DATE: March 30, 2007

In re:

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

Applicant for Security Clearance

ISCR Case No. 06-09757

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Although his family ties to Australia raise a security concern, Applicant has successfully mitigated the concern because of the steps he has taken. Additionally, the totality of the facts and circumstances under the "whole person" concept further show his family ties do not pose an unacceptable risk of foreign preference or influence. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On October 9, 2006, DOHA issued a Statement of Reason (SOR)[(1)] detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) and Guideline C (Foreign Preference) of the Directive. Applicant answered the SOR in writing on October 30, 2006, and elected to have a hearing before an administrative judge.

The case was assigned to me on November 8, 2006. On November 29, 2006, DOHA issued a notice of hearing scheduling the hearing for December 21, 2006. The hearing was conducted as scheduled.

The government offered five documents, which were admitted without objections as Government Exhibits (GE) 1 through 5. The Applicant offered eight documents, which were admitted without objections as Applicant Exhibits (AE) A through H. I held the record open to afford Applicant additional time to submit material in support of his case. Applicant submitted one additional material document, which was admitted as AE I, without objections. DOHA received the transcript on January 3, 2007.

Concerning the security guidelines, this case is brought under the revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information approved by the President on December 29, 2005. The revised guidelines were then modified by the Defense Department, effective September 1, 2006. They supersede or replace the guidelines published in Enclosure 2 to the Directive and Appendix 8 to DoD Regulation 5200.2-R. They apply to all adjudications and other determinations where an SOR has been issued on September 1, 2006, or thereafter, and they

apply to this case because the SOR is dated October 9, 2006. Both the Directive and the Regulation are pending formal amendment.

Upon review of the record and new Adjudicative Guidelines, I reopened the record on February 21, 2007 to afford Applicant further opportunity to submit additional material in support of his case. Applicant submitted additional material, which was marked as AE J and K, without objections.

FINDINGS OF FACT

In his Answer, Applicant admitted, with explanation all the SOR allegations (SOR ¶¶ 1., 1.a. through 1.c., 2., 2.a., and 3., 3.a.). His admissions are incorporated into my findings. After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant testified during the hearing, and I find his testimony credible.

Applicant is a 47-year-old senior scientist who has been employed by a defense contractor since April 2000. He is a first-time applicant for a security clearance. He has been married to his U.S. born wife since January 2005. (Applicant's wife holds a Ph.D. in psychology and is employed as a technical manager at a major university where she manages their netware corporations.)

Although Applicant has no children, he is the biological father to a one-year-old daughter born to his wife's sister through artificial insemination. He openly acknowledges he is the biological father to this child. Although he does not provide financial support to this child, he is involved in her upbringing.

Applicant was born, raised, and educated in Australia. He attended university in Australia and was awarded a bachelor of science degree, majoring in physics, in December 1980. Following his degree, he began a one-year honors program under the Australian educational system. Applicant stated under the Australian system "there was no need for a masters's degree." From January 1981 to July 1993, he was in a Ph.D. program offered through an Australian university. From 1990 to 1993, he worked on his doctoral dissertation and was awarded his Ph.D. in physics in November 1993.

Applicant arrived in the U.S. in March 1990 on a J-1 visa, which he later converted to an H-1 visa. He met his wife in 1993, and began seeing her "regularly" in 1994. He received his "green card" in approximately 1997, and became a U.S. citizen and received his U.S. passport in May 2004. Applicant is a dual citizen of Australia and also holds an Australian passport (SOR ¶ 1.a.). His Australian passport was issued on August 28, 1999, and will expire on August 28, 2009 (SOR ¶ 1.b.).

Applicant's relatives in Australia include his mother (SOR ¶ 2.a.), his sister-in-law, who was married to his late brother, a cousin, and nephew (SOR ¶ 3.). Applicant used his Australian passport when visiting Australia in May 2005 (SOR ¶ 1.c.). He traveled to Australia in March 1996, March 1999, October 2001, December 2002, October 2003, March 2004, and May 2005 (SOR ¶ 3.a.).

