DATE: October 31, 2006

In re:

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

Applicant for Security Clearance

CR Case No. 04-10276

DECISION OF CHIEF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Mark S. Zaid, Esquire

SYNOPSIS

Security concerns were raised regarding a 62-year old Swiss-born naturalized U.S. citizen who has very substantial foreign investments in Swiss bank accounts ($10,000,000) when compared with his substantial U.S. investments ($5,000,000), and who served in the Swiss militia before becoming a U.S. citizen. He chose to maintain his Swiss citizenship to not jeopardize his inheritance since real estate can only be owned by Swiss citizens. Now that the property has been sold, he is willing to consider renouncing his Swiss citizenship as his wife, children, and brother are all U.S. citizens. He intends to move the assets to U.S. banks as soon as the exchange rate improves because to do so at this time would cost Applicant a loss of 15 per cent of the overall value of his holdings. These facts do not constitute an unacceptable security risk. Under the facts herein, the government's security concerns are mitigated. Clearance is granted.

STATEMENT OF THE CASE

On October 9, 2003, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86). (1) On August 15, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry,* dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons under Guideline C (foreign preference) and Guideline B (foreign influence) 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, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn, written statement, dated October 5, 2005, but notarized October 4, 2005, Applicant responded to the SOR allegations and requested a hearing. Department Counsel indicated the government was ready to proceed on November 10, 2005, and on the following day, the case was assigned to another Administrative Judge. It was reassigned to me on March 7, 2006. A notice of hearing was issued that same day, scheduling the hearing for March 30, 2006. The hearing

was held as scheduled. During the hearing, five Government exhibits, two Applicant exhibits, and the testimony of six Applicant witnesses, including Applicant, were received. The transcript (Tr.) was received on April 10, 2006.

RULINGS ON PROCEDURE

Department Counsel requested Official Notice be taken of the contents of the following documents: Memorandum from the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD/C^3I), *Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline*, dated August 16, 2000; and U.S. Department of State, Bureau of European and Eurasian Affairs, *Background Note: Switzerland*, dated July 2005. Applicant requested Official Notice be taken of the contents of the following document: emorandum from Assistant to the President for National Security Affairs, *Adjudicative Guidelines*, dated December 29, 2005, along with the referenced attachment. Pursuant to Rule 201, *Federal Rules of Evidence* (F.R.E.), I took Official Notice as requested, without any objection by either party.

Applicant argued that the newly revised Adjudicative Guidelines approved by the President in December 2005, identified above, and forwarded to the Director, Information Security Oversight Office (ISOO), with directions for "immediate implementation," should be in effect for this matter. I indicated that I had been previously directed by the Director, DOHA, that until such time as implementation guidance was issued to DOHA from higher authority, the current or "old" guidelines, as opposed to the "new" guidelines, would continue to apply. Accordingly, I declined to apply the new guidelines.[(2)] The argument was preserved for possible appeal.

At the conclusion of Applicant's case, Department Counsel moved to amend the SOR to conform to the testimony. More specifically, he moved to delete the contents of subparagraph 1.c. of the SOR and substitute therefor the following language: "You maintained your citizenship with Switzerland because of your inheritance."[(3)] Applicant offered no objection to the motion and it was granted.[(4)]

FINDINGS OF FACT

Applicant admitted all of the factual allegations pertaining to foreign preference under Guideline C (subparagraphs 1.a. through c.) and all of the factual allegations pertaining to foreign influence under Guideline B (subparagraphs 2.a. through 2.c.). Those 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:

Applicant is a 62-year-old[(5)] employee of a defense contractor. He is seeking to retain a SECRET security clearance. He previously held a CONFIDENTIAL clearance from about 1986-87 to about 1991, and then a SECRET clearance since about 1991.[(6)] He has been employed by the same government contractor since September 1986, and currently serves as the Director of Advanced Programs.[(7)] His immediate supervisor has known Applicant for about 10 years and he supports his application. Colleagues and co-workers recommend him without reservation.

