DATE: August 2, 1999

In Re:

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

Applicant for Security Clearance

ISCR Case No. 98-0476

REMAND DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Mel A. Howry, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On July 22, 1999, the Appeal Board issued a Decision and Remand Order requiring further processing consistent with the rulings and instructions set forth in its Decision and Remand Order. As I understand the Appeal Board's ruling, the primary matters to be resolved is consideration of Applicant's response to Department Counsel's Response to my January 26, 1999 Order entitled "Official Notice" (Applicant's Response). The Appeal Board correctly noted that my Order set a response date of February 5 for original responses to the Order and February 12 for any responses by either part to the submission of the other party. My decision was issued on February 10, 1999, two days prior to the February 12, 1999 closing date. I was under the impression that Applicant would not be filing a response to Department Counsel's original brief. I was in error. I was not aware that Applicant had submitted such a response until after receiving the Remand Order. I have now obtained a copy from Department Counsel. I have added this document to the record and have reevaluated the now completed case file.[(1)]

On September 23, 1998, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended by Change 3, issued a Statement of Reasons (SOR) to the Applicant that 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 and recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On October 8, 1998, Applicant responded to the allegations set forth in the SOR (Government Exhibit (GX) 2). Applicant elected to have the case determined by an Administrative Judge on the written record, in lieu of a hearing (GX 3). A File of Relevant Material (FORM) was issued by Department Counsel on November 27, 1998. Applicant was notified that he could respond to the FORM within 30 days of his receipt of the FORM. Applicant did not submit any response to the FORM. This case was assigned to me for resolution on January 4, 1998.

Because of the unusual nature and circumstances of this case, I concluded it was appropriate to consider taking official

notice of a number of documents and to allow the parties to indicate any objections to my taking official notice of these documents; to indicate any additional documents they thought I should take official notice of; and to provide additional comments and responses to both the cited documents and the questions raised during my preliminary evaluation of the evidence. The Official Notice document (Attachment A) was issued on January 26, 1999. The parties were given until close of business on February 5, 1999 to file any response. Department Counsel submitted a timely formal response on February 5, 1999 (Attachment B), on which date the record was closed.

Applicant did not file a response to the Official Notice but did file a response to Department Counsel's original brief. Applicant's brief is dated February 11, 1999. The Remand Order states that the letter was postmarked February 12, 1999. The date stamp on the letter indicates it was received at DOHA on February 16, 1999. In the interests of developing the fullest possible record, I will consider the submission to be timely and I will admit the document into evidence.

In his original response, Department Counsel objected to my taking official notice of items 2, 3, 4, 5, and 7. I will not be taking official notice of those documents. Department Counsel did not object to my taking official notice of items 1, 6, 8, and 9. All nine items have been added to the case file, but I have taken official notice only of Items 1, 6, 8, and 9.

FINDINGS OF FACT

The Government opposes the Applicant's request for a continued security clearance, based on the five allegations set forth in the attached SOR, specifically three allegations under Criterion C (Foreign Preference) (SOR 1.a.,1.b., and 1.c.) and two allegations under Criterion B (Foreign Influence) (SOR 2.a and 2.b.). In evaluating the evidence, in addition to the general guidelines found in Section F.3 of the Directive, I considered the following points: (1) whether the evidence supports each and every SOR allegation; (2) whether the evidence comes within one or more of the Disqualifying Conditions cited in the Foreign Preference and Foreign Influence guidelines in the Directive at Enclosure 2; (3) whether the evidence establishes a nexus or connection with Applicant's security clearance eligibility; and (4) whether Applicant has established mitigation and/or extenuation.

After a thorough review and analysis of all the Government Exhibits in the FORM, and considering Department Counsel's argument as to how the record evidence should be viewed, I make the following findings of fact:

SOR 1.a. - alleges that Applicant applied for and received a passport from Country A in about 1993, which Applicant used in preference to his United States (U.S.) passport while traveling in Country A.

The record evidence is that Applicant did apply for and receive a passport from Country A. However, the evidence does not establish that he did so voluntarily or that he used it in preference to his U.S. passport while traveling in Country A. The only evidence as to Applicant's use of the Country A passport is that he agreed to apply for it as a condition of leaving Country A for a neighboring country in November 1993 and he then used the County A passport only to reenter Country A and then leave that country in March 1994. At the same time, he used his U.S. passport to enter and leave the neighboring country. He has not returned to Country A since 1994 time and has not used the Country A passport on any other occasion (GX 3, 4, 5, and 6 and Applicant's Response). Based on this evidence, I conclude that while Applicant did "apply for" and receive a passport from Country A in 1994, he did not do so voluntarily and did not use the passport in preference to his U.S. passport while traveling in country A or at any other time, except to enter and leave that country, as he believed he was obligated to do.

