DATE: April 20, 1998

In Re:

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

Applicant for Security Clearance

ISCR Case No. 97-0770

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Michael H. Leonard, Esq., Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 3), issued a Statement of Reasons (SOR), dated December 4, 1997, to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on foreign preference concerns (criterion C) related to Applicant reclaiming his foreign citizenship to obtain possible future educational benefits for his children.

On December 18, 1997, Applicant responded to the allegations set forth in the SOR and requested a hearing. The case was assigned accordingly to this Administrative Judge on January 22, 1998, and on January 28, 1998, a hearing was scheduled for February 24, 1998. On January 30, 1998, the Government moved to amend the SOR by adding criterion B, alleging the foreign citizenship and foreign residency of Applicant's mother, brother and two sisters create the potential for foreign influence which could result in the compromise of classified information. Applicant was provided until close of business on February 13, 1998, to file any objection to the amendment as proposed as well as informed the lack of a timely response would be construed as assent to the amendment. No response was forthcoming from the Applicant.

On February 24, 1998, the hearing was held as scheduled. At the hearing, Applicant admitted the additional allegations set forth in subparagraphs 2.a. and 2.b. under criterion B. Two Government exhibits and two Applicant exhibits were admitted into evidence.(1) Testimony was taken from the Applicant and his spouse. A transcript of the hearing was received by this office on April 17, 1998.(2)

FINDINGS OF FACT

After a thorough review of the evidence in the record, and upon due consideration of same, this Administrative Judge renders the following findings of fact:

Applicant is a 44 year old test technician who has worked for his current employer, a defense contractor, since June 1997. Applicant previously worked for this employer from June 1986 to April 1993 when he was laid off. He held a Secret security clearance in connection with his prior employment at the company. Applicant seeks a Secret clearance for his present duties there.

Born in June 1953 in foreign country A to citizens of that nation, Applicant spent his formative years there. At age seventeen, after finishing his schooling, Applicant left his home for employment opportunities in other countries. While in an island nation in 1974, Applicant met his future spouse who is a United States citizen. Shortly thereafter, he relocated to the United States and they were married that November. Applicant has resided in the United States since. In 1979, he and his spouse moved to the home in which they currently still reside. Applicant and his spouse have two children, a daughter and son born to them in the United States in 1981 and 1984, respectively.[(3)]

In February 1982, Applicant became a naturalized United States citizen, swearing allegiance to the United States and intending to exercise the rights and privileges afforded thereby. He obtained a United States passport, which he has used to travel back to foreign country A on two occasions since his naturalization (most recently in 1996) to visit his mother and three siblings (an older brother, an older sister and a younger sister), all resident nationals of foreign country A. Applicant allowed his foreign country A passport to expire in April 1978 and he has never renewed it.[(4)]

In 1992, Applicant lost dual citizenship status with foreign country A by virtue of his United States naturalization.

An avid soccer fan, Applicant is active as a referee in his local youth soccer league. In March or April 1997, while watching on cable television a soccer match in which a foreign country A team was playing, Applicant learned that former foreign country A nationals could reacquire their country A citizenship on presentation of an application and documentation proving birth in that nation. This was an opportunity available only during calendar year 1997. Applicant, who had not previously considered regaining his dual citizenship status, contacted foreign country A's consulate to determine whether there was a benefit to reclaiming his foreign citizenship. Informed that his children might possibly be entitled to pursue their higher educations at a foreign country A university at greatly reduced tuition and that reclaiming his foreign country A citizenship would not negatively impact his United States citizenship, Applicant applied for restoration of his foreign country A citizenship. On presentation of proof of his foreign country A birth (birth certificate and marriage certificate) to a foreign country A consular official, Applicant was informed verbally that his foreign country A citizenship had been reinstated.[(5)] Applicant has not received any written confirmation of this citizenship.

After learning of the Government's security concerns related to exercise of dual citizenship, Applicant in about late January 1998 contacted the consulate. He learned the consulate had sent his papers back to his hometown for verification about six months prior but had received no response. Applicant asked the consulate about renunciation of foreign country A citizenship. He was informed it could be accomplished but not recommended as he would not have another opportunity to reclaim his foreign country A citizenship.

