DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 06-24175
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel
For Applicant: John Gallini, Esquire

January 18, 2008

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted his security clearance application (e-QIP) on August 25, 2005. On March 13, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline C and Guideline L for Applicant.[1] The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on March 19, 2007. He answered the SOR in writing on March 22, 2007, and requested a hearing before an Administrative Judge. DOHA received Applicant's response on March 26, 2007. On

[1]The original SOR was not dated. Department Counsel confirmed it was issued on March 13, 2007, the date the SOR was forwarded to Applicant.

April 23, 2007, Applicant separated from the employer who had sponsored his need for a security clearance. Later that week, he began working for his present employer and the request for clearance for him was transferred.

On October 2, 2007, Department Counsel indicated the government was prepared to proceed, but she also moved to amend the SOR. The case was assigned to me on October 10, 2007. On October 18, 2007, I gave Applicant until November 2, 2007, to respond to the proposed amendments to the SOR.

On November 1, 2007, counsel for Applicant entered his appearance. On November 2, 2007, Applicant responded to the allegations set forth in the motion to amend.[2] On November 13, 2007, I scheduled a hearing for December 11, 2007.

The hearing was convened as scheduled. Before the introduction of any evidence, I granted the Government's motion and amended the SOR. Four Government exhibits (Ex. 1-4) and ten Applicant exhibits (Ex. A-J) were admitted and Applicant testified, as reflected in a hearing transcript (Tr.) received on December 21, 2007. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Motion to Amend SOR

In the SOR, DOHA alleged under Guideline C that Applicant exercises dual citizenship with the United Kingdom (U.K.) and the U.S. (SOR ¶ 1.a), possessed a U.K. passport issued on March 9, 2000 (¶ 1.b), owns approximately 376,492 shares worth $3,326,758.61 in a U.K. company (¶ 1.c), and has about $98,529.34 on deposit in a bank account in England (¶ 1.d). DOHA alleged under Guideline L Applicant's stock ownership in the U.K. company (¶ 2.a) that his father co-founded and currently works for as a consultant (¶ 2.b). On October 2, 2007, Department Counsel moved to allege under a redrafted ¶ 1.a that Applicant exercised dual citizenship as of December 14, 2006, by possessing the U.K. passport; to allege under a new Guideline B rather than under Guideline C his foreign stock ownership (¶ 2.a) and foreign bank deposits (¶ 2.b); and to allege the Guideline L concerns under ¶ 3.

Applicant, through counsel, did not object to the motion. He indicated that he would be surrendering custody of his U.K. passport to his employer, had sold all his stock in the U.K. company effective November 12, 2007, and would be closing his U.K. bank account on settlement of the stock sale. After reviewing the Applicant's response, the motion to amend was granted. Applicant was deemed to have answered the SOR allegations as set forth in his November 2, 2007, response to the motion.

[2]Due to an apparent miscommunication between the parties, I was not provided with Applicant's response until his December 11, 2007, hearing.

Findings of Fact

In the SOR, as amended, DOHA alleges under Guideline C, Foreign Preference, that as of December 14, 2006, Applicant exercised dual citizenship with the U.K. and U.S. by possessing a valid U.K. passport that does not expire until March 9, 2010 (SOR ¶ 1.a). Under Guideline B, Foreign Influence, Applicant is alleged to own as of December 14, 2006, 376,492 shares of stock worth about $3,326,758.61 in a U.K. company (SOR ¶ 2.a) and to maintain a bank account in England with about $98,529.34 on deposit (SOR ¶ 2.b). Guideline L, Outside Activities, concerns are also alleged related to his stock ownership (SOR ¶ 3.a) in the U.K. company, and his father's status as cofounder and current consultant of the U.K. company (SOR ¶ 3.b). Applicant did not deny the allegations, but submitted changed circumstances (stock sale, surrender of his foreign passport) justify de novo review of his case. After consideration of the evidence of record, I make the following findings of fact:

Applicant is a 45-year-old senior engineer with a doctorate degree from a British university. He seeks his first security clearance.

A U.K. native, Applicant was raised and educated in the U.K. where his mother was a schoolteacher until she retired, and his father worked as a chief electrical engineer for a large instrument company until 1971. With the company experiencing cutbacks in design and development activities, his father and six of his father's coworkers started their own measurement technologies' company in 1971. On the company's initial public offering, Applicant was issued publicly traded stock proportionate to his holdings in the company co-founded by his father. The company paid dividends that Applicant had deposited directly into a bank account in the U.K. maintained for that purpose.