SOR 1.b. - alleges that Applicant is unwilling to renounce his Country A citizenship. The record establishes that Applicant remains unwilling to make such a statement. What Applicant has said is that he would do so if he were shown a good reason to renounce his Country A citizenship. (GX 3 and 6 and Applicant's Response). Clearly, Applicant has not stated an unequivocal intent to renounce his Country A citizenship and return his Country A passport but, based on the full record, I conclude that Applicant's reluctance is based on personal factors that do not suggest a preference for Country A over the United States. Indeed, Applicant emphasized that he "[did] not and [does]

not desire to have [a Country A] passport or [Country A] citizenship" (Applicant's Response at p. 2). Applicant's last words in his Response raise the question of what he sees as the neglected factors of his "honesty and integrity." There is considerable logic in Applicant's contention. A person with an inclination toward improper conduct would be more

likely to say the "magic" words: "I intend to renounce!" and avoid any potential problem. I cannot conclude, under the facts and circumstances of this case, that Applicant's reluctance to do so suggests any foreign preference.

SOR 1.c. - Applicant admits he will not "unequivocally support the United States" (GX 3 and 7). However, his admission is stated in terms of the unlikely circumstance that if the U.S. and Country A were to go to war, Applicant would support the U.S. unless the nation's "democratic foundations" been destroyed (GX 7). He "will always support the ideals on which this country was founded" (Id.).

SOR 2.a. - Applicant admits that he has family members/relatives who are citizens of country A (GX 3 and 6).

SOR 2.b. - Applicant admits he has relatives, living in Country A, who are members of Country A's armed forces "in a reserve capacity"(GX 3 and 6). "Most [Country A] citizens are members of the military" (GX 3).

I also make the following findings of fact:

Applicant is a 29-year-old project engineer for a defense contractor. He is a native-born citizen of the U.S. and holds a U.S. passport. Because his parents were born in Country A and hold dual U.S. and Country A citizenship, Country A considers him to be a citizen of the country under that country's law.

Applicant has only been in Country A on two occasions. The first time was with his parents in 1972, when he was two years old (GX 6 and Applicant's Response). The second time was in 1993 - 1994, when his employer sent him to Country A for approximately seven months on company business. He traveled to Country A on his U.S. passport. At the airport in Country A, he was informed he had to register as a citizen of Country A. A Country A citizenship number was entered on his U.S. passport. When he sought to leave Country A for a short trip to a neighboring country, he was told by an official he could not leave Country A until he agreed to obtain a Country A passport (GX 4 and 6 and Applicant's Response). When he agreed to do so, he was given a permission slip allowing him to leave the country. A few months later, he did apply for a Country A passport and received it on March 3, 1994 (Applicant's Response). As of his June, 1997 sworn statement (GX 6), he still had that passport (GX 4, 5, and 6), but the passport expired on February 3, 1999 (GX 5).

While in Country A on business from October 1993 to March 1994 (GX 4), Applicant visited with relatives on weekends (GX 6). Some of the relatives had served in the Country A armed forces and were in the reserves (Id.). He had no contact with Country A intelligence or military officials (Id.). Appellant has not served in Country A's military but "might have to serve if [he] moved back to [Country A]" (Id.).

Applicant: (1) did not go to Country A to satisfy that country's citizenship requirements; (2) is not maintaining his country A citizenship to protect inheritance rights or to receive benefits; and (3) is not employed as an agent of country A, nor is he seeking political office in that country (GX 6). His parents still own property in Country A (value unknown), but Applicant is not aware if Country A citizenship is required to inherit the property.

As to why he retains his Country A citizenship, Applicant states: (1) his Country A citizenship is basically automatic (because of his parent's dual nationality with Country A); (2) that he feels an "obligation to Country A" because he has relatives there; and (3) his parents were born in Country A (GX 6) but became naturalized citizens in 1974 (GX 4 at Item 10).

