DATE: June 7, 2004

In Re:

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

Applicant for Security Clearance

ISCR Case No. 03-13031

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Nygina T. Mills, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

A citizen of the United States from birth and of Ireland from 1990, Applicant applied for derivative Irish citizenship in 1990 because of a possible transfer of his duty station to Ireland. He acquired an Irish passport which has since expired. The Foreign Preference concerns generated by his acquisition of foreign citizenship and the passport are mitigated by his demonstrated preference for the U.S. and surrender of his expired passport. Financially overextended because of past financial support for his spouse's daycare businesses, Applicant has outstanding credit card debt of $99,635 that he claims was settled by a payment of only $3,850. He is held in high regard by work associates, but his handling of his financial matters casts serious doubt on his security worthiness. Clearance is denied.

STATEMENT OF CASE

On August 4, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to 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 Applicant.[(1)] DOHA recommended referral to an administrative judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on Foreign Preference (Guideline C) and Financial Considerations (Guideline F).

On August 23, 2003, Applicant executed an Answer to the SOR, and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on October 9, 2003, and pursuant to formal notice of October 22, 2003, a hearing was scheduled for November 21, 2003. At the hearing, held as scheduled, the Government's case consisted of three exhibits. Applicant testified, and ten exhibits were accepted on his behalf. A transcript of the hearing was received on December 15, 2003.

The record was held open until December 1, 2003, for Applicant to submit proof that the law firm collecting some $99,000 in consumer credit debt offered to settle the debt for only $3,850. By facsimile on November 24, 2003,

Applicant timely submitted a document from the law firm, that was marked and entered as Exhibit I, Department Counsel having no objection to its admission.

FINDINGS OF FACT

The SOR alleges Foreign Preference (Guideline C) concerns because of Applicant's dual citizenship with the U.S. and Ireland, his acquisition of Irish citizenship for foreign business considerations, his retention of Irish citizenship for possible future employment in Ireland, and his possession of an Irish passport that expired in December 2000 which he might reactivate. Also alleged were Financial Considerations (Guideline F) because of $99,635 in delinquent debt in collection. Applicant did not dispute his Irish citizenship, derived from his grandparents, or his acquisition of an Irish passport, but denied preference for Ireland. He expressed a willingness to renounce his Irish citizenship and indicated he had surrendered his expired, and unused Irish passport in August 2003. Applicant admits he owed roughly $99,000 to a single creditor as a result of extending credit to his spouse to operate a daycare business that was subsequently liquidated in 2001, but he claims to have complied with the terms of a valid settlement offer that a collection agent has chosen to dishonor and was prepared to litigate the issue if necessary. After a complete and thorough review of the evidence of record, and upon due consideration of the same, I make the following findings of fact:

Applicant is a 44-year-old consultant who has been employed on a temporary basis since August/September 2002 by a defense contractor. He seeks a secret security clearance to provide logistics and supply integration support to the Department of Defense. Applicant has the support of the Assistant Deputy Under Secretary (Supply Chain Integration) and others who regard him as a "man of sober judgment with the highest ethical standards and with a demonstrated ability to handle often sensitive matters with discretion and integrity." (2)

Foreign Preference

Applicant, who had already earned a master's degree in engineering, was awarded an M.B.A. in May 1986. In 1990, he was working for a U.S. company that opened a wholly owned manufacturing subsidiary in Ireland. Under consideration for a possible transfer of his job to Ireland, Applicant acquired Irish citizenship (derived from his grandparents' births in Ireland) by registering in the Foreign Birth Register at the Irish Consulate. To avoid the delays associated with obtaining visas to travel to Ireland, Applicant obtained an Irish passport in late December 1990, valid to late December 2000, having been assured by the U.S. State Department that it would not undermine his U.S. citizenship. Applicant's job was not transferred and he did not use the Irish passport before it expired.

