

DATE: January 7, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-27376

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Jonathan A. Beyer, Esquire, Department Counsel

FOR APPLICANT

Elizabeth L. Newman, Esquire

SYNOPSIS

Applicant's application for a Latvian passport after his naturalization as a U.S. citizen--even if used only to prove his Latvian citizenship to secure title to ancestral lands illegally confiscated by the Soviet Union at the end of WWII--demonstrated an unacceptable preference for his Latvian citizenship. His failure to comply with the provisions of the "Money Memo" required revocation of his clearance. Substantial current value of ancestral lands--even if not readily accessible or of greater value to Applicant's descendants--subjected Applicant to unacceptable risks of foreign influence. Clearance denied.

STATEMENT OF THE CASE

On 23 April 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.⁽²⁾ On 6 May 2002, Applicant submitted an unresponsive Answer, having clearly requested a hearing, but having failed to admit or deny the allegations under oath or affirmation.⁽³⁾ In accordance with DOHA policy, the SOR was re-transmitted (G.E. 4) with specific instructions to admit or deny the allegations under oath or affirmation. On 22 May 2002, Applicant submitted a second unresponsive Answer.⁽⁴⁾ Notwithstanding the two unresponsive answers, the case was assigned to a different administrative judge for hearing, but was re-assigned to me on 2 July 2002 because of a change in regional assignments. On 11 October 2002, I scheduled the case for hearing on 20 December 2002 and issued a notice of hearing the same day. However, on 13 November 2002, I rescheduled the case for 18 December 2002, for reasons discussed below.

At the hearing, the Government presented four exhibits--admitted without objection--and no witnesses; Applicant presented no exhibits, and the testimony of one witness, himself. DOHA received the transcript on 27 December 2002.

PROCEDURAL ISSUES

At the hearing, Department Counsel asked me to take official notice of the U.S. Department of State, Bureau of European and Eurasian Affairs, Background Note: Latvia, dated April 2002.⁽⁵⁾ Applicant's counsel posed no objection, and I granted the motion (Tr. 15-16). In the absence of a responsive Answer to the SOR, I entered formal denials of the allegations on Applicant's behalf (Tr. 7).

On my own motion, I take official notice of the "Money Memorandum," the applicability of which was debated at the hearing, both during the evidence phase of the hearing, and in argument.

On or before 11 October 2002, Applicant agreed to have his case set for hearing on either 18 or 20 November 2002. On 11 October 2002, I set the case for hearing on 20 November 2002 and issued the Notice of Hearing (NOH) the same date. By the time Applicant received the NOH on 17 October 2002, he had scheduled a business trip for 20 November 2002. The next day, he made an appointment with his counsel for 23 October 2002. Notwithstanding the scheduled hearing date (or the alternate date agreed to)--neither of which counsel was available for--Applicant obtained counsel on 30 October 2002. Counsel requested a continuance by email to Department Counsel on 30 October 2002. On 1 November 2002, I conducted a conference call with the parties in which I denied Applicant's request for continuance because he had not demonstrated good cause as required by the Directive. I indicated to counsel that I would hear the case as scheduled on 20 November 2002, or I would reschedule the hearing to the other date agreed to by Applicant before he retained counsel (18 November 2002). I directed Applicant's counsel to advise her client of the ruling, advise me of her client's decision regarding the two dates, and take necessary action to resolve her availability issues regarding the two dates.

Instead, Applicant's counsel filed a **Motion for Reconsideration of Denial of Applicant's Request for Rescheduling of Hearing Date** after the close of business on 1 November 2002. On 13 November 2002, I issued my **Memorandum and Order** (which more fully sets out the scheduling issues addressed above) denying the motion for reconsideration, but rescheduling the case for 18 December 2002, under the provisions of the Directive, Enclosure 3, Paragraph E.3.1.10. to deal with procedural matters and conduct the proceedings in a fair, timely, and orderly manner.

FINDINGS OF FACT

Applicant formally denied the allegations of the SOR. However, he substantially admitted the allegations in his testimony.

