alleged because of the foreign citizenship and/or residency of close family members. On issuance of the SOR, Applicant's Interim Secret clearance was

withdrawn.

On his receipt of the SOR in mid-May 2002, Applicant realized he had to do something about his Polish passport. Applicant contacted the Polish embassy for information about the procedures for surrender. When the representative from the embassy proved unable or unwilling to provide guidance, Applicant discussed the matter with his supervisor at work. His supervisor in turn contacted security personnel at company A. On the unofficial advice of company A security personnel, Applicant by letter dated July 30, 2002, surrendered his Polish passport to the Polish consulate. In this letter, a copy of which Applicant forwarded to the Polish government, Applicant indicated he was surrendering his Polish passport and renouncing his Polish citizenship due to his US naturalization. Applicant's foreign passport was received by the Polish consulate on August 2, 2002.

By letter dated August 12, 2002, Applicant was notified by the Consulate General of the Republic of Poland that he needed to follow formal, established procedures to renounce his Polish citizenship, including filing of a Citizenship Renunciation form. Along with the mandatory fees, Applicant was informed he would have to submit with the completed Citizenship Renunciation form documentation of foreign citizenship, a photo identification, birth and marriage certificates, child's birth certificate if applicable, two copies of a signed autobiography, certificate from his last employer in Poland, credit history, a government certificate verifying the status of possession or rent of a government-owned apartment, certificate of full reimbursement to the Polish government for educational costs, proof of foreign address and termination of Polish address. Any documents not in the Polish language were required to be translated into Polish with the translation approved of by the Polish consulate. Applicant was notified that final approval authority on any request for renunciation rests with the President of the Republic of Poland. Applicant has not filed the form required for renunciation due to the burdensome requirements.

Applicant's financial assets, which include a personal residence, bank accounts, retirement account, mutual funds and government bonds, are all in the US. He has no financial assets in Poland and receives no benefit from Poland. Applicant has not voted in any Polish elections. He pays taxes to the US. While he has a potential inheritance interest in his parents' small, single family dwelling in Poland, he expects the property to be devised to his sister who lives only two miles from his parents in Poland. In the event Applicant inherited all or a share of the asset, which has a present value of about \$20,000.00 US, he would refuse it as his future is in the US.

Applicant's spouse and children are dual citizens of Poland and the US, having not formally renounced their foreign citizenship. Applicant's spouse is employed as an accountant. Applicant and his spouse are raising their two children as Polish Americans. Their children are being educated in the local public school system. In the event of a conflict between the US and Poland, Applicant would support the US.

Applicant's parents and sister are resident citizens of Poland. Applicant's parents are retired from private (non government) employment. His father at one time owed a small business restoring old cars. Applicant contacts his parents about twice per month by telephone. He does not know whether they receive any financial benefit from the Polish government. Applicant sends them between \$200.00 and \$500.00 per year as gifts, usually at Christmas or Easter. Applicant's sister is thirty-four years of age, and works as a high school teacher in Poland. He corresponds with her via electronic mail from his computer at home a few times per year and speaks with her on the telephone every couple of weeks. Applicant's trips to Poland have been to see these relations. His Polish relations know he works as an engineer for a large company that contracts with the US Government. He has not disclosed the content of his work with them. Applicant understands the need to report to his employer or the Federal Bureau of Investigation any suspicious contacts or threats made to him or his Polish relations.

Applicant's in-laws are also resident citizens of Poland. His father-in-law, now retired, was a member of the Polish army's band twenty to thirty years ago. His mother-in-law is also retired, while his sister-in-law works as a nurse. His brother-in-law, a musician employed by a piano store, organizes concerts and helps with sound at such events. Applicant visits with his in-laws when he is in Poland. He has no contact with his spouse's siblings apart from his trips to Poland. Applicant has sent his mother-in-law and father-in-law money on occasion, in lesser amounts than his parents.

Applicant has some friends from college and one high school friend who he usually visits on his trips back to Poland.

One of these friends is a college teacher; the others are employed in, or own, private business enterprises. His contact with these individuals is limited to the times just before, during, and immediately following his trips to Poland.

Applicant has proven himself to be a very conscientious, ethical employee at company A. The coworker who has served as his mentor for the last year has been impressed by Applicant's dedication to duty and regulations, including strict compliance with escort requirements when Applicant is in a restricted area. Applicant was rated as "exceeds requirements" for his work performance over the April 2001 to April 2002 time frame.

