DATE: April 30, 2002

In Re:

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

Applicant for Security Clearance

ISCR Case No. 01-23911

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Marc Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

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), dated November 5, 2001, to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on foreign preference (guideline C) related to the exercise of dual citizenship since the acquisition of foreign citizenship in 1995/96; intent to maintain his foreign citizenship; possession of a foreign passport since 1996; employment by a foreign university from November 1991 to December 1996; exercise of foreign voting rights, entitlement to foreign medical benefits; and ownership of stock in companies in the nation of his foreign citizenship. Also alleged were foreign influence (guideline B) concerns because of the foreign residency and/or citizenship of close family members (parents and brother) and friends.

On November 20, 2001, 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 January 29, 2002, and pursuant to formal notice dated February 22, 2002, a hearing was scheduled for March 14, 2002. At the hearing, which was held as scheduled, the Government submitted three exhibits, which were entered into the record without objection. Applicant, a coworker, and a facility security officer testified on Applicant's behalf and he tendered seven documentary exhibits, all of which were admitted. At the close of the evidence, the Government moved to withdraw SOR subparagraph 1.d. pertaining to possession of a foreign passport. Applicant having no objection thereto, the motion was granted. With the receipt on March 22, 2002, of the transcript of the hearing, the case is ripe for a decision.

FINDINGS OF FACT

After a thorough review of the evidence, and on due consideration of same, I render the following findings of fact:

Applicant is a 40-year-old dual citizen of the United States and New Zealand, who has been employed by a United States defense contractor (company A) since about January 1997.[(1)] Granted in 1997 a Secret security clearance for his duties as a member of the technical staff, Applicant seeks a Top Secret security clearance.

Applicant was born in the United States in 1961 to U.S. resident citizens. Circa 1964, when Applicant was about two years of age, he moved with his family (parents and a sister born in the U.S. in 1963) to New Zealand, where his father had accepted a position as a professor of English literature at a university. Following their relocation, Applicant's parents had another child, a son born in 1965.

As a United States citizen raised in New Zealand, Applicant attended schools in the local community where he was exposed to the New Zealand culture. He pursued undergraduate studies at a university in New Zealand, earning a Bachelor of Arts degree in December 1982 and a Bachelor of Science degree with honors in December 1983 from the foreign institution of higher learning. At that time a permanent resident of New Zealand, Applicant voted in one election in that country, which was held sometime in 1983/84, shortly before he commenced his graduate studies.[(2)] Eligible to apply for New Zealand citizenship, Applicant gave no thought at that time to acquiring foreign citizenship as he always considered himself an American.

In 1984, Applicant came to the United States to continue his education at a university renowned for its academic excellence. A United States citizen from birth, he entered the United States on a United States passport. While pursuing his graduate studies, Applicant became romantically involved with a United States citizen of Chinese descent who was also a graduate student at the university. While Applicant was a pre-doctoral fellow at the university, his advisor left the faculty to establish an institute at another private university in the United States in June 1989. Applicant accompanied this professor to assist him in setting up the institute, and in the October/November 1991 time frame, Applicant finished writing his doctoral thesis under the guidance of this professor. He continued his relationship with his girlfriend, and she took regular plane trips to see him over the sixteen months or so he was at the geographically distant institution. In ay 1992, Applicant was awarded his Ph.D. degree in computer science from the university where he had completed the graduate residency requirements before following his advisor in June 1989 to the university where he finished his thesis.

After he completed his academic work for his doctorate, Applicant in November/December 1991 returned to New Zealand where he immediately began an academic position as a lecturer/professor in computer science at a university.[(3)] Applicant's academic work did not involve national security issues, but rather was related to weather forecasting and building smart systems to understand written texts. While still a member of the academic staff of the foreign university, Applicant over the July 1994 to July 1995 time frame consulted with the country's meteorological service regarding the application of artificial intelligence to weather forecasting.