Applicant--a 58-year old Chief Executive Officer of a defense contractor--seeks to retain the access to classified information he has held since at least August 1995.⁽⁶⁾ In addition, he held a clearance while an officer (active and reserve) in the U.S. Army from 1964 to 1977, and while employed by a U.S. intelligence agency from 1970 to 1974.

Applicant was born on 13 June 1944 in the once-and-future Republic of Latvia.⁽⁷⁾⁻⁽⁸⁾ Within weeks, his parents fled west in front of the advancing Red Army: Poland, East Germany, West Germany--where they resided until 1949. The Iron Curtain fell on Latvia, as on most of Eastern Europe.

In September 1949, Applicant emigrated to the U.S. with his parents. They became naturalized citizens of the United States on 1 November 1956, when Applicant was 12 years old. His parents never returned to Latvia. His father died in 1976. His mother died in 1986. Applicant did not return to Latvia until 1992, nearly 50 years after his birth.

Applicant was educated in the U.S. He graduated from high school, and attended college. However, he answered his country's call-to-arms and enlisted in the Army in 1964. He was selected for Officers' Candidate School, commissioned in August 1965, and served a year in Viet Nam as a forward observer. He later received the Bronze Star for his Viet Nam service. He left active duty in 1967, but remained in the reserves until 1977.

After leaving active duty, Applicant returned to college, obtaining a degree in international relations and public affairs in 1970. After graduation, he went to work for a U.S. intelligence agency. Although he considered himself in line for senior leadership--a "hot runner" in agency parlance--those prospects dimmed when the current political head of the agency was replaced. Applicant and his spouse were also expecting their first child, and he knew his overseas postings as a junior officer would not be the kind of places conducive to child raising. Applicant resigned the agency in August 1974, the day his daughter was born.

He entered the consulting business, and worked for about a year before the company went out of business. He started his own company, which he sold to another company in 1979. He stayed on as an equity principal until 1984, when he disagreed with the other principals over the business direction the company should take. Applicant wanted to branch out into other areas, and left to found the firm he now leads as CEO, with 22 active employees and a stable of specialty associates. He makes \$210,000.00 per year as CEO; his wife earns \$245,000.00 per year in an unrelated employment. He would not sell his company for less than \$6 million (Tr. 46).

In 1989, the winds of change that were sweeping over the Soviet Bloc reached Latvia, opening the way for the restoration of democracy in a country that had seen little of it since the declaration of Latvian independence in 1918. Applicant--who had virtually no contact with Latvia since leaving in 1944 and who had no family still living there--became aware of the possibility of obtaining title to his family's ancestral land⁽⁹⁾, and began to research the issue in 1990. When the Soviet Union fell, Applicant believed it safe to travel to Latvia to discover for himself whether he could obtain the properties. He made a trip to Latvia in approximately May 1992 and discovered that he could regain the ancestral properties, although the process would be long as Latvia struggled to reinstate democratic due process procedures which had ceased between 1936 and 1991.

Applicant returned to Latvia in approximately April 1994 to further pursue title to the ancestral properties. He had two options available to him. He could sue in Latvian courts, still redeveloping--an option Latvia officials were open to as the country re-asserted the rule of law. Or, he could prove his Latvian citizenship, and thus his entitlement to reclaim the land, by some means acceptable to the Latvian Government. The government officials suggested to Applicant that if he could prove his birth on Latvian soil (the government not recognizing the legality of either Soviet or German claims to the territory), he would be able to obtain a Latvian passport as proof of citizenship and assert his property claim.⁽¹⁰⁾ Applicant applied for, and obtained, a Latvian passport on 13 April 1994 (not to expire until 13 April 2004), and used it to begin the process of gaining title to the ancestral properties. He made two more trips to Latvia to secure title, one in November 1995, another--with his wife and children--in January 2002.⁽¹¹⁾ Applicant has obtained title to the ancestral property, and is all-but-certain to obtain title to the compensatory property. He still possesses the Latvian passport, although he has never used it to travel--having always traveled on his U.S. passport--only to assert title to the ancestral properties.