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

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.A2.1.3. 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.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent

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. ⁽¹⁰⁾ A citizen of Poland from birth, Applicant was a citizen solely of Poland until his recent US naturalization in September 2000. Educated through his master's degree in Poland, Applicant emigrated to the US in 1992 with his nuclear family. He renewed and traveled on his Polish passport when he held permanent residency status in the US. The acceptance of a privilege/benefit of Polish citizenship prior to his US naturalization in September 2000 does not fall within E2.A3.1.2.1. (exercise of dual citizenship). Indeed, his renewal of his Polish passport when in Poland to see his family in September 1997 does not raise foreign preference concerns, as it occurred before he acquired US citizenship. (See E2.A3.1.3.2.). While Applicant's conduct since September 2000 has been largely consistent with his US

citizenship, Applicant continued to possess his Polish passport until late July 2002. Possession of a foreign passport after acquisition of US citizenship is potentially disqualifying under guideline C (*see* E2.A3.1.2.2.). As set forth by the ASDC³I in his August 2000 memorandum clarifying the foreign preference guideline with respect to the possession and/or use of a foreign passport, possession of a foreign passport could facilitate foreign travel unverifiable by the United States and it raises questions of primary allegiance. [\(11\)](#)

Especially where Poland does not recognize dual citizenship and considers Applicant a citizen solely of Poland, [\(12\)](#) travel on his Polish passport was a viable option for him until his recent surrender of the travel document. However, as confirmed by his use of his US passport to travel to Italy in October 2000 and to Poland in June 2001, Applicant had no intent to travel on his Polish passport once he acquired his US passport. Indeed, Applicant did not consider his foreign passport valid for travel once he acquired his US citizenship, as evidenced by him leaving his Polish passport in a drawer in his home in the US when he traveled to Poland with his family in June 2001. His retention of his foreign passport was not intended as an act of foreign preference. As of his DSS interview in August 2001, Applicant was willing to surrender his foreign passport to the Government if necessary to obtain a security clearance.

Applicant kept the foreign passport because he was given no guidance by either Polish or US authorities as to what he should do with the Polish passport once he became a naturalized US citizen. Applicant's benign reason for possessing the foreign passport notwithstanding, denial of his security clearance is required unless he surrenders the foreign passport or obtains official approval from the US Government for its use. On the unofficial advice of security officials at company A, Applicant forwarded his Polish passport to the Polish consulate, expressing his intent to relinquish the foreign passport as well as renounce his foreign citizenship. The consulate received his foreign passport on August 2, 2002. While there is no evidence of cancellation, the passport was not returned to Applicant by the consulate. Indeed, nothing in the Consulate General's letter of August 12, 2002, notifying Applicant of the requirements to renounce his foreign citizenship indicates that his passport was refused by the Polish consulate. With the surrender of his Polish passport, and a credible intent not to reacquire one, the foreign preference concerns related to possession and/or use of a foreign passport have been mitigated. Especially where Poland does not recognize dual citizenship, his surrender of his foreign passport confirms his preference for the US.

As of September 2002, Applicant had not filed the application for formal renunciation of his Polish citizenship due to the burdensome nature of the process, the lack of guaranteed approval of his application for renunciation, and the fact that the Department of Defense does not require the renunciation of foreign citizenship. There is no evidence from which one could reasonably conclude that Applicant would have to bribe Polish authorities to obtain the required certifications or the President's approval. Yet, there are extensive costs in fees and potential travel to Poland to acquire the necessary documentation. Applicant having expressed in writing to the Polish consulate his intent to give up his Polish citizenship, his failure to pursue formal renunciation is not reflective of a preference to retain his Polish citizenship. Mitigating condition E2.A3.1.3.4., individual has expressed a willingness to renounce dual citizenship, applies in his favor. As for Applicant's potential inheritance interest in his parents' single family dwelling in Poland, Applicant is not maintaining dual citizenship to protect that interest. Moreover, Applicant testified to the likelihood of his sister inheriting the property since she lives in close proximity and cares for their parents. Should Applicant inherit a share or all of the property, Applicant testified credibly that he would reject the inheritance. A speculative interest in a foreign property worth only about \$20,000.00 is not sufficient to affect Applicant's security responsibilities. Favorable findings are returned as to subparagraphs 1.a., 1.b., and 1.c. of the SOR.