Applicant was born in 1943 in the Swiss Confederation (Switzerland) to Swiss citizens, both of whom are now deceased.[(8)] He and his brother (born in 1941)[(9)] were raised and educated in Switzerland.[(10)] During the period 1962 until 1968, he attended a Swiss university with a scholarship from the Swiss government.[(11)] He received his degree in December 1968, and was immediately employed as a teaching assistant at the same university for the next six months.[(12)]

Swiss males between the ages of 20 to 30 have a mandatory military service obligation.[(13)] Furthermore, as Applicant received a subsidized education, his obligation was to serve as an officer in the Swiss militia or Army Reserve.[(14)] Complying with Swiss law, Applicant served as a first lieutenant in the Swiss militia (the National Guard) from February 1963 until April 1975.[(15)] He no longer has any further military obligation.[(16)]

Applicant immigrated to the U.S. in 1969 and remained here until 1971.[(17)] He returned permanently to the U.S. in 1975,[(18)] and in May 1982, became a naturalized U.S. citizen.[(19)] He remains a dual citizen of Switzerland and the U.S.

(20) Applicant and his Swiss-born wife were married in Switzerland in 1970.(21) She became a naturalized U.S. citizen in October 1996.(22) They have two U.S. native-born children (born in 1979 and 1984, respectively).(23) When the children reached the age of 21, because of their parents' dual citizenship, they too were given the opportunity to continue their own dual citizenship, but they both declined Swiss citizenship and are now solely native-born U.S. citizens.(24)

Applicant's brother also immigrated to the U.S. and became a naturalized U.S. citizen in 1972.(25) He is a current U.S. resident.(26) Both of Applicant's wife's parents are now deceased.(27) She has one brother who is a Swiss citizen residing in Switzerland.(28)

Applicant retained his Swiss passport for a number of years after becoming a U.S. citizen. He renewed that passport, but finally allowed it to expire in June 1999,(29) without having been used after 1995.(30) He has no intention of ever renewing or obtaining another Swiss passport.(31) His wife's Swiss passport also expired in June 1999.(32) Both expired passports were surrendered to the Consulate General of Switzerland in March 2006.(33)

Over the years since becoming a U.S. citizen, Applicant has traveled for pleasure and business to a variety of different countries in all corners of the globe, including trips to Switzerland.(34) He used his U.S. passport for all of those trips that occurred after 1995.(35)

When Applicant's father passed away, Applicant and his brother were made beneficiaries of the estate, including real property, subject to a life estate to Applicant's mother.(36) After his mother passed away, the property was sold, and he no longer owns any real estate in Switzerland.(37) When Applicant's father-in-law passed away in 1978, Applicant's wife and her brother were made the beneficiaries of the estate, including real property, subject to a life estate to Applicant's mother-in-

law.(38) The mother-in-law continued residing in an apartment where Applicant's wife was born, raised, and lived.(39) After her mother passed away, the property was put up for sale, and it was eventually sold in December 2005.(40) Applicant's wife no longer owns any real estate in Switzerland.

Neither Applicant nor his wife really wanted to sell their family estates in Switzerland at the time they did so because of unfavorable exchange rates and real estate markets.(41) However, after different interviews with the U.S. government investigators, they sensed the government really wanted them to divest themselves of the property and they felt pressured to do so.(42) Had they retained the real estate, they believe they would have realized the full potential value of their property as both properties were still appreciating in value at the time of the respective sales.(43) However, because of the potential negative impact the real estate might have on Applicant's security clearance application, they decided to minimize the potential foreign financial issues and sell the real estate.(44)

Applicant and his wife retained their dual citizenship with Switzerland because of the Swiss laws dealing with real property ownership. Since only Swiss citizens may own real property in Switzerland,(45) it was financially and fiscally advisable to retain their Swiss citizenship until such time as the properties could be sold. To do otherwise would have exposed them to substantial financial loss, something he would like to avoid.(46) Now that the properties have been sold, he is seriously considering renouncing his Swiss citizenship.(47)

