DATE: November 7, 2002

In Re:

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

Applicant for Security Clearance

ISCR Case No. 01-21490

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Jonathan A. Beyer, Esquire, Department Counsel

FOR APPLICANT

David A. Wilson, Esquire

Jay P. Urwitz, Esquire

SYNOPSIS

Applicant's retention of his U.K. passport after his naturalization as a U.S. citizen--an act demonstrating potential foreign preference--was mitigated where Applicant had retained the passport only because he had never been given any instructions that he should surrender it, had not used the passport after becoming a U.S. citizen--and thought he might need proof of that fact--had indicated an intent to use only his U.S. passport even before he became aware of the "Money emo", and had surrendered it in accordance with the "Money Memo" once he became aware of its provisions. Applicant's prospective foreign influence was mitigated where his parents and in-laws were retired (and when working, not working in any positions connected to the U.K. government) and his brother was employed in the construction industry. Circumstances of their lives in the U.K. did not suggest that Applicant would be subject to pressure on their behalf. Similarly, Applicant's foreign financial interest--in the form of a life insurance policy--presented no prospect of coercion or duress. Clearance granted.

STATEMENT OF THE CASE

On 31 May 2002, 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)] that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 19 June 2002, Applicant answered the SOR and requested a hearing. The case was originally assigned to a different Administrative Judge, but was re-assigned to me on 2 October 2002, when the Applicant requested a change in venue, and I received the case the same day. I set the case on 11 October 2002, and issued a notice of hearing the same day for a hearing on 28 October 2002.

At the hearing, the Government presented three exhibits--admitted without objection--and no witnesses; Applicant presented ten exhibits--also admitted without objection--and the testimony of one witness, himself. DOHA received the transcript on 5 November 2002.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR; accordingly I incorporate those admissions as findings of fact.

Applicant--a 45-year-old general manager of a defense contractor--seeks access to classified information. He has not previously held a clearance.

Applicant was born in England in 1957, making him a citizen of the United Kingdom. He came to the U.S. in 1982, when he was 25 years old, on a work visa related to his inter-company transfer. He obtained resident status in the U.S. in 1984. He applied for U.S. citizenship in 1997, and became a naturalized citizen in June 1999. He obtained his U.S. passport in August 1999. He does not consider himself a dual citizen (Tr. 65). He has expressed a willingness to formally renounce his U.K. citizenship (Tr. 66).

Applicant's spouse, a woman he met in England in 1977, emigrated to the U.S. in 1983, and married Applicant in 1984. Applicant and his wife have two children, ages 15 and 10; both are U.S.-born citizens. She has resided continually in the U.S. with her family since her marriage to Applicant. She is applying for U.S. citizenship, having evolved slower than Applicant to the point where she realized that her life was in the U.S. (Tr. 67).

When Applicant became a U.S. citizen, he possessed a U.K. passport issued in February 1999 (while Applicant's application for U.S. citizenship was pending, but Applicant was still a citizen only of the United Kingdom). This passport would not expire until February 2009. Applicant used his U.K. passport to travel to Australia on business in April 1999--before his naturalization as a U.S. citizen. Indeed, Applicant renewed his U.K. passport, which was expiring, so that he could make this business trip.[(2)]

On 20 September 1999, Applicant executed a Security Clearance Application (SCA)(SF 86) (G.E. 1) on which truthfully disclosed his foreign connections and travel.

On 19 April 2001, Applicant gave a sworn statement to a Special Agent of the Defense Security Service (DSS) (G.E. 2), describing his foreign connections, particularly his U.K. passport and his potential foreign preference:

Prior to becoming a U.S. citizen, I traveled on my British passport for business and pleasure. . . However, since becoming a U.S. citizen, I have traveled exclusively on my U.S. passport.[(3)] My British passport is valid to 26 February 2009 but I do not intend to use it; I am more than willing to relinquish it.[(4)]

Even though Britain recognizes dual citizenship and will always consider me a British subject, I renounced my loyalty to Britain when I took the oath of allegiance to the U.S. I do not and will not take advantage of any possible benefits, privileges, or rights that could be derived from my former British citizenship and not and will not bear arms for Britain. I have not been in the British military and have no mandatory British military requirement to fulfill. I have not performed any kind of alternative service for Britain, either for the government, the military, or any British industrial establishment. I have not voted in any British election since first comint to the U.S. in 1981. I have not used a U.S. Government position of trust or responsibility to influence decisions in order to serve the interests of another government in preference to those of the U.S.