In the mid-1970s, the company established a worldwide distribution/agency network as it became a leader in the development and provider of intrinsic safety explosion protection devices and physical layer components for the process control industry. Through product innovations and corporate acquisitions, the company continued to expand its products and worldwide presence as sales increased. As of late 2006, the company had five business divisions with direct operations in 14 countries (five production plants and multiple sales and support operations). Additional corporate acquisitions in 2007 added products unrelated to Applicant's work in the defense industry. (Ex. 3, Ex. 4)

Applicant pursued his own life as the value of his shares in the measurement instrument technologies company continued to grow.[3] While in college, Applicant married a U.K. native citizen in September 1982. They had three children together, sons born in May 1988 and December 1991, and a daughter born in April 1990. After earning his doctorate degree in physical chemistry in June 1992, Applicant and his immediate

[3]Applicant did not actively trade his shares (Tr. 37), although he exercised shareholder voting rights by proxy through his father (Tr. 78).

family moved to Canada where he began working as a visiting scientist for the Canadian government. Academic in nature, his work involved the spectroscopy of small diatomic molecules in the atmosphere for clues as to the origin of the universe and dynamics of matter in the universe. (Tr. 80) From 1994 to 1995, Applicant also performed part-time consulting work for his father's company in the U..K., preparing a database of the company's products and their utilities. (Tr. 76)

He and his first wife experienced marital difficulties, and they divorced in June 1995. On his legal separation in 1994, Applicant was required to give his ex-wife half of his stock holdings. She sold her share immediately, and Applicant was reissued a new certificate for the balance of his holdings. The certificate was mailed to his former residence in the U.K. Living in Canada at the time, Applicant possessed contract notes but never received the certificate showing the remaining balance of his holdings. (Tr. 70)

In April 1997, Applicant was granted sole custody of his older son, who is severely autistic. Applicant placed his son in a residential facility for autistic children in the U.S. (Tr. 39). In May 1997, Applicant began employment for a U.S. private university nearby, as a visiting scientist at its center for astrophysics. From September 1998 to April 2000, Applicant was a postdoctoral research fellow at a public university in the U.S.

On March 9, 2000, Applicant renewed his U.K. passport for another ten years. (Ex. 2) Later that month, Applicant married his current spouse. By virtue of his marriage to a native U.S. citizen, he acquired U.S. permanent residence status in late October 2000. From November 2000 to January 2002, Applicant worked as a senior engineer for a U.S. company. Following six months of unemployment, he secured a position as a senior engineer with a new company and stayed on at the same facility under a new employer effective May 2003.

In January 2005, Applicant became a U.S. citizen, taking an oath to renounce all foreign allegiances, to support and defend the U.S. Constitution and its laws, and to bear arms or perform noncombatant service or civilian service on behalf of the U.S. if required. Applicant took no action to formally renounce his U.K. citizenship or return his U.K. passport, which does not expire until March 2010. In February 2005, Applicant was issued his U.S. passport. Thereafter he traveled exclusively on his U.S. passport, including on numerous trips to Canada to see his children and on trips to the U.K. to visit his parents and sister in July 2005, December 2005, and July 2006.[4]

On August 25, 2005, Applicant applied for a security clearance for potential duties on projects for the U.S. military. On his questionnaire for investigations processing (e-QIP), Applicant disclosed his dual citizenship with the U.S. and U.K., his possession of U.S. and U.K. passports, the dual citizenship (Canada and U.K.) and

[4]Applicant has one surviving sibling, who is a resident citizen of the U.K. where she operates a horticultural business. (Ex. 1; Tr. 38)

Canadian residency of two of his children and his ex-wife, his parents' and surviving sister's U.K. citizenship and residency, his past employment for the Canadian government, and his stock ownership, reportedly since July 1989,[5] in the foreign company co-founded by his father.

