DATE: August 12,2003

In Re:

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

Applicant for Security Clearance

ISCR Case No. 02-04398

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Esq., Department Counsel

FOR APPLICANT

Daniel C. Schwartz, Esq.

Colleen Reddan, Esq.

SYNOPSIS

Applicant, a dual citizen of Morocco and the United States (US) since his US naturalization in August 2000, has mitigated the foreign preference concerns presented by his dual citizenship. In May 2001 he surrendered his Moroccan passport, and in February 2003 he commenced the process to renounce his foreign citizenship. The foreign citizenship and in some cases, foreign residency, of close family members presents little risk of undue foreign influence. None are agents of a foreign power or in a position where they are likely to be exploited. Clearance is granted.

STATEMENT OF THE CASE

On January 6, 2003, 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) to the Applicant.[(1)] The SOR 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) and foreign influence (Guideline B) concerns.

On February 12, 2003, Applicant, acting *pro se*, executed an Answer to the SOR and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on March 31, 2003. Pursuant to formal notice dated April 1, 2003, a hearing was scheduled for April 24, 2003. By letter dated April 9, 2003, counsel for Applicant entered a Notice of Appearance.

At the hearing held as scheduled, the Government submitted one exhibit--entered without objection--and requested administrative notice be taken of: The US Department of State Consular Information Sheet for Morocco; the *Annual*

Report to Congress on Foreign Economic Collection and Industrial Espionage, 2000 by the National Counterintelligence Center; extracts from the *Operations Security Intelligence Threat Handbook*, published by The Interagency OPSEC Support Staff (revised May 1996); and the US State Department's Designated Foreign Terrorist Organization List. The publications were accepted for administrative notice with the exception of the list of the foreign terrorist organizations. There was no allegation or evidence of involvement by Applicant or his family members in the activities of such rogue organizations.

Thirteen Applicant exhibits were admitted into evidence, and testimony was taken from the Applicant and two coworkers (his company's chief operating officer/chief financial officer and the facility security officer/office manager). Applicant also requested administrative notice be taken of the US State Department's background notes on Spain (June 2002), France (February 2003), and Hong Kong (November 2001), and of the text of the US-Hong Kong Policy Act of 1992. The Government had no objection to the background notes, and these State Department releases were deemed proper for official notice. Faced with Department Counsel's expressed concerns about the US-Hong Kong Policy Act predating the transfer of control of Hong Kong to the People's Republic of China (PRC), Applicant requested leave to submit more current US Government reports pursuant to the Act. The record was ordered held open until May 2, 2003, for that purpose.

By letter dated April 30, 2003, Applicant requested notice be taken of the US-Hong Kong Policy Act Reports dated March 31, 2002, and April 1, 2003. Applicant also moved for the admission into evidence of a character reference from a senior scientist affiliated with a military research laboratory. On May 2, 2003, Department Counsel indicated she had no objection, and accordingly the character reference letter was marked and admitted as Applicant Exhibit N, and administrative notice was taken of the text and recent reports on the US-Hong Kong Policy Act of 1992. A transcript of the April 24, 2003, hearing was received in this office on May 6, 2003.

FINDINGS OF FACT

In the SOR, DOHA alleged foreign preference concerns due to Applicant's dual citizenship with Morocco and the US, and his alleged acquisition after he became a US citizen of a Moroccan passport, with retention of that document until at least 2001. Also alleged were foreign influence concerns related to the foreign citizenship(s) and/or residency abroad of several immediate family members. In his Answer, Applicant denied any preference for Morocco, as he had surrendered his foreign passport in May 2001 and notified Moroccan authorities in February 2003 of his desire to renounce his Moroccan citizenship. He denied the acquisition of a Moroccan passport after his US naturalization. Applicant admitted the Moroccan/French dual citizenship and residency in France of his parents and older sister, the French naturalized citizenship and Hong Kong residency of his younger sister, the Moroccan/US dual citizenship of his brother, and the Moroccan/Israeli dual citizenship and Israeli residency of his grandmother. Applicant denied the alleged Israeli/Colombian citizenship of his spouse, and indicated his spouse, a Colombian citizen from birth, had acquired her US citizenship in January 2000. Applicant admitted the dual citizenship Spain/Colombia with Spanish residency of his father-in-law, but maintained his mother-in-law was a citizen solely of France. Applicant denied travel to Spain to see his in-laws. After a complete and thorough review of the evidence of record, and upon due consideration of the same, I make the following findings of fact:

