

DATE: February 25, 2003

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-15383

**DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn D. MacKinnon, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant, a United States citizen from birth, acquired Spanish citizenship and a Spanish passport in March 1997 so that she could continue to work in Italy for a university under contract with the Department of Defense. A stated willingness to renounce foreign citizenship and relinquish a foreign passport, without actual surrender of the passport, are not enough to overcome the foreign preference concerns presented by the acquisition and retention of the foreign passport. Foreign influence concerns persist because of the Italian citizenship and residency of her cohabitant boyfriend, and the Italian residency (with European employment) of her brother. Clearance is denied.

**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), dated July 30, 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 dual citizenship (United States and Spain), possession of a Spanish passport, Italian residency and NATO employment in Spain, and foreign influence concerns (guideline B) because of the Spanish citizenship and/or residency of immediate family members (mother and brother) and other close associates, including her boyfriend. [\(1\)](#)

On August 26, 2002, Applicant filed a response to the allegations set forth in the SOR. Applicant acknowledged possessing Spanish citizenship and a Spanish passport, but she denied any active exercise of her foreign citizenship or employment for NATO in Spain. Applicant expressed a willingness to relinquish her foreign citizenship and passport. With regard to the foreign citizenship of close relations, Applicant indicated her mother and maternal grandmother have Spanish citizenship, her brother United States citizenship and her boyfriend Italian citizenship. All of these individuals

were residing in Italy as of August 2002. Applicant requested that her case be determined on the written record in lieu of a hearing.

The Government submitted its File of Relevant Material (FORM) on September 26, 2002. (2) On the submission of the FORM, the Government moved to amend the SOR to indicate Italy (rather than Spain) as the situs of Applicant's employment and the country of residence of her mother, brother and boyfriend. The Government also proposed to add a new allegation under guideline B reflecting the Spanish citizenship and Italian residency of Applicant's grandmother. A copy of the FORM, including the proposed amendments, was forwarded by letter dated September 27, 2002, to Applicant with instructions to submit additional information and/or any objections within thirty days of receipt. With the issuance of the SOR, Applicant was apprized of an August 16, 2000, memorandum issued by the Assistant Secretary of Defense for Command, Control, Communications and Intelligence [ASD(C3I)], clarifying the application of the foreign preference adjudication guideline (guideline C) with respect to foreign passports, to wit: possession and/or use of a foreign passport in preference to a United States passport raises doubt as to whether the person's allegiance to the United States is paramount and it could facilitate foreign travel unverifiable by the United States, and that clearance is to 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.

Documentation was submitted on Applicant's behalf consisting of a character reference letter, a Statement of Compelling Need for Applicant's stepfather to continue his clearance for work with the United States military in 1981, and a request for a Status of Forces Agreement (SOFA) in connection with Applicant's employment as the assistant program manager of the English Language Program at a university under contract with the Department of Defense and located at a NATO base in Italy. On November 21, 2002, Department Counsel indicated the Government had no objection to the documentation. On November 26, 2002, the case was assigned to me for a decision based on the written record.

On January 2, 2003, I received a memorandum submitted on Applicant's behalf, authored by a colonel in the United States military familiar with Applicant's work and family situations. A copy of this memorandum was provided to Department Counsel for consideration and comment by close of business on January 13, 2003. Department Counsel having indicated on January 3, 2003, that she had no objection thereto, the memorandum was accepted into the evidentiary record.

### **PROCEDURAL RULINGS**

Applicant having had adequate notice of the Government's proposed amendments to the SOR and having failed to file any objection thereto, the Government's motion is granted. SOR subparagraphs 1.c., 2.a., 2.b., and 2.c. are amended and a new allegation 2.d. is added, as follows:

- 1.c. You obtained your citizenship and passport from Spain in approximately 1997 even though you were already a United States citizen. You are employed by NATO, in Italy, and Spanish citizenship allowed you to continue working for NATO without the necessity of renewing your Soggiorno Permit.
- 2.a. Your mother is a Spanish citizen currently residing in Italy.
- 2.b. Your brother is a United States citizen currently residing in Italy.
- 2.c. Your boyfriend and other close associates with whom you are bound by affection, obligation or close and continuing contact are Italian citizens residing in Italy.
- 2.d. Your grandmother is a Spanish citizen currently residing in Italy.