Applicant maintained a long distance relationship with his girlfriend until sometime in early 1994 when she moved to New Zealand. With his job secure in New Zealand, and his relationship with his girlfriend uncertain, Applicant thought he would remain in New Zealand. Circa mid-1995, Applicant applied for citizenship in New Zealand.[(4)] From July 1995 to December 1995, Applicant took a sabbatical from his position with the foreign university to teach at a technological institute in the United States.

In 1996, Applicant returned to New Zealand, accompanied by his girlfriend. Circa February 1996, Applicant purchased 300 shares of stock in a New Zealand department store and 1,500 shares in a meat processing company. In New Zealand legally, Applicant was entitled to medical benefits from the state. Sometime during the 1995/96 time frame when residing in New Zealand, Applicant voted in local and national elections held in that country.

In mid-1996, Applicant was granted his New Zealand citizenship. Shortly thereafter, Applicant in August 1996 was issued a New Zealand passport, valid for a period of ten years. By September 1996, it had become clear to Applicant that his girlfriend did not desire to reside in New Zealand permanently, and that if they were to stay together, he would have to move back to the United States. Circa October 1996, while attending a conference in the United States concerning his academic work in New Zealand, Applicant interviewed with prospective employers. Applicant accepted a position with his current employer, and in about December 1996, he and his girlfriend returned to the United States, with Applicant traveling on his United States passport.

In connection with his employment at company A, Applicant completed in early November 1996 a security clearance application (SF 86). Applicant reported thereon his dual citizenship with the United States and New Zealand, his employment at that time as a lecturer at the university in New Zealand, his possession of a New Zealand passport issued in August 1996 and ownership of shares of stock in New Zealand companies worth at that time about $2,300 US. Applicant disclosed as well the New Zealand residency of his parents and the New Zealand residency and citizenship of his younger brother.

On May 14, 1997, Applicant was interviewed by a special agent of the Defense Security Service regarding his foreign connections. Applicant told the agent he began thinking about making the United States his permanent home, so in 1995 applied for New Zealand citizenship "as a way of insuring [his] ability to return to NZ to visit family and friends for extended periods of time." [(5)] Granted his New Zealand citizenship in mid-1996, Applicant maintained his national allegiance was with the United States, and he was committed to establishing permanent residency in this country. Applicant denied any use of his New Zealand passport acquired in 1996 or of any intent to renew it on its expiration. While he had no intent to relinquish his foreign citizenship, he also did not intend to exercise or accept any right or privilege of his foreign citizenship in preference to the United States. Acknowledging the New Zealand residency of his parents and some childhood friends and his stock ownership in two New Zealand companies, Applicant indicated he could not be pressured because of his foreign investments or connections.

Granted a Secret security clearance in 1997, Applicant became the principal investigator project lead for his employer on a major new program for a defense advanced research projects agency. He was granted special access for his duties in conjunction with that program.

In October 1997, Applicant and his girlfriend married in the United States. In 1998, Applicant became involved in proposal work for his employer as a member of the technical staff. His career with company A progressed, and in 2000, he was made a director with supervisory authority over fifteen engineers.

In January 2000, Applicant was reinterviewed by the DSS special agent who had met with him in May 1997.[(6)] Although he has made his home in the United States since January 1997, Applicant explained he maintained his New Zealand citizenship as it allows him the option of returning to New Zealand to live during his retirement years. Without this foreign citizenship, he would be required to pay about $1,000,000 NZ into the nationalized health care system if he elected to return as an elderly resident. Ineligible to vote in New Zealand because he had not been a permanent resident since January 1997, Applicant denied any intent to vote in a New Zealand election in the future. When asked whether he would be willing to renounce his foreign citizenship, Applicant responded:

I would not be willing to renounce my dual citizenship if necessary as a condition of access at this time, as I do not want to lose the option of returning to NZ in the future, should I desire to do so.

Applicant did not express the same reservations about relinquishing his foreign passport, as he had not used it and did not have a need for it. Regarding his stock shares in New Zealand companies, Applicant estimated their current value at $1,650 US. His foreign citizenship was not being maintained to protect that foreign financial asset.