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. Poland recognizes Applicant's spouse and daughter, Polish citizens from birth, and apparently his US born son as well, as citizens of Poland only. Applicant's parents and sister, and his spouse's parents and her siblings, are resident citizens of Poland. Applicant contacts his parents and sister about twice monthly by telephone. He has traveled to Poland with his nuclear family on several occasions to visit these close relations as well as his spouse's parents and siblings, most recently in the late June/early July 2001 time frame. Although not alleged by the Government, Applicant has some friends in Poland whom he sees when he returns to his native land. 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, must be considered in assessing whether there is an unacceptable risk of foreign influence.

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.). The US citizenship (spouse and daughter through naturalization) and residency of his spouse and children greatly reduce the risk of them being susceptible to undue influence. Applicant testified credibly to his nuclear family being acclimated to life in the United States. His spouse is employed as an accountant. His children attend schools in the local community where they are subject to the same cultural influences as their peers. Of those family members residing abroad, his parents and his spouse's parents are retired. His sister works as a high school teacher, his spouse's siblings as a nurse and as a musician in a piano store. None appear to be in a prominent position of authority or influence which would cause attention to their activities. While his father-in-law was affiliated with the Polish military, this was twenty to thirty years ago as a member of the military band. There is no evidence any of the relations residing abroad has ever come under any undue influence by foreign authorities. Nor is there anything unreasonable or untoward about Applicant's contacts with his family members in Poland. Applicant's contacts with friends in Poland are casual in nature and infrequent (*see* E2.A2.1.3.3.). Those individuals to whom Applicant is closest are US resident citizens. In the unlikely event Applicant's relatives living in Poland were to fall subject to undue duress or pressure, I am persuaded Applicant would report to proper authorities in the United States as well as his employer, any contacts, requests or threats by foreign authorities or individuals. Applicant has been candid with the United States about his foreign connections, and understands his obligations. Subparagraphs 2.a. and 2.b. 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

Paragraph 2. Guideline B: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: 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. Per Applicant's "rough translation," the documents consist of: 1) a cover page from the Consulate General of the Republic of Poland, acknowledging receipt of Applicant's Polish passport and informing him of the requirement to complete the required Citizenship Renunciation form; 2) information about the procedure of renunciation; and 3) the appropriate Citizenship Renunciation form.

2. The document was reviewed with the understanding both parties concur as to the formal documentation required for renunciation of Polish citizenship as well as the fees and repayments involved (including payment for education if not matched by equal work time for a Polish employer). Representations by the parties which commented on the nature of

the requirements (whether the fees were extensive, the burdens onerous) were viewed as legal advocacy.

3. After completing all immigration requirements, Applicant and his daughter were granted permanent residency in the US.

4. Applicant testified he was unaware whether Poland considers his son a Polish citizen. (Transcript pp. 83-84). Under the Constitution of the Republic of Poland (Chapter II, Article 34) as enacted April 2, 1997, and the Citizenship Act of February 15, 1962, a child acquires Polish citizenship by descent regardless of the country of birth, if both parents are citizens of Poland. (See www.polskiinternet.com/english/info/polishcitizen.html).

5. At the hearing, Applicant testified he just sold his home, valued at \$150,000.00, and was purchasing another home in the same community for almost \$400,000.00. (Transcript p. 143).

6. Applicant explained the delay in his naturalization was due to his application being returned to him as the fees had increased between the time his spouse filed her application and he filed his. (Transcript p. 97).

7. Asked on direct examination whether he is a Polish citizen, Applicant testified he is not. (Transcript p. 32). Since he has not filed a formal application for renunciation, he remains a Polish citizen as far as that nation is concerned.

8. Applicant testified his daughter, who was ten years old at the time of his naturalization, automatically became a naturalized citizen when he took the oath of US citizenship, as both of her parents were US naturalized citizens. (Transcript p. 92). Title 8 U.S.C. Section 1432 provides in pertinent part:

A child born outside of the United States of alien parents . . . becomes a citizen of the United States upon fulfillment of the following conditions:

(1) The naturalization of both parents . . . and if

(4) Such naturalization takes place while such child is under the age of eighteen years; and

(5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (1) of this subsection. . .

9. When completing his SF 86, Applicant checked the date on his Polish passport and realized it was still valid. (Transcript p. 93).

10. Dual citizenship is recognized by the United States, and a decision to deny or revoke security clearance based solely on one's status as a dual citizen would raise constitutional issues. 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. Among the specific behaviors which raise significant guideline C issues is possession/use of a foreign passport.

11. In his memorandum of August 16, 2000, the ASDC³I 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.

12. While Polish law does not forbid Polish citizens from becoming the citizen of a foreign state by birth or naturalization, Polish authorities apparently recognize that national as a Polish citizen only.