In April 1998, Applicant resigned from his job due to the burdens of the extensive travel. That December, he went to work as a service director for a local company where he served as the chief executive officer's "right-hand man" in all matters relating to the operation of the business. After the chief executive officer (CEO) left the firm, Applicant became the defacto chief operating officer where he led the company through a restructuring until his position was eliminated with his approval in January 2001.

Recruited by the chairman and CEO of another company, Applicant became the vice president of a business that subsequently closed in May 2002. After three months of unemployment, Applicant was hired on a temporary basis by his current employer to provide consulting services to the Department of Defense in his area of expertise, supply chain management.

In applying for his first security clearance, Applicant executed a security clearance application (SF 86) on November 25, 2002. He disclosed his dual citizenship with the U.S. and Ireland and possession of an Irish passport from December 1990 to December 2000.

On May 1, 2003, Applicant was interviewed by a special agent of the Defense Security Service (DSS) about his dual citizenship and financial issues. He asserted loyalty solely to the U.S. and indicated he became a citizen of Ireland for potential business considerations which "have long since passed, and actually never occurred." He stated he had not renounced his Irish citizenship, as one never knows what the future might bring, and although highly unlikely, should he find himself employed in Europe in the future, "Irish citizenship would facilitate the transition." Applicant also told the agent he would be willing to consider renouncing his Irish citizenship as a condition of access to classified information.

Regarding his retention of an expired Irish passport that he never used, Applicant asserted he had kept it as "a souvenir" and if he were to find himself employed in the future in Europe, he could reactivate it. Applicant expressed a willingness to consider relinquishing his expired passport.

On receipt of the SOR, Applicant was apprised of the policy clarification concerning the possession and/or use of foreign passports issued by the Assistant Secretary of State for Command, Control, Communications and Intelligence (ASDC3I) on August 16, 2000, which requires the denial of security clearance unless the foreign passport is surrendered or the applicant obtains official approval from the U.S. Government for its retention and use.[(3)] On August 21, 2003, Applicant surrendered his expired Irish passport to the Irish Embassy.

As of November 2003, Applicant had not formally renounced his Irish citizenship. He indicated he would do what was necessary to renounce his foreign citizenship if it was required in order to obtain his security clearance.

Applicant comes from a family of dedicated service to the U.S. His grandfather served in World War I. His father (now deceased) was a decorated World War II veteran who retired from federal service after 32 years. Applicant served as a member of his local municipality's finance and advisory board from August 1998 to May 2002.

Applicant has no foreign financial assets. He has never voted in a foreign election.

Financial Considerations

In approximately 1991, Applicant's spouse began a daycare business which expanded to two locations. During the late 1990s, the business began to fail as his spouse made poor management decisions associated with a move of one of the facilities. Claiming to have known nothing of the corporate organization of his spouse's business, Applicant infused about $250,000 in the business in an effort to keep it solvent, including $202,360 in credit extended to him by a major credit card company.[(4)] Applicant guaranteed repayment of the credit card debt even though he lacked liquid assets, as he expected the business to turn around.

After the business failed, Applicant paid about $100,000 to the creditor over the 2001to Spring 2002 time frame with monies obtained from personal savings, retirement accounts, a sizable severance received on termination of his job in 1998, and the sale of income producing property. Still, some $99,635 in bad debt was charged off and placed for collection by October 2002.

On October 6, 2002, Applicant offered the agency then assigned to collect on the debt $1,500 per month for five years plus a lump sum payment of $5,000 as soon as he could sell his automobile, as a "full and final settlement of the outstanding obligation." After checking with the creditor, the collection agency notified Applicant on October 21, 2002, that the credit grantor would settle for no less than $99,000 plus interest at 8% down from 9%, rather than the $95,000 in total payments Applicant was proposing. Applicant responded on October 28, 2002, he had no ability to go beyond the offer he had already made. Should this prove unacceptable, he would have to consider "more aggressive approaches to resolving the situation."

With his credit card debt still unresolved, Applicant began infusing all of his disposable income (about $2,000 per month) in a new daycare business started by his spouse in January 2003.