On 2 October 2001, Applicant completed a Security Clearance Application (SCA)(SF-86)(G.E. 1) on which he truthfully disclosed his foreign connections, including his dual citizenship with Latvia⁽¹²⁾, his ownership of 300 acres in Latvia, and his possession of a current Latvian passport--and the fact that he could not have obtained ownership of the property without it.

On 8 November 2001, Applicant gave a sworn statement to a Special Agent of the Defense Security Service (DSS) (G.E. 2), in which he responded to questions about his dual citizenship, use of the foreign passport, and his future intentions. The details of the statement are unimportant except that they establish every allegation in the SOR. Although the statement is typewritten, Applicant prepared it himself--having been working on the foreign connection issues for some time before the interview--and used his own words to cover general areas of concern raised by the agent. He stated a willingness to renounce both his Latvian citizenship and surrender his passport as a condition of access to classified information.

To the extent that Applicant's 6 May 2002 Answer was responsive to the SOR, his key disagreement is with the valuation of the 300 acres in Latvia (a number Applicant acknowledges is a relatively-uninformed guess, but nevertheless the number he gave the agent and the only number known to DOHA at the time of the SOR). Applicant asserted, and reiterated at the hearing, that restrictive logging rules in Latvia make the actual value of the land much lower. Logging is managed on three 5-year plans. The logging for the first plan has occurred, with the maximum value (approximately \$25,000.00) already reduced by illegal logging by others valued at \$20,000.00. Applicant testified that his estimate of the land value in his statement was based on the value of the land and timber, clear cut, something that cannot happen under existing Latvian law. However, he also estimated that the value of the land and renewable timber to his children, and unborn grandchildren, is several million dollars.

Applicant's testimony revealed him to be a loyal citizen of the U.S. He grew up here, married here, raised his children here. Until 1992, he had no relevant contacts with Latvia. However, his testimony also revealed that in addition to the conduct alleged in the SOR, which his statement supports, and his testimony concedes, Applicant has developed an abiding affection for his natal land. He acknowledges he pays the necessary taxes on the property, and between other required expenses and the costs of his travel to Latvia he is losing money on the property. But in doing required land surveys, he has discovered the historical and archaeological value of the land,⁽¹³⁾ and has had discussions with government officials about developing some kind of national park, cemetery, or war memorial. He has discovered ancestral graves on the property which he wants to preserve. Some of the structures on the ancestral property go back to the 1700s and 1800s. He has discovered that he can restore and renovate the family manor for a figure enormous by Latvian standards, but easily affordable for him. He is aware of, and sensitive to, the economic plight of Latvia as an emerging democracy and the poverty-stricken Latvians who resided on the ancestral properties.⁽¹⁴⁾ Indeed, although he is aware of the identities of the persons who stole the timber from his land, he has not taken the legal action available to him because he believes the thieves needed the money obtained from the timber more than he. He waxes lyrical about the sentimental and emotional value of the land to himself and his

descendants (Tr. 63-65).

Applicant's testimony reiterated his earlier willingness to renounce his foreign citizenship and surrender his foreign passport. However, as of the date of the hearing, he had not taken any action to do so, or to obtain information on how to accomplish those acts. Indeed, he indicated he would not take any such action until after he retained his clearance, for two reasons. First, although he thought that title to the first parcel was irrevocably vested, and that the title to the second parcel could now vest, regardless of his citizenship status in Latvia, he was not sure of that and thus was reluctant to risk either by renouncing his Latvian citizenship. Second, he was not prepared to run the risk of losing title unless he was assured of retaining his clearance, since at his age he considered himself unlikely to reapply later if he lost his clearance.

The record contains no character references or information on Applicant's work performance.

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 6.3. 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.A3.1.2.1. The exercise of dual citizenship:

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

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

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

E2.A.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 (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.A2.1.2.8. A substantial financial interest in a country. . . that could make the individual vulnerable to foreign influence.

