DATE: August 16, 1999

In Re:

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

Applicant for Security Clearance

ISCR Case No. 99-0026

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On January 20, 1999, 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 February 1, 1999, Applicant responded to the allegations set forth in the SOR, and elected to have a hearing before a DOHA Administrative Judge. The case was assigned to me for resolution on June 11, 1999. On June 18, 1999, a Notice of Hearing was issued, setting the matter for July 14, 1999, on which date the hearing was conducted.

At the hearing, the Government did not call any witnesses, but offered three exhibits. These exhibits were marked for identification as Government's Exhibits (GX) 1 - 3. Both parties stipulated to the admissibility of all three exhibits and they were added to the case record. Applicant testified on his own behalf, and called four other witnesses, his father, mother, wife, and best friend. Applicant offered 21 exhibits. These were marked for identification and admitted into evidence as Applicant's Exhibits (AX) A - U. The transcript was received at DOHA on July 22, 1999.

FINDINGS OF FACT

The Government opposes the Applicant's request for a security clearance, based on the eight allegations set forth in the attached SOR, specifically five allegations under Criterion C (Foreign Preference) (SOR 1.a.,1.b., 1.c., 1.d., 1.e., and 1.f.) and three allegations under Criterion B (Foreign Influence) (SOR 2.a , 2.b., and 2.c.). 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 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 testimony and exhibits from both parties, and considering closing arguments as to how the record evidence should be viewed, I make the following findings of fact:

SOR 1.a. - alleges that Applicant maintains dual citizenship with Country A and the United States (U.S.). Applicant's response to the SOR admits this allegation is true, and it is otherwise supported by the record evidence.

SOR 1.b. - alleges that Applicant possesses a Country A passport and renews it every five years. The passport was last renewed in 1997. Applicant's response to the SOR admits this allegation, and it is otherwise supported by the record evidence.

SOR 1.c. - alleges: (1) that Applicant served in the Country A military service for two months in 1989, in order to retain his country A citizenship, and (2) that, as a Country A citizen residing abroad, he was required to make a cash payment of about $5,000 to the Country A government. The payments were made by Applicant's father, and the final installment was made during the Spring of 1998. Applicant admits this allegation, and it is otherwise supported by the record evidence. The military service consisted of a two-month period of basic training.

SOR 1.d. - alleges that Applicant is an heir to both his father's real property and to his uncle's real property in Country A, valued together at approximately $700,000 (approximately $200,000 and $500,000, respectively). Applicant's response to the SOR denies this allegation and some of the specific details alleged are not adequately supported by the record evidence. Applicant's father (AF) is a dual U.S./Country A citizen, who has resided in the U.S. since the mid-1970s. His property in Country A is a small shop, which he is in the process of selling. The value of AF's shop is uncertain, but it will probably be sold for less than the $150,000 - $200,000 estimated by Applicant. Applicant's father is the primary heir to this property.

The uncle's real property may be worth up to $500,000, bur the exact value is unknown. The uncle lives six months in Country A and six months in another country, where he has had a close relationship with a woman friend for 27 years. Applicant has relatively little contact with the uncle. It is not known if the uncle has a will or what his estate intentions are. Applicant and his father believe the uncle will likely leave most, if not all, of his estate to the woman friend. In the absence of a will, Applicant's father would be the primary beneficiary under Country A law. Any interest by Applicant is therefore speculative as to amount, and minimized by the likely inheritors above him in precedence.

SOR 1.e. and 1.f. - allege that Applicant is not willing to relinquish his Country A passport or to renounce his Country A citizenship. Applicant's response to the SOR denies these allegations (with an attached explanation), and the literal assertions are not supported by the totality of the record evidence. Applicant is willing to relinquish his Country A passport and to renounce his Country A citizenship under what he considers appropriate circumstances, including a direct request from a U.S. official (Response and Tr at 173 - 175).

CRITERION B (FOREIGN INFLUENCE)

SOR 2.a. - cites the financial interests alleged above at SOR 1.d. Applicant's Response to the SOR denies this allegation and, as is the case with SOR 1.d., the record evidence does not adequately support this allegation. To the contrary, Applicant's testimony and documentation support his contention that financial interests have played no part in his retaining a Country A passport and citizenship.

