DATE: June 10, 2003

In Re:

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

Applicant for Security Clearance

ISCR Case No. 02-12617

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 43-year-old university professor and consultant. He was born in Argentina, came to the U.S. in 1986, graduated from college, and became a U.S. citizen in 1999. He has renounced his Argentinean citizenship, after allowing his Argentinean passport to lapse in 2002. He has elderly parents in Argentina, but his most significant ties are with the U.S. Mitigation has been established. Clearance is granted.

STATEMENT OF THE CASE

On November 23, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons

why DOHA could not make the preliminary affirmative finding required under the Directive that it

is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

On December 13, 2002, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made after a hearing before a DOHA Administrative Judge. The matter was assigned to another Administrative Judge on February 4, 2003, but was reassigned to me on February 11, 2003 because of caseload considerations. A Notice of Hearing was issued on February 26, 2003, setting the matter for March 12, 2003. At the hearing, Applicant testified and did not offer any exhibits. The Government did not call any witnesses, but offered four exhibits, which were marked as Government Exhibits (GX) 1 - 5, to which Applicant did not object. I agreed to keep the record open to allow Applicant to obtain and submit some documentation relating to Argentinean law on nationality. Applicant timely submitted the document to me through Department Counsel. It has been marked collectively as Applicant's Exhibit (AX) A. All

exhibits were admitted as marked, without objection. The transcript (Tr) was received at DOHA on March 27, 2003.

FINDINGS OF FACT

Applicant is a 43-year-old mathematician and consultant. The SOR contains three allegations, 1.a. - 1.c., under Guideline C; one allegation, 2.a., under Guideline B; and three allegations, 3.a., 3.b., and 3.c., under Guideline L. Applicant's response admits all seven SOR allegations. The admissions are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Guideline C (Foreign Preference)

1.a. - Applicant was a citizen of Argentina and possessed an Argentinean passport when he moved to the U.S. with his wife in 1986, to continue his education (GX 2). He became a U.S. citizen on September 3, 1999 (GX 3). At the time Applicant completed his security clearance application on March 1, 2001, he considered himself to be a dual citizen of the U.S. and Argentina (*Id*.). He reiterated this belief in his sworn statement of February 15, 2002, based on his understanding that "Argentina will not remove [his] citizenship, no matter what" (Id.) (GX 2 and Tr at 41 - 45). Applicant expressed his willingness to renounce his Argentinean citizenship (Tr at 73). After the hearing on March 12, 2003, Applicant researched Argentinean law and learned of the process by which Argentina will suspend the citizenship of someone who becomes a citizen of another country. He has documented his use of this process and the suspension of his Argentinean citizenship by that

country's government (AX A, official document dated March 18, 2003). Consequently, Applicant has demonstrated that he is no longer a dual citizen of Argentina and the U.S.

1.b - Prior to the end of 2002, Applicant possessed a valid Argentinean passport, but the passport expired on December 29, 2002, and was not renewed. Applicant retained the now invalid passport, but "is willing to surrender it" (Tr at 14). Applicant is now a U.S. citizen only and uses his U.S. passport for all purposes.

1.c. -Applicant traveled to Argentina six times since June 1994, with his most recent visit being in December 2000/January 2001. The purpose of these journeys was to visit his elderly parents.

Guideline B (Foreign Influence)

2.a. - Applicant's mother, father, brother, mother-in-law, and father-in-law reside in Argentina and are citizens of that country.

Guideline L (Outside Employment).

3.a - Applicant attended and lectured at a University in Hong Kong from March 27, 2000 to April 2, 2000. The trip was paid for by the University. Eighty percent of the attendees were from the U.S. (Tr at 57 - 64).

3.b. - Applicant gave two lectures at a university in France in the summer of 2001. He was reimbursed by the university for this trip (Tr at 65).

3.c. - Applicant lectured at an international conference in Italy during the summer of 2001. Applicant was reimbursed for this trip by the Italians.

There was a fourth such occasion, in 2002, when Applicant spoke at an international seminar in England, and his expenses were reimbursed by the seminar sponsors (Tr at 56 - 57).

Applicant has made clear his strong feelings for the United States, and his "enjoy[ment] of the security and freedom and respect that there is here that was not existent and is still not existent in Argentina" (Tr at 76).

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing 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, exploitation, or duress; and (9) the likelihood of continuation or recurrence (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent to this case:

GUIDELINE C (Foreign Preference)

Conditions that could raise a security concern and may be disqualifying:

1. The exercise of dual citizenship;

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

Conditions that could mitigate security concerns include:

1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country;

4. Individual has expressed a willingness to renounce his dual citizenship.

GUIDELINE B (Foreign Influence)

Conditions that could raise a security concern and may be disqualifying:

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;

Conditions that could mitigate security concerns include:

1. A determination that the immediate family member(s), cohabitant, or associate(s) in question would not constitute an unacceptable security risk.

GUIDELINE L (Outside Activities)

Conditions that could raise a security concern and may be disqualifying:

3.a. - Any service, whether compensated, volunteer, or employment, with:

1. A foreign country; or

3. A representative of a foreign country.

Conditions that could mitigate security concerns include:

1. Evaluation of the outside employment or activity indicates that it does not pose a conflict with an individual's security responsibilities.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns 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 conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

Applicant was born in August 1959 in Argentina to Argentinean parents. He came to the United States 1986 (age 26), accompanied by his wife, to continue his education at an American university. He became a U.S. citizen on September 23, 1999, and obtained a U.S. passport on September 29, 1999. He is a full tenured professor at a major U.S. university.