On February 13, 2003, the collection agency notified Applicant that the creditor was "willing to modify the Stipulation and Agreement of Settlement" by calling for a payment of $99,636.60 on the obligation plus interest at the rate of 3% per year from October 1, 2002, with an initial payment of $5,000 on or before February 20, 2003, followed by 60 monthly payments of $1,500 and a lump sum of the remaining balance due March 20, 2008. In response, on February 19, 2003, Applicant indicated the proposal exceeded what was within his ability to repay, and that if the creditor continued to pursue these terms, he would likely be forced into bankruptcy. Applicant indicated he was in no position to make a lump sum payment, and countered that the collection agency consider restating the balance, calculated at zero percent interest, and offer a five-year repayment at $1,000 per month with a balloon at the end of five years at zero interest. He also requested the default be removed from his credit report so that he could refinance his mortgage at a lower rate, which would provide him with the cash flow to make payments on his delinquent credit card debt. The

collection agency in turn withdrew the offer and notified Applicant its counsel was preparing to file suit to collect.

When interviewed by a DSS special agent on May 1, 2003,about the debt, Applicant admitted his balance on the credit card had reached about $200,000 as of late 2001, but he had paid $100,000 with several large sum lump payments and offered to continue to pay $1,000 per month until satisfied. The creditor demanded a lump sum payment of $5,000 and monthly payments of $1,500 so he had made no payments since about Spring 2002. The agency with whom he has been negotiating on the collection threatened suit to recover the debt, an action that may prove beneficial as a judge could order a reasonable repayment plan. Asked about his monthly disposable income, Applicant indicated it was zero as he has been infusing all of his disposable income (about $2,000 per month) into his spouse's new daycare business, but he estimated his financial assistance should no longer be needed by June 2003. Applicant declined to execute a Personal Financial Statement on the basis it was "unnecessary and intrusive."

By letter dated May 9, 2003, Applicant was advised by a law firm that a claim had been placed with that office to collect on the delinquent credit card debt:

A claim has been placed against you with this office by the above-named party in the amount of $99,000.00, together with a reasonable attorney's fee of $4,850.00 representing 5% of the balance placed, for a total of $03,850.00 [sic].

If you agree that the balance is correct and due, please pay it; otherwise, please contact this office.

Aware that the listed total of $3,850 could not be reconciled with the amount of the claim placed or with his understanding of what he owed, Applicant elected to treat it as a settlement offer, and on

May 16, 2003, he mailed a check to the law firm drafted in the amount of $3,850 with language in the memo section indicating he accepted the proposed balance total.

On June 19, 2003, the law firm returned Applicant's personal check to him, uncashed, notifying him that the office was unable to accept it "due to the language written in the memo line.

The balance on this account is accruing interest and will be different than the demand letter first received."

By letter dated June 16, 2003, Applicant notified the law firm he accepted the balance total as of May 9:

I am issuing a new check, again with language indicating my acceptance of the balance total as specified in the May 9 letter from your offices to me. I accepted the terms of settlement you specified when I originally responded to and complied with the terms of your demand letter, and therefore we have a settlement agreement regarding the matter in question effective as of May 16, 2003.

On the check drafted June 16, 2003, in the amount of $3,850 made payable to the law firm, Applicant indicated in the memo section, "I agree to balance total as specified by [law firm] on 5/9/03." The firm presented the check on June 18, 2003, endorsing it for deposit into its client trust account, and it was paid by Applicant's bank on that same date.

Two days later, on June 20, 2003, the law firm notified Applicant it was returning his check because it contained "satisfaction in full" type language when his account had not been satisfied. Applicant was informed the May 9, 2003, letter contained an incorrect balance due to computer error, and the correct balance was $113,850. On June 26, 2003, Applicant countered that the obligation had been discharged as a matter of law with the presentation and payment of the check. He declined to accept the check paid to him, which was drawn against the client trust account, and returned it with a request that the firm notify all credit reporting agencies that a settlement had been reached and the obligation fully discharged.