SOR 2.b. - asserts that his uncle (presumably the uncle cited in SOR 1.d.) is a Country A citizen and resides in Country A. In his response to the SOR, Applicant denies this allegation. In the explanation attached to the response, and from hearing testimony, the uncle lives only half of the year in Country A.

SOR 2.c. - asserts that the family of Applicant's best friend (BF), considered by Applicant to be his "second family," resides in Country A, and that Applicant has "quarterly telephone contact and twice yearly letter contact with them." In his response to the SOR, Applicant admits this allegation, and it is otherwise supported by the record evidence. From the totality of the record evidence, I conclude that the relationship is not of security clearance significance.

I also make the following findings of fact:

Applicant was born in 1966 and is a Senior Analyst for a defense contractor. He is a native-born citizen of the U.S., since his mother was an American citizen when he was born in Country A.

Applicant's mother (AM) met Applicant's father in the 1950s, when both were attending a university in the U.S. She accepted a position to teach at an "American" college in Country A and again met Applicant's father. After marrying in the early 1960s, they stayed in Country A until 1977, when Applicant was 11 years old. Applicant attended Country A public schools, but was otherwise raised in a "segregated [American] community" operated by a major U.S. company. Applicant speaks fluent and unaccented English, in addition to the language of Country A.

Applicant's father was born in Country A to citizens of that country. He became a naturalized U.S. citizen in the mid-1980s, and holds a U.S. passport. The father also retains his Country A citizenship and possesses a Country A passport, along with his U.S. passport. Because of Applicant's birth in Country A to a Country A father, Country A considers Applicant to have been a citizen of that country since birth. In 1977, the family moved to the U.S., and has resided here since that date. Applicant's father at first worked as an engineer, but is currently a stock broker for a major U.S. investment firm. His mother is retired after a career as a teacher.

After graduating from college in 1989, with a B.S. in Electrical Engineering, Applicant traveled abroad for six months. It was during this period that he spent two months in the Country A military. His service actually consisted of two month basic training, with minimal military activity, instead of the 18-month duty required of most Country A males. The limited period was designed for Country A citizens residing abroad. The two-month training and $5,000 payment completed his military obligations to Country A. Applicant's father paid the $5,000 on Applicant's behalf, over a ten-year period ending in 1998. Prior to his military training, Applicant informed the local U.S. Consulate and completed a form stating it was Applicant's desire to remain a U.S. citizen.

Applicant has used his Country A passport only to enter and leave that country. He also uses his U.S. passport to enter and leave Country A and for all other purposes. He considers his Country A citizenship to be only a "cultural thing for me" (GX 3). His loyalty is "totally toward the U.S." (Id., Response, and Tr at 55, 56). He considers the interests of the U.S. to be above that of Country A or any other country. There is no evidence of his seeking any advantage from his Country A citizenship

Several friends and relatives of Applicant, who have known him for 10 years or longer, attest to his honesty and integrity (AX F, G, H, and I (his father-in-law)).

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 specific 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) is not applicable to the fact situation in the present case, since Applicant was born an American.

(3) Applicant had reason to believe that his Country A military service was sanctioned by a U.S. official.

(4) Applicant has expressed his willingness to renounce his Country A citizenship if asked by the U.S.

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 seeking 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 he or she is nonetheless security worthy. As noted by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates security clearance determinations should err, if they must, on the side of denials." As I understand the Court's rationale, doubts are to be resolved in favor of the Government.

CONCLUSIONS

FOREIGN PREFERENCE (CRITERION C)

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 in 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 may tend to show a preference for the U.S., rather than another country. I have considered, therefore, whether the evidence demonstrates actions by Applicant tending to show that he has a preference for Country A.

As to SOR 1.a. - there is no question that Applicant maintains dual citizenship with Country A. He has been a citizen of the U.S. since birth, through his mother, and of Country A through his father. Likewise, as to SOR 1.b., there is no question that Applicant possesses a Country A passport and that it is renewed in his behalf by his father every five years. The question to be resolved is whether these facts, (1) singly, (2) taken together, or (3) when considered in the context of all record evidence under the whole person concept establish that Applicant has shown a preference for Country A over the U.S.

