

DATE: April 28, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-04942

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

SYNOPSIS

A native citizen of Portugal, Applicant became a United States naturalized citizen and obtained a United States passport in March 1994. His Portuguese passport, issued before he acquired United States citizenship, has expired and he has no intent to renew it. He has some funds in a savings account in Portugal, but the majority of his assets are in the United States, where he plans to remain. While his parents and other relatives are resident citizens of Portugal, there is little risk of foreign influence presented by the foreign citizenship and residency of these family members. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR) on October 29, 2002, to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on foreign preference concerns (guideline C) related to the Applicant's dual citizenship with the United States and Portugal, his maintenance of a savings account in Portugal, his potential inheritance of a half share of his parents' home in Portugal, and his retention of a Portuguese passport after he became a United States naturalized citizen. The SOR was also based on foreign influence concerns (guideline B) related to the Portuguese citizenship and/or residency of his parents, a sister, other close relatives, and a friend, and on the alleged dual citizenship status (United States and Portugal) of his fiancée.

On November 19, 2002, Applicant executed an Answer to the SOR in which he admitted the allegations of the SOR but cited the applicability of mitigating conditions. He requested a hearing before a DOHA Administrative Judge, and the case was assigned to me on January 13, 2003. Pursuant to formal notice dated February 4, 2003, a hearing was scheduled for February 27, 2003. With Applicant's agreement, the hearing was rescheduled for February 25, 2003,

pursuant to amended notice dated February 21, 2003.

At the hearing held on February 25, 2003, four Government exhibits and eighteen Applicant exhibits were admitted into evidence, and testimony was taken from the Applicant. With the receipt on March 7, 2003, of the transcript of the hearing, this case is ripe for a decision.

FINDINGS OF FACT

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

Applicant is a 41-year-old senior software engineer, who has been employed by a defense contractor since late January 2000. Applicant seeks a secret security clearance for his duties, which have consisted primarily of working on planning and engineering software for a branch of the United States military.

Applicant was born in Portugal in 1961 to resident citizens of that country. Raised in Portugal with his sister, who had been born in 1951, Applicant attended local schools. After high school, Applicant enlisted in the Portuguese military so that he could obtain an education. From June 1980 to April 1986, Applicant served as a meteorologist, stationed mainly at headquarters where he observed the weather, and charted and provided briefings to air crews and bases. Applicant did not require a security clearance for his duties. During his tenure in the foreign military, Applicant completed his bachelor of science degree and began graduate studies.

In about January 1985, Applicant's parents, who had been factory workers in Portugal, came to the United States with the hope of making a better living for themselves. They came to a community where Applicant's maternal uncle had already established a home, and secured jobs in a local factory. Applicant and his sister remained in Portugal.

In August 1987, Applicant emigrated to the United States from Portugal. He entered the United States on a Portuguese passport. In January 1989, Applicant matriculated in a state university in the United States in pursuit of a bachelor of science degree in computer science.

Due to a downturn in the local economy in the early 1990s, Applicant's mother was laid off from her manufacturing job. Depressed at the lack of available work, and with their daughter in Portugal experiencing marital difficulties, Applicant's parents decided to move back to their native land in 1991, into an apartment which they had purchased with monies they had managed to save while working in the United States. Against the wishes of his mother, Applicant decided to remain in the United States, as he was pursuing a computer science degree in the United States and he liked the opportunities here. In October 1992, Applicant, then a permanent resident of the United States, was issued on renewal a Portuguese passport, valid for ten years. In May 1993, he completed his undergraduate studies in computer science, and the following month was awarded his bachelor of science degree.

Sometime in the mid-1990s, Applicant began dating his fiancée, who emigrated from the Azores with her family when she was eighteen years old in 1972. Her acquisition of United States naturalized citizenship operated as a revocation of her Portuguese citizenship, as she became a United States citizen before Portugal legally sanctioned dual citizenship.