POLICIES

The adjudication process established by DoD Directive 5220.6 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, as amended by Change 3, sets forth specific adjudicative guidelines that must be carefully considered according to the pertinent criterion in making the overall common sense determination required. In addition, each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or

absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Because each security case presents its own facts and circumstances, it should not be assumed that the factors cited above 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 (CRITERION C)

The preface to this criterion states that: "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;

(2) possession and/or use of a foreign passport;

(3) [a] willingness to bear arms for a foreign country;

Conditions that could mitigate security concerns include:

(1) dual citizenship is based solely on parent's citizenship or birth in a foreign country.

(2) and (3) are not applicable to the fact situation in the present case.

(4) Applicant has expressed a conditional willingness to renounce his dual citizenship.

FOREIGN INFLUENCE (CRITERION B)

The preface to this criterion states that 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 (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 foreign 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 lives in a foreign country;

(3) relatives, cohabitants, or associates who are connected with any foreign government;

(8) a substantial financial interest in a foreign country of business;

(2), (4), (5) (6), and (7) have been considered but found to be inapplicable under the facts of this case.

Conditions that could mitigate security concerns:

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

(3) contact and correspondence with foreign citizens are casual and infrequent;

(5) foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities;

(2) and (4) have been considered and found inapplicable under the facts of this case.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest." In reaching the fair and impartial overall common sense determination required by the Directive, the Administrative Judge is not permitted to speculate, but can only draw those inferences and conclusions that 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.

In the defense industry, the security of classified information is entrusted to civilian workers who must be counted on to safeguard classified information and material twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for a security clearance may be involved in conduct that demonstrates poor judgment, untrustworthiness, or unreliability on the part of an Applicant. These concerns include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

An Applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the Applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by an Applicant's admissions or by other evidence) and establishes conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the applicant.

A person who seeks access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. When 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 or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the 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

In the absence of hearing testimony and exhibits, my decision is necessarily based on the contents of the written record, as contained in the FORM submitted by Department Counsel.[(2)] I have also carefully considered all of the arguments by Department Counsel (Attachment B) offered in response to my questions about the state of the evidence as to all five sub-allegations.

Foreign Preference -

The underlying premise behind the Foreign preference guidelines is that actions taken by an applicant that tend to show a preference for another country (generally but not necessarily a country of which an applicant has dual citizenship with the U.S.) raise the possibility that the applicant may be prone to provide information or make decisions that are harmful to the interests of the U.S. Indeed, DOHA case precedence supports this premise. It stands to reason, therefore, that the absence of such actions by a dual citizen tends to show a preference for the U.S., rather than for another country. I have considered, therefore, whether the evidence demonstrates actions by Applicant that tends to show that he has a

preference for Country A.

SOR (1) - The Government contends that Applicant: "applied for and received a [Country A] passport in about 1993," which he "used in preference to [his U.S.] passport while traveling in Country A."

After a careful evaluation of the Government's exhibits, I conclude that the allegation is not supported by the record evidence. The *only* evidence as to how Applicant obtained the Country A passport is found in Applicant's March 20, 1997 security clearance application (SCA) (GX 4), his June 27, 1997 sworn statement to the Defense Security Service (DSS) (GX 6), and Applicant's Response.

In his March 1997 SCA, Applicant states, in response to two questions (14 and 15), that he "was forced to get [a country A] passport in order to leave the country" (GX 4 at questions 14 and 15).

These statements were made when Applicant began the security clearance process and about three months before the date of his corroborating June 1998 sworn statement to DSS (GX 6).

In his June 1997 sworn statement (GX 6), Applicant explained the circumstances: he entered Country A on his U.S. passport; was informed he had to register as a Country A citizen; he was given a Country A passport number, which was stamped in his U.S. passport; when he sought to leave the country in March 1994, he was detained for about four hours by Country A authorities; he was then given a permission slip that would allow him to leave the country and the authority's computer records were then corrected to reflect that he had permission to leave the country. Applicant's statement adds that he was "then able to obtain [a Country A] passport."

Applicant's Response explains he had been identified to Country A authorities when he entered that country at age two, with his parents, and he had, at that time, been identified as a Country A citizen. Applicant's statements are the only evidence as how he came to obtain a Country A passport. I find Applicant's statements to be consistent and credible in the context of the overall evidence of record and in the absence of evidence to the contrary. In his Response to the Official Notice (Attachment B, at page 4), Department Counsel argues that to comply with Judicial Notice Exhibit (JNE) 8, which pertains to Acquisition of [Country A] Nationality, Applicant "actively disclosed his parentage and requested to settle in the country." Department Counsel also states that"[t]o the extent that Applicant needed to obtain [a Country A] passport to leave [that country], it was only because he placed himself in that position by his own actions." In Applicant's response, he vigorously denies Department Counsel's contention, which I find unsupported by any record evidence. The evidence establishes that Applicant's Country A citizenship resulted from action by his parents and not by him.