### **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 37-year-old assistant program manager of the English language program at an educational institution

under contract with the DoD located on a NATO base in Italy. Applicant seeks a security clearance for her duties, which include examining student proficiency in North American English, arranging American cultural events for foreign students, performing as registrar, recommending curriculum changes, assigning classes and counseling students. <sup>(3)</sup>

Applicant was born in July 1965 in the United States to a United States citizen on active duty in the United States military and his Spanish spouse. With a transfer of her father's duty station to Spain in 1970, Applicant spent from 1970 to 1972 with her family in her mother's native land. Applicant and her brother, who had been born in the United States in 1964, were educated within the DoD dependent school system during their two-year stay in Spain.

In September 1978, Applicant's parents divorced. Applicant remained in the United States, where she was attending high school. Following her graduation, Applicant matriculated in a college in the United States.

In May 1981, Applicant's mother married a United States citizen employed in a civilian capacity (GS-12) by the United States military at an air base in Europe. As the chief of a COMSEC branch, Applicant's stepfather had top secret/SCI access, which was continued because of compelling need after his marriage to Applicant's mother, an immigrant alien. In September 1985, he was transferred to a communications command located on a NATO base in Italy.

At the time a twenty-year-old student, Applicant visited her mother and stepfather in Italy in February 1986. <sup>(4)</sup> Considered a DoD dependent because of her student status, Applicant decided to remain with her mother and stepfather, and she found a job with a tax-free furniture store on the NATO base. As a United States dependent, Applicant had to obtain a permit to work ("Soggiorno" permit) from the Italian authorities.

In 1991, Applicant's stepfather retired from his United States civil service employment. He elected to remain in the vicinity of his last duty station, and he and Applicant's mother took up residence in northern Italy.

In May 1992, Applicant commenced employment as an administrative assistant for an American institute of higher education under contract with the Department of Defense, located on a NATO base in Italy.

In mid-April 1986, Applicant was issued a United States passport, valid for ten years. Applicant traveled from her home in Italy to Spain on her United States passport each August from 1996 to at least 2000.

Circa 1997, the Italian authorities decided not to grant or renew Soggiorno permits to those American citizens hired locally for positions with the United States contractors or the military in Italy. On the advice of the Italian police that she acquire status as a citizen of a European Union nation so that she could continue her employment at the university, <sup>(5)</sup> Applicant became a citizen of Spain, which citizenship she was entitled to by virtue of her mother's status as Spanish citizen. In March 1997, Applicant was issued a Spanish passport, valid for ten years. The United States military subsequently resolved its conflict with the Italian authorities about the status of United States citizens hired locally, and all American citizen employees who had been recruited locally prior to 1997 were "grand-fathered" in.

In or before April 1998, Applicant was denied a Status of Forces Agreement (SOFA) identification by the United States Sending State Office for Italy. A SOFA stamp would identify her as a member of a civilian component or dependent of a member of a force or civilian component of the United States, and entitle her to unrestricted entry into, and exit from, Italy. The SOFA designation was denied on an assessment that Applicant's job at the university had no technical requirements and could therefore be filled by a local national. The university requested reconsideration of the decision in late April 1998, citing technical linguistic requirements of the position, and Applicant was given SOFA identification. Recently reapproved for SOFA status in mid-July 2002, Applicant is entitled, as a member of a civilian component of the United States, to unrestricted entry into, and exit from, Italy until August 2005.

As required under Italian law, Applicant has maintained her Soggiorno's permit in Italy. <sup>(6)</sup> On her official permit issued in mid-October 1998 and valid until August 1, 2002, Applicant was identified as a citizen of the United States.

In conjunction with her employment at the university, Applicant executed a Questionnaire for National Security Positions (SF 86) on October 23, 2000. Applicant disclosed thereon her dual citizenship (United States and Spain) and possession of both United States and Spanish passports. In response to question 17 regarding foreign activities,

Applicant listed contact with the Spanish consulate in mid-March 1997 in connection with the foreign passport, which she obtained "due to difficulties with 'Sojourn's Permit.'" With regard to the foreign citizenship and/or residency of family members and close associates, Applicant reported the Spanish citizenship and Italian residency of her mother, the United States citizenship and Italian residency status of her stepfather and brother, and the Italian citizenship and residency of her cohabitant boyfriend, and two other close associates. Applicant also reported on her SF 86 her travels outside of Italy since April 1993, including annual pleasure trips to Spain each summer since 1995.

On March 21, 2002, Applicant was interviewed at the NATO base by an agent from the Naval Criminal Investigative Service (NCIS). Applicant admitted she was a citizen of Spain as well as the United States, having obtained the foreign citizenship solely because she was having difficulties renewing her Soggiorno Permit that she needed to continue working "for NATO." At the suggestion of the Italian police, Applicant became a citizen of a European Union nation so that she could continue working. Applicant expressed a willingness to relinquish her Spanish passport, which he indicated she had never used for travel. Applicant denied loyalty to any country other than the United States, and indicated she would not bear arms for Spain.