In March 1994, Applicant became a naturalized United States citizen, taking an 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. Applicant regarded his acquisition of United States citizenship as a renunciation of his Portuguese citizenship, although he subsequently discovered that Portugal recognizes him to be a citizen of their country. Twelve days after he became a United States naturalized citizen, he was issued a United States passport, valid until March 2004. He has since used that passport exclusively when traveling abroad.

In May 1994, Applicant began working as a senior systems engineer for a weather services corporation in the United States. Two years later, he took a position as a software engineer with another company, where he worked until he accepted his present position with the defense contractor in about January 2000.

In August 1997, Applicant traveled to Portugal for the purpose of visiting his parents. During that trip, he did not see his sister because she was unavailable, but he saw a friend, who works as a security guard in a public school, as well as his

paternal uncles and cousins. In June 1998, Applicant and his fiancée went to the Azores to see her birthplace. Applicant did not travel to the mainland on that trip. Although Applicant had a valid Portuguese passport, he elected to travel on his United States passport on those trips taken to Portugal in 1997 and 1998. Circa 1999 or 2000, Applicant's parents stayed with him for about a month in the United States.

In late January 2000, Applicant started working as a senior software engineer for his present employer, a defense contractor. Selected for the position on the basis of his experience, skills, and a strong recommendation, Applicant has proven to be an "extremely dependable, trustworthy and outstanding software engineer." Compliant with all corporate policies and procedures, Applicant can be counted on to complete his assignments on or ahead of schedule. The engineering manager who has supervised him for the last three years has seen no personal or professional behavior by Applicant which would cause him to question Applicant's ethics or loyalty to the company or to the United States.

In conjunction with his employer's request that he be granted a secret security clearance for his duties, Applicant on August 21, 2000, executed a security clearance application (SF 86) on which he revealed his dual citizenship (United States and Portugal); his possession of United States and Portuguese passports, the latter acquired before he became a United States naturalized citizen; his service in the Portuguese military from June 1980 to April 1986; his foreign travel to Portugal in 1997 and 1998; and the Portuguese citizenship and residency of his parents and sister.

In late August 2000, Applicant purchased a home in the United States with his fiancée, taking out a home equity loan on which he owes \$98,187.86 as of mid-January 2003. Since April 2001, Applicant has used this address as his legal residence, but he has lived primarily with his fiancée in a house she owns. Applicant's fiancée works as a community coordinator for the state's department of social services.

On August 14, 2001, Applicant was interviewed by a Defense Security Service (DSS) special agent about his foreign citizenship and connections. Applicant acknowledged his dual citizenship with the United States and Portugal, his foreign citizenship making him eligible for health care benefits if he lived there, and to vote in Portuguese elections. Applicant denied application or acceptance of any foreign benefits since he became a United States naturalized citizen in arch 1994. While Portugal still considers him to be a citizen, Applicant regarded the oath of United States citizenship as a renunciation of his foreign citizenship. Applicant admitted he had renewed his foreign passport in 1992, as a Portuguese citizen, which remains valid until October 2002. He denied any intent to renew that foreign passport, as all foreign travel since his United States naturalization has been on a United States passport. Applicant volunteered he has a small savings account in Portugal, worth about \$1,300.00, and stands to inherit some assets from his parents, but he denied ever using his foreign citizenship to protect financial or business interests in another country. Applicant also discussed his service as a meteorologist in the Portuguese military from June 1980 to March 1986, with no further obligation or contact with the military since his discharge. Applicant indicated he would not bear arms against the United States.

Candid with the agent about his foreign connections, Applicant described contact with his parents in Portugal twice per month and with his sister about twice per year. While he briefly visited other relations (two uncles and three cousins) during his trips to Portugal, he had no direct contact with them otherwise. Applicant related he has three or four times yearly telephone contact with a school friend, who works as a public school security guard in Portugal. Applicant volunteered that in addition to seeing this friend in Portugal in 1997, this friend visited him in February 2001 in the United States. Planning to spend the rest of his life in the United States and to be married soon, Applicant expressed his willingness to formally renounce his Portuguese citizenship and turn in his Portuguese passport, "should it be required." The agent did not inform Applicant he was required to surrender his passport as a precondition for access to classified information. Receiving no direction from the agent as to what he should do with it, Applicant kept the foreign passport among his personal papers.