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

E2.A2.1.3.5. 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, C³I) issued a memorandum

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, C³I 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 had been a dual citizen of the Soviet Union (by operation of Soviet law) and the United States since his naturalization in 1956, that foreign citizenship possessed little security significance, because it was based solely on his birth in territory considered by the Soviet Union to be Soviet territory.⁽¹⁵⁾ However, Applicant's acknowledged dual citizenship presents a different question, especially if based on other factors besides his birth in territory considered Latvia by the current Latvian Government (in obvious rejection of the political realities of Latvia in 1944). 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.

Although Applicant claims to prefer his U.S. citizenship to his Latvian citizenship, his conduct belies that assertion. Although Applicant is clearly proud of his U.S. citizenship, beginning in 1992, he took steps to re-assert his Latvian citizenship. While his oath of allegiance to the U.S. and his rejection of allegiance to any foreign government in the citizenship oath is powerful evidence of a preference for U.S. citizenship, even as a 12-year old, the citizenship oath does not automatically operate to terminate his citizenship rights in his birth country. The fact that his native country considered him a citizen would ordinarily not affect the analysis of Applicant's preference. However, in this case Applicant reasserted his foreign citizenship and his preference for that citizenship when he obtained a Latvian passport to establish his Latvian citizenship and then used this passport to establish his eligibility to assert ownership rights to property seized without compensation by the Soviet Union. Latvia permitted Applicant to be a dual citizen of the U.S. and Latvia because his family had fled the Soviet occupation. After 1994, Latvians who did not qualify for this exception were required to renounce their other citizenship in order to retain Latvian citizenship (See endnote). He remains in possession of that passport, although he has made a conditional offer to surrender it and renounce his Latvian citizenship

Regarding possession and use of his Latvian passport, Applicant meets none of the mitigating conditions (MC) for foreign preference.⁽¹⁶⁾ His dual citizenship is not based merely on his birth in Latvia, but on his active re-assertion of his citizenship rights in Latvia. Applicant's voluntary re-assertion of his foreign citizenship rights occurred after he

became a naturalized U.S. citizen. Indeed, the circumstances of this case demonstrate that except for his birth in Latvia, he engaged in no conduct indicative of a preference for Latvian citizenship before his naturalization. Further, although his conduct is lawful, there is no evidence that the conduct was formally sanctioned by the United States. Applicant has expressed a conditional willingness to renounce his foreign citizenship. Applicant first made that offer in August 2001, but has yet to take definitive action, and has declined to take action until the result in this case is known. His offer, therefore, carries little weight.

The ASD, C³I Memorandum only complicates matters for Applicant. The Memorandum states that Applicant's past possession and use of his foreign passport can be mitigated only if Applicant surrenders the foreign passport or obtains U.S. Government approval for its use. Applicant has undertaken neither action. Further, his demonstrated conduct in reasserting his Latvian citizenship after acquiring U.S. citizenship, and his inaction on his offer to renounce his citizenship and surrender his foreign passport cast serious doubt on his fitness for access to classified information, and presents an unacceptable level of risk that he has a foreign preference.⁽¹⁷⁾ Further, Applicant's financial and other interests in his Latvian property provides an independent foreign preference concern. He used his Latvian citizenship to obtain a financially significant property interest in Latvia, an interest he clearly desires to retain for his own interests and those of his children.

Applicant's conduct is legal, and his desire for involvement in a resurgent, democratic Latvia is understandable, possibly commendable, perhaps even noble. Nevertheless, his conduct demonstrates a division in his national preferences which presents an unacceptable level of risk to U.S. interests. I resolve Guideline C against Applicant.

