DATE: June 18, 2003

In Re:

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

Applicant for Security Clearance

ISCR Case No. 02-01591

DECISION OF ADMINISTRATIVE JUDGE

BURT SMITH

APPEARANCES

FOR GOVERNMENT

Nygina T. Mills, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

American-born Applicant provided a sworn declaration stating he is a dual citizen of the United States and Canada, and he will not renounce his Canadian citizenship. Applicant's later written statement to the contrary is not persuasive. Applicant's decision to retain his dual citizenship is likely influenced to some degree by the dual US-Canadian citizenship choice made by his father, mother, sister and brother, who are Canadian residents. Applicant's Austrian-born wife has no foreign connections or involvement of a security concern. Clearance is denied.

STATEMENT OF THE CASE

On January 6, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to Applicant. The SOR details 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 Applicant. It recommended referral to an Administrative Judge to determine whether a clearance should be granted or denied. In a written answer dated February 10, 2003, Applicant responded to the SOR, and he elected to have his case decided on the written record in lieu of a hearing.

A complete copy of the Government's File of Relevant Material (FORM) was provided to Applicant on March 21, 2003, and he was afforded thirty days to file objections and/or submit further material in refutation, extenuation, or mitigation. Applicant received the FORM on April 4, 2003, but he did not submit a reply. The case was assigned to me on May 19, 2003.

FINDINGS OF FACT

Paragraph 1 (Guideline C - Foreign Preference). In Applicant's written answer to the SOR, he admitted to all of the Government's factual allegations. In view of Applicant's admissions, the Government's factual allegations are found to be true, and they are incorporated herein. In his response to the allegations, Applicant presents a case in mitigation.

Applicant is 30 years old and married, and he and his wife have a son, age two. Applicant and his son were born in the United States. Applicant's wife was born in Austria, and she resides with Applicant in the US as a permanent resident. Applicant's parents are also US citizens by birth, but in 1988 they accepted dual citizenship with Canada, and they presently reside in Canada. Applicant has a brother and a sister, both US-born, and they also live in Canada as dual citizens.

In October 1987, Applicant was issued a US passport, and in August 1988 he was issued a Canadian passport. During the period 1988-1991, when Applicant was 16-18 years old, he used his Canadian passport for occasional overseas travel. Applicant's Canadian passport expired in 1993, and he did not renew it. For the last ten years, Applicant has traveled overseas about 11 times, mostly for pleasure, and he has used his US passport. Applicant's US passport expired in 1992, and he renewed it.

DoD background investigators asked Applicant about his dual citizenship, and he provided a sworn statement dated October 9, 2001. (FORM, Item 6.) Applicant conceded he holds dual citizenship, and his national allegiance is divided between the United States and Canada. In his words, "Although my loyalties lie with both the U.S. and Canada, at this time and for the foreseeable future I consider the U.S. to be my home. However, in time and as my family grows I may move to Canada and make Canada my home." (FORM, Item 6, p.1.) He further stated he would not be willing to renounce his Canadian citizenship if it is a necessary condition for grant of a security clearance. Applicant's dual citizenship is therefore based in large part upon his personal decisions and choices as an adult, and not solely upon his parent's acceptance of Canadian citizenship.

In his February 10, 2003, answer to the SOR, Applicant departs from his sworn statement. Contrary to his earlier statement, Applicant now claims "[M]y allegiance is entirely to the United States." As to the possibility of residing in Canada, Applicant states "I have no plans to ever return to live in Canada." Applicant further points out his Canadian passport is expired and not renewed; he uses only his US passport for foreign travel; and he has acquired a US passport for his son. However, the first two of these circumstances existed earlier when Applicant declared he is a dual citizen with divided allegiances. It is unclear why they now support Applicant's change to an undivided US allegiance.

Applicant's sworn statement of October 9, 2001, and his written answer of February 10, 2003, are therefore in conflict. In his sworn statement Applicant clearly admits his national allegiance is divided between Canada and the United States. In his later written answer he asserts his allegiance is entirely to the United States. With regard to his choice of residence, Applicant made it clear in his sworn statement he may move to Canada and make it his home. In his answer, Applicant states six times he presently has no plans to live in Canada, although this wording leaves open the possibility of a later change in his plans.