In April 2000, Applicant and his spouse (who works in the computer industry) had a daughter. His contacts with his spouse's family accelerated thereafter. Sometime between September 2000 and March 2001, Applicant's in-laws purchased a home near Applicant and his spouse so that they could visit their grandchild frequently. Almost in daily contact with his in-laws since, Applicant has developed a close relationship with his spouse's relatives, including a brother who lives in the area with his family. Applicant's father-in-law, a United States citizen from birth, has a doctorate degree in electrical engineering. He is semi-retired. His mother-in-law, a United States naturalized citizen, has never worked, although she has a college degree. With the progression of his career, the passage of time, and the development of close familial bonds with his spouse's family in the United States, Applicant became committed to remaining in the United States "for the long haul." He is willing to renounce his New Zealand citizenship if necessary to retain his security clearance.

In or before mid-February 2002, Applicant surrendered his New Zealand passport to the New Zealand Embassy in the United States. His foreign passport was cancelled by consular officials on receipt.

As of mid-March 2002, Applicant's stocks in the two firms in New Zealand had an approximate value of $2,005 US, which represented less than one percent of his total financial portfolio. Applicant continues to hold the stocks for sentimental reasons, and because the market is not favorable for selling.

Applicant's parents have never applied for any foreign citizenship, electing to maintain permanent residency status in New Zealand as United States citizens. His father is now retired, although he consults on occasion for the New Zealand government. A number of years have passed since his mother worked outside of the home. Since his parents are very interested in tracking the progress of their granddaughter, Applicant speaks with them about once every couple of weeks via telephone. Applicant last traveled to New Zealand to see them in 1998 when his brother was married. In September 2000, Applicant's mother visited Applicant and his family in the United States. Applicant recently saw his parents, as well as his brother, at a family reunion held in Hawaii in February 2002.

Applicant's brother, a resident citizen of New Zealand, chose not to apply for United States citizenship, for reasons unknown to Applicant. This brother serves as a consultant working in pharmaceutical purchasing in New Zealand. Applicant had frequent contact with his brother making arrangements for the family reunion. Their contact otherwise has been on the order of once every three to six months since Applicant moved to the United States in January 1997.

Applicant has a number of friends from when he resided in New Zealand. His contact with them has trailed off substantially since January 1997 to where it is infrequent.

Applicant is held in the highest regard by his defense contractor employer. His work in support of all three major services as well as DoD has intelligence as well as military implications. Applicant has appropriately handled sensitive information, including classified information pertaining to a special access program. For two years in a row, Applicant has been the recipient of an entrepreneur of the year award from his employer for his ability to present the technology of the company to the DoD client and have it implemented in programs. Due to his expertise in a particular area of artificial intelligence, Applicant was invited by the United States defense advanced research projects agency to participate in a senior industry panel to advise the defense agency on the maturity of various technologies. In December 2001, Applicant also served on a senior advisory panel for the defense projects agency regarding the direction fusion should take in support of defense problems. In recognition of Applicant's skill, he was chosen by a government program manager to personally support in 1999 and 2001 a scientific advisory board in connection with the board's reviews of the work performed by a military research laboratory. In the opinion of the government client, Applicant provided indispensable assistance in preparation for the scientific board's review.

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.A3.1.2.8. Voting in foreign elections

E2.A5.1.3. Conditions that could mitigate security concerns include:

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

E2.A2.1.3.5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities

* * *

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

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.[(7)] A citizen of the United States from birth, Applicant was raised from age two in New Zealand by United States citizens who had chosen to establish permanent residency in New Zealand because of employment opportunities in academia. Although living in the culture with New Zealanders his friends, Applicant did not give any thought to applying for New Zealand citizenship. Yet, he had some interest in the future of New Zealand, as he voted once in elections after he reached the age of eligibility. Following completion of his undergraduate studies at a university in New Zealand, Applicant elected to further his education in computer science (artificial intelligence) at a renowned university in the United States. On earning his doctorate, Applicant returned to New Zealand in late 1991, where he assumed the position of a lecturer at a university, essentially becoming an employee of a foreign state. Circa 1995/96, he exercised a right of his permanent residency there, voting in national and local elections. As evidence of his intent at that time to make a life and establish his career in New Zealand, Applicant in 1995 applied for his New Zealand citizenship, which was granted in mid-1996. Since Applicant was raised and educated through his formative years in New Zealand, and his parents made New Zealand their permanent home, his acquisition of the foreign citizenship is understandable. However, by gaining dual citizenship status, Applicant has placed himself in the position of being subject to the duties or obligations owed to two different countries, which could present him with competing claims. Inimical intent or detrimental impact on the interests of the United States is not required, as the United States Government has a compelling interest in ensuring that those entrusted with the Nation's secrets will make decisions free of concerns for the foreign country of which one is also a citizen.