As of December 2006, Applicant owned 376,492 shares of stock in the U.K. company co-founded by his father. The shares had an approximate value of £1,694,214 ($3,326,758.61 US). He was paid stock dividends totaling $53,228.13 in 2006, which were deposited directly into a savings account in the U.K. Funds were transferred by him into a linked checking account maintained for travel expenses during his annual visits to the U.K. to see his parents. As of December 2006, Applicant had $98,529.34 (U.S.) on deposit in a U.K. bank. Applicant also had $9,588.61 on deposit in an account in a Canadian financial institution out of which he paid monthly child support of $1,350 (Can.). (Ex. 2)

On December 14, 2006, Applicant acknowledged in response to DOHA interrogatories that he still owned 376,492 shares of the U.K. company co-founded by his father. His indicated his father was no longer a shareholder, but was employed as a consultant by the company. Applicant denied any intent to renew his UK passport on its expiration. (Ex. 2)

In April 2007, Applicant changed jobs and the pending request for a clearance for him was transferred to his new employer. A principal research scientist, Applicant has been working on unclassified projects focusing on the use of lasers to image underwater objects (laser spectroscopy) and on radio and antenna work. (Tr. 77-78)

After he received the SOR in March 2007, Applicant attempted to divest himself of his stocks in the U.K. company, which had 19,455,277 ordinary shares outstanding as of July 11, 2007 (Ex. B). Because of the number of shares held by Applicant, the company's board would not issue a resolution allowing him to sell without the required stock certificate. (Tr. 70) After the registrar confirmed that an original certificate had been issued in 1994 but sent to Applicant's old address, the company board allowed the sale to proceed. (Tr. 70-71) On October 29, 2007, Applicant sold his entire holdings (376,492 shares at a price of £5.40 per share). After deducting fees associated with the transaction (largely the broker's commission), £2,025,940.10 was deposited into his "current account" in the U.K. on November 12, 2007. (Ex. C, Ex. D) It was automatically transferred into his linked savings account. On November 23, 2007, Applicant transferred £2,034,061.90 ($4,172,783.80 U.S.) from his U.K. savings account to his bank in the U.S. (Ex. D, Ex. E, Tr. 56-57) As of December 4, 2007, he had closed both of his accounts in the U.K. bank. (Ex. D)

[5]The evidence is inconclusive as to when Applicant became a shareholder. Applicant testified that in 1971, when he was nine, he was given holdings (privately held stock certificates) in the company by his father (Tr. 66). He was issued a proportionate share of publicly trading stock on the initial public offering (Tr. 37, 66-67). In response to DOHA interrogatories, Applicant indicated in December 2006 that he owned 376,492 shares given to him by his father in 1992. (Ex. 2)

Applicant is somewhat familiar with the operations and corporate management of the U.K. company. He is aware that the company moved its U.S. manufacturing operations to another state (Tr. 78-79). He exchanges Christmas greetings with a member of the company's board (one of the company's two executive officers), but has no regular contact with company management or employees other than his father. (Tr. 86)

Applicant continues to maintain a bank account in Canada from which he pays his child support and gives his daughter a voluntary allowance of $1,000 (Can.) per month. She is a freshman at a college in Canada. (Tr. 35, 61-63) As of November 23, 2007, he had $15,119.39 (Can.) on deposit in his account in Canada. (Ex. H)

Applicant's spouse is a clinical psychologist licensed to practice in the U.S. (Tr. 66) They own their home in the U.S. on which they have a mortgage. (Tr. 72-73) In summer 2007, Applicant purchased outright another house for just over $600,000 in a locale near work. Applicant and his spouse plan to sell their current residence and move into the other home once renovations are completed. (Tr. 73-74) With the transfer of the stock proceeds to the U.S., Applicant has $820,000 in a high yield savings account in a local U.S. bank (Ex. J), and $3,300,000 in an investment account that is going to be set up into a trust for his autistic son. (Ex. I, Tr. 75)

On his receipt of the SOR in mid-March 2007, Applicant learned for the first time that his possession of a valid U.K. passport could prevent him from obtaining the requested clearance. (Tr. 42) On November 5, 2007, Applicant voluntarily surrendered his U.K. passport to his employer's custody until it expires.[6] (Ex. A) He is willing to renounce his U.K. citizenship if necessary ("if I had to, if I was asked to renounce my citizenship, I would." Tr. 90. *See also* Tr. 82).