Applicant is a 48-year-old expert in the field of command and control who is the principal founder and technical lead of a human-centered engineering company established in 1995. About 99 percent of the company's work is for the Government or prime contractors of the Government. In his current status as chief executive officer and lead researcher, Applicant needs a secret security clearance to continue his contributions on several projects for the US military, including a major research program which uses mathematical models to understand the relationship of military organizational structure to mission performance.[(2)] Applicant held an interim secret clearance without adverse incident which was recently withdrawn pending final adjudication of his security suitability.

Applicant was born in October 1954 in Morocco to resident citizens of Jewish heritage. Applicant's father taught mathematics in a private Jewish foundation high school. His mother did not work outside the home. Applicant and his siblings (sisters born in 1952 and 1963, respectively, and a brother born in 1958), oroccan citizens from birth, were oriented to the French language and culture in Morocco during their formative years, and all elected to continue their education in France after high school. The elder sister moved permanently to France in 1971 to pursue university

studies, and she acquired French citizenship in June 1975. Applicant's brother left Morocco for France in 1976. He moved to the US permanently in December 1980 and became a US naturalized citizen in ay 1990. Applicant's younger sister left Morocco for France in 1980, and acquired French citizenship in January 1988.

Circa 1972, Applicant's grandmother, a Moroccan citizen by birth, emigrated to Israel, as Morocco was becoming increasingly inhospitable for its Jewish citizens. She exercised her "right of return" and acquired Israeli citizenship that same year.

While studying mathematics and physics at the French university, Applicant made no effort to acquire French citizenship, as he perceived some antisemitism in France. From 1972 to 1977, Applicant pursued undergraduate studies in aeronautical engineering and educational psychology at the preeminent technological university in Israel. Applicant earned his bachelor of science degree in 1977, and his master's degree in 1981, in aeronautical engineering. His graduate studies at the Israeli university were sponsored by a subsidiary of a public Israeli aeronautics firm.

In July 1980, Applicant married in Israel a dual citizen of Colombia (by birth) and France (by naturalization in her infancy), who had been in the country for about five years, having left Colombia after high school to pursue her education in Israel. Neither Applicant nor his spouse exercised their right to become Israeli citizens.

In 1981, Applicant and his spouse came to the US, as Applicant had accepted a doctoral fellowship in the electrical engineering department of a public university. As a graduate student, Applicant contributed significantly to a US military research office-sponsored research program involving distributed tactical decision making. In 1985, Applicant was awarded his M.B.A. in international management and his 1986, he completed all of the requirements for his doctorate in electrical and systems engineering, excepting publication of his dissertation.

In 1986 Applicant commenced employment as a junior member of the technical staff with a US defense contracting firm that was growing its business in human factors. As a project leader, he began to collaborate with scientists and information science professionals involved in innovative research in command and control for the US military. Promoted to the position of engineering group leader in 1990, Applicant started developing his own customer base.

With his expertise in mathematical modeling of command organizations gaining recognition within the US defense sector, Applicant and his spouse took steps to remain permanently in the US, acquiring their "green cards." Applicant was granted permanent residence in the US in early 1991. Around that same time, Applicant's parents emigrated to France, as they felt it was no longer safe for Jews to live in Morocco. His parents acquired French naturalized citizenship. Applicant's younger sister was transferred from France to Hong Kong by her employer, then a French firm, to manage their promotions' department.