Dual citizenship is not illegal under U.S. law, but is recognized as a fact of life. An American obtaining citizenship in another country does not automatically lose U.S. citizenship. Beginning in 1967, the United States Supreme Court has found unconstitutional the compulsory or automatic denaturalization of American citizens on grounds of attachments to [(1)]

other nations. With only a few exceptions not relevant here, denaturalization occurs only when the conduct in question is accompanied by the intent to give up U.S. citizenship.[(2)]

Loss of U.S. citizenship because of conduct is subject to substantial limitations because it involves constitutional rights. Access to classified information, on the other hand, is a privilege rather than a right. The requirements for denying or revoking a security clearance are significantly less, but under Criterion C (Foreign Preference), the Government is still required to establish some basis for concluding that a risk exists that a person might act in the interests of another country, rather than the U.S. Present judicial and DOHA Appeal Board precedent does establish that possession of dual citizenship and/or passports, by themselves, warrant denial or revocation of a security clearance, some conduct demonstrating a preference for the other country should be necessary to establish ineligibility.

Under Criterion B (Foreign Influence), denial or revocation of a clearance can be based on the existence of relationships, but the fact of the relationship should be considered with evidence showing that the relationship raises the risk that improper influence might be exerted and that a risk exists that an applicant might respond to the influence by acting contrary to the interests of the United States. It is the identity and position of the other person and the nature and scope of the relationship that is most important. Federal case law suggests that loss of a security clearance because of status, rather than conduct, may be unconstitutional, unless thoroughly established as absolutely necessary.[(3)]

HEARING EVIDENCE

Testimonial and documentary evidence adds considerable meaning and import to the evidence available when the SOR was drafted. Applicant is a "natural born citizen of the United States of America" (Tr at 53). On his mother's side, he can trace his ancestry in America back to 1634 (Id. and AX M). One ancestor fought in the American Revolution, a grandfather fought in both World Wars, an uncle fought in World War II, Korea, and Viet Nam (Tr at 53, 54). He is proud of his American heritage (Tr at 54).

At the same time, he is also proud of his heritage on his father's side. His grandfather fought in Country A's War of Independence (Id.). Applicant recognizes that he was at the hearing because his mother met and married his father, a citizen of Country A (Id.). Applicant stressed that he had stated in his security clearance application that he was "loyal only to the United States and not to any other country, including [Country A]" and that he still felt that way (Tr at 55, 56). Applicant expressed his intent to establish "that there is no financial, emotional, or political circumstance under which I would betray the United States" (Tr at 56).

Applicant recognizes that his life long dual citizenship is a privilege granted to him under U.S. law (Tr at 57), and he sees it as a privilege that "the [U.S.] government has sanctioned [his] entire life . . . "(Tr at 58). He testified that if his "intentions are to betray this country, then [he] should do anything [he] can do to obtain a security clearance, including relinquishing [his Country A] citizenship" (Id.). He also points out that if he "capitulates] and relinquish[es] his [Country A] citizenship, [he] can also be judged as being too pliable and prone to coercion" (Id.). Applicant's "emotional attachments [to] people in [Country A] are social in nature. They do not work for the government. They are not technical people. They do not understand the things I do and are, therefore, of no risk to the United States of America" (Tr at 59, 60).

Applicant's wife (AW) met him in 1993 and they were married in May 1999 (AX J). She accompanied him to Country A on one occasion, apparently in May 1998 (Tr at 64 - 66 and GX 6). When Applicant entered and left Country A on that occasion, he used (and had stamped) both his U.S. and Country A passports (Tr at 66 - 69). He used the Country A passport to avoid having to pay a $45 fee imposed on foreigners, and he used his U.S. passport at the same time because he was also "reinforcing that [he's] an American citizen (Tr at 69). Applicant's wife testified that Applicant's reason for maintaining Country A citizenship was "sentimental" (Tr at 75), rather than out of allegiance to that country; and that he has never expressed an intent to move to Country A, or to run for political office there. Applicant has expressed a desire to run for political office in the United States (Tr at 70 - 72). The family's finances are "very comfortable" (AX L), and they have recently purchased an "expensive" house in an affluent area, with the support of his parents (Tr at 73, 74 and AX K). It is her understanding that Applicant's military commitment to Country A was satisfied, and that his two-month training and fee payment "fulfilled all [military] obligations" to that country (Tr at 76).