In a similar fashion, Applicant appears vulnerable to foreign influence. Despite the varying values ascribed to the property, ranging from present money loser to prospective millions for Applicant's descendants, the financial interest is not minimal. Its long-term value is real, and the economic value is inseparable from the emotional and sentimental value assigned it by Applicant and his children. I resolve criterion B. against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline C: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Paragraph 2. Criterion B: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not 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. The Transmittal Letter of the same date (G.E. 3) advised Applicant of required actions he must take, permissive actions he could take, basic rights and procedures available to him, and important enclosures containing amplifying information. The key actions required of Applicant were to specifically admit or deny the allegations of each paragraph and subparagraph, state whether he wanted a hearing, and sign his Answer under oath or affirmation. In addition to the SOR, a current copy of the Directive and a copy of the 16 August 2000 memorandum of the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD, C³I), so-called the "Money Memorandum" because it is signed by Assistant Secretary Arthur L. Money, were provided to Applicant.
3. Applicant's 6 May 2002 Answer is best characterized as intemperate, an assessment he concurred with at hearing (Tr. 91-92). For purposes of this decision, it is most notable for demonstrating Applicant's understanding that he had a right to a hearing, and a right to be represented by counsel or personal representative at the hearing.
4. Although shorter than his first Answer, the 22 May 2002 Answer was also intemperate, as Applicant acknowledged at hearing (Tr. 99).
5. See, www.state.gov. The hard copy print date for the 12-page document was 10 December 2002.
6. Although Applicant referred to this proceeding as one involving an application for upgraded access, the record is not clear whether the current investigation involves upgraded access or merely a periodic re-investigation of his current access.
7. Latvia's key location on the Baltic Sea has made it a valuable prize for centuries. Its evolution as a nation and a democracy began in the 1860s, but did not reach important milestones until the end of WWI. As described by the State Department:

The onset of WWI brought German occupation of the western coastal province of Kurzeme, and Latvians heroically countered the invasion with the establishment of several regiments of riflemen commanded by Czarist generals. As a defensive measure, Russia dismantled over 500 local Latvian industries, along with technological equipment, and relocated them to central Russia. The sagging military campaign generally increased Latvian and LSDU support for the Bolsheviks' successful October Revolution in 1917, in the hopes of a "free Latvia within free Russia." These circumstances led to the formation of the soviet "Iskolat Republic" in the unoccupied section of Latvia. In opposition to this government and to the landed barons' German sympathies stood primarily the Latvian Provisional National Council and the Riga Democratic Bloc. **These and other political parties formed the Latvian People's Council which on November 18, 1918 declared Latvia's independence and formed an army.**

The new Latvian army faced rogue elements of the retreating German army and squared off in civil war against the Soviet Red Army, comprised greatly of the former Latvian Riflemen. Soviet power resumed in Latvia one month later on December 17 by order of the Latvian SSR, which forcefully collectivized all land and nationalized all industries and property. By May 22, 1919 the resurgent German Army occupied and devastated Riga for several days. In response, the Latvian army managed to win a decisive battle over the combined German-Red Army forces and thereafter consolidated its success on the eastern Latgale front. These developments led to the dissolution of the Soviet Latvian government on January 13, 1920 and to a peace treaty between Latvia and Soviet Russia on August 11 later that year. **By September 22, 1921, Latvia was admitted to the League of Nations.**

Having obtained independent statehood in which Latvians were an absolute majority, the Government headed by Prime Minister Ulmanis declared **a democratic, parliamentary republic**. It recognized Latvian as the official language, granted cultural autonomy to the country's sizeable minorities, and introduced an electoral system into **the Latvian constitution, which was adopted in 1922**. The decade witnessed sweeping economic reform, as war had devastated Latvian agriculture, and most Russian factories had been evacuated to Russia. Economic depression heightened political turmoil, and on May 15, 1934, Prime Minister Ulmanis dismissed the parliament, banned outspoken and left-wing political parties and tightened authoritarian state control over Latvian social life and the economy.

The effects of the infamous Molotov-Ribbentrop agreement of 1939 steadily forced Latvia under Soviet influence until August 5, 1940, when the Soviet Union finally annexed Latvia. On June 14 of the following year 15,000

Latvian citizens were forcibly deported and a large number of army officers shot. **The subsequent German occupation witnessed the mobilization of many Latvians into Waffen SS legions, while some Latvians joined the Red Army and formed resistance groups; others fled to the West and East. By 1945, Latvia's population dropped by one-third.**

After the war, the U.S.S.R. subjected the Latvian republic to a scale of social and economic reorganization which rapidly transformed the rural economy to heavy industry, the strongly ethnically Latvian population into a more multiethnic structure, and the predominantly peasant class into a fully urbanized industrial worker class. As part of the goal to more fully integrate Latvia into the Soviet Union, on March 25, 1949 Stalin again deported another 42,000 Latvians and continued to promote the policy of encouraging Soviet immigration to Latvia. The brief "Krushchev thaw" of the 1950s ended in 1959, when the Soviets dismissed Latvian Communist Party and Government leaders on charges of "bourgeois nationalism" and replaced them with more aggressive hardliners, mostly from Russia.