Applicant has substantial financial holdings. As of March 2006, the family assets worldwide totaled about $16,000,742.(48) In the U.S., he has a qualified pension plan worth about $1,022,695,(49) a nonqualified plan worth about $136,857,(50) a 401(k) worth about $334,000,(51) an IRA worth about $337,000,(52) a supplemental savings plan worth about $190,000,(53) a deferred incentive plan worth about $411,000,(54) and stock options worth about $120,000.(55) Those assets total approximately $1.4 million dollars.(56) He also owns a residence worth about $1,500,000, with a mortgage of about $100,000.(57) They have about $3,000,000 in U.S. banks.(58) Applicant's annual salary in June 2004 was over (59)

$140,000.

The remaining family assets, including stocks in Swiss companies, bonds, and the proceeds from the sale of the Swiss real estate holdings, are in Switzerland.[(60)] Of the total family Swiss assets, approximately two thirds are in his wife's name and one third in his name.[(61)] All the financial interests in Switzerland are in Swiss bank accounts where privacy is paramount.[(62)] Applicant intends to move all remaining financial assets currently in Swiss banks to the U.S. as soon as the exchange rate improves because to do so at this time would cost Applicant a loss of 15 per cent of the overall value of his holdings.[(63)] That would equate to a loss of about $1,000,000 or more.[(64)]

At no time prior to the issuance of the SOR did anyone from the U.S. government advise Applicant that he had to sell his foreign financial assets or divest himself of those assets.[(65)] Moreover, Applicant has never been approached or pressured by anyone or threatened with the loss of those foreign assets.[(66)]

Applicant's allegiance and loyalty towards the U.S. is "unswerving." He made his choice of loyalty to the U.S. over Switzerland because his life is here. He has no intention of returning to live in Switzerland largely because his children were born in the U.S. and their lives are here.[(67)] A coworker who has known Applicant since 1988, characterized him in the following manner: "[Applicant] is Swiss born. [Applicant] is more American than many American born Americans that I've met."[(68)]

Switzerland is a constitutional federal state with three branches of government: a bicameral legislature, a collegial executive of seven members, and a highly developed judiciary.[(69)] It is politically stable,[(70)] and its economy is among the world's most advanced and prosperous.[(71)] Per capita income and wages are the highest in the world.[(72)] Switzerland subscribes to most of the ideals with which the U.S. is identified.[(73)] Swiss neutrality has been recognized and accepted universally (with the exception of Napoleon in 1797-98) since 1648.[(74)] It became a member of the United Nations in 2002.[(75)] "The Swiss feel a moral obligation to undertake social, economic, and humanitarian activities that contribute to world peace and prosperity."[(76)] There is no evidence that Switzerland conducts intelligence operations or economic espionage against the U.S.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E.2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable 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.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an [(77)]

evaluation of the facts of this case:

GUIDELINE B - FOREIGN INFLUENCE: 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.

GUIDELINE C - FOREIGN PREFERENCE: 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.

Conditions that could raise security concern and may be disqualifying, as well as those which could mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the Conclusions section below.

On August 16, 2000, the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD/C^3I) issued a passport policy "clarification" pertaining to Adjudicative Guideline C--foreign preference. It is unclear if a photocopy of the memorandum was ever furnished to Applicant. The memorandum states, 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.*** Modification of the Guideline is not required. (Emphasis supplied)

Since the protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security" or "clearly consistent with the national interest."[(78)] For the purposes herein, despite the different language in each, I have concluded all of the standards are the same. In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences that are grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which raises a security concern under the Directive that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of credibility, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

As noted above, the entire process involves a crucial aspect of the entire analysis and synthesis of the facts-a conscientious scrutiny of the variables known as the "whole person concept." In this instance we are concerned with two different issues, one involving Applicant's actions pertaining to matters which might indicate a foreign preference, and another involving primarily the status of his and his wife's financial interests in Switzerland and potential foreign influence generated by those financial interests. Applicant is a person whose drive and enthusiasm to work hard and excel--characteristics which we used to hold dear in the U.S.--motivated him to obtain extensive education, work hard, invest, and seek opportunity in the U.S. He is to be lauded for his numerous successes.