By letter dated July 15, 2003, the law firm acknowledged it had not returned Applicant's original check to him, but had properly sent him repayment of his check in the amount of $3,850, citing a provision of the state's Uniform Commercial Code, which allows for the correction of mistakes within 90 days. The office sent a second check for $3,850, notifying him there was no settlement of the $113,850 balance owed.[(5)]

On July 18, 2003, Applicant declined to accept the $3,850 refund of monies paid, contending his obligations were discharged under law as he had fulfilled his responsibilities under a settlement agreement made binding when he accepted without qualification the "settlement amount" specified in the May 9, 2003 correspondence from the law firm. Circa early October 2003, the law firm filed suit in superior court to collect the debt. Applicant filed a counterclaim. As of November 2003, the debt was still in litigation.

Sometime in Summer 2003, Applicant stopped infusing cash into his spouse's daycare business as it was solvent, but his spouse was also not realizing any personal income from the business. As of November 2003, they were current on their day to day living expenses, although all discretionary income was going to paying down existing debt. Applicant has about $100 in savings and $550 in checking account funds.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Considering the evidence as a whole, I find 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.A3.1.2.1. The exercise of dual citizenship;

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

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

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

Financial Considerations

E2.A6.1.1. The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

E2.A6.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A6.1.2.1. A history of not meeting financial obligations.

E2.A6.1.2.3. Inability or unwillingness to satisfy debts.

E2.A6.1.3. Conditions that could mitigate security concerns include:

E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation).

E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

CONCLUSIONS

Having considered the evidence 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 F:

Guideline C is based on actions taken by an individual that indicate a preference for a foreign country over the United States.[(6)] A U.S. citizen from birth, Applicant voluntarily acquired Irish citizenship in 1990 as a convenience should his job be transferred to Ireland by his U.S. employer at the time. Applicant's status as a dual national is not necessarily indicative of a foreign preference (*see* E2.A3.1.3.1., dual citizenship based on parents' citizenship--in this case grandparents' citizenship--as mitigating of foreign preference concerns) but his voluntary acquisition of foreign citizenship as an adult raises significant security Foreign Preference issues (*see* disqualifying condition E2.A3.1.2.1. *The exercise of dual citizenship*) especially since he obtained an Irish passport, a benefit of his foreign citizenship.

Possession of a valid foreign passport raises doubt as to whether the person's allegiance to the U.S. is paramount and also could facilitate foreign travel unverifiable by the U.S. As noted by the ASDC3I, administrative convenience is not a mitigating factor, even if it is to the benefit of a U.S. company. Disqualifying condition E2.A3.1.2.2. *Possession and/or use of a foreign passport* must be considered even though the Irish passport was never used. Moreover, expiration of a foreign passport does not overcome the security concerns where the passport is subject to renewal.

In mitigation of the Foreign Preference concerns generated by his acquisition of a foreign passport, Applicant did not understand the security concerns presented by the possession and/or use of a foreign passport until he received the ASDC3I's August 2000 memorandum. On learning of the requirement to surrender his foreign passport, Applicant turned in his expired Irish passport to the Irish Embassy in August 2003.

The U.S. 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. Indeed, willingness to renounce foreign citizenship is mitigating of Foreign Preference concerns under E2.A3.1.3.4. At his subject interview in May 2003, Applicant indicated he would be willing to consider relinquishing his Irish citizenship if necessary as a condition of access to classified material. He reaffirmed his willingness to do so at the hearing ("And if it is required in order to obtain the security clearance, I'll do what is necessary to renounce the Irish citizenship." Tr. 31). To the extent that Applicant is willing to renounce foreign citizenship only if it is required to obtain clearance, it is considered conditional and not entitled to the same weight in mitigation as unqualified expressions of willingness to renounce or concrete actions taken, such as filing the documentation required to renounce. At the same time, renunciation of foreign citizenship is not required provided

there are adequate assurances a dual citizen will not actively exercise or seek rights, benefits, or privileges of that foreign citizenship.

