DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 09-07072
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel
For Applicant: *Pro se*

October 14, 2010

_____

Decision

_____

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has not mitigated the Foreign Preference security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 30, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines C, Foreign Preference and B, Foreign Influence. The action was taken under Executive Order (EO) 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 adjudicative guidelines (AG) effective for cases after September 1, 2006.

Applicant answered the SOR on May 28, 2010, and requested a hearing before an administrative judge. The case was assigned to me on June 28, 2010. DOHA issued a notice of hearing on July 23, 2010, and the hearing was convened as scheduled on

August 31, 2010. The Government offered Exhibit (GE) 1 through 2, which were admitted without objection. The Applicant offered Exhibit (AE) A through E and testified on his own behalf. The record was held open for Applicant to submit additional information until September 10, 2010. Applicant submitted AE F through Q, which were admitted without objection, post hearing. DOHA received the transcript of the hearing (Tr.) on September 15, 2010.

Findings of Fact

In the SOR, DOHA alleges under Guideline B, Foreign Influence, that Applicant's wife is a dual citizen of the United States and Country A, and is employed as the Deputy Trade Commissioner for Investment and Trade of a state in Country A (SOR ¶1.a.); that his parents (SOR ¶¶ 1.b. and 1.c.), sister (SOR ¶1.d.), parents-in-law (SOR ¶¶ 1.e. and 1.f.), and two sisters-in-law (SOR ¶1.g.) are citizens of and reside in Country A; and that Applicant travels to Country A approximately every year (SOR ¶1.h.). DOHA alleges under Guideline C that Applicant possesses a valid Country A passport, issued on December 8, 2006, and that after becoming a United States citizen on July 1, 2005, he applied for reinstatement of his Country A citizenship on October 4, 2006. Applicant admitted to all of the subparagraphs as stated in the SOR. After considering the evidence of record, I make the following findings of fact.

Country A is an ally of the U.S. and is a member of the European Union. Its government is a parliamentary democracy under a constitutional monarchy. Country A is divided politically and geographically into three regions. The regional and community governments have jurisdiction over transportation, public works, water policy, cultural matters, education, public health, environment, housing, zoning, economic and industrial policy, agriculture, foreign trade, and oversight of local governments. Each has autonomy in courting potential foreign investors. Country A has assisted in U.S. lead operations in Iraq and the State Department has noted that "Bilaterally, there are few points of friction with the U.S." (AE B; AE F; AE G.)

Applicant is a 33-year-old employee of a government contractor. He has worked for his employer since March 2005. He is married and has a six-month-old daughter, who is a natural born citizen of the U.S. (GE 1; Tr. 28, 71-72.)

Applicant was born in Country A. In the early 1990's his parents entered the U.S. Green Card Lottery. His mother was eventually selected, and while his family vacationed in Colorado, they obtained green cards to enter the U.S. in approximately 1996. After graduating with his master's degree from a school in Country B, in 1999, he moved to the U.S. to attend a Ph.D. program. He earned his Ph.D. in 2004. (GE 1; Tr. 28-29, 47-54.)

After living in the U.S. for five years, Applicant became eligible to apply for U.S. citizenship and did so at the first available opportunity. He became a naturalized U.S. citizen on July 1, 2005. At that time, the law in Country A forbid dual citizenship and Applicant relinquished his Country A citizenship by becoming a U.S. citizen. However, in 2007, the law in Country A changed to permit dual citizenship. Applicant requested to

become a Country A citizen again, largely because he wanted to be able to act as power of attorney for his parents and parents-in-law, who are citizens and residents in Country A, as addressed below. To reacquire his Country A citizenship, Applicant had an interview with the Country A Consulate General who sent a recommendation to a Judge in Country A. The Judge then was required to make a ruling based upon that interview whether to admit the Applicant. Applicant regained his Country A citizenship on October 4, 2006. Subsequently, he was issued a Country A passport, dated December 8, 2006. His passport was valid through December 7, 2011. Applicant has never used his Country A passport. He has invalidated it by writing "annulled" on each page of that passport and clipping the corner of the passport. Additionally, he has surrendered his Country A passport to his facility security officer. He also signed a letter acknowledging, "I am willing to renounce my [Country A] dual citizenship if required by the United States of America." (GE 1; GE 2; AE A; AE P; AE Q; Tr. 28-34, 47-54.)

In 2004, Applicant met his wife at a New Year's Eve party in Country A. They married in August 2005. His wife was naturalized as a U.S. citizen in February 2008, and maintains dual citizenship with Country A. She works as a contract employee to a trade commissioner for a state-like region in Country A. Her contract is held by a U.S. company, which provides her payroll and benefits, but she is outsourced to the foreign state's Investment and Trade Company. The primary purpose of the Investment and Trade Company is to "promote sustainable international business in the interests of both [foreign region]-based companies and foreign enterprises. . ." Applicant describes his wife's position as an administrative assistant to a Trade Commissioner who is responsible for exports. Her office is located in the building next to the Consulate, but is not part of the Consulate of Country A. (GE 1; GE 2; AE C; AE H; AE I; AE J; Tr. 37-40, 51, 63-65.)