Dual citizenship is recognized by the United States, and a decision to deny or revoke a security clearance based solely on one's status as a dual citizen would raise constitutional issues. However, affirmative acts in exercise of foreign citizenship are potentially security disqualifying, as they may indicate a preference for the foreign country over the United States. (*See* E2.A3.1.2.1.). The Directive cites specific affirmative behaviors which raise security significant guideline C concerns, including possession and/or use of a foreign passport. (*See* E2.A3.1.2.2.). As set forth by the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASD^3I) in an August 16, 2000 policy clarifying guideline C as it applies to foreign passports, possession and/or use of a foreign passport raises doubt as whether the person's allegiance to the United States is paramount, and it could also facilitate travel not verifiable by the United States.[(8)] Shortly after Applicant was granted his foreign citizenship, he acquired a New Zealand passport, primarily to facilitate travel to Australia. Applicant having recently surrendered his foreign passport to New Zealand consular authorities, the Government withdrew at the hearing the allegation (subparagraph 1.d.) pertaining

to possession of a foreign passport.[(9)] Applicant's acquisition of the foreign passport remains relevant to the extent it constitutes an exercise of his foreign citizenship (*See* E2.A3.1.2.1. the exercise of dual citizenship).

In addition to Applicant's acquisition and maintenance of his foreign citizenship, the Government submits as raising foreign preference concerns Applicant's employment as a lecturer at the university with potential social security type benefits in the future because of the funds he paid into the country's national superannuation system; Applicant's ownership of stock shares in two New Zealand companies; and Applicant's voting in New Zealand local and national elections. As Applicant testified and his father's situation proves, New Zealand citizenship is not a prerequisite for holding an academic position in a state-run university in New Zealand. Similarly, a foreigner can hold stock in a company in New Zealand. Even voting, which is a right reserved for citizens in many countries, can be exercised by non citizens in New Zealand as long as certain residency requirements are met. Yet, guideline C is not limited to acts in exercise of foreign citizenship. Indeed, certain of the disqualifying conditions, such as E2.A3.1.2.4. (accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country) do not turn on whether one has foreign citizenship. Although there is no evidence Applicant ever performed his duties as a lecturer so as to serve the interests of New Zealand in preference to the United States, he was essentially a state employee from November 1991 to December 1996. His voting in the elections in 1995/96 reflects an interest if not concern with the political future of New Zealand. With state medical benefits available to all lawfully in New Zealand, including American tourists, his receipt of medical benefits as a permanent resident of New Zealand is not seen as reflective of foreign preference. Yet, as recently as January 2000, he wanted to retain his New Zealand citizenship, at least in part because he did not want to have to pay into the New Zealand national health care system the almost $1,000,000 NZ required before he could retire there. Although Applicant pursued his graduate studies in the United States, his preference was for New Zealand prior to January 1997. After he completed his doctorate studies, as a United States citizen from birth, he could have elected to pursue his career in the United States. His decision to return to New Zealand in late 1991 was not solely because of his tight financial situation.[(10)]

