DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 09-05000
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro se*

April 12, 2010

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding foreign preference and personal conduct. Eligibility for a security clearance with access to classified information is granted.

Statement of the Case

On February 25, 2009, Applicant applied for a security clearance and submitted an Electronic Questionnaires for Investigations Processing version of a Security Clearance Application (e-QIP).[1] On July 30, 2009, the Defense Office of Hearings and Appeals (DOHA) furnished him a set of interrogatories pertaining to his potential foreign preference. He responded to the interrogatories on August 11, 2009.[2] On November 3, 2009, DOHA issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and

[1] Government Exhibit 1 (e-QIP), dated February 25, 2009.

[2] Government Exhibit 3 (Applicant's Answers to Interrogatories, dated August 11, 2009).

modified (Directive); and *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (effective within the Department of Defense on September 1, 2006) (hereinafter AG) for all adjudications and other determinations made under the Directive. The SOR alleged security concerns under Guidelines C (Foreign Preference) and E (Personal Conduct), and detailed reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on November 10, 2009. In a sworn, written statement, dated November 16, 2009, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on December 31, 2009, and the case was assigned to Administrative Judge Edward W. Loughran on January 11, 2010. It was reassigned to me on February 12, 2010, due to caseload considerations. A Notice of Hearing was issued on March 12, 2010, and I convened the hearing, as scheduled, on March 29, 2010.

During the hearing, seven Government exhibits and one Applicant exhibit (with 17 tabs) were admitted into evidence without objection. Applicant testified. The transcript of the hearing (Tr.) was received on April 6, 2010.

Findings of Fact

In his Answers to the SOR, Applicant admitted the factual allegation in ¶ 1.a. of the SOR, and denied the remaining allegation.

Applicant is a 55-year-old employee of a defense contractor, currently serving as a senior network administrator,[3] and he is seeking to obtain a TOP SECRET security clearance. He was previously granted a SECRET security clearance in August 2007.[4]

He received a bachelor's degree in an unspecified discipline in December 1987,[5] and attended nearly six months of continuing education in a part-time status in 2006.[6] In 1972, when he was 17 years old, Applicant joined the U.S. Army and served honorably for about two months before it was determined that he had not been medically fit at the time of his enlistment.[7] He received an honorable discharge in June 1972.[8] Applicant

[3] Government Exhibit 1, *supra* note 1, at 19.

[4] *Id.* at 56.

[5] *Id.* at 18.

[6] *Id.* at 16.

[7] Tr. at 71.

[8] Government Exhibit 1, *supra* note 1, at 27.

was employed by several different companies and held a variety of different positions over the years, including supplier quality assurance manager, factory worker, development engineer, engineering manager, and control and release manager.[9] He joined his current employer as a PC systems assistant in December 2006.[10]

Applicant has been married three times, with the first two marriages ending in divorce. He married his first wife in August 1977. They had two children, and eventually divorced in August 1990.[11] He married his second wife in October 1992, and they divorced in August 1998.[12] His relationship with his third wife is the reason for this security clearance review.

At some unspecified time, thought to be in 2006 or early 2007, Applicant met a woman through a friend at church. The friend was aware that Applicant had been "looking for somebody who held some very high virtues, and values, and principles."[13] The woman happened to be a Mexican national visiting from Mexico. They dated and eventually married in Mexico in December 2007.[14]

Applicant's wife possessed a U.S. visitor's visa at the time of their wedding, and under U.S. law, according to Applicant, her marriage was construed as an intention to immigrate. She was required by U.S. immigration law to leave the U.S.[15] Applicant informed his facility security officer (FSO) of his desire to remain with his bride and his intention to establish a residence in Mexico until such time as U.S. law would allow her to obtain the appropriate visa to remain permanently in the U.S.[16] In order to comply with Mexican law, Applicant obtained a short-term nonimmigrant (FMT) visa when he obtained his marriage permit.[17] Because of their proximity to the U.S.-Mexican border, commencing January 3, 2008, Applicant and his bride resided in a rented home in a Mexican border community, and Applicant commuted across the border to work each day.[18]

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[9] Government Exhibit 2 (SF 86), dated December 7, 2006), at 15-20.