Although proud of his foreign heritage, Applicant has considered himself a citizen of the United States since his naturalization. Applicant owns no property in foreign country A, has no inheritance interest, has never voted in a foreign country A election, nor served in that nation's military. Had he realized maintenance of dual citizenship could jeopardize his chances of obtaining a security clearance, Applicant would not have commenced proceedings to regain his citizenship status with foreign country A. While he would like to continue to retain dual citizenship status for sentimental reasons, Applicant is willing to renounce his foreign country A citizenship if necessary to obtain the requested Secret security clearance. He has no intent to obtain a foreign country A passport.

Applicant contacts his immediate family members in foreign country A about four times per year by telephone. He speaks primarily with his mother and younger sister with whom their mother resides. None of Applicant's immediate family members are employed by foreign country A's government or that nation's military.

Applicant is regarded as a person of high integrity by friends in the local community who have known him for at least twelve years. A co-worker acquainted with Applicant both personally and professional over that time attests to Applicant's conscientiousness and hard work on the job.

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the seriousness, recency, frequency and motivation for an applicant's conduct; the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the circumstances or consequences involved; the age of the applicant; the absence or presence of rehabilitation, the potential for coercion or duress, and the probability that the conduct will or will not recur in the future. *See* Directive 5220.6, Section F.3. and Enclosure 2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

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 a security concern and may be disqualifying include:

(1) the exercise of dual citizenship

Conditions that could mitigate security concerns include:

(4) individual has expressed a willingness to renounce dual citizenship

FOREIGN INFLUENCE

A security risk may exist when an individual's immediate family, including cohabitants, and other persons to who he or she may be bound by affection, influence or obligation are: (1) not citizens of the United States or (2) 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.

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

(1) an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country

Conditions that could mitigate security concerns include:

(1) a determination that the immediate family member(s), cohabitant, or associate(s) in question would not constitute an unacceptable security risk

* * *

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the Applicant.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, this Judge concludes the following with respect to criteria C and B:

Criterion C is based on actions taken by an individual which indicate a preference for a foreign country over the United States. Born and raised in foreign country A, Applicant emigrated to the United States in 1974. Following his naturalization as a United States citizen in February 1982, Applicant exercised only those rights and privileges attendant with his United States citizenship. He had already by that time married a United States native, established a home in this country and had a daughter. Over the last twenty-three years, he has vacationed in foreign country A only four times, and on those trips taken after his United States naturalization, he presented a valid United States passport. Despite these clear indications of United States citizenship, Applicant in 1997 reclaimed his dual citizenship[(6)] with his land of birth in an effort to protect possible future educational benefits for his children. This recent exercise of dual citizenship is potentially security disqualifying under the Directive's adjudicative guidelines pertaining to foreign preference, specifically disqualifying condition (DC) 1. (the exercise of dual citizenship).

On review of the mitigating conditions (MC), dual citizenship based solely on birth in a foreign country (MC 1.) is clearly not available to Applicant. Born and raised in foreign country A until he left at age 17 to pursue employment, Applicant enjoyed privileges and rights, to include schooling, of his foreign citizenship. His reclamation of his foreign country A citizenship some fifteen years after he became a naturalized U.S. citizen also precludes favorable consideration of MC 2. (indicators of possible foreign preference occurred before obtaining United States citizenship). Applicant's motivation is significant in determining whether this exercise of dual citizenship, though legal, poses an unacceptable security risk. The reinstatement of his foreign citizenship was not actively sought by him over the years. On learning by chance of the opportunity to reclaim his foreign citizenship, Applicant pursued it to obtain educational benefits for his children, who according to Applicant and his spouse's testimony, are unlikely to attend a foreign country A university. Applicant testified credibly, moreover, that he applied to reclaim his citizenship only after receiving assurances from the foreign country A consulate that it would not adversely affect his United States citizenship. While he indicated he would like to maintain his dual citizenship for sentimental reasons, Applicant also expressed a

willingness to renounce his foreign citizenship if required to obtain a security clearance, and to that end, he inquired in about January 1998 of the foreign consulate about the process of renunciation. C 4. (willingness to renounce foreign citizenship) is therefore applicable.