Applicant's best friend (BF) (the same person cited in SOR 2.c.) has known Applicant since childhood (Tr at 83). BF came to the U.S. in 1990 and became an American citizen in 1996 (Tr at 84, 85). His parents still live in Country A (Tr at 84). He served in the Country A military for 18 months when he was 20 years old. The two months that Applicant served in the County A military and the fee that was paid were designed for citizens who lived outside the country (Tr at 85). Neither of BF's parents nor his brother work for the Country A government, and none have any technical background (Tr at 88). BF also retains his Country A citizenship and passport and uses both U.S. and Country A passports when entering and leaving that country (Tr at 91). If the American government asked him to give up his Country A citizenship, "He would do it, because he took the [naturalization] oath" Tr at 92, 93). As a native born American by descent, Applicant was never required to take such an oath.

Applicant's mother (AM) testified that she is an American citizen by birth, born overseas to American missionary parents, who had both been born in a Midwestern state (Tr at 96, 97). She met Applicant's father (AF) at a university in the United States in 1957. She went to Country A to teach at an American school there and married AF in 1961 (Tr at 99). She became a Country A citizen by operation of that country's law when she married AF (Tr at 100). She lived in Country A for 19 years, and Applicant was born there in 1966 (Id.). She spoke to Applicant in English, and taught him to read books in English (Tr at 102, 103). At this point in her testimony, Applicant played a tape (AX U), which his mother identified as containing Applicant speaking when he was a child, in 1974 or 1975, when he was 8 or 9 years old (Tr at 104 - 106). Enough of the tape was played to demonstrate that Applicant spoke unaccented English and read quite well at an early age.

AM added she believed part of the reason for Applicant's military service was to prevent any legal tangles if he were to inherit any property in Country A (Tr at 108, 109). She believed that she might have told him to perform his Country A military obligation because of the possibility of his inheriting money or assets there (Tr at 110, 115). Nearly all of AF's property is now in the United States and all that remains in County A is a small vacant shop, estimated to be worth in the area of $150,000 to $200,000. It has been for sale for several years, and she expects it will bring less than the hoped for amount (Tr at 111). Applicant's uncle (AU) (AF's brother) lives in Country A part-time and in another country part-time, with a woman with whom he has had a relationship for 27 years (Tr at 111, 112). The uncle's property could be worth as much as $500,000, but is more likely to be worth considerably less. It is a store in an area where property values are going down (Tr at 148). AF would be his first heir (Tr at 112), unless there is a will in which the woman friend is a beneficiary. She does not know if there is any such will (Tr at 113). When Applicant was born, his mother registered him with the U.S. consulate to ensure he was officially recognized as an American citizen (Tr at 113 and AX N). Her marriage to AF was likewise registered with the U.S. consulate (Tr at 114).

Applicant's father (AF) testified that he was born in Country A, went to a local primary school, and then went to "American school for 11 years, where [he had his] junior, senior high school education and my Bachelor of Science degree in Engineering" (Tr at 119). He came to the U.S. to complete his education (his American schooling making it impossible to do so in Country A universities) and met Applicant's mother in1957. They were married in Country A in 1961. For most of his career in that country, he worked for a major U.S. oil company and lived in a "typical American community" run by the oil company in the middle of Country A (Tr at 123). He resigned to emigrate to the U.S. in1976, because he wanted Applicant and his brother to have American educations, and he did not want to be apart from them. They came to the U.S. permanently in1977, and AF enrolled in a major university to complete his education (Tr at 124, 125). He is presently an associate vice-president for a major U.S. stock brokerage firm (Tr at 125). About eight percent of his net worth remains in Country A and he has been attempting to sell it and bring the proceeds to the U.S.. He intends to remain in the U.S. for the remainder of his life (Tr at 126).