In September 2001, Applicant went to Portugal for about two weeks to see his parents. During his stay, Applicant visited with his sister, who is unemployed and on disability, and he met briefly with two paternal uncles and three cousins, who are resident citizens of Portugal. Applicant traveled on his United States passport. He did not take his Portuguese passport with him as he saw no need to, since he had a valid United States passport.

In May 2002, Applicant earned his master's degree in computer science engineering from a private university in the

United States. In December 2002, Applicant purchased a bakery in the local community with five partners (his fiancée, his fiancée's two sisters, a friend of Applicant's whom he has known since they grew up together in the same city in Portugal, and a Portuguese native who is the primary baker). At least four of his five partners are United States naturalized citizens. Applicant suspects the baker may not be a United States citizen based on this person's limited facility in English. The bakery serves as the primary employer for one of his fiancée's sisters, and for the baker. As of February 2003, Applicant and the partner with whom he grew up in Portugal were delivering the baked goods to stores early each day (around 5:30 a.m.) before reporting to their regular jobs. Applicant is owed about \$49,000.00 for money he lent to his partners for the bakery business.

In addition to his share in the bakery and home ownership, Applicant has funds on deposit in banking/credit union institutions and other investment interests (retirement accounts, money market funds, stocks) in the United States. As of late 2002/early 2003, Applicant has about \$14,577.67 in checking/savings funds on deposit (\$5,262.97 in joint accounts with his fiancée), money market assets of \$3,513.89, retirement accounts totaling \$49,800.13, and a brokerage account valued at \$5,627.09.

Applicant is not involved in any business ventures in Portugal, and he does not own any real estate in Portugal, although he may inherit 50 percent of his parents' home on their deaths. With his parents both in their seventies and retired, they struggle on their small pensions and might have to sell their residence should they have to enter a nursing home, since neither Applicant nor his sister is available to care for them. Applicant sends his parents \$50.00 US about four times per year, requesting on occasion that they give \$20.00 to his sister. Applicant still maintains the savings account in Portugal which he has held since before he emigrated to the United States. As of late 2002, the account had funds on deposit of \$1,837.60 Euro. Several years ago, Applicant made the funds in the account available to his parents. He has no intent at present to close the account.

Applicant has not applied for, or exercised, a right or benefit of Portuguese citizenship since he became a United States naturalized citizen. As of February 2003, he had taken no steps to formally renounce his Portuguese citizenship or relinquish his now expired foreign passport, although he remains willing to do so.

As of February 2003, Applicant had contact with his parents in Portugal approximately twice per month, usually by telephone. If two to three weeks pass without him contacting them, his mother calls him. In about 2002, Applicant began corresponding with his godmother in Portugal. He sends her \$50.00 once in awhile. Applicant's contacts with his sister are limited to speaking with her when she is at their parents' home during the holidays, about twice per year. Applicant's contact with his paternal uncles and cousins is limited to personal contact when he has gone to Portugal to see his parents. Applicant talks with his old school friend about three or four times per year by telephone, with the calls usually initiated by this friend in Portugal.

Prior to his emigration to the United States in about 1972, Applicant's fiancée's father worked at the United States military base in the Azores. He was a factory worker after arriving in the United States. Applicant believes his fiancée's parents, who do not speak English well, are Portuguese citizens.

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.A3.1.2.3. Military service or a willingness to bear arms for a foreign country

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 (e.g., foreign military service) occurred before obtaining United States citizenship

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

Foreign Influence

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

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

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

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

E2.A2.1.3.1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States.