As of the hearing, Applicant had not commenced the formal process of renunication. His failure to do so is not regarded as fatal to his case in mitigation because of the compelling evidence showing a preference for the United States. Applicant has consistently maintained that he considers himself a United States citizen first and foremost, and his actions bear that out. For the last twenty-three years, even prior to becoming a United States citizen, he has maintained his home and career in the United States. His employment with the same defense contractor from April 1993 to June 1996 and more recently from June 1997 is consistent with his United States citizenship. There is no evidence that Applicant has performed his duties with the defense contractor so as to serve the interests of another government. He has not received any employment compensation from foreign country A sources. Although he has taken trips back to foreign country A since his naturalization, these were infrequent and on a United States passport. While proud of his heritage, he has never joined any fraternal, social or political organization which fosters affiliation with foreign country A interests. In marked contrast, he is involved in his local United States community as a referee in the local youth soccer organization and as a member of an "Over the Hill" soccer league. On balance, the security concerns engendered by the lone, albeit recent, act in exercise of dual citizenship are overcome by his behavior otherwise consistent with United States interests. Subparagraph 1.a. is thus resolved in Applicant's favor.

Under Criterion B 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 United States citizens. Whereas Applicant's mother and siblings are resident citizens of foreign country A, DC 1. under the adjudicative guidelines pertaining to foreign influence must be considered.

The potential for foreign influence which exists because of the foreign citizenship and residency of immediate family members may be successfully challenged if the family members do not constitute an unacceptable security risk (MC 1.). Neither the degree of affection Applicant has for these family members nor the employment and/or personal circumstances of these family members render Applicant especially vulnerable to foreign influence. Although Applicant continues to share a bond with family members, it is primarily to his mother and then secondarily to his younger sister with whom his mother resides. Even then, he telephones only four times per year on significant occasions (Mother's Day, religious holidays). Applicant has traveled to foreign country A to visit his relations only four times in the last twenty-three years. During those trips, he has been accompanied by his spouse and they have toured other countries as well. There is no evidence that he has been approached by any official from foreign country A's government during these visits. As noted, with the exception of his first two trips with his spouse in 1976 and 1978, he has traveled to foreign country A as a United States citizen. At the hearing, Applicant testified none of the immediate family members are employed by foreign country A's military or government. Applicant's mother has never worked. His brother makes ceramics and his older sister is a seamstress in her home. The younger sister works part-time. There is no evidence that any of his immediate family members or their spouses have been approached by foreign authorities. Subparagraphs 2.a. and 2.b. are therefore found for Applicant.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1. Criterion C: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Paragraph 2. Criterion B: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the 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.

Elizabeth M. Matchinski

Administrative Judge

1. The transcript index fails to reflect the admission of Applicant Exhibit B. *See* Transcript p. 22.

2. The belated receipt of the transcript was due to factors outside of DOHA's control.

3. Applicant testified to his understanding that his children are dual citizens of the United States and foreign country A until they reach eighteen years of age. At that point, they would no longer be foreign country A citizens. (Transcript p. 50).

4. Applicant's spouse confirmed Applicant has taken four trips back to his native land since their marriage (in 1976, 1978, 1987 and 1996 (Transcript pp. 29-30). On the first two, he presented a foreign country A passport as he was not yet a citizen of the United States.

5. Applicant testified he paid no fee, did not sign any papers or fill out any forms at the consulate; that when he contacted the consulate he was told to bring in his birth and marriage certificates along with another document; and that on presentation of those documents, he was told he was a foreign country A citizen. (Transcript pp. 37-41). During his interview with a Special Agent of the Defense Security Service, Applicant indicated he was required to submit an application to the consulate which he did in June 1997. (Government Exhibit 2). At the hearing, he testified that the process was finished in August 1997. (Transcript p. 52). While the record is not entirely clear as to the application process, to include when Applicant presented proof of his foreign birth to the consulate, the salient fact is that Applicant sought to reclaim his foreign citizenship to obtain possible educational benefits for his children in the future.

6. Applicant understands he holds dual citizenship based on verbal confirmation from the consulate. As noted, he has never received any written confirmation.