Applicant has never voted in a Spanish election, worked in Spain, or paid taxes to Spain. Applicant has no financial interest in Spain, and is not using her Spanish citizenship to protect a financial asset in Spain. While in Italy, Applicant has been employed by contractors either for NATO or the United States Government, so income taxes have been paid to the United States.

As of late August 2002, Applicant was willing to renounce her Spanish citizenship and surrender her Spanish passport, if required. Aware as of about late October 2002 of the ASDC3I policy clarification which requires the surrender of a foreign passport or official approval from the United States Government for its use, <sup>(7)</sup> Applicant has assured her character references—a military colonel and a Federal civilian stationed at a military command in Europe—of her intent to relinquish her foreign passport as soon as possible. The United States Army colonel has had the opportunity to witness Applicant's performance on the job, and as a friend, she is familiar with Applicant in social and familial contexts as well. This colonel, who holds TS/SCI clearance since 1975, recommends Applicant be granted a security clearance. The Federal civilian employee does not have a personal relationship with Applicant, but he has been acquainted with Applicant's mother and stepfather since December 1987. Currently serving as an installation security manager for the military intelligence command, this Federal civilian considers Applicant's parents to be "the most honest, trustworthy, and patriotic couple" he has had the honor of knowing.

Applicant's mother and grandmother are citizens of Spain residing in Italy. Applicant's mother, who underwent a personnel security background investigation conducted by the Defense Security Service in 1979 for a position in a communications center, has lived in Italy since September 1985. Applicant's brother, a citizen of the United States, lives close to his mother and stepfather in northern Italy. As of late August 2002, Applicant's brother was on a four-month assignment in Mexico for his employer, a European multinational firm/organization. <sup>(8)</sup>

Applicant's live-in boyfriend is an Italian citizen who has is not employed by the Italian military or Italian government.

As of January 2003, Applicant had not taken any concrete steps to surrender her foreign passport to Spanish authorities.

## 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 include:

E2.A3.1.2.1. The exercise of dual citizenship

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

E2.A5.1.3. Conditions that could mitigate security concerns include:

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

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 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 her 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 she 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, 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. <sup>(9)</sup> A citizen of the United States from birth, Applicant elected to remain in Italy with her mother and stepfather in February 1986, securing and then maintaining employment with NATO or United States military contractors. Hired in Italy in May 1992 for a position as an administrative assistant at an educational institution under contract with the Department of Defense, Applicant had no problems with Italian authorities until 1997, when Italy refused to grant or renew work permits to American citizens hired locally. Advised by law enforcement officials that she could remain in her position if she was a citizen of a European Union nation, Applicant acquired Spanish citizenship and a Spanish passport in 1997.

As a dual citizen, Applicant is subject to the duties or obligations owed to two different countries, which could present her with competing claims. Yet, dual citizenship is recognized by the United States, and a decision to deny or revoke a security clearance based solely on one's status as a dual citizen would raise constitutional issues. The adjudicative guidelines provide for mitigation where the dual citizenship is solely based on the foreign citizenship of one's parents (see E2.A3.1.3.1.), and Applicant's foreign citizenship is derived from her mother's status as a Spanish citizen. However, Applicant's dual citizenship involves more than the factual application of the laws of two sovereign nations. Her acquisition as an adult of Spanish citizenship to facilitate her desire to retain her employment in Italy, and her procurement of a Spanish passport to prove that citizenship, raise security significant foreign preference concerns. As set forth by the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I) in an August 16, 2000 policy clarifying guideline C as it applies to foreign passports, possession and/or use of a foreign passport raises doubt as to whether the person's allegiance to the United States is paramount, and it could also facilitate travel not verifiable by the United States. Disqualifying conditions E2.A3.1.2.1. (The exercise of dual citizenship) and E2.A3.1.2.2. (Possession and/or use of a foreign passport) must be considered in evaluating Applicant's security suitability.

Applicant has the burden of overcoming the security concerns engendered by her affirmative acts in exercise of foreign citizenship. In her favor, Applicant has never voted in a Spanish election, never paid taxes to Spain, never voluntarily taken up residence in Spain, or acquired any financial assets in Spain. Her continuous residency in Italy since February 1986 does not reflect a preference for Spain, or even for Italy over the United States, as her decision to stay in Italy is

motivated by a desire to stay close to family members. Her stepfather, mother, brother and even her grandmother have made Italy their home. <sup>(10)</sup> Applicant's employment with DoD/military or NATO contractors, with taxes paid to the United States, is consistent with her United States citizenship. Significantly, Applicant is listed on a recent Soggiorno permit filed with Italian authorities as a citizen only of the United States.