Department Counsel adds that despite Applicant's claim that "citizenship and a passport were forced on him by [Country A], his actions there indicated a preference and were the direct cause of the situation. In Applicant's Response, he denies this contention. The record evidence indicates that Applicant has not used the Country A citizenship for any purpose other than to leave, reenter and leave again in 1994, while he has used his U.S. passport for all other purposes. Department Counsel never indicated what "actions" by Applicant demonstrated a preference and none are apparent in the record.

As to when Applicant received the passport, I note Government Exhibit 5, a copy of Applicant's Country A passport. On page 2 of the passport, next to Applicant's photograph, appears an issuance date of "3/3/94." Government Exhibits 4 and 6 each show that Applicant entered Country A in October 1993 and then left and reentered that country in *March 1994.* The evidence is thus compelling that Applicant did not actually receive the passport until around the time he left the country on the first and then final occasions. The evidence does not establish that there was any other use of the Country A passport or that the limited use indicated was "in preference" to his U.S. passport.

It is the Government's position (Attachment B at page 5) that "Applicant's acceptance of [Country A] citizenship and his obtaining of [a Country A] passport invoke disqualifying conditions under Criterion C: (1) the exercise of dual citizenship, and (2) the possession and/or use of a foreign passport." Under the Directive, such factors clearly "may" be construed as disqualifying conditions.

The issue is whether they should be so construed. I conclude that, without additional, and negative, evidence of actual

conduct showing a preference for Country A over the United States, finding these factors to be a basis for denial of clearance would mean that no person with a dual citizenship involving *any* other country (regardless of how the citizenship and passport were obtained) and/or possessing (even without using) a foreign passport would be ineligible for a security clearance. There is no basis in fact or DOHA precedent to support such a premise of automatic ineligibility without reference to the surrounding facts and circumstances. Under the Directive, obtaining citizenship in and a passport from another country *may* be a disqualifying condition but, under the whole person concept, each condition must be viewed in the context of the evidence relating to the other allegations.

SOR 1.b. - alleges Applicant is "unwilling to renounce his [Country A] citizenship."

In his response to the SOR (GX 3), Applicant "admits" the above allegation. The other evidence of record on this point is contained in GX 6, wherein Applicant states that he is "maintaining dual citizenship; " that he "feel[s] he has an obligation to [Country A] because he has many relatives [there]" . . . and, impliedly, because his parents were born there. In Applicant's Response, he adds that he "would be willing to consider renouncing his [Country A] citizenship" if convinced that doing so would not prevent him from returning to Country A.

The wording of the allegation is problematic in its use of the term "unwilling." There is no evidence Applicant was asked during the investigation if he was willing to renounce his Country A citizenship or advised by anyone of the possible consequences to his eligibility for a security clearance. While Applicant is unwilling to immediately renounce his dual citizenship, I conclude this admission is not outcome determinative by itself, but must be considered in the context of all the evidence.

SOR 1.c. - alleges that Applicant "will not unequivocally support the United States."

As is the case with SOR 1.b., above, in his response to the SOR (GX 3), Applicant answers:

" I admit" to the allegation. The only other record evidence on this point comes from Applicant's sworn statement to DSS on April 23, 1998 (GX 7). Here, in response to a hypothetical question about possible hostilities between the U.S. and Country A, Applicant states that his:

allegiance would lie with the United States with the caveat that for a situation to arise that would make these events plausible, something so dramatic would have to happen in the United States as to possibly destroy the democratic foundations that exist there today. If that situation arises, then I cannot state unequivocally that I would support the policy of the administration in power. But I will always support the ideals on which this country was founded.

While this statement clearly establishes that Applicant will not always or automatically "unequivocally support" the United States, the nature and circumstances of this statement affect the

weight to be given it in terms of his security clearance eligibility. His preference for the United States is clear and the reluctance is so qualified as to minimize the risk that such a event would ever occur.