Before Applicant's father died, he had "a number of professions" to include auto mechanic, self-taught electrical engineer, "welding jobs and other stuff like that," and later on in life was a beekeeper behaviorist. Tr. 76. Afer Applicant's mother married his father, she became and remained a housewife. Applicant's late brother met his wife (Applicant's sister-in-law) at a U.S. facility located in Australia. After Applicant's brother married Applicant's sister-in-law, she became and remained a housewife. Applicant's cousin is a "jack of all trades" who worked as a biologist for an Australian government and had "various odd jobs" after he retired such as growing flowers for gardens. Tr. 78-79. Applicant's nephew recently graduated from high school and has yet to establish a career.

On February 23, 2007, Applicant surrendered his Australian passport to his Facility Security Officer (FSO). The FSO verified that Applicant had surrendered his passport to him. The FSO further stated if Applicant requested his Australian passport be returned to him, he would document the facts and circumstances surrounding the return by an entry in the Joint Personnel Adjudication System (JPAS).

Applicant's mother is 85-years-old, a widow, and lives by herself. Applicant has investigated the option of moving her

to the U.S., however, he has encountered difficulty in obtaining affordable health care insurance for her. To date, he has not discovered any viable health care coverage and, given her age, he does not want to risk bringing her to the U.S. without adequate coverage. Applicant maintains his Australian citizenship and Australian passport solely to retain the flexibility of being able to travel to Australia as long as necessary on short notice to assist his mother should she develop a medical emergency. He is his mother's only living child. Applicant remains in contact with his mother by telephone and calls her every one-to-two weeks. Applicant contacts his sister-in-law by telephone several times a year, and sends her flowers on her birthday and when he visits Australia.

Applicant has no property or assets in Australia. He does expect to inherit 50% of his mother's estate when she passes on and estimates his portion to approximate slightly more than $100,000.00. Conversely, Applicant has substantial assets in the U.S. Applicant and his wife each earn approximately $114,000.00 gross income per year, for a joint gross income totaling $228,000.00 per year. They purchased their home in 2000 for approximately $330,000.00 and have paid down their mortgage to $250,000.00. Their home is currently valued at approximately $650,000.00.

Applicant's other assets include $184,000.00 in a 401(K) retirement plan, company stocks worth $113,000.00, $20,000.00 in other stocks, and $60,000.00 in bank accounts and cash due from a one-time payment of company stocks. He estimates his joint net worth at $1,027,000.00, which includes all assets, or his singly held assets at $702,000.00.

Applicant testified his life is "clearly here in the U.S. I lost my brother (in Australia) about three years ago. My father [has] passed away. My mother is at an advanced age. Hopefully she'll have another ten years. But I'm in close contact with my wife's family (U.S. citizens). She has a fairly large family. My career is here. And I have a daughter here as well who I could not take to Australia here." Tr. 57.

Applicant stated in his response to interrogatories, "As part of my naturalization to US citizenship I swore to uphold the Constitution of the United States and to defend the US against all enemies both domestic and foreign. I wholeheartedly gave that oath and stand by it. Should I feel that I have a moral conflict in any work I would ask to recused from that work. I would maintain that work as classified and secret, as required by law." GE 2. Applicant is registered and regularly votes in U.S. elections, and exercises all rights of a U.S. citizen.

Applicant provided two work-related reference letters from officials describing his work performance as outstanding. The letters emphasized he is a conscientious and trustworthy employee. These letters document in detail the tremendous contributions Applicant has made to the national defense over the years and his potential for future service. They also make it clear Applicant is a trusted and valued employee. AE B through C.

The government offered exhibits, as did the Applicant, from the U.S. Department of State, relevant to U.S. - Australia relations. A pertinent portion taken from Background Note: Australia, Bureau of East Asian and Pacific Affairs, August 2006, states in part:

U.S. - AUSTRALIAN RELATIONS - The World War II experience, similarities in culture and historical background, and shared democratic values have made U.S. relations with Australia exceptionally strong and close. Ties linking the two nations cover the entire spectrum of international relations - from commercial, cultural, and environmental contacts to political and defense cooperation. Two-way trade reached $30.1 billion in 2004. More than 400,000 Americans have visited Australia in a single year.