When asked in May 2003 about the retention of his Irish citizenship, Applicant responded it could prove beneficial to him in the future in the unlikely event he were to find himself employed in Europe. Foreign Preference concerns arise where an applicant uses foreign citizenship to protect financial or business interests in another country (*see* E2.A3.1.2.6.). Applicant submits he had no intent to seek employment in Europe, and he was responding to a hypothetical question as to why he might need his foreign citizenship in the future. Applicant's financial support of his spouse's daycare business (see below), and the absence of any evidence that he inquired into or applied for employment abroad, corroborate he had no plan or intent to pursue foreign business interests. In light of his compliance with the Department of Defense requirement to surrender his foreign passport, as well as the lack of other potential indicators of foreign preference--no voting in Irish elections, no acceptance of economic benefits from Ireland, no financial assets in Ireland--favorable findings are warranted as to subparagraphs 1.a., 1.b., 1.c., and 1.d. of the SOR.

Under the Financial Considerations guideline, an individual who is financially overextended may be at risk of having to engage in illegal acts to generate funds. From the late 1990s into 2001, Applicant infused approximately $250,000 into his spouse's daycare business in an effort to keep it viable. Of that amount, approximately $202,360 was credit extended to him by one lender when he knew he did not have the liquid assets to repay the obligation. Whether he or his spouse made the charges, Applicant as the primary cardholder remains legally responsible for the balance. Applicant exhausted his personal savings, withdrew retirement funds, sold income producing property, and applied severance funds awarded in 1998 to pay approximately half of the debt by Spring 2002. Still, Applicant owes about $99,635 and has little, if any, financial resources to repay it. Disqualifying conditions E2.A6.1.2.1. *A history of not meeting financial obligations*, and E2.A6.1.2.3. *Inability or unwillingness to satisfy debts*, are pertinent to an evaluation of his security worthiness.

Even sizable financial indebtedness may be mitigated where it was due to factors largely beyond the person's control, such as a business downturn (*see* MC E2.A6.1.3.3). While the debt was incurred in conjunction with a business failure, it cannot fairly be attributed to unforeseen circumstances, such as a depressed local economy, change in zoning which would have required the business to move to a less advantageous location, or other factors over which Applicant had no control. To the contrary, his spouse's poor business decisions were a substantial factor in the failure of her daycare business, and the debt was incurred because Applicant relied heavily on credit in an effort to keep her business afloat. Especially where he has an M.B.A. degree and purportedly lacked knowledge of even the daycare's corporate organization, it was extremely poor judgment on his part to allow his spouse to make use of his credit beyond their financial ability to repay.

Mitigating condition E2.A6.1.3.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, applies in that Applicant paid about half of his credit card obligation. Applicant submits he has demonstrated similar good faith in attempting to resolve the remainder sent for collection, and that Financial Considerations no longer exist as the debt has been settled ("There has been no recurrence of financial over extension, and I have behaved with initiative and good faith throughout in the process with various attorneys representing [the creditor]." Tr. 64).

It is unclear whether the negotiations between Applicant and the collection agent in October 2002 were initiated by Applicant. Applicant's email correspondence of October 6, 2002, was apparently in response to a request by the collection agent. Applicant deserves some credit for attempting to secure an affordable payment plan that Fall under which he would have satisfied most of the principal balance. However, there is no evidence of any settlement negotiations between October 28, 2002 and February 12, 2003, when the collection agent left a voicemail message for Applicant.

Correspondence between Applicant and the collection agent between February 12, 2003 and February 19, 2003, resulted in no agreement, as Applicant did not have the $5,000 lump sum initial payment requested. Applicant countered with a proposal that would have relieved him of any financial interest on the debt and included a demand by him for the creditor to remove the default from his credit report so that he could refinance his mortgage. He was within his rights to offer that counter proposal, but once the creditor rejected it, Applicant remained liable for the total balance owed.