Considering that these statements occurred ten months after the first statement, I conclude that Applicant, if he were trying to be devious or had meant to be less than candid, could have simply answered that he would always and unequivocally support the United States. Based on his explanation and the other record evidence, I conclude that his integrity can be relied upon. Given the hypothetical nature of the question asked of Applicant, his specific hypothetical answer to the hypothetical question does not demonstrate a preference for Country A.

Summary

The evidence establishes that Applicant visited Country A when he was two years old, did not return to that country until 1993 - 1994, when he went to Country A at the request of his employer, and that he has not returned there since that time. In addition, there is no conduct shown that comes within DCs 3 - 9 as possibly disqualifying conditions. On this record evidence, I cannot find that he has ever shown a preference for that country over the United States.

Specifically, I conclude that Applicant has never "exercised" his dual citizenship, as that phrase is used in the Criterion

C, Disqualifying Condition (1), except in order to enter and leave Country A, as required by that country's authorities. As I read the Directive guidance, "exercise" requires that an Applicant actually use his dual citizenship for some purpose that tends to show a preference for the other country. Disqualifying conditions (3) - (9) are specific examples of specific conduct that demonstrates intentional and voluntary exercise of a person's dual citizenship.

Only DC (2) is clearly applicable to Applicant. He does possess a foreign passport, although he has not used it for any purpose since 1994, nor has he indicated any intention to do so. I conclude that possession of a foreign passport, without more in terms of actual conduct, is an inadequate basis for a denial of security clearance, unless supported by other evidence indicating that an applicant's conduct and/or statements actually demonstrate a preference for another country.

DC (3) could be construed as applicable to Applicant, to the extent that if he moved to Country A, he might have to serve in their military, but there is no evidence that he intends to do so. DC (3) also appears to cover the allegation, drawn from Applicant's April 28, 1998 statements (GX 3, 6, and 7), that he is unwilling to "unequivocally support the United States" in circumstances where the U.S. and Country A may be in conflict. Applicant indicates he would always support of the U.S. unless political conditions change to the degree that he believes the U.S. has moved away from the ideals of American democracy in which he believes (GX 7). In addition, he acknowledges that he "might have to serve" in Country A's armed forces if he returns to that country (GX 6).

DC (4) - Applicant has not accepted and educational, medical, or other benefits from Country A;

DC (5) - Applicant is not residing in Country A and is not seeking to meet Country A citizenship requirements.

DC (6) - Applicant is not using his Country A citizenship to protect financial or business interests in that country.

DC (7) - Applicant is not seeking or holding political office in Country A;

DC (8) - Applicant has not voted in any Country A elections;

DC (9) - Applicant has not performed or attempted to perform duties, or otherwise acted, to serve the interests of Country A in preference to the interests of the US.

Mitigating Conditions:

(1) - It may be mitigating if dual citizenship is based solely on parents' citizenship or birth in a foreign country. In this matter, the FORM does not contain any evidence on this point. I note from Applicant's March 1997, Security Clearance Application that his father and mother both became naturalized U.S. citizens in 1974 (GX 4 at Item 10), and are presently citizens of both the U.S. and Country A. Applicant's Response explains how he became a Country A citizen at age two, because of his parents' status and conduct.

(2) - indicators of possible foreign preference. This mitigating circumstance applies only when the indicators occurred "before [an applicant] obtain[ed] United States citizenship." Since Applicant was born in the U.S. (GX 6), this factor is not applicable.

(3) - there is no evidence of any activity by Applicant and therefor, no activity sanctioned by the U.S.;

In summary, other than asking for and accepting a Country A passport, because he was led to believe he had to have one, Applicant has done nothing to indicate a preference of any kind for Country A over the United States.

FOREIGN INFLUENCE

The Directive's guidance on Foreign Influence, is concerned with situations where an individual's immediate family, etc., are not citizens of the United States or may be subject to duress, because "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."

SOR 2.a. - alleges that Applicant has "family members who are [Country A] citizens."

SOR 2.b. - alleges that Applicant has relatives, living in Country A, who are members of the Country A military.

The record evidence supports the conclusion that the allegations in SOR 2.a. and 2.b. are literally true (GX 4 and 6). Although the concerns stated in the two allegations are clearly serious in general *and* when demonstrated by sufficient evidence, the record evidence in this case does not establish realistic concerns under either the SOR allegations or Department Counsel's arguments in Attachment B. Department Counsel does not argue there is a *per se* rule wherein status automatically make a person with dual citizenship ineligible for holding a security clearance.[(3)]

It is clearly the nature of the relationship that an Applicant shares with his or her relatives and others with whom he or she has close ties, that is most significant in evaluating security clearance eligibility. It is the personal relationship, in terms of feelings and motional ties, that is of most significance on this issue. In any case, I conclude that here must be some evidence from which it can be reasonably inferred that a relationship exists which gives rise to the risk that a security clearance problem may exist.[(4)] No such evidence is apparent from the record in this case.