E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent

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

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can

only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

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 the Applicant, 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. ⁽¹⁾ A citizen of Portugal from birth, Applicant was raised and educated through his formative years in Portugal. Following his graduation from high school, Applicant enlisted in the Portuguese military so that he could further his education which his parents could not afford. For six years, he served in the speciality of meteorology while pursuing his bachelor of science degree. In 1985, Applicant's parents came to the United States at the invitation of his mother's brother. Applicant liked it in the United States, and after he completed his military tour, he emigrated to the United States in 1987, entering on a Portuguese passport. When his parents decided to move back to Portugal in 1991, Applicant elected to remain in the United States, where he was pursuing a degree in computer science. As a permanent resident of the United States, Applicant renewed his Portuguese passport in October 1992. Applicant's military service for Portugal, and his acceptance of a privilege/benefit of Portuguese citizenship prior to his United States naturalization in March 1994, do not fall within E2.A3.1.2.1. (exercise of dual citizenship), and do not raise foreign preference concerns (*see* E2.A3.1.3.2.).

However, possession of a valid foreign passport after acquisition of United States citizenship is potentially disqualifying under guideline C (*see* E2.A3.1.2.2.). The evidence reflects Applicant possessed a valid Portuguese passport after he acquired United States citizenship and after he was interviewed by a DSS special agent in August 2001. In August 2000, the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC³I) issued a memorandum with respect to the possession and/or use of a foreign passport, clarifying that possession of a foreign passport could facilitate foreign travel unverifiable by the United States and it raises questions of primary allegiance. ⁽²⁾

Travel on the Portuguese passport was a viable option for Applicant until its recent expiration in late October 2002, but his retention of the foreign passport was not intended as an act of foreign preference.

Initially, Applicant thought he had renounced his Portuguese citizenship when he took the oath of United States naturalization. He subsequently learned (sometime before August 2000) Portugal still considers him a citizen. Yet, his use of his United States passport-in clear preference to his Portuguese passport-to enter and exit Portugal in 1997, 1998 and 2001, confirms he had no intent to exercise his foreign citizenship after he became a United States naturalized citizen. Unaware there was a problem with its retention, Applicant kept the foreign passport with his personal papers for

the same reason that he keeps old tax returns and bank statements. Candid with the Government on his August 2000 SF 86 about his status as a dual citizen and his possession of a Portuguese passport scheduled to expire in October 2002, Applicant expressed in August 2001 his willingness to relinquish his Portuguese passport and renounce his foreign citizenship, if required. While he did not take any action to surrender the foreign passport after that interview, it was because he had not been given any clear guidance that surrender was required. There is no evidence Applicant was notified before the issuance of the SOR of the ASDC³I policy clarification on the use and possession of foreign passports. By the time Applicant received the SOR, his foreign passport (which he never used) had expired. Since Applicant no longer possesses a valid Portuguese passport, and he does not intend to renew it, any foreign preference concerns related to the possession of a foreign passport have been mitigated.

Applicant's decisions to become a United States citizen and to pursue his career here are telling in their implications for his primary allegiance. Applicant's Portuguese citizenship is based solely on his birth in that country (*see* E2.A.3.1.3.1.), while Applicant became a United States naturalized citizen, knowing and accepting of the obligations of his United States citizenship. Applicant has indicated without reservation that he would not bear arms against the United States. A joint owner with his fiancée of a home in the United States and partner with five others in a bakery business in his local area, Applicant intends to remain in the United States. Applicant has expressed a willingness to renounce his foreign citizenship (*see* E2.A.3.1.3.4.). As of February 2003, he had taken no affirmative steps to do so. 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 has not voted in a Portuguese election since he acquired United States citizenship. There is no evidence Applicant is using his foreign citizenship to protect financial or business interests in Portugal. Although he has a savings account in Portugal, the account was opened before he emigrated to the United States, and its balance of \$1,837.60 Euro is very minimal in comparison to his United States assets. A potential inheritance share in his parents' residence is too speculative to engender current security concern. Applicant testified his parents may be forced to sell their apartment before their deaths. Engaged to be married to a Portuguese native who has spent her entire adult life in the United States, Applicant sees his future as being in the United States. After considering all the evidence of record, I conclude there is little risk, if any, that Applicant will act in preference to any foreign country (including Portugal) over the United States, notwithstanding the presence of close family members in Portugal. Subparagraphs 1.a., 1.b., and 1.c. are resolved in Applicant's favor.