Traditional friendship is reinforced by the wide range of common interests and similar views on most major international questions. For example, both countries sent military forces to the Persian Gulf in support of UN Security Council resolutions relating to Iraq's occupation of Kuwait; both attach high priority to controlling and eventually eliminating chemical weapons, other weapons of mass destruction, and anti-personnel landmines; and both work closely on global environmental issues such as slowing climate change and preserving coral reefs. The Australian Government and opposition share the view that Australia's security depends on firm ties with the Unites States, and the ANZUS Treaty enjoys broad bipartisan support. Recent Presidential visits to Australia (in 1991, 1996 and 2003) and Australian Prime Ministerial visits to the United States (in 1995, 1997, 1999, 2001, 2002, 2003, 2004, 2005, and 2006) have underscored the strength and closeness of the alliance.

The bilateral Australia - U.S. Free Trade Agreement (AUSFTA) entered into force on January 1, 2005. This

comprehensive agreement, only the second FTA the U.S. had negotiated with a developed nation, substantially liberalizes an already vibrant trade and investment relationship. The AUSFTA also creates a range of ongoing working groups and committees designed to explore further trade reform in the bilateral context.

Both countries share a commitment to liberalizing global trade. They work together very closely in the World Trade Organization (WTO), and both are active members of the Asia-Pacific Economic Cooperation (APEC) forum.

A number of U.S. institutions conduct scientific activities in Australia because of its geographical position, large and mass, advanced technology, and, above all, the ready cooperation of its government and scientists. Under an agreement dating back to 1960 and since renewed, the U.S. National Aeronautics and Space Administration (NASA) maintains in Australia once of its largest and most important program outside the United States, including a number of tracking facilities vital to the U.S. space program. Indicative of the broadranging U.S. - Australian cooperation on other global issues, a Mutual Legal Assistance Treaty (MLAT) was conducted in 1997, enhancing already close bilateral cooperation on legal and counter-narcotics issues. In 2001, the U.S. and Australia signed a new tax treaty and a bilateral social security agreement.[(2)]

POLICIES

In an evaluation of an applicant's security suitability, an administrative judge must consider Enclosure 2 of the Directive, which sets forth adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into disqualifying conditions (DC) and mitigating conditions (MC), which are used to determine an applicant's eligibility for access to classified information.

These adjudicative guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these guidelines in conjunction with the factors listed in the adjudicative process provision in Section E2.2, Enclosure 2, of the Directive. An administrative judge's overarching adjudicative goal is a fair, impartial and common sense decision. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

Specifically, an administrative judge should consider the nine adjudicative process factors listed at Directive ¶ E2.2.1: (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.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to the relevant adjudicative guidelines are set forth and discussed in the Conclusions section below. Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security." 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 grounded on mere speculation or conjecture.

In the decision-making process, facts must be established by "substantial evidence."[(3)] The government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive. Once the government has produced substantial evidence of a disqualifying condition, the burden shifts to the applicant to produce evidence and prove a mitigating condition. Directive ¶ E3.1.15 provides, "The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." The burden of disproving a mitigating condition never shifts to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).[(4)]

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 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 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.

The scope of an administrative judge's decision is limited. 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 that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism.

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CONCLUSIONS

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

Guideline C - Foreign Preference

Under Guideline C, a security concern may exist 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. Directive ¶ 9.

Foreign Preference Disqualifying Condition (FP DC) 10.(a) *exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to (1) possession of a current foreign passport.*

Applicant is a dual citizen of the U.S. and Australia, and has exercised his Australian citizenship by obtaining and using an Australian passport to enter Australia after he became a U.S. citizen. He maintains an Australian passport for the sole purpose of having the flexibility of being able to care for his elderly mother in Australia. Such flexibility would include being able to travel to Australia on short notice and stay for an extended period of time, if required. Applicant is his mother's sole surviving child. Applicant's past visits to Australia were primarily to visit his mother and secondarily to visit his sister-in-law, cousin, and nephew.

This case poses a new challenge and a case of first impression in the application of the Revised Guidelines.[(5)] A significant concern surrounding the possession of a foreign passport is the ability of the holder to travel to and from a foreign country under the sponsorship of the government issuing the passport and oftentimes without the knowledge of the U.S. Government. Conversely, traveling to a foreign country with a U.S. passport precludes that from occurring. Using a foreign passport in lieu of a U.S. passport may also show a preference of the rights and privileges afforded by that foreign country over the U.S.