[10] *Id.* at 14.

[11] Government Exhibit 1, *supra* note 1, at 33, 36-37.

[12] *Id.* at 32,

[13] Tr. at 59.

[14] *Id.* at 60; Government Exhibit 1, *supra* note 1, at 31.

[15] Applicant's Answer to SOR, dated November 16, 2009, at 2.

[16] Applicant Exhibit A-2 (E-mail from Applicant to FSO, dated December 11, 2007; E-mail from Applicant to FSO, dated December 12, 2007).

[17] Tr. at 30, 32.

[18] Tr. at 31, 55; Applicant's Personal Subject Interview, dated March 17, 2009, at 1-2, attached to Government Exhibit 3, *supra* note 2.

FOREIGN PREFERENCE

In March 2008, when a Mexican immigration official told Applicant he was residing illegally in Mexico under Mexican law because he was renting a residence in the country with only a short-term visitor's visa,[19] Applicant decided to comply with Mexican law and applied for an FM2 immigrant visa.[20] The FM2 visa is intended for persons seeking to reside in Mexico for nine months or more.[21] Since he was under the impression that his wife's U.S. visa could take up to two years to obtain,[22] and he could import his personal possessions into Mexico without restriction,[23] Applicant chose the FM2 visa over the FM3 long-term nonimmigrant visa.[24] One other benefit of the FM2 visa over the FM3 visa was that if he should eventually decide to retire to Mexico, or if he hoped to hold property or receive an inheritance, his period of eligibility would run from the beginning and be verified each year by Mexican authorities.[25]

In April 2008, after only two months of spending time and effort in repairing and cleaning their Mexican residence, Applicant's landlord gave him two days notice to relocate.[26] As the holder, at that time, of only the FMT visa, Applicant possessed no negotiating rights and was in no position to argue.[27] So, Applicant and his wife relocated to a U.S. border community.[28] Within a week of his return to the U.S., Applicant received his FM2 visa.[29] He decided to retain the FM2 visa in the event his wife could not remain in the U.S. with her visitor visa.[30] Finally, nearly nine months after they were married, Applicant's wife received her U.S. K-3 spousal nonimmigrant visa, allowing her to remain in the U.S. pending receipt of her immigrant visa.[31]

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[19] Tr. at 32.

[20] *Id.*

[21] *Id.* at 33.

[22] *Id.*

[23] *Id.*

[24] *Id.* at 33-34.

[25] *Id.* at 34-35.

[26] *Id.* at 36.

[27] *Id.*

[28] *Id.* at 37.

[29] *Id.*

[30] *Id.* at 38-39.

[31] *Id.* at 39.

In October 2008, considering their future, Applicant declared to his FSO: "We plan to keep a place to live in [Mexico] as well as in [U.S.]. Eventually we would both like to be dual citizens."[32]

In light of the problems caused by Applicant's application for the Mexican FM2 visa and the current instability along the U.S. – Mexican border, Applicant and his wife underwent a substantial change of heart. Since his wife can now remain in the U.S. as a legal permanent resident,[33] and is no longer comfortable residing in Mexico,[34] in January 2010, Applicant sought the cancellation of his Mexican FM2 visa. It was cancelled on January 13, 2010.[35]

Neither Applicant nor his wife holds a Mexican visa;[36] owns any property in Mexico;[37] is eligible for any type of Mexican social security or retirement benefits;[38] or has any Mexican bank accounts or other financial accounts.[39] While Applicant's wife may someday be in line to share an inheritance of approximately $20,000 worth of Mexican property,[40] it is highly unlikely, because the property is highly leveraged and of little value.[41] Nevertheless, Applicant has an "idealistic" and "romantic" vision of eventually owning a safe retreat in Mexico.[42] His wife does not share his vision.[43]

Applicant denies any foreign preference:[44]

> I have been and remain a faithful, trustworthy, reliable, committed citizen and servant of the U.S. I have no preference for any other country over the U.S. I will always endeavor to protect and serve my country.