In view of all the evidence, I find Applicant's unguarded and spontaneous sworn statement to be credible, and it expresses Applicant's divided national allegiance between the United States and Canada. I find his answer to the SOR is carefully crafted to declare his allegiance to the United States while simultaneously keeping open the option of remaining a dual citizen. It is noted Applicant has taken no steps to renounce his Canadian citizenship, and he continues to possess his expired Canadian passport, arguably for ease of renewal should he elect to make Canada his home in the future

Paragraph 2 (Guideline B - Foreign Influence) As noted above, Applicant's father, mother, brother, and sister are US-born citizens and also citizens of Canada. For their own reasons, all of Applicant's family members have chosen to accept Canadian citizenship and Canadian residency.

There is no evidence to suggest Applicant's family in Canada is connected or associated with any government-related agencies or activities. Applicant's parents are linguists, and they are employed in the field of Bible translation. Applicant's sister is unemployed, and his brother is a computer programmer in the private sector. There is no reasonable basis to find that Applicant or his family members are subject to duress from foreign sources.

However, it is found Applicant is potentially vulnerable to non-coercive influence with regard to his ultimate choice of national allegiance. It can not be ignored that Applicant's father, mother, sister and brother have voluntarily sought dual citizenship with Canada, and on their own initiative they have made Canada their permanent home. Applicant' sworn

statement indicates he was influenced to a degree by their example, although he reserves for the future a final decision regarding Canadian residency.

On a commonsense basis, it would be natural and expected for Applicant to give serious consideration to retaining dual citizenship with Canada in the same manner as his parents and siblings. Applicant would be able to maintain strong connections with his family due to ease of travel; Canadian residency and employment; and other benefits of Canadian citizenship enjoyed by his family. Applicant presently declares himself a dual citizen, and this decision likely will become even more firm with the influence of Applicant's family members who are clearly attracted to the benefits of dual US-Canadian citizenship. For these reasons, I find it likely Applicant is influenced to some degree toward dual citizenship due to the decisions and actions of his family.

Applicant's wife is an Austrian-born US permanent resident with relatives residing in Austria. She has no financial or property interests in Austria. Her mother is a part-time masseuse, and her brother is a computer programmer in the private sector. Neither Applicant's wife nor her family are associated with Austrian government agencies or activities. Likewise, there is no evidence that their status as Austrian citizens places themselves or Applicant in any positions of potential duress.

POLICIES

Enclosure 2 of the Directive, as amended by DepSecDef Memorandum dated June 7, 2001, sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. The guidelines are divided into those that may be considered in deciding whether to deny a security clearance (Disqualifying Conditions, hereafter DC) and those that may be considered in deciding whether to grant a clearance (Mitigating Conditions, hereafter MC).

Based upon a consideration of the entire record, I find the following adjudicative guidelines have application in this case:

Guideline C - Foreign Preference. *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.

Disqualifying Conditions applicable:

1. The exercise of dual citizenship;

2. Possession and/or use of a foreign passport.

Mitigating Conditions applicable:

(None have application.)

Guideline B - Foreign Influence. *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.

Disqualifying Conditions applicable:

1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or a resident or present in, a foreign country.

Mitigating Conditions applicable:

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 prson(s) involved and the United States;

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

The whole person concept. In addition to the above guidelines, the Directive provides in Para. E.2.2.1. that under the "whole person concept" the Administrative Judge shall also consider (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, or duress; and (9) the likelihood of continuation or recurrence.

The "Money Memorandum." The DoD "Money Memorandum"[(1)] of August 16, 2000, clarifies DoD policy regarding the possession and/or use of foreign passports. It 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." Under the Money Memorandum, possession and/or use of a foreign passport is not mitigated by reasons of personal convenience, safety, requirements of foreign law, or the identity of the foreign country.

CONCLUSIONS

In the defense industry, the security of classified information is entrusted to civilian workers who must be counted upon to safeguard it 24 hours a day. The Government is therefore appropriately concerned where reliable information indicates an Applicant for clearance may be subject to manipulation or duress due to foreign preference or foreign influence. On a commonsense basis, these circumstances might easily contribute to a compromise of defense secrets through coercion, conflicting loyalties, or foreign sympathies.

With regard to burden of proof in DOHA cases, the Government must prove all controverted facts that tend to demonstrate Applicant is ineligible for clearance. Once this burden is met, the Applicant must overcome the Government's case by persuasive evidence in refutation, mitigation, or changed circumstances. However, the Applicant always bears the ultimate and overall burden of proving it is clearly consistent with the national interest to grant him or her a security clearance. Furthermore, the Directive provides "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." (Directive, Para. E2.2.2.) Thus, the Applicant's burden is a heavy one.