Applicant's mother, father, sister, mother-in-law, father-in-law, and two sisters-in-law are citizens and resident in Country A. Applicant's father is a 60-year-old dentist. His mother, age 59, and sister, age 30, are both homemakers. His father-in-law is a 59-year-old technician for a private company. His mother-in-law is a 63-year-old retired nurse. Applicant's sisters-in-laws, ages 23 and 35, work as an installation technician and a container importer dispatcher, respectively. Applicant speaks to his parents and parents-in-law on a weekly basis for about an hour each week. He visits Country A on an average of once per year. His most recent visit occurred two weeks prior to the hearing. (GE 1; GE 2; Tr. 35-36, 55-56, 66-74.)

Applicant has not voted in any foreign elections since becoming a U.S. citizen. All of his assets are located in the United States and total approximately $320,000. He has no bank accounts or financial interests in Country A. He votes in the U.S. and he reports all foreign travel and foreign contacts to his facility security officer. In 2003, he volunteered for the Civil Air Patrol, an Auxiliary of the United States Air Force. (AE D; AE E; Tr. 40, 44.)

Applicant is well respected by his supervisors and colleagues. He was classified as a "man of great integrity and honesty" by his Program Manager. He is also credited

with a strong work ethic and is trusted by his colleagues and supervisors. (AE K; AE L; AE M; AE N; AE O.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense 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.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 EO 10865 provides that adverse 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 interests of the United States.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. Three are potentially applicable in this case:

> (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. This includes but is not limited to:
>
> (1) possession of a current foreign passport;
>
> (b) action to acquire or obtain recognition of a foreign citizenship by an American citizen; and
>
> (d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

In 2005, Applicant chose to become a United States citizen. In doing so, he renounced his citizenship in Country A. However, in 2006, he reacquired his citizenship in Country A by actively petitioning for dual citizenship. It was granted and he then obtained a passport, issued by Country A in December 2006. These actions, taken after becoming a U.S. citizen, show Applicant's allegiance to Country A. AG ¶ 10(a), 10(b), and 10(d) are disqualifying.

Conditions that could mitigate Foreign Preference security concerns are provided under AG ¶ 11. Three are potentially applicable:

> (a) dual citizenship is based solely on parent's citizenship or birth in a foreign country;
>
> (b) the individual has expressed a willingness to renounce dual citizenship; and
>
> (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant's dual citizenship is based upon his deliberate act of petitioning the Government of Country A, not solely on his parent's citizenship or his birth in Country A. He chose to reacquire citizenship in Country A because he wanted to be able to have power of attorney for his parents and in-laws, apparently a right only available to citizens of Country A. While he has expressed a willingness to renounce his dual citizenship with Country A, he has qualified his willingness with the statement "if required." Applicant clearly wishes to continue to maintain his dual citizenship with Country A, to take care of his aging parents and parents-in-law. While he has invalidated and surrendered his foreign passport, that act alone does not mitigate Applicant's strong ties with Country A. Nor does the surrender of the passport mitigate the concern created by his conscious decision to reacquire citizenship with Country A, after becoming a U.S. citizen.

Guideline B, Foreign Influence

The security concern for the Foreign Influence guideline is set out in AG ¶ 7:

> 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.

The guideline notes nine conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable in this case:

> (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and
>
> (d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

The Government raised concerns over possible foreign influence because of Applicant's close ties of affection to Country A as his mother, father, sister, mother-in-law, father-in-law and two sisters-in-law are residents of Country A. Applicant travels annually to visit his family there. The Government also expressed concerned about Applicant's wife, who is a dual citizen of Country A and was alleged to work for Country A. With respect to Applicant's family members living in Country A, no heightened risk

has been established. Neither Applicant's mother, father, sister, mother-in-law, father-in-law, or two sisters-in-law work for Country A. Country A is an ally of the U.S.

Further, no heightened risk of foreign inducement, manipulation, pressure, or coercion exists with respect to Applicant's wife. She is directly employed by a U.S. company, and works with representatives of a region of Country A, not Country A itself, promoting trade with that region. There is no relationship directly between Applicant's wife and Country A, other than her dual national status. The nature of U.S. relations with Country A creates no concerns. Therefore, AG ¶ 7 is not disqualifying.

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 relevant 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines C and B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant's letters of support show he is a valued employee. However, his choices, with respect to his decision to reacquire citizenship with Country A, do not demonstrate the judgment, reliability, or trustworthiness needed to hold a security clearance. He has not demonstrated he is unequivocally willing to renounce his dual citizenship. There are significant unresolved concerns about Applicant's Foreign Preference.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated Foreign Preference security concerns.

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:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b:	Against Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a.:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c.:	For Applicant
Subparagraph 2.d.:	For Applicant
Subparagraph 2.e.:	For Applicant
Subparagraph 2.f.:	For Applicant
Subparagraph 2.g.:	For Applicant
Subparagraph 2.h.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

_____
Jennifer I. Goldstein
Administrative Judge