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[32] *Id.* at 41; Applicant Exhibit A-5 (E-mail from Applicant to FSO, dated October 1, 2008).

[33] Tr. at 50.

[34] *Id.* at 58.

[35] Applicant Exhibit A-15 (National Institute of Migration Cancellation of Document, dated January 13, 2010.)

[36] Tr. at 50.

[37] *Id.*

[38] *Id.* at 54.

[39] *Id.* 56.

[40] *Id.* at 52,

[41] *Id.* at 52-53.

[42] *Id.* at 53-54.

[43] *Id.* at 59.

[44] Applicant's Answer to SOR, *supra* note 15, at 2.

> If my holding the FM2 or holding dual citizen status with Mexico by me or my wife is a security concern, then I am prepared to immediately follow a course of action to terminate the process of becoming dual citizens. If I thought it would compromise national security or lead anyone to think I preferred Mexico or would not protect U.S. interests, I would not have considered it as an option. It only came up when I was trying to faithfully follow the letter of U.S. immigration law.

PERSONAL CONDUCT

On February 25, 2009, Applicant applied for a security clearance and submitted a completed e-QIP.[45] The SOR alleges Applicant deliberately failed to disclose complete information in response to § 20B: Foreign Business, Professional Activities, and Foreign Government Contacts. The section contains six individual questions, the first three of which are irrelevant as they pertain only to foreign business activities. The last question pertains to foreign passports, and is not relevant. The first relevant question is § 20B.4: (*In the last 7 years, have you or any of your immediate family members had any contact with a foreign government, its establishment (embassies, consulates, agencies, or military services), or its representatives, whether inside or outside the U.S.?*)). Applicant answered "Yes" and listed the following foreign entities: civil registry, immigration, driver's license, and voter's registration.[46] He provided the dates of contact as November 2007 to August 2008 (estimated).[47] He added a description of the circumstances as ". . . in order to get married, live in Mexico, and lastly to correct wife's birth date on birth certificate."[48]

The other relevant question is § 20B.5: (*In the last 7 years, have you sponsored any foreign citizen to come to the U.S. as a student, for work, or for permanent residence?*). Applicant answered "Yes" and added: "This is my wife who is not involved with foreign business, professional activities, or foreign government. I am sponsoring her for immigration. We had many interactions with Mexican government offices to marry in Mexico and immigrate to the USA."[49]

Applicant attributes his failure to specifically list his application for the Mexican FM2 visa to confusion rather than an intentional concealment. He stated:[50]

> I have made a diligent and continuous effort to understand and satisfy the eQip application, the collection of evidence by the Security Officer who

[45] Government Exhibit 1, *supra* note 1.

[46] *Id.* at 48.

[47] *Id.*

[48] *Id.*

[49] *Id.* at 48-49.

[50] Applicant's Answer to SOR, *supra* note 15, at 3.

> acts on behalf of [the employer] and the DSS, the DSS investigator during the interview, and all follow on questions. It has always been my intent and the purpose of any of my actions to provide all information requested in a manner that would be accurate, complete, and would lead to the desired understanding by anyone involved with the clearance application process. My understanding of how to approach the clearance application process has been to provide as much information as seemed required and reasonable on the eQip, review information and questions with the Security Officer, provide any supporting information to be placed in the folder kept by the Security Officer for DSS review, and have a personal interview based on all this information with a DSS investigator.

He added:[51]

> It was my understanding after reading and studying the questions that the information I provided was what was being requested and more. I stated that I had contacts with immigration in a foreign country. I was not 100% sure if questions in Section 20b sought information about things such as immigration or were intended to find out about foreign governments or their agents trying to approach me, or my trying to approach them, for some sort of dealings with sensitive government information.