Potentially mitigating of foreign preference concerns related to dual citizenship (*see* E2.A3.1.3.4.), Applicant has expressed a willingness to relinquish her Spanish citizenship and passport. When interviewed by an NCIS agent on March 21, 2002, Applicant explained she obtained dual citizenship only because she was having difficulty renewing her Soggiorno permit, and she related she would surrender her Spanish passport "if asked." With the issuance of the SOR, Applicant was placed on notice that her foreign citizenship and possession of a Spanish passport caused sufficient foreign preference concerns to warrant referral of her case to a DOHA Administrative Judge. In response, Applicant reiterated her willingness to "renounce Spanish citizenship, if so required," and her readiness to surrender the Spanish passport. Yet, Applicant has presented no evidence of concrete steps taken on her part to sever these ties to Spain. Although renunciation of foreign citizenship is not mandated under the Directive, consistent application of the guideline pertinent to foreign passports requires that clearance be denied or revoked unless Applicant surrenders her foreign passport or obtains official approval for its use from the United States Government. <sup>(11)</sup>

Applicant remains in a position to present herself to authorities anywhere as either an American or a Spanish citizen, depending on her needs at the time. Absent surrender of the foreign passport accompanied by a credible intent not to renew, the risk of unverifiable travel cannot be completely discounted. In recommending Applicant for security clearance, a military colonel intimated that Applicant was waiting to be told specifically what to do with her passport rather than proceed on her own. It was incumbent on Applicant to make a good faith effort to comply with Department of Defense requirements, especially after she was made aware of the ASDC3I's policy clarification and the uncompromising mandate on foreign passports. There is no evidence Applicant has even made any inquiries as to how she might effect the surrender of her Spanish passport. Although Applicant has never used her Spanish passport for travel in preference to her United States passport, her continued acceptance of a benefit/privilege of her foreign citizenship precludes the affirmative finding that it is clearly consistent with the national interest to grant her a security clearance. Subparagraphs 1.a., 1.b., and 1.c. (as amended) are resolved against her. Subparagraph 1.d. is found in Applicant's favor as her residency in Italy is attributed to familial and employment factors, rather than a preference for Italy over the United States.

Under guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom she is bound by affection, influence or obligation are not citizens of the United States or may be subject to duress. Whether an applicant's family ties in a foreign country pose a security risk depends on a common sense evaluation of the overall facts and circumstances of those family ties. Those individuals with whom Applicant shares a close relationship or is bound by obligation (mother, brother, grandmother, cohabitant boyfriend) are residents of Italy. <sup>(12)</sup> Of these individuals, only her brother is a citizen of the United States. Consideration is warranted of disqualifying conditions 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) and 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).

The security concerns engendered by the foreign citizenship and/or residency of close family members 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 (MC E2.A2.1.3.1.). There is no evidence any of Applicant's relatives are agents of a foreign power. However, Applicant has the burden of demonstrating that these foreign nationals are not in a position to be exploited by a foreign power. As articulated by the DOHA Appeal Board in ISCR Case No. 00-0317 decided on March 29, 2002:

Under Guideline B, the presence of family members in a foreign country must be evaluated both in terms of (i) possible vulnerability to coercive pressure or influence being brought to bear on, or through an applicant's family members in a foreign country, and (ii) possible vulnerability to noncoercive means of influence being brought to bear on, or through, an applicant's family members in a foreign country.

Although Applicant's mother remains a citizen of Spain, and she has resided in Italy since September 1985, there is little risk of any undue foreign influence presented by her foreign citizenship and residency. Applicant's mother was subjected to background investigations conducted by agents of the Department of Defense in 1979, and again in 1981 after she married Applicant's stepfather, who had access to high-level security clearance for his employment with the United States military in Europe. Furthermore, a Federal civil servant, who is currently employed as senior information manager and deputy special security officer for a United States military command in Europe, indicates Applicant's stepfather and mother "are the most honest, trustworthy, and patriotic couple [he's] had to (sic) honor of knowing." The retirement of Applicant's parents (mother and stepfather) to northern Italy is understandable, given this was the geographical area in which they were living when Applicant's stepfather retired. Given the sensitive nature of her spouse's past employment and her friendships with individuals devoted to protecting and fostering United States interests, Applicant's mother is more likely to recognize, and to avoid, situations which could pose a risk of undue foreign influence. A favorable finding is warranted as to subparagraph 2.a. (as amended) of the SOR.