However, the government has chosen to question his efforts because of several issues which it considers to be negative influences on his security clearance eligibility and suitability. He exercised dual citizenship based on his birth in Switzerland and his naturalization as a U.S. citizen; as required by law, he served in the Swiss militia; he inherited foreign real estate, as did his wife; they invested in foreign stocks and bonds; realized a return on their investments; maintained their Swiss financial interests in a Swiss bank; and he was initially reluctant to relinquish his Swiss citizenship to protect his inheritance. Although not specifically alleged in the SOR, the government also indicated an interest and concern that he had used a foreign passport as a convenience; and was reluctant to remove his foreign financial interests from Swiss banks to U.S. banks. Thus, Applicant's allegiance to the U.S. has been questioned, and an allegation has been made that he prefers Switzerland over the U.S.

Guideline C plainly states an individual may be prone to provide information or make decisions that are harmful to the interests of the U.S. when that individual acts in such a way as to indicate a preference for a foreign country over the U.S. The government has presented evidence under Guideline C which it believes raises that vaguely-defined situation.

A review of the evidence reveals his allegiance and loyalty to the U.S. are resolute, and supported by significant indicia of same. Applicant has: surrendered his expired Swiss passport after having used it on several occasions for convenience, but not using it after 1995; maintained a family residence in the U.S.; made substantial investments in the U.S.; had two children born in the U.S.; sold the Swiss real estate his father had left him; been employed in the U.S. by the same company since 1986; and declared allegiance to the U.S. Moreover, as stated above by a coworker, he is more American than many American-born Americans.

Applicant's actions in serving in the armed forces of Switzerland raises Foreign Preference Disqualifying Condition (FP DC) E2.A3.1.2.3. (*military service or a willingness to bear arms for a foreign country*). However, as previously noted, Applicant was merely fulfilling his mandatory military service obligation before becoming a naturalized U.S. citizen. Thus, the significance of his membership in the Swiss militia or Army Reserve is minimized and overcome by Foreign Preference Mitigating Condition (FP MC) E2.A3.1.3.2. (*indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship*). Those facts alone should have been sufficient to either avoid placing the allegation in the SOR or once the allegation was made, faced with the evidence, the government should have withdrawn it at or before the hearing.

Possession of a foreign passport cannot be considered merely in isolation, but should be analyzed in light of all the facts and circumstances, "with the adjudicator needing to consider whether the facts and circumstances of possession reasonably indicate the applicant is demonstrating a foreign preference within the meaning of [Guideline] C." (79) The

ASD/C^3 I memo appears to be conclusive in this regard, negating any consideration of the facts and circumstances. Thus, the remaining issues are whether the following actions by Applicant were indicative of a preference for Switzerland over the U.S.: (1) keeping and using his Swiss passport as a convenience until 1995, and then retaining the expired passport until he surrendered it in March 2006--issues which were not alleged in the SOR; and (2) maintaining his Swiss citizenship to protect his inheritance--an issue which was alleged in the SOR.

Applicant's actions in retaining and using the Swiss passport after he became a naturalized U.S. citizen were exercises by him of his Swiss citizenship and fall within FP DC E2.A3.1.2.1. (*the exercise of dual citizenship*) and FP DC E2.A3.1.2.2. (*possession and/or use of a foreign passport*).

Applicant's dual citizenship is based solely on his birth in Switzerland to Swiss parents. Thus, Applicant benefits from FP MC E2.A3.1.3.1. (*dual citizenship is based solely on parents' citizenship or birth in a foreign country*). And now that the real estate which was his inheritance has been sold, he has indicated a willingness to consider the actual renunciation of his Swiss citizenship. That comes within FP MC E2.A3.1.3.4. (*individual has expressed a willingness to renounce dual citizenship*). The ASD/C^3 I memo states there are no mitigating factors "related to an applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country," a phrase which I construe to relate to the use of a foreign passport. In this instance, Applicant has used that passport until 1995, but not thereafter. Furthermore, the memo states "consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport. . . ."