Applicant contends that he maintained routine open communications with his FSO about everything related to his marriage to a foreign national and their efforts to legally reside together, either in the U.S. or in Mexico, until his wife could receive her U.S. permanent resident status.[52] His e-mails of December 11-12, 2007, ("[We] are moving ahead with getting married and finding a home in Mexico)" and ("We will most likely move to the States as soon as the law allows. The CR-1 Visa for a spouse to immigrate is taking about 2 years before approval as of now"),[53] and October 1, 2008 ("We plan to keep a place to live in [Mexico] as well as in [the U.S.]. Eventually we would both like to be dual citizens."),[54] clearly state his intentions. The October 1, 2008, response from his FSO ("Please bring in her paperwork as well. I'd like to keep a paper trail so I can send when DSS requests it."),[55] confirms his contentions.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security

[51] *Id.*

[52] Tr. at 67-70.

[53] Applicant Exhibit A-2, *supra* note 16.

[54] Applicant Exhibit A-5, *supra* note 32.

[55] Applicant Exhibit A-5 (E-mail from FSO to Applicant, dated October 1, 2008).

emphasizing, "no one has a 'right' to a security clearance."[56] As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."[57]

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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 commonsense decision. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."[58] The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.[59]

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 as well. It is because of this special relationship that the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk

[56] *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

[57] Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

[58] "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

[59] *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

the Applicant may deliberately or inadvertently fail to 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. Furthermore, "security clearance determinations should err, if they must, on the side of denials."[60]

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."[61] Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

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 interests of the United States.

The foreign preference guideline notes several conditions that could raise security concerns. Under AG ¶ 10(a), "exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member" is potentially disqualifying. This includes but is not limited to: AG ¶ 10(a)(1), "possession of a current foreign passport;" AG ¶ 10(a)(4), "residence in a foreign country to meet citizenship requirements;" and AG ¶ 10(a)(5), "using foreign citizenship to protect financial or business interests in another country." Similarly, under AG ¶ 10(b) "action to acquire or obtain recognition of a foreign citizenship by an American citizen" may raise security concerns.

The Government has argued the applicability of AG ¶ 10(a) but concedes that none of the disqualifying conditions apply.[62] Department Counsel likened the Mexican FM2 visa to a foreign passport,[63] but that comparison is not accurate. It is unclear if AG

[60] *Egan*, 484 U.S. at 531

[61] *See* Exec. Or. 10865 § 7.

[62] Tr. at 88.

[63] *Id.* at 91-92.

¶ 10(a) applies to native-born U.S. citizens such as Applicant, for the condition refers to actions taken "after becoming a U.S. citizen." Even assuming that AG ¶ 10(a) does apply in this instance, there is no evidence that Applicant ever possessed a foreign passport. Applicant, a native-born U.S. citizen, married to a Mexican national, when confronted with the bureaucratic hurdles presented by the immigration laws of two countries, took several steps to maintain his marital relationship and residence. This is a love story, not a defiant act of foreign preference. Applicant and his wife could not legally reside together in the U.S. because she only possessed a visitor visa; they could not legally reside together in Mexico because he only possessed a visitor visa. Accordingly, to remain legal, they made applications to both countries for permanent resident status. In his situation, Applicant's actions might eventually lead to dual citizenship with Mexico, but in order to successfully achieve that status, he would have had to maintain his residency in Mexico, something he chose not to do once his wife obtained her permanent U.S. resident visa. He entertained the "romanticized" desire of eventually owning a residence in Mexico, a desire his wife does not share. He also openly discussed the possibility that his wife some day might share in a rather modest inheritance, but that is merely speculation. The evidence supports the application of AG ¶¶ 10(a)(4), and 10(b), as well as the partial application of 10(a)(5). AG ¶¶ 10(a)(1) does not apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign preference. Under AG ¶ 11(b), the disqualifying condition may be mitigated where "the individual has expressed a willingness to renounce dual citizenship." Applicant took the first steps towards dual citizenship when he applied for the Mexican FM2 visa and resided in Mexico from January 3, 2008 to April 15, 2008. He never came close to satisfying the essential Mexican citizenship requirements, however, for he withdrew his application and had his FM2 visa cancelled. Applicant's action presents not only an expressed willingness to renounce a potential dual citizenship, but also the actual act of doing so. AG ¶ 11(b) applies.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(a), a "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary

responsibilities," is potentially disqualifying. Similarly, under AG ¶ 16(b), "deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative," may raise security concerns. The Government has argued that Applicant's omissions of critical information pertaining to his application for, and receipt of, a Mexican FM2 visa provides sufficient evidence of deliberate falsifications. One possible alternative which must be examined is that his actions were the result of simple oversight or negligence on his part. Pending further comments below, AG ¶¶ 16(a) and 16(b) tentatively apply.

The guidelines also include examples of conditions that could mitigate security concerns arising from personal conduct. Under AG ¶ 17(a), evidence that "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts" is potentially mitigating. Similarly, AG ¶ 17(b) applies where "the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully." Also, when "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress," AG ¶ 17(e) may apply.

As noted above, Applicant attributes his failure to specifically list his application for the Mexican FM2 visa to confusion rather than an intentional concealment. He contends that he maintained routine open communications with his FSO about everything related to his marriage to a foreign national and their efforts to legally reside together, either in the U.S. or in Mexico, until his wife could receive her U.S. permanent resident status. His December 2007 and October 2008 e-mails to his FSO clearly state his intentions. The October 2008, response of his FSO confirms his contentions, and leads to the conclusion that the comment regarding maintaining a paper trail for the benefit of DSS, is confusing. Applicant's full multi-year disclosures to his FSO well before the SOR was issued clearly contradicts the Government's contentions that Applicant's SF 86 omission was a deliberate falsification or concealment of the facts pertaining to his personal conduct or relationship with the Mexican Government. AG ¶¶ 17(a), 17(b), and 17(e) apply. Furthermore, I find Applicant's explanations are credible in his denial of deliberate falsification.[64]

[64] The Appeal Board has explained the process for analyzing falsification cases, stating:

> (a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

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) the 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.

There is some disqualifying evidence regarding Applicant's conduct and actions. Applicant and his wife could not legally reside together in either the U.S. or Mexico because they each possessed only a visitor visa for the other's country of residence. To remain legal, they made applications to both countries for permanent resident status. Applicant's actions might eventually lead to dual citizenship with Mexico, but in order to successfully achieve that status, he would have had to maintain his residency in Mexico and eventually gain Mexican citizenship. Also, when completing his e-QIP, he failed to understand the necessity of total inclusion of all the Mexican immigration facts pertaining to his application.

The mitigating evidence under the whole-person concept is more substantial. Applicant maintained routine open communications with his FSO about everything related to his marriage to a foreign national and their efforts to legally reside together, either in the U.S. or in Mexico, until his wife could receive her U.S. permanent resident status. Love and marital responsibility for his wife, not foreign preference for Mexico, prompted Applicant to explore every possible avenue, including becoming a permanent resident and eventual citizen of Mexico. Likewise improper or inadequate advice from his FSO caused him to believe his routine status correspondence was being gathered for the benefit of DSS. Applicant did nothing to hide his relationship with his wife or with the Mexican immigration authorities. To the contrary, he was open with the FSO and the investigator. While his e-QIP disclosures might not have been thorough enough for some, he candidly commented on his responses. When his wife received her U.S. permanent resident visa, he withdrew his application and had his FM2 visa cancelled. (*See* AG ¶ 2(a)(1), AG ¶ 2(a)(2), AG ¶ 2(a)(3), AG ¶ 2(a)(4), AG ¶ 2(a)(5), AG ¶ 2(a)(6), AG ¶ 2(a)(7), and AG ¶ 2(a)(9).)

Overall, the record evidence leaves me with no substantial questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising under the guidelines for foreign preference and personal conduct.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the 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 E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

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ROBERT ROBINSON GALES
Administrative Judge