AF informed Applicant about the "living trust" that covers the assets of AF and AM, and showed Applicant the contents of a safe deposit box that contains important family papers (Tr at 128 - 130, AX O). AF testified that he had believed that Country A citizenship was required to inherit property there, but he has recently discovered he was mistaken (Tr at 130, 131, AX C and D). It is also AF's understanding that military service for males is a requirement for Country A citizens but that the birth rate is such that there are so many young men of draft age, that older men are unlikely to ever be called (Tr at 132, 133). Over half of Country A's estimated 65 million population is under 25 (Tr at 137), and Applicant is now 33. AF paid the $5,000 to Country A in Applicant's behalf (Tr at 133 - 135). Applicant has a Certificate of Completion of ilitary Service (AX P, Tr at 137).

Applicant can relinquish his Country A citizenship by submitting the proper documents and surrendering his passport, but he can also later regain Country A citizenship by reversing the process (Tr at 135, 136). Country A recognizes dual citizenship with the United States and welcomes Americans.

AF became a U.S. citizen in 1984. He voted in Country A elections once or twice when he was young, but not since 1977 (Tr at 140). He consistently votes in U.S. elections. He advises Applicant as to financial matters but Applicant makes his own decisions (Tr at 141). AF is aware of Applicant's financial position and estimates his net worth to be about $275,000 plus the house (Tr at 143).

After his mother, father, and best friend testified, Applicant testified on his own behalf: "Because of my mother's influence and the location where I was born in [Country A], it was a very Americanized community that I lived in; that I have known that I've been American for all of my life"

(Tr at 149). Since the family moved to the United States in 1977, Applicant's visits to Country A have been less and less frequent (Tr at 149, 150).

Applicant's military service in Country A occurred in 1989 and consisted of firing three shots from an M-1 and a little physical activity (Tr at 150, 151). When he entered Country A on that occasion and in 1998, he used his U.S. passport along with his Country A passport. Applicant introduced a copy the U.S. passport he used (Tr at 151, referencing AX Q and R). The passport shows date stamps corroborating that he did use his U.S. passport at the time (Tr at 152, 153). The same date stamps appear on his Country A passport (Tr at 152, 153, and GX 1). Applicant never used his Country A passport for any purpose other then when entering and leaving that country, and even then only in combination with his U.S. passport (Tr at 153).

When he visited Country A in1989, after graduation from college, he decided to comply with the Country A requirement for military service. He informed the U.S. consulate and was asked to complete a form stating that he was not intending to renounce his U.S. citizenship (Tr at 154, 155).

If the "American government said to me: 'No, no, no, you can't do this,' I would have gladly relinquished my [Country A] citizenship, and that would have been the end of this. We probably would not be here today. But the American government said, 'that's okay. Go ahead and do it'" (Tr at 155 and AX B). Applicant thought he would just "play a little soldier. . . It was only two month. . . I would not have served in the [Country A] military for 16 months" (Id.). He "sat around most of the time" and then picked up cigarette butts every 15 minutes (Tr at 156, 157). He satisfied his military obligation to Country A (AX P).

Of particular note is Applicant's testimony that: "The reasons I did it [serve in the military] were purely because of my pride in my [Country A] heritage and it was not in any way, from my point of view, a preference for the [Country A] government. In fact, I should have asked this question of my father, but I don't necessarily agree with a lot of things that the [Country A] government does. I don't even think it's a really good system of government. . . I did it because of my heritage, . . . and whether or not I relinquish my citizenship won't change that fact. . . ." (Tr at 155, 156).

Applicant did not perform his military obligation in Country A with any thought about protecting an inheritance (Tr at 160). He is "financially secure" (Tr at 161). He mentioned the real property in Country A on his security clearance application only because his father had told him about it in 1996. He has no real idea of the actual value of the properties (Tr at 162). He was "honest and open" in mentioning his best friend's parents in Country A to the DSS agent. They don't talk business, they do not have technical backgrounds, and none of them work for the government (Tr at 162). Applicant mentioned the contacts because he wanted the U.S. government to know that he did have friends and family in Country A, but that his "loyalty is still only to the United States" (Tr at 162, 163).