Upon being advised of the significance of possessing a foreign passport, Applicant immediately surrendered the expired Swiss passport to Swiss authorities and indicated no desire to ever have it renewed. Applicant's actions have complied with the surrender provisions of the ASD/C^3 I memo.

I have also examined the various allegations under the spotlight of those factors identified as part of the "whole person concept." The allegations are simply that Applicant is a dual citizen having been born in Switzerland; that prior to becoming a naturalized U.S. citizen he complied with his military service obligation; and he maintained his Swiss citizenship to protect his inheritance. As to the first and third allegations, the circumstances and motivation are clear: Applicant was Swiss-born and he maintained his dual citizenship to protect his inheritance. To do otherwise would have placed him in a situation where he would lose the real estate left to him by his father and caused him substantial financial loss. Now that the property has been sold, and he is contemplating renouncing his Swiss citizenship, the potential for pressure, coercion, exploitation, or duress, to the extent there ever was any generated by the Swiss government, have been minimized and are not likely to recur.

Applicant has clearly stated his position regarding his relationship with the U.S. and his country preference. His family is here and they are all U.S. citizens. His home and job are here. His allegiance and loyalty towards the U.S. is "unswerving." I have read his statements and listened to his testimony, and I believe him. I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the government's case with respect to Guideline C. Accordingly, allegations 1.a. through 1.c. of the SOR are concluded in favor of Applicant.

Guideline B plainly states 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 U.S. or may be subject to duress. Additionally, financial interests in other countries are relevant if they make an individual potentially vulnerable to coercion, exploitation, or pressure. The government has presented evidence under Guideline B which it believes raises those situations.

Applicant has been portrayed as a person who is a potential security risk because his spouse inherited an apartment house in Switzerland; he inherited some Swiss real estate from his father; and he and his spouse maintain a bank account in Switzerland. This situation purportedly raises the potential for vulnerability to coercion, exploitation, or pressure, and the exercise of foreign influence that could result in the compromise of classified information. In support of its contentions, the government has cited the above facts and argued that maintaining financial assets in a Swiss bank should be considered clear vulnerability to the whims of the Swiss government.

This is a rather unusual situation because this case does not involve the possibility of Applicant's vulnerability to

coercion, exploitation, or pressure arising from relationships with family members in a foreign country. The purported vulnerability is derived solely from the financial holdings he and his wife have in Switzerland. Based on the evidence, I conclude the security concerns manifested by the government, in this instance, are largely unfounded.

As noted above, Switzerland is politically stable, and its economy is among the world's most advanced and prosperous. It has a highly developed judiciary. It subscribes to most of the ideals with which the U.S. is identified. More important is the moral obligation Switzerland takes to contribute to world peace and prosperity. Also, there is no evidence that Switzerland conducts intelligence operations or economic espionage against the U.S.

There is little merit to the government's concerns regarding the need for heightened awareness regarding Applicant's potential vulnerability to threats from Switzerland and the presence of Applicant's and his wife's financial assets in Swiss banks. Specifically, I reject the government's position that such heightened concern is justifiable simply because those assets are in Swiss banks without any other specific indication of the nature of the concern. In sum, the government has argued that having foreign investments is both a foreign preference and a foreign influence suggesting there is a greater vulnerability to Applicant.[(80)] Upon considering the evidence, I find the government's position is unfounded and unreasonable.

Nevertheless, it is necessary to consider Applicant's potential vulnerability to exploitation through his financial interests overseas. As noted above, Applicant has substantial financial holdings. As of arch 2006, the family assets worldwide totaled about $16,000,742. In the U.S., he has retirement plans and pensions worth approximately $1.4 million dollars. He also owns a residence worth about $1,500,000, and has about $3,000,000 in U.S. banks. Applicant's annual salary is over $140,000.