In late December 1995, Applicant and the director of finance at his previous employment opened their own company dedicated to human-centered engineering, with Applicant as principal founder and chief scientist. Applicant continued his work on the design of more effective teams and organizations for the US military, in collaboration with US Government scientists and researchers.

As a permanent resident of the US, Applicant traveled extensively for pleasure on his Moroccan passport, including to France in March 1994, May 1994, December 1999, and June 2000; to Spain in July 1994; to Colombia in January 1995; to Hong Kong in October 1997 for his sister's wedding; to Hungary in December 1999; to various Caribbean nations in June 1995, May 1996, July 1998, and June 1999; to Israel in September 1999; and to Morocco in April 2000.

In January 2000, Applicant's spouse became a US naturalized citizen. That August, Applicant took the oath to renounce all foreign allegiances, to support and defend the United States Constitution and its laws, and to bear arms or noncombatant service or civilian service on behalf of the United States if required. In September 2000, Applicant was issued his US passport, valid for ten years. Applicant thereafter used his US passport exclusively for foreign travel, including on a trip to Turkey for pleasure and to Israel for business in October 2000.

Sometime in 2000 Applicant assumed the position of president and chief executive officer of the company he founded. [(3)] Once he acquired his US citizenship, the company's facility security officer (FSO) presented him with a security clearance application worksheet to fill out and return to her. Applicant entered on the worksheet pertinent details of his

and family members' citizenships, the Israeli firm's sponsorship of his graduate research for his Masters, and his possession in the last seven years of a Moroccan passport, adding "I have been a Moroccan citizen by birth, until my naturalization to US citizen in August 2000." On review of his worksheet in preparation for typing the electronic personnel security questionnaire (SF 86) to be submitted to the Government, the FSO noted Applicant had provided no dates for his foreign passport. When the FSO asked him for the date of his passport, she did not specify she needed the dates for his foreign passport, and Applicant gave her the dates of his US passport. The FSO assumed the dates were for his Moroccan passport and she entered on both the worksheet and the EPSQ submitted to the Government in February 2001 that Applicant held a Moroccan passport issued September 2000 valid to September 2010, when in fact Applicant's Moroccan passport had been issued in August 1997 to expire August 2002.

On February 23, 2001, the Defense Security Service notified Applicant through his company that it was unable to issue an interim industrial security clearance for him. On March 7, 2001, the chief of the information systems branch at a US military research laboratory issued a letter of compelling need for Applicant, citing Applicant's key contributions in assessing the command and control requirements for currently deployed military units conducting support and stability operations and his required presence on-site to observe operations and interview commanders and teams. Applicant was granted the interim secret clearance.

In the process of acquiring his interim secret clearance, it became clear to Applicant he would have to surrender his foreign passport.[(4)] Through the FSO, Applicant relinquished his foreign passport to the Moroccan Consulate by letter dated May 3, 2001, indicating he had no intent to reapply for a Moroccan passport. On May 7, 2001, the Consulate confirmed receipt of Applicant's passport. Applicant assumed surrender of his foreign passport also operated as a renunciation of his Moroccan citizenship.

In summer 2001, Applicant's spouse, a tenured professor of Spanish and comparative literature at a private college in the US, directed the college's summer program in Spain. Applicant traveled to Spain in July 2001 to see his spouse. Although his in-laws had moved to Spain from Colombia in March 2000 following his father-in-law's retirement, Applicant did not visit them on that trip.

In late 2002, Applicant and his spouse had twins born to them in the US. Applicant and his spouse intend to raise their children as citizens solely of the US. They do not intend to acquire any foreign citizenship for them.[(5)] Applicant's parents and sisters visited Applicant in the US on the birth of the children.

By letter dated February 4, 2003, Applicant asked the Moroccan Ministry of Justice (the equivalent of the US Attorney General) to honor his decision to give up his Moroccan citizenship, indicating he was required to surrender his foreign citizenship to obtain a final secret security clearance from the Defense Security Service ("One of the requirements to obtain a Secret Final Clearance is to give up my dual Citizenship to Morocco, and keep my U.S. citizenship only. I have been a resident of the U.S.A. for the past 22 years and am doing this of my own accord.").