"Perestroika" enabled Latvians to pursue a bolder nationalistic program, particularly through such general issues as environmental protection. **In July 1989, the Latvian Supreme Soviet adopted a "Declaration of Sovereignty" and amended the Constitution to assert the supremacy of its laws over those of the U.S.S.R.** Pro-independence Latvian Popular Front candidates gained a two-thirds majority in the Supreme Council in the March, 1990 democratic elections. On May 4, the Council declared its intention to restore full Latvian independence after a "transitional" period; 3 days later, Ivars Godmanis was chosen Council of Ministers Chairman, or Prime Minister. . .

Latvia claimed de facto independence on August 21, 1991 in the aftermath of the failed Soviet coup attempt. International recognition, including the U.S.S.R., followed. **The U.S., which had never recognized Latvia's forcible annexation by the U.S.S.R., resumed full diplomatic relations with Latvia on September 2.**

In autumn 1991 Latvia reimplemented significant portions of its 1922 constitution and in spring 1993 the government took a census to determine eligibility for citizenship. After almost 3 years of deliberations, Latvia finalized a citizenship and naturalization law in summer 1994. **By law, those who were Latvian citizens in 1940, and their descendants, could claim citizenship.** Forty-six percent of Latvia's population is ethnically non-Latvian, yet about 85% of its ethnic Slavs can pass the residency requirement. Naturalization criteria include a conversational knowledge of Latvian, a loyalty oath, renunciation of former citizenship, a 10-year residency requirement, and a knowledge of the Latvian constitution. **Dual citizenship is allowed for those who were forced to leave Latvia during the Soviet occupation and adopted another citizenship.** . .

8. The pertinent history of Latvia is set out more fully in the end note at the end of this decision.

9. Actually, two parcels. One a truly ancestral property, the other a compensatory property for ancestral land which could not be reclaimed by Applicant. The property had been seized by the Soviet Union without compensation and the new Latvian Government was willing to make restitution for eligible Latvians.

10. Applicant asserts that he was not required to take any oath of allegiance, declare Latvian citizenship or his recognition of Latvian citizenship, or renounce his U.S. citizenship. However, he acknowledges that this informal arrangement--little more than a "nod and wink"--did not negate the legal reality that only citizens can have passports, and that applying for, and accepting a Latvian passport, is an active exercise of citizenship.

11. All of Applicant's four trips to Latvia have been related in some fashion to resolving the title issue on his properties.

12. Which he also simultaneously tried to disavow, asserting that Latvia considers him a citizen, but he does not consider himself a Latvian citizen--analogizing to his earlier status as a de jure citizen of the Soviet Union, which was adjudicated favorably to Applicant on his earlier clearances. The key distinction here is that Applicant essentially fled the Soviet Union, became a U.S. citizen, and at the time of his earlier clearances, taken no action to assert that Soviet citizenship.

13. Located as it is in the middle of a major east-west invasion route going back a millenia.

14. Applicant moved them from the land, but obtained apartments for them.

15. And presented no barrier to Applicant's earlier clearances both because Applicant had no ties to the Soviet Union and because the U.S. never recognized the Soviet annexation of Latvia.

16. Even if I accept counsel's argument that Applicant never used his passport to travel, he still used it--and the exercise of Latvian citizenship it represented--to first assert, then protect, a financial interest in Latvia.

17. Counsel's invitation in her closing argument that I side-step the plain language of the "Money Memo" must be declined. Although Applicant did not use his Latvian passport to travel, thus falling outside the stated rationale of the memo that use of the foreign passport can conceal foreign travel, his retention of the Latvian passport makes possible all the evils identified by the memo as creating a security risk. Further, the use of the Latvian passport to obtain and protect financial interests is still a use of the passport, albeit a less standard use.