Applicant's parents and sister continue to reside in their native U.K. His father holds the title of president of the company that he originally co-founded, which is now only one part of a larger corporate organization. He has no managerial or executive responsibilities, but serves as a part-time salaried consultant. In October 2005, Applicant's father was given a lifetime achievement award by the preeminent institute in his field in the U.K. (Ex. 3, Tr. 84) Applicant's father was disappointed that Applicant had divested himself of his holdings in the company but understood that a large foreign interest was incompatible with a U.S. security clearance. (Tr. 67-68) To Applicant's understanding, the U.K. company's line of business is directed to products and service in the oil and pharmaceutical sectors and not governmental activities. (Tr. 78)

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition

[6]He turned the passport over to the vice president for administration (Ex. A), who apparently also serves as the company's facility security officer (Tr. 44).

to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's overarching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline C, Foreign Preference

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

> 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 United States.

A native of the U.K., Applicant came to the U.S. in 1997 from Canada for work and to be near his son, whom he moved to a residential facility in the U.S. After marrying a native U.S. citizen in March 2000, Applicant decided to live here permanently, and in January 2005, he became a naturalized U.S. citizen. He took no action to renounce his British citizenship or relinquish the U.K. passport that he had renewed shortly before his marriage. His retention of a valid foreign passport is an exercise of a privilege of his U.K. citizenship after becoming a U.S. citizen, raising concerns of foreign preference under ¶ 10(a)(1) (exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport). Although Applicant traveled abroad exclusively on his U.S. passport after he became a U.S. citizen, he was free to travel as a U.K. citizen and to present that document as proof of his U.K. citizenship for other benefits or privileges if he so chose. The mitigating condition available where dual citizenship is based on birth in a foreign country (*see* ¶ 11(a)), does not adequately address the security risks (*e.g.,* unverifiable travel) associated with a foreign passport.

Applicant submits in mitigation that he turned over his U.K. passport to his employer's custody on November 5, 2007. His good-faith effort to comply with DoD requirements satisfies mitigating condition ¶ 11(e) (the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated). Applicant presumably could reapply for a U.K. passport. There is no indication that he has notified the U.K. authorities of the custody transfer. Given his considerable ties to the U.S. (marriage to U.S. citizen, home ownership, employment, son's residential placement in the U.S.), and his recent divestiture of stock ownership in the U.K. company, Applicant is not likely to do so. He expressed a credible intent to renounce his U.K. citizenship if asked to do so. Willingness to renounce dual citizenship is itself potentially mitigating under ¶11(b) (the individual has expressed a willingness to renounce dual citizenship). While he has taken no action in this regard, he demonstrated a preference for the U.S. by traveling on his U.S. passport, even to the U.K., when he could have used his valid U.K. passport.

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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

Applicant has close bonds with family members (parents and sister) who are resident citizens of the U.K. He travels to the U.K. at least once a year to visit them. Perhaps because the U.S. and U.K. have long been allies, the Government did not allege that these relationships create a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion, despite his father's role in the founding, operation, and ongoing consulting in a U.K. business in which Applicant held a potentially disqualifying financial interest.[7]

As recently as late October 2007, Applicant held 376,492 shares of ordinary stock in a U.K. company that had been started by his father. The shares had a value of about $3,326,758.61 (US). Applicant also had $98,529.34 (US) on deposit in a bank in the U.K. Disqualifying condition ¶ 7(e) (a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation) is clearly implicated. Applicant has a heavy burden of mitigation, and not only because of the high dollar value of the foreign assets. With his father having staked his reputation and invested the last 36 years of his career on the U.K. corporation, considerations of family pride, affection and obligation for his parents, and the impact of the U.K. business on his relatives, also come into play in assessing the risk of undue foreign influence because of Applicant's financial interest in the company.

Applicant has alleviated the vulnerability concerns raised by his foreign financial interests by divesting himself of his entire holdings in the U.K. company, transferring the

[7]Under AG ¶ 7(a) contact with a foreign family member can be disqualifying if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. The government alleged only foreign financial ties under Guideline B. It is seemingly inconsistent to allege that Applicant is at heightened risk because of his substantial interest in the foreign-owned or foreign-operated business and not allege that Applicant is at a heightened risk because of his relationship to his father, who co-founded and still consults for the business.

proceeds from the stock sale to the U.S., closing his savings and checking accounts in the U.K., and bringing those liquid assets as well to the U.S. On being apprised in the SOR of the foreign influence risks associated with his foreign financial assets, Applicant put his career in the U.S. first, even though it came at some personal cost in that his father was disappointed. The delay in selling the stock was not due to any reluctance on Applicant's part, but rather because he did not have the required certificate.