The record establishes Applicant has relatives in Country A (GX 4 and 6). As to the nature of the relationship, the only evidence is that while in Country A from August 1993 to March 1994, Applicant "spent weekends with relatives and many of them were with the military reserves." The only other evidence as to possible foreign influence appears in GX 3, in which Applicant states that "most [Country A] residents (impliedly including his relatives) are member of the military." An Administrative Judge is "not compelled to find a security concern exists merely because an applicant has family ties and contacts with a [foreign country]."[(5)] On the basis of the record evidence, facts of this case, I conclude the Government has not shown any factual basis for such concerns.

On the premise that any doubts must be construed against an Applicant, it is also true that the existence of a doubt must first be established by the record evidence. In the present case, the record evidence is insufficient to establish the existence of a doubt on these points (SOR 2.and 2.b). As to Disqualifying Condition (DC) 1, the only evidence is that Applicant visited his relatives in Country A while there on business in 1993 -1994. There is no evidence that he has been in Country A in the past five years, or that he has had any contact with his Country A relatives during that five year period. There is no evidence that he "has close ties of affection or obligation" with those relatives. It would therefore be speculative to conclude that the relationship with his Country A relatives comes within the scope of Criteria B.

DC (3) - Applicant admits he has relatives in the military reserves in Country A and that most citizens of that country are required to serve in the military and military reserves. While armed forces in Country A can be considered to be a part of the government, it is not clear that this relationship is what is meant by the language of the disqualifying condition. To the degree that the relatives in Country A's military reserves are "connected" with the government, because of the lack of any evidence establishing a relationship based on affection, influence, or obligation, I conclude that this disqualifying condition is so attenuated that it does not establish that a risk foreign influence exists.

DC (4) -(7) - Not applicable under the facts of this case.

DC (8) - Although Applicant acknowledges that his parents own property in Country A (GX 6), there is no evidence that the value of the property is "substantial," as required by this disqualifying condition. I therefore find DC (8) not to be applicable under the record evidence in this case.

Department Counsel argues that "Applicant's dual citizenship subjects him to the influence

of [Country A], in addition to being proof of his preference" and that Applicant can be made subject to [Country A] laws whenever a part of [that] government chooses to exert influence on the Applicant" (Attachment B at page 11). These general arguments can apply to anyone who holds dual citizenship. What is missing in this case is evidence that supports the Government's position.

FORMAL FINDINGS

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

CRITERION B (Foreign Influence) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

CRITERION C (Foreign Preference) 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.

BARRY M. SAX

ADMINISTRATIVE JUDGE

1. Other matters raised by the Appeal Board include (1), on page 9 of the original decision, lines of text that were fragmented and not clearly understandable. This language was part of a earlier draft but does not appear on my computer database in the version I printed out as my final version. The language identified by the Appeal Board played no part in my original decision and has been deleted from this Remand Decision; and (2) the omission from the case file case of Items 2, 3, 4, 5, and 7, as cited in the Official Notice. These documents have now been added to the case file. I did not take official notice of these documents during my consideration of this matter.

2. Applicant did not file a response to the FORM.

3. In 1988, a U.S. District Court invalidated a DoD regulation that denied a security clearance to any person who had been born in, or lived for a significant period in, any country on a published list (mostly communist nations), and who had not been a U.S. citizen for at least five years or a permanent resident for at least 10 years (Huynh v. Carlucci, 679 F. Supp. 61 (D.C. D.C. 1988)).

4. Under parallel guidelines pertaining to Sensitive Compartmented Information (SCI), relating to contacts with persons in other countries: "The adjudicator must assess carefully the degree of actual or potential influence that such persons may exercise on the individual based on an examination of the frequency and nature of personal contact or correspondence and with the political sophistication and general; maturity of the individual" (Director of Central Intelligence Directive (DCID) 1/14 at p. 10).

5. Appeal Board Decision and Reversal Order, ISCR Case No. 98-0331 (May 26, 1999) at p. 4.