DATE: January 21, 2004

In Re:

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

Applicant for Security Clearance

CR Case No. 02-22316

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Ms. T (Wife and Personal Representative)

SYNOPSIS

This 61-year-old Applicant was born in Mexico in 1942, moved to the U.S. in 1960, and became a U.S. citizen in 1970. In 1999, he obtained a document from a Mexican consulate in the U.S. officially recognizing his Mexican citizenship. Use of the document meant he could avoid having to pay newly imposed fees charged foreigners traveling into the interior of Mexico. He used the document three times. Applicant has lived, married, and worked in the U.S. for more than 40 years. He has worked for many years cleaning and repairing U.S. Navy ships, with no apparent problems. People who know Applicant describe him as hard working and law abiding. Mitigation has been established. Clearance is granted.

STATEMENT OF THE CASE

On June 20, 2003, 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 July 21, 2003, Applicant submitted a response to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The matter was assigned to me for resolution on September 2, 2003. On September 4, 2003, a Notice of Hearing was issued, setting the hearing for September 19, 2003. At the hearing, the Government did not present any witnesses but offered two exhibits, Government Exhibits (GX) 1 and 2. Applicant testified and offered four exhibits, which were marked as Applicant's Exhibits (AX) A-D. Applicant timely

submitted several post hearing documents, which were marked collectively as AX E. All exhibits were admitted without objection. The transcript (Tr) was received at DOHA on September 29, 2003.

FINDINGS OF FACT

Applicant is 61 years old. The SOR contains one allegation, 1.a. Applicant admits the factual allegations in SOR 1.a., but denies that his conduct showed a preference for Mexico over the United states.

After considering the totality of the evidence derived from the hearing testimony and all evidence of record, I make the following FINDINGS OF FACT as to each SOR allegation:

Guideline C (Foreign Preference)

1.a. - Applicant was born in Mexico in 1942 and was a Mexican citizen. He came to the U.S. in 1960 and became a U.S. citizen in December 1970. At all times since, he has retained his Mexican citizenship and has no plans to renounce it, although he would do so "if necessary." (GX 1 at Item 3 and GX 2). He maintains dual citizenship in Mexico for the sole purpose of "facilitat[ing] contact with brothers and sisters who reside in Mexico because it is easier for me to travel to Mexico than for them to obtain visas to visit me here in the United States." (July 21, 2003 Response to SOR and Tr at 25, 30). Applicant "continue[s] to have cultural and personal ties to Mexico" (Response to SOR), but no financial, political, or other ties to that country. (Tr at 31-33). He "would do nothing to compromise the way of life in the U.S." (Response to SOR). His greatest ties are with the U.S., where he has lived and worked for 43 years. (Tr at 32). He and his wife have substantial financial, social, and political interests in the U.S. (Tr at 24-34).

Applicant has never "possessed a Mexican passport." (GX 1 at Item 15 and GX 2). What he does have is an official document issued by the Consul General of exico in 1999 declaring that Applicant is "Mexican by birth," that he has indicated that he did not want to deprive himself of his Mexican citizenship when he became a U.S. citizen in1970, and that under Mexican law, Applicant has retained his Mexican citizenship. (AX E). The document is clearly not a passport, which traditionally is a document (1) certifying that the person whose photograph is attached is a citizen of the issuing country; (2) asking another country to recognize the person's status, allow him or her entry and exit; and (3) containing pages for the other countries to place imprints showing the dates of such entrance and exit. The document in issue in this case contains only the first aspect of a passport. After reviewing the document, it is clear that while it is a formal recognition that Applicant is a Mexican citizen, it does not refer to any foreign travel and contains no pages for imprints. I conclude that it is analogous to an identification card issued by a state Motor Vehicle Bureau in that it is official recognition of a person's identity, but does not authorize the person to drive an automobile. The document may have other uses within Mexico, but it contains nothing indicting it can be used for foreign travel.

Applicant viewed the document as "for traveling to Mexico, like regular passport or something like that, authentication you know, I'm a [Mexican] citizen." (Tr at 39). The document is in Spanish and a certified translation is attached (Ax E at pages 2-5). While Applicant testified the document was "like" a passport, it clearly is not a passport, as his representative argues.[(1)]

(AX E at page 1).