Applicant's Australian citizenship is derived solely by his birth in Australia to Australian parents. The evidence clearly supports the notion the Applicant is a loyal and devoted U.S. citizen. To accommodate the Revised Guidelines, Applicant has surrendered his Australian passport to his FSO, and his FSO has stated any request by the Applicant seeking return of his Australian passport would be documented by a JPAS entry explaining such action.

By Applicant surrendering his Australian passport to his FSO, he forfeits the flexibility of unfettered and undocumented travel. Furthermore, any attempt by Applicant to retrieve his Australian passport will be documented by a JPAS entry and the U.S. Government will have knowledge of such action. These collective facts warrant application of Foreign Preference Mitigating Conditions (FP MC) 11.a.: *dual citizenship is based solely on parents' citizenship or birth in a*

foreign country; and FP MC 11.e.: *the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.* It is my "commonsense" determination that Applicant's FSO qualifies under the Revised Guidelines as cognizant security authority. Applicant no longer retains the unfettered ability to use his Australian passport and has taken steps to comply with the Revised Guidelines.

Guideline B - Foreign Influence

Under Guideline B, foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism. Directive ¶ 6.

Under Guideline B for foreign influence, a security clearance risk exists 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. Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohibitant, or close associate is brought under control or used as a hostage by a foreign intelligence or security service.

The concern under Guideline B is the presence of Applicant's family members to include his mother, sister-in-law, cousin, and nephew who are resident citizens of Australia. Applicant's travel to Australia to visit his mother primarily and his sister-in-law, cousin, and nephew secondarily have the potential to make Applicant vulnerable to foreign influence.

Disqualifying condition applicable under Guideline B based on these facts is: ¶ 7.(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.*

All of Applicant's adult family members in Australia are either retired or not in the work force. His late brother and sister-in-law were employed at a U.S. facility in Australia. His nephew, who just graduated from high school, has not joined the work force. The likelihood of any of these individuals being placed in a position to extract information from Applicant directly or indirectly is remote. This is made more evident given this Applicant is in a country governed by the rule of law.

Applicant has spent the past 17 years in the U.S., has married a U.S. born wife, and has become integrated in the U.S. His joint assets in the U.S. exceed $1 million in contrast to the $100,000.00 worth of assets in Australia he stands to inherit when his mother passes away. It is apparent from his demeanor and actions taken the U.S. is his home. Furthermore, Australia, his country of origin, is on excellent terms with the U.S.

Mitigating conditions applicable under Guideline B are: 8.(a) *the nature of the relationships with foreign persons, the country in which these persons is located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;* and 8.(b) *there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that individual can be expected to resolve any conflict of interest in favor of the U.S. interest.*

"Whole Person" Analysis

In addition to the enumerated disqualifying and mitigating conditions discussed previously, I have considered the general adjudicative guidelines related to the whole person concept under Directive ¶ E2.2.1. The Appeal Board has

repeatedly held that a Judge may find in favor of an applicant where no specific mitigating conditions apply.[(6)] Moreover, "[u]nder the whole person concept, the administrative judge must not consider and weigh incidents in an applicant's life separately, in a piecemeal manner. Rather, the Judge must evaluate an applicant's security eligibility by considering the totality of an applicant's conduct and circumstances."[(7)] The Directive lists nine adjudicative process factors (APF) which are used for "whole person" analysis. Because foreign influence does not involve misconduct, voluntariness of participation, rehabilitation and behavior changes, etc., the eighth APF, "the potential for pressure, coercion, exploitation, or duress," Directive ¶ E2.2.1.8, is the most relevant of the nine APFs to this adjudication.[(8)] In addition to the eighth APF, other "[a]vailable, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination." Directive ¶ E2.2.1. Ultimately, the clearance decision is "an overall common sense determination." Directive ¶ E2.2.3.

The Appeal Board requires the whole person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family's ties to the U.S. relative to his [or her] ties to a foreign country; his or her ties social ties within the U.S.; and many others raised by the facts of a given case." ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007). In that same decision, the Appeal Board commended the whole person analysis in ISCR Case No. 03-02878 at 3 (App. Bd. June 7, 2006), which provides:

Applicant has been in the U.S. for twenty years and a naturalized citizen for seven. Her husband is also a naturalized citizen, and her children are U.S. citizens by birth. Her ties to these family members are stronger than her ties to family members in Taiwan. She has significant financial interests in the U.S. , and none in Taiwan. She testified credibly that she takes her loyalty to the U.S. very seriously and would defend the interests of the U.S. Her supervisors and co-worker assess her as very loyal and trustworthy.