The remaining family assets, including stocks in Swiss companies, bonds, and the proceeds from the sale of the Swiss real estate holdings, are in Switzerland. All the financial interests in Switzerland are in Swiss bank accounts where privacy is paramount. Applicant intends to move all those financial assets currently in Swiss banks to the U.S. as soon as the exchange rate improves because to do so at this time would cost Applicant a loss of 15 per cent of the overall value of his holdings. That would equate to a loss of about $1,000,000 or more. From the above facts, the government has pursued Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.8. (*a substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence*). It is clear that on its face, Applicant's and his wife's foreign holdings are substantial. It is equally clear that these facts may not fall within FI MC E2.A2.1.3.5. (*foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*).

One factor which must be considered is "the potential for pressure, coercion, exploitation, or duress." In that regard, it is important to consider the character of the foreign power in question, including the government and entities controlled by the government, within the relevant foreign country. It is reasonable to presume that a friendly relationship, or the existence of a democratic government, is not determinative, but it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through threats and intimidation under its banking laws. Moreover, if past actions, or inaction, can in any way be predictive of possible future actions, or inaction, the likelihood of the exercise of any threats or intimidation coming from the Swiss government or banking authorities is nil because Applicant has never been approached or pressured by anyone or threatened with the loss of those foreign assets.

As noted above, I have also examined the various allegations under the spotlight of those factors identified as part of the "whole person concept." The allegations, now simplified, are simply that Applicant and his wife currently maintain a substantial amount of financial assets--about $10,000,000--in Swiss banks. Applicant intends to move all remaining financial assets currently in Swiss banks to the U.S. as soon as the exchange rate improves because to do so at this time would cost Applicant a loss of 15 per cent of the overall value of his holdings. That would equate to a loss of about $1,000,000 or more. To do so would be irresponsible. Considering the nature of this entire situation, the motivation for the conduct, and the potential for pressure, coercion, exploitation, or duress, to the extent there ever was any generated by the Swiss government, I believe there is little likelihood for vulnerability by this U.S. citizen maintaining his Swiss financial assets in a Swiss bank until such time as they can be transferred to U.S. banks without ever having to personally return to Switzerland.

Because of Applicant's deep and long-standing relationships and loyalties in and to the U.S., he can be expected to resolve any conflict of interest in favor of the U.S. Consequently, I find the potential for pressure, coercion, exploitation, or duress does not constitute a security risk. Thus, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the government's case with respect to Guideline B. Accordingly, allegations 2.a. through 2.c. of the SOR are concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is suitable for access to classified information.

FORMAL FINDINGS

Formal Findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25. of Enclosure 3 of the Directive, are:

Paragraph 1., Guideline C: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.e.: For Applicant

Paragraph 2., Guideline B: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For 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. Clearance is granted.

Robert Robinson Gales

Chief Administrative Judge

1. Government Exhibit 1 (Security Clearance Application, dated October 9, 2003). Although the SF 86 was signed by Applicant on October 8, 2003, the electronic version of the document was not submitted until October 9, 2003.

2. Tr. at 10.

3. *Id*. at 125.

4. *Id.* at 126.

5. On the date the record closed (April 10, 2006), Applicant was 62 years old.

6. Response to SOR, dated October 5, 2005, at 2.

7. Government Exhibit 1, *supra* note 1, at 1.

8. *Id.* at 2-3.

9. *Id.* at 3.

10. Government Exhibit 3 (Affidavit, dated June 23, 2004), at 1.

11. Government Exhibit 1, *supra* note 1, at 1; Response to SOR, *supra* note 6, at 2.

12. Government Exhibit 3, *supra* note 10, at 2.

13. U.S. Department of State, Bureau of European and Eurasian Affairs, *Background Note: Switzerland*, dated July 2005, at 8.