Applicant's personal circumstances and orientation have changed significantly over the past five years to where he can be counted on to act consistent with his obligations to the United States. After spending the last quarter of 1995 on sabbatical at a technological university in the United States, Applicant and his girlfriend returned to New Zealand, where her disaffection with living in that country became clear. Applicant made the commitment at that time to continue his relationship with his girlfriend, which meant a move to the United States. In 1996, he took the opportunity when attending a conference in the United States to interview with a number of prospective employers. With his marriage in October 1997 and the progression of his career with the United States defense contractor, his level of commitment to remaining permanently in the United States has grown over the years. As of January 2000, Applicant was not willing to renounce his foreign citizenship as a condition of access as he did not want to lose the option of retiring to New Zealand. However, since the birth of his daughter in the United States in April 2000, Applicant has experienced a strengthening of his bonds with his spouse's family in the United States to where he is no longer considering the option of retiring abroad. Consistent with his intent to remain in the United States, Applicant not only surrendered his foreign passport (which he had never used), but he has expressed a willingness to renounce his citizenship if required to retain access to classified information.

A willingness to renounce dual citizenship is potentially mitigating of foreign preference concerns. (See E2.A3.1.3.4.). Applicant has taken no affirmative steps to renounce his New Zealand citizenship to date. The United States Government does not encourage its citizens to remain dual nationals because of the complications that may ensue from obligations owed to the country of second nationality. The Directive does not require that one renounce foreign citizenship in order to gain access, but there must be adequate assurances that a dual citizen will not actively exercise or seek rights, benefits, or privileges of that foreign citizenship. There is no evidence Applicant is using his foreign citizenship to protect financial or business interests in New Zealand. While Applicant still owns stock in two companies in New Zealand, their current value at $2,005 US represents less than one percent of his total financial assets, the remainder of which are in the United States. Any future social security benefit payments from NZ are speculative. With respect to the performance of his job duties, Applicant has had access to classified information, including Secret information pertaining to a special access program. There is no evidence Applicant has performed or is attempting to perform his duties to serve the interests of New Zealand in preference to the United States. To the contrary, he has served his employer and Government clients with distinction, as evidenced by him being named to two advisory boards for a defense advanced research projects agency. After considering all the facts and circumstances, there is little

likelihood of Applicant acting in preference for New Zealand over the United States in the future. Accordingly, subparagraphs 1.a, 1.b., 1.c., 1.e., 1.f., 1.g., and 1.h. are resolved in Applicant's favor.

Under guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation are not citizens of the United States or may be subject to duress. Applicant's parents are United States citizens permanently residing in New Zealand. His brother remains a resident citizens of that nation. Although Applicant has seen his father only twice and his mother three times since moving to the United States in January 1997, he calls them once every couple of weeks. With respect to his brother, the frequency of their contact increased in the last year as Applicant and his brother discussed arrangements for a family reunion which was held in Hawaii in February 2002. Otherwise, Applicant corresponds with this brother once every three to six months. DC E2.A2.1.2.1., an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country, applies in evaluating Applicant's security worthiness. Applicant also has some friends in New Zealand from his childhood as well as from when he worked there as a university lecturer/professor from late 1991 through 1996, although the degree of affection held by Applicant for these friends was not developed in the record.

The security concerns engendered by the foreign citizenship and/or residency of close family members may be mitigated where it can be determined that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States (MC E2.A2.1.3.1.). Applicant's father is a semi-retired professor of English literature who consults on occasion for the New Zealand government in an academic capacity. He has taken no steps to acquire New Zealand citizenship, despite having lived in that country since 1964, which is indicative of his allegiance to the United States. Likewise, Applicant's mother, who has not worked in many years, has not acquired New Zealand citizenship.