At the hearing, Applicant described, consistent with his sworn statement, how he came to apply for U.S. citizenship:

I applied to become a U.S. citizen because I'd lived in the U.S. since 1982. By the time I got into the 1990s, I'd had children here. It was obvious to me that I was never going back to the U.K. to live in the U.K. I had very few friends in the U.K. and all of my social activity was in the U.S. And I just decided that I was a person that lived in the United States and upheld the beliefs of the United States. And I just really wanted to formalize that whole process (Tr. 39).

Applicant initially retained his U.K. passport because he knew of no reason not to. He did not surrender it after he got his U.S. passport because he had received no indication that the should do so (Tr. 63). He used only his U.S. passport on trips to Europe despite the fact that European Union immigration policies would have made use of his U.K. passport more convenient (Tr. 55).When the DSS agent expressed concern that he still had the passport, Applicant tried to give it

to the agent, who declined (Tr 56). When Applicant got the SOR, he cut the U.K. passport in half, so it could not be used, but kept it so he would have proof of his claim that he had not used it since becoming a U.S. citizen (Tr. 57). Not until his attorneys advised him of the ramifications of the Money Memo did Applicant understand that he might be required to relinquish his passport (Tr. 64). Applicant surrendered his U.K. passport to the British Embassy on the day of the hearing (Tr. 33; A.E. A., B.). Surrender of the passport does not constitute formal renunciation of U.K. citizenship (A.E. A).

Applicant's mother, father, and brother are U.K. citizens living in the U.K. His mother and father are retired; father from the construction business, mother from work as a legal assistant. His brother is in the construction business in a different part of the U.K.(Tr. 40). None have any connection to the U.K. government (Tr. 66-67). Applicant's in-laws are also U.K. citizens living in the U.K. Both are retired from the graphics design business they owned (Tr. 41). Applicant sees his relatives when he is in the U.K. on business, and has also taken family vacations to Europe and the U.K. so his children can spend time with their grandparents.

Applicant had a bank account and credit card from the U.K. that he had gotten when he was about 18. In recent years, the account had little activity (Tr. 42). The balance in September 1998 was £104.40 (roughly $150.00) and had declined to £72.10 when Applicant closed the account in August 2002 (A.E. D.) The only activity on the account appears to have been the £10.00 annual fee for the credit card, which itself had not been used since about December 1998 (A.E. E.), and is now closed. Applicant prefers to use his U.S. credit card (A.E. F.), which gets frequent flyer points, but in any event, use of a credit card (debt) is not a financial interest.

Applicant and his wife also have a life insurance policy issued in the U.K. that they bought in 1985 as part of a real estate transaction (A.E. G., H). They sold the property shortly after buying it because of the logistical problems of dealing with rental property far away, but kept the insurance policy initially because the cash surrender value of the policy was less than they had invested in the account, and the dollar/pound sterling exchange rate was not very good for dollars. Later, they thought the policy might be a good college fund for their son (Tr. 50).The death benefit is £32,000 (Tr. 72), but the value of the account at maturity (2010) is expected to be only about £29,000 ($40,000.00), a payout that depends on stock prices both in the U.K. and overseas (similar to a mutual fund)(Tr. 50; A.E. H.). Applicant's wife pays the £47 monthly premium by direct withdrawal from a checking account (A.E. I); Applicant replenishes the account as necessary to make the payments (Tr. 69). Applicant has stated a willingness to close the account if required, but the early-termination provisions of the policy make that an unattractive option. Nothing in the policy documents submitted by Applicant suggests that issuance of the policy or its terms is tied to U.K. citizenship status.

One of Applicant's subordinates considers Applicant a trustworthy individual, loyal only to the U.S. (A.E. J).

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. 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, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc*.

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

FOREIGN PREFERENCE (GUIDELINE C)

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 include:

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

E2.A.1.3. Conditions that could mitigate security concerns include:

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 (CRITERION B)

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 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 in, a foreign country;

E2.A2.1.2.8. A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence.

E2.A2.1.3. Conditions that could mitigate security concerns include:

E2.A2.1.3.1. A determination that the immediate family member(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. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

On 16 August 2000, the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD, C^3I) issued a memorandum (the "Money emo") to clarify the application of Guideline C., Foreign Preference, to cases involving possession and/or use of a foreign passport. In pertinent part, the ASD, C^3I memorandum **"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."**(Emphasis added).