Applicant has served on juries, has voted in every U.S. election since 1984 (AX S), and is considering running for public office (Tr at 163, AX S). He did register under the U.S. Selective Service System (AX T) and would have served if asked (Tr at 164). He never thought about having to relinquish his Country A citizenship until asked by DSS in 1998 (Tr at 165). Applicant was "a little surprised" at the questions and at having to answer "yes or no" to hypothetical questions about possible circumstances where he would renounce his Country A citizenship (Tr at 166). He made some corrections to the statement prepared by the DSS agent and signed it, but the language was not the way Applicant would

have said it if he had written the statement himself (Tr at 167, 168).

Applicant again turned to the question of whether he would renounce his Country A citizenship and concluded that he had done nothing wrong and that his conscience would not allow him to renounce his Country A citizenship for less than what he considered to be a good reason, such as war between the U.S. and Country A (T at 173 - 175). Country A is a long time ally of the United States, and there is little risk that such an event will come to pass in the foreseeable future. Nevertheless, Applicant would renounce his dual citizenship if everyone with dual citizenship was denied a security clearance (Tr at 174) or if asked by the U.S. government (Tr at186), but is not willing to do so "just out of the blue sky" (Tr at 188). Applicant stated his employer would have a job for him without a security clearance, but that he needs the clearance in order to advance in his field. (Tr at 172).

Applicant's only activities in connection with Country A have been to use his Country A passport to enter and leave that country, at which times he also used his U.S. passport, and to go through two months of military basic training 10 years ago (Id.). Any interest in his father's property in Country A is "insignificant" and the property is for sale, with the proceeds coming to the U.S. His uncle's property is an ambiguous factor, in that Applicant does not know what it is worth, or who will inherit it, Applicant being either second or third in a possible line of succession; and Applicant being otherwise financially secure (Tr at 186 - 188).

Applicant stressed that (1) his possession of Country A citizenship and passport are based on his parents' citizenship; (2) his military service was sanctioned by the U.S. government (Tr at 186); (3) he has not voted in Country A or accepted any education, medical, or other benefits because of his Country A citizenship (Tr at 187); and (40 he has not sought political office there (Tr at 188).

The Government's case in support of the SOR is necessarily built on the evidence provided by DSS and the inferences Department Counsel draws from that evidence. This is not an unreasonable position and, in the absence of contrary evidence, would be entitled to considerable weight. The reality behind the Government's evidence is that it is derived primarily from a Security Clearance Application (SCA) and a sworn statement, both provided by Applicant and both containing basic information about Applicant, but without much detail. The SCA (GX 2), for example, contains some basic information that was the apparent source of the questions asked by DSS in preparation of the sworn statement (GX 3). Applicant answered the questions asked but the questions did not appear to go into explanations. The record now contains exhaustive evidence as to Applicant's thought processes, including detail about each SOR allegation. The evidence now includes insights from parents and a lifelong friend. Along with Applicant's documentary evidence (AX A - U), this evidence develops an understanding of Applicant's character with far more substance and objectivity than the bare inferences the Government seeks to draw from its three exhibits.

In summary, in contrast to the generalized negative inferences argued by Department Counsel, Applicant has provided testimonial evidence from his mother, father, and best friend, and a collection of documentary evidence that supports the oral testimony. Applicant's evidence is positive, massive, and consistent, internally and with all of the other record evidence. The strength of Applicant's feelings and commitment toward America has been established by credible evidence. Each negative possibility raised by the Government has been countered by contrary direct evidence. I conclude that the Government has not made a case that Applicant has at any time shown a preference for Country A over the United States, nor has the Government established that any relationship exists that raises the risk that Applicant might be susceptible to pressure to disclose classified information to unauthorized individuals.

It is the Government's position 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, 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. Considering the record evidence, the only direct conduct in preference appears to be his military training, but

that was two months, ten years ago.