Applicant's younger brother is a New Zealand citizen by virtue of his birth in that nation. For reasons not known to Applicant, he chose not to acquire United States citizenship. His brother's personal affiliation with New Zealand notwithstanding, there is no evidence this brother, who works in pharmaceutical purchasing in New Zealand, has ever come under any undue influence by foreign authorities or that he is an agent of the foreign government. Applicant does not have regular contact with this brother, which would indicate their relationship is not an especially close one. Applicant's contacts with his friends in New Zealand have trailed off considerably since he moved to the United States. Mitigating condition E2.A2.1.3.3. (contact and correspondence with foreign citizens are casual and infrequent) applies to his contacts with his foreign friends. The familial bond between brothers makes it difficult to characterize their relationship as casual. Yet, the risk of possible foreign influence because of Applicant's relations residing abroad is countered by the United States citizenship and residency of those family members closest to Applicant (spouse and daughter) as well as his extended family (primarily his spouse's parents as well as her brother and his family). It is also noted that Applicant has a sister who is a United States citizen who was residing in the United States as of late 1996. Applicant sees his in-laws almost daily and as a consequence, he has developed a close relationship with them--a closeness beyond that which he shares with his own parents and brother who are geographically distant. In the unlikely event Applicant's relatives abroad would fall subject to undue duress or pressure, I am persuaded Applicant would report to proper authorities in the United States any contacts, requests or threats by foreign authorities or individuals. Subparagraphs 2.a., 2.b., and 2.c. are resolved in his favor.

FORMAL FINDINGS

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

Paragraph 1. Guideline C: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: Withdrawn

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: For the Applicant

Paragraph 2. Guideline B: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Elizabeth M. Matchinski

Administrative Judge

1. On an SF 86 completed initially in November 1996, Applicant listed employment with company A as of December 1996. Applicant's current supervisor testified Applicant has been working at the company since January 1997. The exact date on which Applicant began working for the defense contractor is not of record.

2. New Zealand citizens or permanent residents of New Zealand, who are eighteen years of age or older and have lived in New Zealand for one year or more without leaving the country, are qualified to vote in New Zealand. (*See* Ex. D).

3. Applicant testified the universities in New Zealand are government-run in that they operate with public funding. (Transcript p. 55)

4. When interviewed by a Defense Security Special Agent on May 14, 1997, Applicant indicated by mid-1995 he had begun to contemplate making the United States his permanent home. He explained he acquired New Zealand citizenship so that he could visit family and friends in New Zealand for extended periods. (Ex. 2). Yet, in January 2000 Applicant told the same agent he had decided to obtain his New Zealand citizenship as he thought he would remain there. At his hearing, Applicant testified at the time he applied for his foreign citizenship, he though he would always remain in New Zealand. (Transcript p. 50). By the time Applicant acquired his New Zealand citizenship, he had spent a few months on sabbatical at a university in the United States and his girlfriend was not comfortable residing in New Zealand. It is obvious that when Applicant initially applied for his foreign citizenship, he intended to remain in New Zealand. However, by sometime in 1996, he was giving serious consideration to relocating to the United States.

5. Following the hearing, it is clear Applicant acquired New Zealand citizenship for the additional protections afforded citizens of that nation which would not have been available to him as a permanent resident. (Transcript pp. 106-07).

6. Applicant testified at his hearing the purpose of the interview was to reconstruct the substance of his earlier interview, as the statement which he had executed in May 1997 had been misplaced or lost. (Transcript p. 77). In his January 2000 statement, Applicant explained he decided to retain his foreign citizenship because it gives him the option of retiring to New Zealand (Ex. 3). In his prior statement, Applicant addressed only his acquisition of the foreign citizenship, which he claimed made it possible for him to visit with relatives for extended periods. Clearly, there was an effort made to address the same interviews covered during his first interview. However, I am not persuaded that Applicant was

speaking in the past tense (circa May 1997) when he expressed his unwillingness to renounce his dual citizenship in January 2000.

7. As the DOHA Appeal Board articulated in October 2000 (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.

8. In his memorandum of August 16, 2000, the ASD^{3}I stated in pertinent part:

The Guideline [C] specifically provides that 'possession and/or use of a foreign passport' may be a disqualifying condition. It contains no mitigating factor related to the person'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 Untied 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.

9. As of the issuance of the SOR, Applicant had possessed a foreign passport, although he had never used it. Given the allegation has been withdrawn, DC E2.A3.1.2.2. is not proper for consideration.

10. As for his motivation in returning to New Zealand, Applicant testified that he had exhausted his student loan money and had been living off credit cards for several months. He admitted his girlfriend wanted him to remain in the United States, but he wanted to see whether he was comfortable living in New Zealand. (Transcript pp. 99-101).