Burden of Proof

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with

the U.S. Government that is predicated upon trust and confidence. Where 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 or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the 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."

CONCLUSIONS

Although Applicant possessed a U.K. passport after his naturalization in 2000, he has not exercised dual citizenship with the U.K. While his U.S. citizenship oath may not operate to terminate his U.K. citizenship under U.K. law, the citizenship oath gives a strong indication of an intent to sever ties to the birth country. Nevertheless, his foreign citizenship possesses little security significance if based solely on his birth in a foreign country. For Applicant's conduct to fall within the security concerns of Guideline C, Foreign Preference, he must have acted in a way to indicate a preference for a foreign nation over the United States. However, inimical intent or detrimental impact on the interests of the United States is not required before the Government can seek to deny access under Guideline C. The Government has a compelling interest in ensuring those entrusted with this Nation's secrets will make decisions free of concerns for the foreign country of which they may also be a citizen. Under this assessment, I conclude the Government has established its case under Guideline C. Nevertheless, I conclude that Applicant has mitigated the security concerns.

Applicant convincingly asserts that he prefers his U.S. citizenship. The single instance of conduct to the contrary--retaining his U.K. passport after becoming a U.S. citizen--is mitigated by a number of factors. First, he credibly asserts that he retained the passport only because he did not know what else to do with it, and had no reason to know that he should dispose of it. Second, he never used the passport; even when traveling to the U.K. and Europe he used his U.S. passport, although it would have been more convenient to use his U.K. passport. Third, before becoming aware of the specifics of the "Money Memo," he stated a clear intention to use only his U.S. passport for foreign travel. Fourth, when it became clear to Applicant that his retention of the passport was an issue, he rather ineptly chose to make the passport unusable by cutting it in half.[(5)] Finally, when he became aware of the requirements of the "Money Memo," he surrendered the passport to the British Embassy. Further, Applicant stated a clear willingness to formally renounce his U.K. citizenship.

Applicant has resided in the U.S. since he was 25 years old and became a U.S. citizen when he began to realize that his loyalties had shifted to the U.S. and the life he and his wife had built here. His national preference seems overwhelmingly for the U.S. In addition, I found Applicant's testimony that he considers himself a citizen of the U.S. only to be credible. Accordingly, I resolve Guideline C. for Applicant.

In a similar fashion, the Government has established its case under Guideline B., but I consider the security concerns mitigated. Applicant's immediate family and in-laws are U.K. citizens residing in the U.K. His contacts with his family are not casual and infrequent. However, the record evidence clearly indicates that Applicant's relatives are not agents of a foreign power, nor are they in a position to be exploited by a foreign power.[(6)] Common sense demonstrates there is nothing in the record to suggest that the family's relationship with Applicant is such that Applicant would be forced to chose between his duty to his parents and his duty to the U.S. In a similar fashion, Applicant's bank account and credit card account were minimal even before Applicant closed them in August 2002. His life insurance policy is certainly a substantial financial interest. However, common sense suggests that there is nothing in the insurance policy that could make Applicant vulnerable to foreign influence--an important element of the disqualifying factor. Conversely, while the financial interest is not minimal, it is nevertheless not sufficient to affect Applicant's security responsibilities. Accordingly, I resolve Guideline B. for Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline B: FOR THE APPLICANT

Subparagraph a: For the Applicant

Paragraph 2. Criterion 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

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.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated 2 January 1992--amended by Change 3 dated 16 February 1996 and by Change 4 dated 20 April 1999 (Directive).

2. Applicant's employment with his current employer and past employers requires extensive foreign travel, attested to by his SCA (G.E. 1) and his U.S. passport (A.E. C).

3. A fact confirmed by both Applicant's U.K. passport (A.E. B) and his U.S. passport (A.E. C).

4. Indeed, Applicant tried to surrender the passport to the DSS agent during the interview (Tr. 56).

5. The photocopy of the U.K. passport admitted as A.E. B shows the passport cut in half.

6. I note that the United Kingdom is a free society whose democratic institutions are similar to our own, long preceded our own, and indeed form the basis for our own. While the U.S. does not share a unity of interests with the U.K., both governments have long acknowledged the special relationship between the two countries. The U.K. is neither a totalitarian regime, nor a regime known to engage in human rights violations, nor a known sponsor of state terrorism. Thus, it is extremely unlikely that the U.K. government would target Applicant's family to extract information from Applicant. Consequently, I conclude that Applicant's family is not in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to his family and the U.S., based on all available evidence.