On the basis of the evidence, I conclude that Applicant's reluctance to renounce his Country A citizenship and to relinquish his Country A passport is based on reasoned principle, and does not suggest that any negative security clearance connotations exist.

CRITERION C

DISQUALIFYING CONDITIONS

Under Criterion C, I conclude that while Appellant has "exercised" his dual citizenship and Country A passport, under DC (1) and (2) in order to enter and leave Country A, but he also used his U.S. passport at the same time.

DC (3): Applicant did serve two months in military basic training ten years ago.

DC (4)-(9) are examples of specific conduct that demonstrates intentional and voluntary exercise of a person's dual citizenship. None apply under the facts of this case.

MITIGATING CONDITIONS

MC (1) - It may be mitigating if dual citizenship is based solely on parents' citizenship or birth in a foreign country.

MC (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 inapplicable.

MC (3) - Applicant's military service in Country A ten years ago was discussed in advance with the U.S. consul and Applicant received what at least was an informal sanction that it would not jeopardize his U.S. citizenship. Applicant's concern and willingness not to enter the military is clearly a positive factor.

MC (4) - Applicant has expressed a willingness to renounce his dual citizenship with Country A, under circumstances that do not appear to be unreasonable and that do not suggest a foreign preference.

CRITERION B (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."

DISQUALIFYING CONDITIONS

DC (1) Applicant has his best friend's family living in Country A.

DC (2) - (7) There is no evidence supporting any of these conditions.

DC (8) There is the possibility of a "substantial financial interest" in County A, but it is a possible inheritance that does not depend on Applicant's being a citizen of Country A and is not of a nature to raise the risk that Applicant might be induced to act contrary to U.S. interests.

MITIGATING CONDITIONS

MC (1) The "associates" in Country A do not constitute an unacceptable security risk.

MC (2) and (4) There is no evidence on these conditions.

MC (3) Contact is infrequent and casual.

MC (4) There is no evidence on this condition.

MC (5) Financial interests are being reduced and are ambiguous as to amount and likelihood that Applicant will inherit all or any of it.

SUMMARY

SOR 1.a. - Applicant maintains dual citizenship, but it arose at birth from the status of his parents; SOR 1.b. - Applicant possesses a Country A passport, but uses it only on infrequent trips to that country, and even then in combination with his U.S. passport; SOR 1.c. - his military service consisted of a two-month period of basic training 10 year ago; SOR 1.d. - he is a possible heir to real property in Country A, the amount and likelihood of his inheriting foreign assets are too speculative to be of current security significance; and SOR 1.e. and 1.f. - Applicant is willing to relinquish his Country A passport and renounce his citizenship in that country if formally requested.

SOR 2.a. - Applicant is unlikely to be influenced by the possibility of inheriting some real property in Country A; and SOR 2.b. and 2.c. - the nature of the relationship with his best friend's family and his uncle is determined not to constitute an unacceptable security risk.

While Department Counsel argues Applicant's dual citizenship subjects him to the influence of Country A, in addition to being evidence of his preference for that country, these arguments are general and can apply to anyone who holds dual citizenship. What is missing is any substantial evidence that Applicant has acted, or is likely to ever act, adversely to United States interests. I conclude that Applicant's activities vis-a-vis Country A are based on respect for his father's heritage,

but that his full allegiance is to the United States.

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

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f. For the Applicant

CRITERION C (Foreign Preference) For the Applicant

Subparagraph 2.a. For the Applicant

Subparagraph 2.b. For the Applicant

Subparagraph 2.c. 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. Afroyim v. Rusk, 387 U.S. 253 (1967) (overruling Perez v. Brownell, 356 U.S. 44); and Vance v. Terrazas, 444 U.S. 252 (1980).

2. Vance v. Terrazas, supra, at 270.

3. Huynh v. Carlucci, 679 F. Supp. 61 (D.C. D..C. 1988), where a district court rules unconstitutional, a DoD regulation prohibiting a security clearance for persons born in, or who had lived for significant periods in, countries on a published list of countries that were communist or otherwise adverse to U.S. interests, when the persons had been U.S. citizens for less than 5 years or resident aliens for less than 10 years.