Applicant obtained the document for reasons of convenience and money. If he entered Mexico on his U.S. passport, specifically beyond a line 500 miles south of the U.S. border, he would have to pay "extra money" (Tr at 42), an entry fees charged of foreigners. Even at the border, "if some Mexican police see me like a U.S. citizen, and then they charge something too." (Id.). Applicant has used the document on about three occasions and has not been charged any fee. He does not know what the charge actually is (Tr at 44, 45).

Applicant has an exemplary work record (AX A, AX B, AX C, and AX D and Tr at 27-29).

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)

When an individual acts in a way as to indicate a preference for a foreign country over the U.S., then he or she may be prone to provide information or make decisions that are harmful to the interests of the U.S.

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

1. The exercise of dual citizenship.

Conditions that could mitigate security concerns include:

1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country.[(2)]

4. Individual has expressed a willingness to renounce dual citizenship

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

There is no dispute as to the basic facts in this case. Applicant was born in Mexico in1942, came to the U.S. at 18, has lived here for 43 years, is now 51 years old. He never officially renounced his Mexican citizenship after becoming a naturalized U.S. citizen in 1970. He obtained a document in 1999, formally recognizing his status as a Mexican citizen. He did so after he learned that Mexico was planning to impose a fee on non-Mexicans who travel beyond a 500-mile border zone. This would have affected Applicant financially on his visits to relatives in that country since they live south of that zone. On his subsequent three visits, he used the document and avoided paying whatever the fee was. Beyond his ties with relatives, he has minimal contacts or interest in Mexico. He has made his life in the United States and considers himself to be an American. People who have known him for years testify as to his integrity. Applicant has

made a choice based on convenience, which is not an explanation recognized as valid by the DOHA Appeal Board.

Applicant is a hard worker, dedicated employee, and has been a part of American society for more than 40 years. However, based on what I heard and observed at the hearing, I conclude that he is not very sophisticated when it comes to understanding some of the legal requirement and standards that are of concern to the Government. Although he has lived and worked in the U.S. for more than four decades, his comprehension of English is not strong. It was clear at the hearing that his wife, who was acting as his representative, was also his mentor, guiding him through the adjudication process, and explaining to him the basis for the government's concerns. While he clearly chose to obtain the document and exercise his dual Mexican citizenship in order to save a little money, I cannot conclude that he did so in a way that shows, directly or indirectly, intentionally or not, a preference for Mexico over the United States.

Beyond the fact of his dual U.S.-Mexican citizenship and the exercise of that Mexican citizenship to save money, no other concerns are expressed in the SOR. Because of this singular concern, which relates to a document he obtained for $12.00, and has used on only three occasions over the years to save a little money, his overwhelming ties the U.S. over more than 40 years are far more indicative of his national preference. I conclude that the conduct alleged in SOR 1.a does not establish a foreign preference, as that term is used in Guideline C.

Disqualification and Mitigation,

Foreign Preference - Disqualifying Condition (DC) 1 (exercise of Mexican citizenship) is applicable, but Mitigating Condition (MC) 1 also applies in that his exican citizenship is derived from his being born in that country to Mexican parents. MC 4 also applies in that Applicant has indicted a willingness (conditional on his being asked) to renounce his dual citizenship. There simply are no other indicia of any preference for Mexico over the United States.

Overall, I conclude that Applicant has shown himself to be a man of integrity and one who takes his obligations seriously. Considering the evidence as a whole, I conclude that the evidence does not show that any risk exists that Applicant would ever act against U.S. security interests.

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

DECISION

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

5with the national interest to grant or continue a security clearance for Applicant.

BARRY M. SAX

ADMINISTRATIVE JUDGE

1. The SOR does not allege that the document was a "passport" and there is no reference to the Money Memorandum, the DoD policy document that prohibits the granting or renewal of a security clearance to a person who has a foreign passport. Since I conclude the document is not a "passport," as that term is used in the Money Memorandum, any further discussion on this point would be academic.

2. As I understand Applicant's contention, the Mexican Supreme Court invalidated a law automatically revoking the citizenship of anyone who became a citizen of another country. The document (AX E) that Applicant obtained in 1999 provided official recognition of his citizenship status, which Applicant sought for the sole purpose of facilitating his travel into the interior of Mexico. It is not necessary, and probably beyond my jurisdiction, to decide whether Applicant

has always been a Mexican citizen or lost that citizenship when he became a U.S. citizen and regained it in 1999, when he obtained the document from the Mexican consulate.