Paragraph 1 (Guideline C - Foreign Preference). Applicant's written answer to the SOR indicates Department Counsel furnished him a copy of the Money emorandum, presumably as notification that his actions are in conflict with DoD policy regarding foreign passports. However, Department Counsel's brief is silent as to application of the Money Memorandum. Accordingly, it is presumed Department Counsel does not now rely on the Memorandum, and it will not be considered. The posture of this case permits a decision based upon other adjudication principles long established under Guideline C.

Applicant furnished DoD a sworn statement in which he unequivocally declared his dual citizenship with the United States and Canada. At the time Applicant issued this declaration, he was an American citizen and a citizen of Canada by virtue of his American-born parents' decision to acquire Canadian citizenship, and his later actions as a Canadian citizen. Therefore, DC 1 has application. As a youth, Applicant used his Canadian passport to travel overseas. Although his foreign passport is expired he retains it in his possession. DC 2 has application. He stated he might move to Canada in the future, and he will not renounce his Canadian citizenship in order to qualify for a DoD security clearance.

At a later date, Applicant furnished DoD an answer to the SOR that contradicts his earlier declaration of dual citizenship, stating now his allegiance is solely to the United States. He also crafts his answer to minimize (but not eliminate) the possibility he might move to Canada. Additionally he points to circumstances of his expired Canadian passport and his recent use of an American passport as evidence of his US allegiance.

Taking both written submissions into account, it is concluded Applicant's sworn statement is the more credible and

informative expression of Applicant's true intentions. Applicant gave the sworn statement as an unguarded declaration, and it is consistent with his past actions. He now highlights indicia of his US allegiance, but these are factors he earlier ignored when he declared his preference for dual citizenship. They are not persuasive as support for Applicant's claim of a changed position. Paragraph 1 is concluded against Applicant.

Paragraph 2 (Guideline B - Foreign Influence). Applicant's father, brother, mother and sister are, by choice, citizens and residents of Canada. There is no evidence indicating they are agents of the Canadian government or likely to engage in activities inimical to US interests. Furthermore, it is administratively noticed that the US and Canada have for many years enjoyed mutually supportive relations.

However, on a common sense basis, it would be unrealistic to conclude Applicant is not, and will not be, influenced by his family's studied decision to seek out and enjoy the benefits of dual citizenship. As concluded above, Applicant's recently-declared allegiance to the United States is not persuasive. The possibility of his continued dual citizenship must be considered in light of numerous past actions taken by him, especially his first sworn declaration. These actions strongly indicate Applicant is influenced to some degree by his family's unified decision to acquire, exercise, and retain dual citizenship. As a consequence, DC 1 has application.

While this is not coercive influence, it is established by the DOHA Appeal Board that non-coercive influence may be taken into account in judging the probability of an Applicant's ultimate national allegiance.[(2)] Subparagraph 2.b. is concluded against Applicant.

With regard to the Applicant's Austrian-born wife and her in-laws, there is no evidence she or her family are connected with the Austrian government in any way, and she has no financial or property ties to Austria. MC 1 and 5 have application as mitigating factors. Also, there is also no evidence Applicant has an interest in gaining dual citizenship with Austria through his wife's citizenship. The only basis for a security concern regarding Applicant's wife is her foreign citizenship and her family members residing in Austria. No other adverse factors are present. Subparagraphs 2.a and 2.c. are concluded in Applicant's favor.

On balance, I conclude the Government has met its burden of proving all factual allegations in the SOR. For his part, Applicant has not introduced persuasive evidence in refutation, mitigation, or changed circumstances which offsets or outweighs the Government's case, except as to subparagraphs 2.a. and 2.c. In reaching these conclusions, I have given consideration to the whole person concept, but Applicant does not bring himself favorably within the factors set forth in the Directive in a manner sufficient to justify a grant of clearance.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1. (Foreign Preference): Against the Applicant.

Subparas. 1.a.-1c.: Against the Applicant.

Paragraph 2. (Foreign Influence): Against the Applicant.

Subpara. 2.a.: For the Applicant.

Subpara. 2.b.: Against the Applicant.

Subpara. 2.c.: For 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 Applicant's request for a security clearance.

Burt Smith

Administrative Judge

1. " " ' '

2. "Guideline B is not limited to situations involving coercive means of influence. Rather, it also covers situations where an Applicant may be vulnerable to non-coercive means of influence." DOHA Appeal Board, ISCR Case No. 99-0511, December 19, 2000.