A resident of Italy who has elected to make his home near his mother, Applicant's brother is a United States citizen who works for a "European multinational." Apart from the fact that Applicant's brother was on a four-month assignment to Mexico, little is known about his work or associates. For example, the record is silent as to the identity of her brother's employer as well as the nature of his job duties. Applicant having presented little to persuade that her brother's work and associations are consistent with United States interests and do not present an unacceptable risk of vulnerability to coercion, exploitation or pressure by foreign governments, entities or agents, SOR subparagraph 2.b. (as amended) is resolved against her. Similarly, while I do not doubt Applicant's assertions that her cohabitant boyfriend, an Italian national, is not a member of the Italian military or connected to any foreign government, little is known about Applicant's boyfriend, to include whether he holds a job with a foreign entity, has foreign financial or business interests, is obligated to any foreign government, or receives any benefits from a foreign government. SOR subparagraph 2.c. (as amended) is also concluded against the Applicant due to the risk of foreign influence presented by her boyfriend's Italian residency and citizenship.

In her listing of relatives and associates on her SF 86, Applicant did not include her grandmother, a Spanish citizen residing in Italy. The omission may have been due to oversight, or to the fact that Applicant does not have close or continuing contact with her grandmother. <sup>(13)</sup> With the nature of their personal relationship unclear, and her grandmother being elderly, there is little risk of foreign influence presented by the foreign citizenship and residency of her grandmother. SOR subparagraph 2.d. is resolved in Applicant's favor.

### **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: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c. (as amended): Against the Applicant

Subparagraph 1.d.: For the Applicant

Paragraph 2. Guideline B: AGAINST THE APPLICANT

Subparagraph 2.a. (as amended): For the Applicant

Subparagraph 2.b. (as amended): Against the Applicant

Subparagraph 2.c. (as amended): Against the Applicant



Subparagraph 2.d.: For the Applicant

## DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

**Elizabeth M. Matchinski**

**Administrative Judge**

1. There is no evidence that Applicant's mother, brother, or boyfriend were residing in Spain at the time the SOR was issued. While Applicant did not list the country of residence for these close relations on her October 2000 security clearance application, it was not reasonable to infer from the addresses provided that her mother, brother or boyfriend lived in Spain. With respect to her boyfriend, it can clearly be inferred that his address was Italy, given he lived with Applicant and she identified her address in full on the SF 86. The colonel who submitted a character reference on Applicant's part complained of personal embarrassment at the mistakes in the SOR. While Department Counsel indicated in the FORM's Discussion of the Facts that Applicant "admits her grandmother is a citizen of and resides in Spain," she moved to amend the SOR to reflect the Italian residency of Applicant's grandmother, mother, brother and boyfriend.
2. The file presented to me for review contains two copies of the Government's FORM.
3. The level of clearance sought by Applicant is not apparent in the record.
4. Presumably, Applicant entered Italy on a United States passport. The only United States passport of record was issued in mid-April 1996, valid for a period of ten years.
5. As noted by the Department Counsel in the Government's FORM, the evidence is conflicting as to whether Applicant was employed by the university for the United States military or for NATO. Applicant informed a Naval Criminal Investigative Service (NCIS) special agent in March 2002 that she needed the Soggiorno Permit to continue working for NATO. (Item 5). In her response to the SOR (Item 2), Applicant described her employer as "an American higher education institution contracted with the US Department of Defense."
6. Applicant has referred to this permit as a "Sojourner's Permit." The document, titled "Permesso di Soggiorno per Stranieri," is translated on the form itself as "Foreigners' Permit of Stay."
7. The letter of assignment indicates Applicant received the FORM on October 23, 2002, although there is no signed receipt in the record confirming the date. Since the military colonel who recommends Applicant for clearance has seen the Government's FORM, and this colonel drafted her letter in November 2002, Applicant was aware by at least mid-November, if not before, of the ASDC3I memorandum on the possession and/or use of foreign passports.
8. The identity of her brother's employer is not of record.
9. 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 or her actions for the foreign country of which he or she is also a citizen.
10. Applicant indicated in her SF 86 that her biological father, who was a United States citizen, is deceased.
11. 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.

12. In response to question 14 on her SF 86 regarding foreign national associates not living with her to whom she is bound by "affection, obligation, or close and continuing contact," Applicant listed two Italian resident citizens. The nature of her relationships with these individuals is not developed in the record.

13. In response to question 14, applicants are required to list with respect to other relatives only foreign national relatives not falling under the other categories specified "with whom you or your spouse are bound by affection, obligation, or close and continuing contact."