1.a. - Prior to becoming a U.S. citizen in 1999, Applicant was a citizen of Argentina only, and used his Argentinean passport for all travel purposes (Tr at 14). Although he renounced his allegiance to Argentina when he took the oath of citizenship in the U.S., Applicant believed that under Argentinean law, he remained an Argentinean citizen. As a result of the hearing in this matter, Applicant researched Argentinean law, and discovered the process whereby Argentina would recognize his intent to be only a U.S. citizen. He has done what was necessary to accomplish his goal (AX A). Consequently, Applicant is no longer a dual citizen of the U.S. and Argentina.

1.b. - Applicant's Argentinean passport expired on December 29, 2002, was not renewed, and is a moot matter since Applicant is no longer an Argentinean citizen. When he completed his security clearance application in March 2001, he was told by a company official that renouncing his Argentinean citizenship and surrendering his passport "could create a concern with the relationship between [the] U.S. and Argentina" (Tr at 15). After the DOHA hearing, he learned otherwise and took prompt action to accomplish both matters. His renunciation of Argentinean citizenship means that he would be unable to obtain a new passport from that country.[(1)] Prior to the hearing, Applicant had not been made aware of the negative significance of holding a foreign passport[(2)] (Tr at 23).

1.c - I have carefully considered the evidence behind the concern about Applicant's having traveled to Argentina on six occasions between June 1994 and December 2000/January 2001. Applicant has been a Professor of Mathematics since 1995. He has also been a consultant to several defense contractors (GX 1, his security clearance application). Since 1974, (the last seven years prior to his security clearance application), along with his visits to Argentina to visit his parents, now in their late 70s, he has traveled to numerous other countries on business (*Id.*, at Item 16). He has explained that his visits to Argentina are made out of love for his parents, and not because he feels any affinity for that country. He has also stated that he would never submit to any pressure to act against U.S. interests (GX 2 at page 5). Based on the totality of the record, I conclude that Applicant's travels to Argentina do not suggest a preference for Argentina over the U.S. and are not of security significance.

Based on the totality of the evidence, I conclude that none of the Foreign Preference Disqualifying Conditions (DC) are currently applicable.

2.a. - The presence of Applicant's parents and in-laws being citizens of and living in Argentina is certainly a matter of concern, but Applicant's explanations as to the relationships, the lack of any problems in the past, and his recognition of his security responsibilities leads me to conclude that there is minimal risk of Applicant acting against U.S. interests.

Foreign Influence Disqualifying Condition 1 (family in foreign country) is applicable but, under Mitigating Condition 1, I conclude the relationships "would not constitute an unacceptable security risk."

3.a., 3.b., and 3.c. - The evidence certainly supports the allegations as stated, but the nexus or logical connection between an American internationally recognized expert in mathematics and related matters accepting reimbursement for speaking at professional seminars overseas and his security clearance eligibility has not been explained by the Government, nor is it evident from evidence of record. This is not a case where the Applicant is acting as a consultant for a foreign government or business. Professors who are experts in a specific field logically attend and speak at international seminars attended by individuals from a variety of countries to share knowledge with professional colleagues in the same or similar fields.

Applicant states that he has actually "attended over 20/30 conferences over the past ten years abroad and consistently the U.S. Government has paid for these trips through grants to myself and the universities where I worked" (GX 2 at page 8). In fact, Applicant saw a function of his lectures as being to "lure . . . students to the U.S." (*Id*.). "It just so happened that these three particular trips [those cited in SOR 3.a, 3.b., and 3.c.] were -- I was offered to be reimbursed by the university. The U.S. Government didn't have t pay for them" (Tr at 16). Taken in context, the three allegations do not even suggest that Applicant may have a preference for each or any of the three cited countries over the United States.

The record does not cite the basis for the stated concern. I conclude that the Government has not shown that Applicant's lectures pose a conflict with his security obligations or that there was an increased risk of unauthorized disclosure of classified information. Although he has been working in his field of expertise for many years, it was only at the suggestion of the U.S. military that he obtain a security clearance so that he could be given the data that would allow him to apply his expertise directly to the military's needs (Tr at 31 - 40). As to possible disqualifying conditions, I conclude that Applicant's lecturing, for which his expenses were reimbursed, was not a "service," with or for "a foreign country, a foreign national, or a representative of any foreign interest," and is not the type of conduct that is a concern under the preamble to this Guideline.

FORMAL FINDINGS

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

Guideline C (Foreign Preference) For the Applicant

Subparagraph l.a.. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Guideline B (Foreign Influence) For the Applicant

Subparagraph 2.a. For the Applicant

Guideline L (Outside Employment) For the Applicant

Subparagraph 3.a. For the Applicant

Subparagraph 3.b. For the Applicant

Subparagraph 3.c. For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent

with the national interest to grant or continue a security clearance for Applicant.

BARRY M. SAX

ADMINISTRATIVE JUDGE

1. The "Money Memorandum," a Department of Defense document that prohibits the granting a security clearance to someone who possesses a foreign passport is not cited in the SOR, and is inapplicable in any case, since the passport in question had expired prior to the hearing, and Applicant is no longer recognized by Argentina as one of its citizens.

2. Department Counsel stated that since the "Applicant's passport had expired, the Government did not feel that the Money Memorandum applies in ths case" (Tr at 23).