There are many other countervailing, positive attributes to Applicant's life as a U.S. citizen that weigh towards granting his clearance. He has strong links or connections to the United States: (1) Applicant became a U.S. citizen in May 2004 and immediately applied for a U.S. passport; (2) His wife and her family are U.S. citizens, and all of them reside in the United States. (3) His biological daughter is a U.S. born citizen; (4) Applicant has resided in the U.S. for the past 17 years and has not been to Australia except for brief visits primarily to check on his mother's welfare, (5) Applicant holds a responsible position as a research scientist with a defense contractor; (6) His wife also holds a responsible position as a technical manager at a major university; (7) All his real and personal property are in the U.S. to include owning a home; (8) All his substantial financial connections are in the United States;[(9)] and (9) He credibly stated that he would never do anything to harm the U.S.

There is no reason to believe that he would take any action that could cause potential harm to his U.S. family or to this country. He is patriotic, loves the United States, and would not permit Australia to exploit him. He has close ties to the United States. The realistic possibility of pressure, coercion, exploitation or duress is low. I base this conclusion on his credible and sincere testimony, and I do not believe he would compromise national security, or otherwise comply with any Australian threats or coercion. Applicant has not been to Australia since 2005. His supervisors, coworkers and friends describe him as very honest, loyal, and trustworthy. He is involved in his local community and is an asset to his community and company.

After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude Applicant has mitigated or overcome the security concerns pertaining to foreign influence and foreign preference. I have no doubts concerning Applicant's security eligibility and suitability. I take this position based on the law, as set forth in *Department of Navy v. Egan,* 484 U.S. 518 (1988), my "careful consideration of the whole person factors"[(10)] and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under Enclosure 2 of the Directive. I conclude Applicant is eligible for access to classified information.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

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

Paragraph 2. Guideline B: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Paragraph 3.: For Applicant

Subparagraph 3.a.: For the Applicant

DECISION

In light of all of 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 J. Tuider

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.

2. GE 4, AE E. The government also submitted U.S. State Department , Bureau of Consular Affairs, Washington, DC, Consular Information Sheet, "Australia," dated April 6, 2006. GE 3.

3. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v.Washington Metro. Area Transit Auth*., 36 F.3d 375, 380 (4th Cir. 1994).

4. "The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, [evaluates] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and [decides] whether Applicant [has] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

5. *See fn 2*.

6. ISCR Case No. 02-30864 at 4 (App. Bd. Oct. 26, 2005); ISCR Case No. 03-11448 at 3-4 (App. Bd. Aug. 10, 2004); ISCR Case No. 02-09389 at 4 (App. Bd. Dec. 29, 2004); ISCR Case No. 02-32006 at 5 (App. Bd. Oct. 28, 2004).

7. ISCR Case No. 03-04147 at 3 (App. Bd. Nov. 4, 2005) (quoting ISCR Case No. 02-01093 at 4 (App. Bd. Dec. 11, 2003)).

8. *See* ISCR Case No. 02-24566 at 3 (App. Bd. July 17, 2006) (stating that an analysis under the eighth APF apparently without discussion of the other APFs was sustainable); ISCR Case No. 03-10954 at 5 (App. Bd. Mar. 8, 2006) (sole APF mentioned is eighth APF); ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006) (remanding grant of clearance because Judge did not assess "the realistic potential for exploitation"), *but see* ISCR Case No. 04-00540 at 6 (App. Bd.

Jan. 5, 2007) (rejecting contention that eighth APF is exclusive circumstance in whole person analysis in foreign influence cases).

9. The government did not allege financial interests as a FI DC. Except for a potential relatively small inheritance when his mother passes, Applicant has no financial interests in Australia. *See* ISCR Case No. 04-02233 at 3 (App. Bd. May 9, 2006) (stating lack of foreign financial interests do not mitigate Guideline B security concerns based on an applicant's relationship with relatives); ISCR Case No. 03-04300 (App. Bd. Feb. 16, 2006), 2006 DOHA Lexis 264 at *17 (accepting the Judge's conclusion applying FI MC 5 because that applicant's foreign financial interests were minimal and not sufficient to affect her security responsibilities).

10. *See* ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).