14. Response to SOR, *supra* note 6, at 2.

15. *Id.*; Government Exhibit 1, *supra* note 1, at 4.

16. Government Exhibit 5 (Statement, dated September 11, 1991), at 3; Tr. at 120.

17. Response to SOR, *supra* note 6, at 1.

18. *Id.*

19. Government Exhibit 3, *supra* note 10, at 1.

20. Government Exhibit 1, *supra* note 1, at 1.

21. *Id*. at 2.

22. *Id*. at 4.

23. *Id.* at 3.

24. Tr. at 119-120.

25. Government Exhibit 3, *supra* note 10, at 3.

26. Tr. at 118.

27. Government Exhibit 1, *supra* note 1, at 3.

28. *Id.*

29. Applicant Exhibit B (Photocopy of Applicant's passport, attached to his letter to Consulate General of Switzerland, dated March 22, 2006), at 5.

30. Tr. at 82-83; Response to SOR, *supra* note 6, at 2..

31. *Id.* Tr.

32. Applicant Exhibit B, *supra* note 29, at 5.

33. *Id*. at 1.

34. Government Exhibit 1, *supra* note 1, at 5.

35. Tr. at 82; Response to SOR, *supra* note 6, at 2..

36. Government Exhibit 5, *supra* note 16, at 1.

37. Tr. at 83.

38. Government Exhibit 5, *supra* note 16, at 1-2; Government Exhibit 2 (Response to Interrogatory, dated November 15, 2004), at 1.

39. *Id.* Government Exhibit 2. In fact, the apartment house in question was built by Applicant's wife's great-grandmother. Tr. at 45-46.

40. Applicant Exhibit C (Letter to Applicant's wife from her attorney, dated December 21, 2005).

41. Tr. at 46-47.

42. *Id*. at 86.

43. *Id.*

44. *Id*. at 46.

45. Government Exhibit 2, *supra* note 36, at 1.

46. *Id.* at 1; Government Exhibit 5, *supra* note 16, at 3. Applicant estimated that selling the real estate before the expiration of the inheritance agreements would have caused a 50% loss of all capital gains, and selling them under pressure in a poor real estate market or with a poor exchange rate would not be wise. *See* Government Exhibit 2, at 2.

47. *Id.* Government Exhibit 2, at 2.

48. Tr. at 122.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.* at 122-123.

57. *Id.* at 123.

58. *Id.* at 52.

59. Government Exhibit 4 (Personal Financial Statement, dated June 23, 2004).

60. Tr. at 96-97.

61. *Id.* at 90.

62. *Id.* at 88-89.

63. *Id.* at 97.

64. *Id.*

65. *Id.* at 98.

66. *Id.* at 48-49.

67. Government Exhibit 5, *supra* note 16, at 3.

68. Tr. at 40.

69. U.S. Department of State, *supra* note 13, at 4, 6.

70. *Id.* at 10.

71. *Id.* at 6.

72. *Id.*

73. *Id.* at 10.

74. *Id.* at 3.

75. *Id.* at 4, 10.

76. *Id.* at 10.

77. It should be noted that on December 29, 2005, the President issued revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information. By letter, dated August 30, 2006, the Under Secretary of Defense issued implementing guidance, directing that the new Guidelines would apply to all adjudications in which an SOR has not been issued by September 1, 2006. All adjudications in which the SOR had been issued prior to that date, as it was in this instance, are to be made under the old Guidelines.

78. The Directive, as amended by Change 4, dated April 20, 1999, uses "clearly consistent with the national interest" (Sec. 2.3.; Sec. 2.5.3; Sec. 3.2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1; Sec. E3.1.2.; and Sec. E1.25.), Sec. E3.1.26.; and Sec. E3.1.27.), "clearly consistent with the interests of national security" (Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (Enclosure 2, Sec. E2.2.2).

79. ISCR Case No. 97-0356 at 5-6 (App. Bd. Dec. 12, 1997).

80. Tr. at 109-117.