By letter date-stamped April 8, 2003, the Moroccan Ministry of Justice notified Applicant that a Moroccan adult who voluntarily acquires foreign nationality abroad is authorized by decree to renounce Moroccan nationality, but that further documentation was required (birth certificate, certificate of Moroccan nationality, copy of naturalization by foreign nation) before the renunciation could take effect. On April 23, 2003, Applicant, through his FSO, forwarded the required documents to the Ministry of Justice in Morocco.

As of April 2003, Applicant's parents are Moroccan/French dual citizens, retired and living in France. Applicant sees them in person once a year. He speaks with his mother once per month and his father once every other month by telephone. Applicant's parents do not speak English well, and their visits to the US have been infrequent. Eight years had passed since their last trip to see Applicant in the US when they came to visit their newborn grandchildren.

Applicant's older sister is a Moroccan/French dual citizen who has lived in France since 1971. A psychotherapist with a private practice, his sister is married to a furniture designer who is a French citizen. Applicant sees this sister on average once per year and speaks with her once every other month about family issues.

Applicant's younger sister is a Moroccan/French dual citizen who resides in Hong Kong. She was married for a few

years to an Australian pilot for the Hong Kong airline, and has a daughter born of that union. Now divorced, she works in public relations for an American company in Hong Kong. Applicant sees her on the order of once every two or three years, and has telephonic contact every other month.

Applicant's brother is a dual citizen of Morocco and the US who has resided in this country since December 1980. He works as a manager at a travel agency. Applicant sees him on average three times yearly.

Applicant's grandmother resides in an assisted living environment in Israel. Having never worked outside the home, she authored a cookbook since moving to Israel from Morocco in 1972. Applicant's contact with her is limited to a telephone call every three months or so. Applicant visited her in Israel in 1999 and 2000.

Applicant's father-in-law, a citizen of Spain from birth and of Colombia, and his mother-in-law, a citizen only of France, lived in Colombia about fifty years before their move to Spain in March 2000. Prior to his retirement, Applicant's father-in-law owned a button factory in Colombia; his mother-in-law never worked outside the home. They no longer have any assets in Colombia. They visit Applicant and his spouse in the US about once a year. Applicant's spouse has contact with her parents once a month. Applicant speaks with his in-laws about three times per year when his wife calls them.

Applicant has no financial assets abroad. He and his spouse live in a condominium in the US where he is active in his condominium organization. Applicant serves on the advisory board of the engineering department of the public university where he pursued his doctoral studies. He belongs to professional organizations in the US involved in human factors, military and command and control research and electrical engineering.

Professional colleagues employed by the US Government in the furtherance of military strategic planning and research, who have collaborated closely with Applicant on major US military-sponsored research programs since the 1980s, consider Applicant to be a gifted researcher of high morals and personal integrity. In the opinion of several high-ranking Government scientists and managers, Applicant has already made a substantial contribution to the interests of the US, and granting Applicant a final secret clearance would increase his value.

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

E2.A3.1.3. Conditions that could mitigate security concerns include:

E2.A3.1.3.1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country

E2.A3.1.3.2. Indicators of possible foreign preference occurred before obtaining United States citizenship

E2.A3.1.3.4. Individual has expressed a willingness to renounce dual citizenship

Foreign Influence

E2.A2.1.1. The Concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation or pressure.

E2.A2.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A2.1.2.1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country

E2.A2.1.2.2. Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists

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.

Under 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.(6) A citizen of Morocco from birth, Applicant's status as a dual national is not necessarily indicative of a foreign preference. (*See* E2.A3.1.3.1., dual citizenship based on birth in a foreign country as mitigating of foreign preference concerns). While the United States Government does not encourage its citizens to remain dual nationals because of the complications that might ensue from obligations owed to the country of second nationality, the Department of Defense does not require the renunciation of foreign citizenship in order to gain access. Yet, there must be adequate assurances that a dual citizen will not actively exercise or seek rights, benefits, or privileges of that foreign citizenship.

Applicant's use, as a permanent resident of the US, of his Moroccan passport to travel abroad was not an active exercise of dual citizenship within E2.A3.1.2.1. (exercise of dual citizenship) and does not raise foreign preference concerns (*see* E2.A3.1.3.2.). However, possession of a valid foreign passport after acquisition of US citizenship is potentially disqualifying under guideline C (*see* E2.A3.1.2.2.). Applicant retained a valid Moroccan passport, which was issued to him in August 1997, after he became a US citizen in August 2000.(7) As clarified by the ASDC3I in August 2000, possession of a foreign passport could facilitate foreign travel unverifiable by the United States, and it raises questions of primary allegiance. While travel on his Moroccan passport was a viable option for Applicant until he surrendered it in May 2001, I am persuaded Applicant's retention of that foreign passport was not intended as an act of preference for Morocco. Although raised in Morocco, Applicant testified credibly to a personal alienation from a country which has become increasingly inhospitable to Jews. After graduating from a French alliance high school in Morocco, he pursued further study in France, but stayed there only two years. Clearly, he felt some affiliation for Israel, having elected to pursue his university studies there, and he married a woman of Jewish heritage. Yet, Applicant made no effort to exercise his "right of return" and acquire Israeli citizenship.

Any concerns that Applicant might act in preference to Morocco, France, or Israel, have been amply overcome by: his continuous residency in the US since 1981; his acquisition of US citizenship in August 2000 (which, unlike his Moroccan citizenship, acquired affirmative acts on his part); his exclusive use since September 2000 of his US passport for foreign travel; his pursuit of his career in the US with notable contributions to the US defense effort; the absence of any act on his part to acquire any foreign citizenship for his children; and his efforts since February 2003 to renounce his Moroccan citizenship. Although the oroccan Ministry of Justice had not confirmed the renunciation as of Applicant's hearing, Applicant's documented willingness to renounce dual citizenship is mitigating of foreign preference (*see* E2.A3.1.3.4. Individual has expressed a willingness to renounce dual citizenship). Subparagraphs 1.a. and 1.b. are resolved in his 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. All of the individuals closest to him possess foreign citizenship. His parents, emigres to France, are Moroccan/French dual nationals residing in France, as is his older sister. Applicant's younger sister is a Moroccan/French dual citizen who has resided in Hong Kong since December 1990. His grandmother is a Moroccan/Israeli dual citizen who emigrated to Israel in 1972. Applicant's in-laws resided in Colombia for 50 years before leaving for Spain in March 2000. His father-in-law is a dual citizen of Colombia and Spain; his mother-in-law is a French citizen. Even those immediate family members with US citizenship remain subject to the laws of other countries as well by virtue of their citizenship status. There is no evidence that his brother, a continuous resident of the US since 1980 and citizen since 1990, has taken any steps to formally renounce the Moroccan citizenship of his birth. Applicant's spouse is a citizen of Colombia (from birth) and of France (since infancy) as well as of the US. Applicant's two children may well be dual citizens of US and Morocco, although Applicant has not taken any steps to acquire

foreign citizenship for them. Disqualifying condition 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, clearly applies. Moreover, given the dual citizenship of his spouse, E2.A2.1.2.2. (sharing living quarters with a person, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists) must also be considered.

The security concerns engendered by the foreign citizenship of close family members and associates may be mitigated where it can be determined that the immediate family member(s), 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 (*see* E2.A2.1.3.1.). There is no evidence Applicant's relations have ever been agents of a foreign power. Applicant's father, prior to his retirement in the early 1990s, was a teacher and then principal in a Jewish foundation school in Morocco. Applicant's maternal relations (grandmother, mother, mother-in-law) were never employed outside of the home. Applicant's father-in-law was an entrepreneur in Colombia prior to his retirement. Applicant's siblings have their own careers in the private sector: his older sister is a psychotherapist with her own practice in France; his brother is a manager of a travel agency in the US; and his younger sister works in public relations for a US company in Hong Kong. Applicant's spouse is a tenured professor at a private college in the US, teaching subjects (Spanish and comparative literature) which are not likely to raise the attention of foreign authorities.

However, Applicant also has the burden of demonstrating that his immediate family members and close associates are not in a position to be exploited by a foreign power. The risk of undue foreign influence must be evaluated in terms of the possible vulnerability to both coercive and non coercive means of influence being brought to bear on, or through, the foreign relations and associates. Countries with strong democratic institutions and respect for the rule of law are generally regarded as presenting less of a risk than totalitarian regimes with a record of human rights abuses and hostility to the US, although the particular circumstances of each applicant must be taken into account.

Due to the high potential for international terrorism and violence against American interests and citizens in Morocco, the US Peace Corps suspended volunteer operations in that country in April 2003.[(8)] Although Applicant, his parents, grandmother, and siblings still possess Moroccan citizenship as of April 2003, their citizenship at this juncture is nominal. All have emigrated from Morocco and voluntarily acquired citizenship of their adopted country. Neither Applicant nor his relations have any financial assets in Morocco which could subject them to undue influence or pressure.

With his parents' and older sister's French citizenship and residency, the foreign ties in France are clear. Applicant maintains frequent contact with his parents and sister. Their travels to see Applicant in the US have been rare, but include a recent trip on the birth of his twins. Applicant went to France on at least a couple of occasions between 2000 and 2002, primarily to see his parents. With France known to actively target US economic and proprietary data, the risk of foreign of undue influence cannot be completely ruled out, but it is regarded as minimal. As noted above, Applicant's father is a retired school principal; his sister, a psychotherapist, is married to a furniture designer. These are not occupational endeavors of interest to a foreign entity attempting to gain sensitive technology or a economic competitive edge. Furthermore, while France has been at odds with the US in international matters, most recently with respect to Iraq, France is also a strategic partner in NATO who has supported peacekeeping efforts in the Balkans.

Israel also engages in economic espionage, particularly directed toward military systems and advanced computing applications. Applicant's ninety-year-old grandmother, who has not worked outside the home and currently resides in an assisted living environment, is not viewed as a likely target of foreign authorities. Certainly, the risk of undue foreign influence presented by the ties to Israel cannot completely be assessed without regard to the fact that Applicant pursued his undergraduate and master's studies in aeronautical engineering at that nation's preeminent technological university. Yet, there is no indication Applicant remains in contact with any of the faculty, staff or students at the university. Having clearly demonstrated his preference to the United States, Applicant is not seen as vulnerable to any coercion or pressure from Israeli interests.

Applicant's younger sister, a dual citizen of Morocco and France, has resided in Hong Kong for more than ten years. Since becoming a special administrative region of the PRC in July 1997, Hong Kong has managed to maintain the

autonomy promised on the reversion. A recent April 2003 report on the US-Hong Kong Policy Act of 1992 confirms Hong Kong's vital cooperation in US law enforcement operations in the region and significant investment by the US in the Hong Kong economy. While 2002/03 saw increased Hong Kong/PRC economic interaction, Hong Kong remained committed to strong export and border controls. A non-sovereign entity, Hong Kong still exerts autonomy in the economic arena as a full member independent of the PRC in several international economic organizations, such as the World Trade Organization. It is not likely Hong Kong, which prides itself on its free and open society and independent judiciary, is going to exert pressure on Applicant's sister--a French national, who is not conversant in Chinese and lives among expatriates.