The close personal bonds Applicant retains with his parents and sister in the U.K. are not likely to place him in a position of having to choose between them and the interests of the U.S. (*See* mitigating factor ¶ 8(a) (the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.)). Historically close allies, the U.S. and U.K. do not have inimical interests. Political, economic, and social differences have been met with mutual respect. While his father continues to consult for the U.K. company, Applicant testified with no rebuttal from the Government, that his duties for the defense contractor are unrelated to the business of the U.K. company.

The evidence shows that Applicant also has close ties of affection as well as obligation to his children, two of whom are residents of Canada and dual citizens of the U.K. and Canada. He maintains a bank account in Canada to pay child support and gives his college student daughter a monthly allowance. He has made an effort to maintain his paternal relationship, traveling to Canada to visit them about once a month. The Government did not allege any foreign influence concerns because of his children's foreign residency and citizenship or his financial interest in Canada. While these ties were discussed at the hearing, nothing surfaced to warrant security concern. He no longer has any financial interest in the U.K., and total funds on deposit in his Canadian bank account ($15,119.39 Can.) are so minimal in comparison with his U.S. assets to present no conflict. Mitigating condition ¶ 8(f) (the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual), applies.

Guideline L, Outside Activities

The security concern related to the guideline for Outside Activities is set out in AG ¶ 36:

> Involvement in certain types of outside employment or activities is of security concern if it poses a conflict of interest with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information.

Guideline L applies when an applicant is engaged in employment or activities, including service, compensated or volunteer, with a foreign government, foreign

national, foreign organization or other entity, representative of a foreign interest, or any foreign, domestic, or international organization or person engaged in the analysis, discussion, or publication of material on intelligence, defense, foreign affairs, or protected technology. (AG ¶ 37(a)) It also applies where an applicant has not reported or fully disclosed an outside activity when required to do so. (AG ¶ 37(b)). Applicant's employment with the Canadian government from 1992 to 1995, and his consulting duties with the U.K. measurement instrument company in 1994/95, predate his U.S. defense contractor employment and were not alleged.

The Government's case under Guideline L focused on Applicant's stock ownership in the U.K. company (SOR ¶ 3.a) and on his father's role as cofounder and current consultant for the foreign company (SOR ¶ 3.b). While his father's duties with a foreign business could present a risk of foreign influence, Guideline L focuses on employment, service, or activities by an applicant that are outside of his or her defense contractor duties and pose a conflict of interest with his or her security responsibilities. His father's employment is not an outside activity engaged in by Applicant. To the extent that stock ownership in a foreign company can be considered an outside activity within the scope of ¶ 37(a) (any employment or service, whether compensated or volunteer, with: (2) any foreign national, organization, or other entity), Applicant exercised shareholder rights by proxy through his father. However, those concerns have been mitigated since he no longer owns the stock (*see* ¶ 38(b) (the individual terminated the employment or discontinued the activity upon being notified that it was in conflict with his or her security responsibilities)).

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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. Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

While alleged under three separate guidelines, the security concerns all relate to Applicant's ownership of stock in the U.K. company co-founded by his father. Applicant maintained the U.K. bank account alleged in SOR ¶ 2.b for convenience in receiving twice yearly stock dividends, which were quite substantial. Yet except for some consulting duties in 1994/95 and exercising shareholder voting rights by proxy, Applicant was not actively involved in the foreign corporation. Allocated a share of the

company by his father when he was a child, Applicant elected to pursue his own life and career. The opportunity to pursue his academic interests in astrophysics led Applicant to leave his native U.K. for Canada in 1992. On his divorce, he was granted sole custody of his oldest child, and they moved to the U.S. because of a favorable residential placement for his son in 1997. Applicant has since established significant ties to the U.S. that led him to acquire U.S. citizenship in January 2005, to travel as a U.S. citizen in preference to his U.K. citizenship, and to act in furtherance of his career in the U.S. in preference to his family's interests in the U.K. by selling all his stock in the foreign company. With his spouse licensed to practice in the U.S., and his son continuing to require special services that are best provided in the U.S., Applicant is not likely to do anything to jeopardize his life and career in the U.S.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the amended SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Paragraph 3, Guideline L:	FOR APPLICANT
Subparagraph 3.a:	For Applicant
Subparagraph 3.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ELIZABETH M. MATCHINSKI
Administrative Judge