Under guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation are not citizens of the United States or may be subject to duress. Applicant's parents, sister, two paternal uncles, three cousins and a school friend are resident citizens of the Republic of Portugal. Applicant shares a close relationship with his parents, traveling to Portugal to see them and contacting them once or twice per month. He also sends his parents \$50.00 four times per year. While his contact with his sister is limited to twice per year, usually over the holidays, he admitted making an effort to see her during his trips to Portugal. (3) E2.A.2.1.2.1., 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, must be considered in assessing whether there is an unacceptable risk of foreign influence because of the Portuguese citizenship and residency of his parents and sibling.

Applicant testified credibly to having contact with his other relations (paternal uncles and cousins) during his trips to Portugal in 1997 and 2001. (4) However, there is no indication that Applicant is especially close to these relatives. He indicated he made an effort to see them to avoid upsetting them and his parents if he did not take the opportunity to visit when he was in Portugal. His contact with these relations is sufficiently casual and infrequent (the blood connection notwithstanding) to cause little foreign influence concern. Similarly, although Applicant remains in contact with a school friend who works as a guard at a public school in Portugal, their contact is sporadic (three or four times per year) and then usually initiated by this friend. Although this friend visited Applicant at his home in the United States in February 2001, he stayed with Applicant for only one day. Mitigating condition E2.A.2.1.3.3. (contact and correspondence with foreign citizens are casual and infrequent) applies with respect to Applicant's relationships with this friend, his two paternal uncles and his three cousins. Subparagraphs 2.c. and 2.d. are found in Applicant's favor.

The security concerns engendered by the foreign citizenship of close family members (parents and sibling in this case) may be mitigated where it can be determined that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States (*see* E2.A2.1.3.1.). Applicant's parents and sister have never been agents of a foreign government, nor are they in positions to be exploited by a foreign power. Applicant's parents were factory workers who could not afford to pay for a college education for Applicant in Portugal. While they own their residence in Portugal, it was paid for with monies earned from jobs in a United States factory. Both in their seventies, Applicant's parents are now retired and living (with some struggle) on small pensions. Applicant indicated they do not travel much, so when he goes to Portugal, he rents a car to take them sightseeing. Applicant's sister, who is divorced, is unable to work due to a disability. There is nothing about either his parents' or his sister's situation or activities to raise the attention of foreign authorities. Nor is there anything unreasonable or untoward about Applicant's contacts with these family members in Portugal. Applicant has been candid with the Government about his foreign connections. In the unlikely event Applicant's family members residing abroad were to fall subject to undue influence or pressure, I am persuaded Applicant would report to proper authorities in the United States any contacts, requests, or threats by foreign authorities or individuals. Favorable findings are also warranted with respect to subparagraphs 2.a. and 2.b. of the SOR.

Applicant and his fiancée, who is also a native of Portugal, have been cohabitants since at least April 2001. In addition to their romantic relationship, Applicant and his fiancée have joint financial interests. While Applicant is certainly bound to his fiancée by affection and perhaps even influence, she emigrated to the United States back in 1972, and has been a citizen solely of the United States since her naturalization. There is no evidence or indication that she has been subject to duress, or is vulnerable to coercion, exploitation or pressure by a foreign entity. Subparagraph 2.e. is found for Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline C: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

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

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. 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.

2. In his memorandum of August 16, 2000, the 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.

3. In subparagraph 2.b., the Government alleged Applicant maintained "regular, approximately annual" contact with his sister. Although Applicant is bound to his sister by obligation, if not affection, contact once or twice per year cannot reasonably be characterized as regular.

4. The Government alleged in subparagraph 1.c. that Applicant has aunts as well who are citizens of, and living in, Portugal. There is no evidence whatsoever that Applicant has any aunts living in Portugal.