Applicant does not have a particularly close relationship to his in-laws, as evidenced by the infrequency of his conversations with them and the fact that he made no effort to visit them when he went to Spain in July 2000. Yet, the possibility of coercion through his spouse, who understandably has feelings of affection toward her parents, must be considered. Applicant's in-laws moved to Spain--the land of his father-in-law's birth--to escape the increasing social violence in Colombia. As the owner of a button factory in Colombia, Applicant's father-in-law may well have had some contact with Colombian officials. Applicant's father-in-law has since retired from that business, and there is no indication that he is currently working in Spain. A member of NATO since 1955 and of the European Union since 1986, Spain is a major participant in multilateral international security activities, and cooperates with the US on matters of defense and security. A stable constitutional monarchy, Spain is not known to target US military or economic interests. Nothing about his in-laws current situation causes concerns of improper foreign influence.

Applicant's spouse and his brother (who he sees on average three or four times per year) are longtime residents of the US who have demonstrated a preference for the US by acquiring US citizenship. Notwithstanding their dual citizenship, neither Applicant's spouse nor his brother are likely to respond to any improper contacts by foreign authorities or individuals. Like Applicant, they are clearly invested in the US, financially, occupationally, and emotionally. In the event undue pressure was to be placed on those relations residing abroad, I am persuaded Applicant would report to proper authorities in the US any contacts, request, or threats by foreign authorities or individuals. Applicant has an established record of close collaboration with US Government researchers and scientists on projects of vital importance to the US military. These professional colleagues, some of whom have worked with Applicant since the early 1980s, are convinced of Applicant's personal integrity and loyalty to the interests of the United States. Favorable findings are warranted as to subparagraphs 2.a., 2.b., 2.c., 2.d., 2.e. and 2.f., as there is little risk of undue foreign influence under the circumstances of this case.

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

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

Subparagraph 2.d.: For the Applicant

Subparagraph 2.e.: For the Applicant

Subparagraph 2.f.: 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. Applicant's surname is misspelled in the SOR, presumably due to typographical error.

2. As set forth in section 2-104 of DoD 5220.22-M, *National Security Program Operating Manual* (January 1995), the senior management official and the facility security officer must always be cleared to the level of the facility clearance. Only US citizens are eligible for a security clearance, although limited access authorization may be granted to a foreign national or immigrant alien if compelling reasons exist. (*See* Section 2-210 of the NISPOM).

3. Applicant testified that he became an officer of the corporation after he obtained his US citizenship.(Tr. p. 68). Yet, on the resume entered as exhibit G, Applicant indicated he became the company's chief executive officer in May 2000, which predates his US citizenship.

4. In his memorandum of August 16, 2000, the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I) stated, in pertinent part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government.

5. According to the US State Department Consular Information Sheet on Morocco, children born to a Moroccan father are considered under Moroccan law to be oroccan citizens. The State Department does not report any distinction between children born in Morocco and those born abroad. It is not clear whether a father's renunciation of his Moroccan citizenship post-birth affects the children's citizenship.

6. Dual citizenship is recognized by the United States, and a decision to deny or revoke security clearance based solely on one's status as a dual citizen would raise constitutional issues. As the DOHA Appeal Board articulated (ISCR Case No. 99-0454, October 17, 2000), dual citizenship in and of itself is not sufficient to warrant an adverse security clearance decision. Under guideline C, the issue is whether an applicant has shown a preference through his actions for the foreign country of which he is also a citizen. Among the specific behaviors which raise significant guideline C issues is possession/use of a foreign passport.

7. The Government alleged foreign preference concerns, in part, related to Applicant's retention of a Moroccan passport to at least 2001 after he acquired US citizenship by naturalization. While the Government was incorrect in the dates of the Moroccan passport, administrative pleadings are sufficient if they place Applicant on notice of the conduct raising security concern. Moreover, the dates alleged for the Moroccan passport correspond to the dates reflected on Applicant's SF 86. At the hearing, Applicant presented a copy of his Moroccan passport and the company FSO explained the entry of the erroneous dates for the Moroccan passport on the SF 86.

8. *See* the State Department's Consular Information Sheet for Morocco, dated April 2003.