Although well aware the creditor was not willing to accept less than $99,000 in settlement, Applicant nonetheless maintains he acted in good faith when he took the law firm's letter of May 9, 2003, as an offer to settle for $3,850. There is nothing in that letter which indicates it was a settlement offer. Instead, the letter was a demand for payment of the balance, which a reasonable person acting in good faith would have understood to be $103,850 ["A claim has been placed against you with this office by the above-named party in the amount of $99,000.00, together with a reasonable attorney's fee of $4,850.00 representing 5% of the balance placed, for a total of $ 03,850.00."]. It is untenable for this Applicant, who has an M.B.A. degree and has held positions of substantial responsibility in the corporate setting (to include as a defacto chief operating officer and as a vice president), to have failed to confirm the balance with the creditor or assignee, if he was as confused about the letter as he now claims (*see* Tr. 83).

With the law firm's return to Applicant of his original check for $3,850, notifying him that the office was unable to accept it due to the satisfaction in full type language he specified in the memo section, Applicant could no longer reasonably believe (if he did so before) that the creditor was willing to settle for $3,850. Yet, he tendered another check in the same amount that the law firm mistakenly cashed. As to whether the law firm is entitled under law to correct its mistake or whether the debt has been discharged through payment is a matter in litigation[(7)]

and not before the undersigned for resolution. The determination as to Applicant's security worthiness does not turn on whether the debt is still owed.

It is recognized that if Applicant is no longer legally responsible for the debt, financial pressures would be significantly lessened. Yet, irrespective of whether Applicant is relieved of the burden of paying back that debt, his handling of his financial matters continues to raise serious doubts about his judgment, reliability and trustworthiness. He infused $2,000 per month from January 2003 to Summer 2003 in his spouse's new daycare business while failing to continue in settlement negotiations to resolve his significant delinquency because of a claimed lack of funds. He also demonstrated a willingness to capitalize on an obvious mistake of the law firm assigned to collect the debt. As of November 2003, all of his discretionary funds were being devoted to paying off other debt, and he admitted he was in financial distress ("My financial distress was, and is, remains real." Tr. 80). Based on the record before me, I cannot conclude that it is clearly consistent with the national interest to grant him access, even if he is no longer responsible for the debts alleged in SOR subparagraphs 2.a., 2.b., and 2.c.

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

Subparagraph 1.d.: For the Applicant

Paragraph 2. Guideline F: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against 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. Clearance is denied.

Elizabeth M. Matchinski

Administrative Judge

1. The SOR was issued under the authority of 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).

2. The same or similar language appears in each of the character reference letters entered into the record (*see* Ex. K). Applicant admits he suggested specific phrases or wording to his references when he asked for their support (Tr. 101-03), but the fact remains that several individuals were willing to execute letters on his behalf.

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

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

4. Three separate accounts with the same lender were opened individually by Applicant, although he submits his spouse made the charges as an authorized user. He maintains he was unaware of how much she was charging, although admits knowing it was "big." (Tr. 69). As the card holder, he is responsible for the outstanding balances.

5. In the law firm's May 9, 2003, letter, the attorney fees were reported to be $4,850. In its more recent correspondence, the law firm assessed reasonable attorney fees at $14,850.

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

7. Chapter 106, Section 3-311 of the pertinent state's Uniform Commercial Code provides as follows:

G.L. c. 106, § 3-311 Accord and Satisfaction by Use of Instrument

Article 3. Negotiable Instruments.

Part 3. Enforcement of Instruments

(a) If a person against whom a claim is asserted proves that (i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply.

(b) Unless subsection (c) applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(c) Subject to subsection (d), a claim is not discharged under subsection (b) if either of the following applies:

(1) The claimant, if an organization, proves that (i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place, and (ii) the instrument or accompanying communication are not received by that designated person, office, or place.

(2) The claimant, whether or not an organization, proves that within 90 days after payment of the instrument, the claimant tendered payment of the amount of the instrument to the person against whom the claim is asserted. This paragraph does not apply if the claimant is an organization that sent a statement complying with clause (i) of paragraph (1).

(d) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent or the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim.