DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 15-00240
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

08/17/2016

Decision

HARVEY, Mark, Administrative Judge:

Applicant was born in Australia, and he is a dual citizen of the United States and Australia. He travels to Australia annually; he lived in Australia from 2008 to 2012, and in 2012, he voted in an Australian election after becoming a U.S. citizen. He has retained a current Australian passport. Foreign influence security concerns are mitigated; however, foreign preference security concerns relating to his retention of a current Australian passport are not mitigated. Access to classified information is denied.

Statement of the Case

On April 23, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (SCA). (Government Exhibit (GE) 1) On August 18, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive); and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a

clearance should be granted, continued, denied, or revoked. (Hearing Exhibit (HE) 2) Specifically, the SOR set forth security concerns arising under Guidelines B (foreign influence) and C (foreign preference).

On September 3, 2015, Applicant responded to the SOR, and he requested a hearing. On October 27, 2015, Department Counsel was ready to proceed. On November 5, 2015, the case was assigned to another administrative judge, and on February 2, 2016, the case was assigned to me. On January 21, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing setting the hearing for January 27, 2016. (HE 1A) At Applicant's request, the hearing was rescheduled. (HE 1B) On March 15, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for March 17, 2016. (HE 1C) Applicant waived his right to 15 days of notice of the date, time, and location of the hearing. (Tr. 14-15) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered three exhibits, which were admitted without objection. (Tr. 18-19; GE 1-3) Applicant did not offer any documents into evidence. On March 28, 2016, DOHA received a copy of the transcript of the hearing.

Procedural Ruling

Applicant and Department Counsel did not request administrative notice of facts concerning Australia's relationship with the United States. There was no objection to my proposal to obtain and incorporate information about the relationship between the United States and Australia taken from the U.S. Department of State website into my decision. (Tr. 63) I took administrative notice of one fact sheet: U.S. Department of State website, Diplomacy in Action, U.S. Bilateral Relations Fact Sheets, *U.S. Relations With Australia* (Feb. 25, 2016), http://www.state.gov/r/pa/ei/bgn/2698.htm. (HE 4)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. *See* ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from government reports. *See* Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). *See* the Australia section of the Findings of Fact of this decision, *infra*, for the administratively noticed facts concerning Australia.

Findings of Fact[1]

In his response to the SOR, Applicant admitted all of the SOR allegations. He also provided extenuating and mitigating information. His admissions are accepted as

[1]The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 59-year-old employee of a DOD contractor. (Tr. 6; GE 1) He is a specialist in information technology. (Tr. 60; GE 1) He held a security clearance in the 1980s at the top secret sensitive compartmented information level. (Tr. 46) He also held a security clearance around 2010. (Tr. 47) In 1975, Applicant graduated from high school in the United States. (Tr. 6) In 1982, Applicant received an associate of science degree in mathematics in the United States, and in 1984, he received a bachelor's degree in applied mathematics in the United States. (Tr. 7) In 1994, he received a graduate teaching diploma in the United States. (Tr. 7) In 2009-2010, he received a master's degree in Australia, and he is pursuing a Ph.D. in Australia. (Tr. 7, 53) He has never served in the U.S. military. (Tr. 7) In 1975, he married his spouse, and his children are ages 13, 19, 33, 35, and 39. (Tr. 7-8)

Foreign Influence and Foreign Preference

In Applicant's SOR response, he admitted the following SOR allegations: (1) in 2007, he reinstated his Australian citizenship and obtained an Australian passport; (2) he used his Australian passport from 2008 to 2014; (3) he received Australian medical benefits from the Australian government; (4) in 2012, he voted in an Australian election; (5) his mother, brother, and sister are citizens and residents of Australia; (6) his five children are dual United States and Australian citizens who are living in the United States; and (7) he has a savings account in Australia with about $45,000 in it.

Applicant has lived in the United States for most of his life. (Tr. 44) He was born in Australia. (Tr. 42) In 1974, he moved to the United States from Australia so that he could graduate from a U.S. high school. (Tr. 45) In 1986, he was naturalized as a U.S. citizen. (GE 1)

In 2008, Applicant and his spouse moved to Australia with their two youngest children, so that Applicant's two youngest children could have a relationship with their three grandparents. (Tr. 38-39, 42, 48) They returned to the United States because he wanted their two youngest children to prepare for and to attend college in the United States. (Tr. 38) He visits Australia on an annual or semi-annual basis to meet commitments for his Ph.D. program. (Tr. 53) In 2012, he voted in an Australian election because voting is compulsory in Australia. (Tr. 54)[2] He also voted absentee in United States elections. (Tr. 54) Applicant said he will not be able to vote in current Australian election because he must be a resident of Australia for six months before he will be eligible to vote in Australia. (Tr. 66) He received Australian medical benefits while he was living in Australia. (SOR response)

[2]Applicant could receive a $20 fine unless he presented "a valid and sufficient reason for not voting." *See* Australian Voting Commission website, *Voting within Australia – Frequently Asked Questions* (July 22, 2016), http://www.aec.gov.au/faqs/voting_australia.htm. (HE 5)

Applicant's five children are dual citizens of the United States and Australia because his children were all born in the United States and Applicant was born in Australia. (Tr. 39) Their children have United States and Australia passports. (Tr. 42) Applicant has a bank account in Australia with about $45,000 in it. (Tr. 40) He also has a vehicle in Australia for his use when he visits Australia. (Tr. 39) Applicant's parents died in 2015, and their estate is in probate. (Tr. 40) Applicant could receive as much as $210,000 from his mother's estate. (Tr. 55, 62) A significant amount of the funds could be used to fund cancer treatment for Applicant's spouse. (Tr. 55)

Applicant's property and assets in the United States are valued at about $830,000, and his U.S. annual salary is about $92,000. (Tr. 56-57, 63)

Applicant's spouse of 40 years was born in the United States and lived in the United States, except for living in Australia from 2008 to 2012. (Tr. 34-35, 49, 52) While living in Australia, he taught at the university level, and he was employed doing various part-time jobs, including driving a bus and milking cows. (Tr. 50) His spouse did not attempt to obtain Australian citizenship. (Tr. 36) Her father is deceased, and her mother lives in Australia, where she has lived since 1980. (Tr. 36) Her mother is a U.S. citizen, and she has never made any attempt to become an Australian citizenship. (Tr. 37) Her mother did not remarry. (Tr. 37) Her sister is deceased and her brother lives in the United States with his son. (Tr. 37)

Applicant applied for and received an Australian passport, which he used to travel between the United States and Australia from 2008 through 2014. (SOR response) He intends to retain his Australian passport because he wants to be able to travel to Australia to visit his brother and sister, who are living in Australia. (Tr. 44, 58) The spouses of his siblings living in Australia have terminal conditions. (Tr. 44, 57) He has also retained his Australian passport because he intends to return to Australia periodically to complete his Ph.D. program. (Tr. 57) He believes he needs an Australian passport to enter Australia. (Tr. 48) Applicant emphasized that the United States and Australia have a long-standing relationship in defense areas. (Tr. 59) His five children and nine grandchildren live in the United States. (Tr. 60)

Character Evidence

A friend, who has worked in law enforcement for many years and has known Applicant for 20 years, described Applicant as honest, loyal, principled, and generous person. (Tr. 23-27) Applicant will be conscientious about his handling of classified information. (Tr. 25)

Another friend and colleague is a federal employee working in the same area as Applicant, and he has known Applicant for about 20 years. (Tr. 28-31) He said Applicant is trustworthy and reliable, and he will be conscientious about the protection of national security. (Tr. 28-32)

Australia[3]

Australia is a vital ally and partner of the United States. The United States and Australia maintain a robust relationship underpinned by shared democratic values, common interests, and cultural affinities. Economic, academic, and people-to-people ties are vibrant and strong. The two countries marked the 75th anniversary of diplomatic relations in 2015.

Defense ties and cooperation are exceptionally close, and Australian forces have fought together with the United States military in every significant conflict since World War I. The ANZUS security treaty, concluded in 1951, serves as the foundation of defense and security cooperation between the countries. The Treaty, which enjoys broad bipartisan support in Australia as its pre-eminent formal security treaty alliance, was invoked for the first time—by Australia—in response to the September 11, 2001 terrorist attacks. The two countries signed the U.S.-Australia Force Posture Agreement at the annual Australia-United States Ministerial consultations (AUSMIN) in August 2014, paving the way for even closer defense and security cooperation, and are now working together to advance force posture initiatives under the Agreement. In October 2015 our defense agencies signed a Joint Statement on Defense Cooperation to serve as a guide for future cooperation.

The U.S.-Australia alliance is an anchor for peace and stability in the Asia-Pacific region and around the world. The United States and Australia share an interest in maintaining freedom of navigation and overflight and other lawful uses of the sea, including in the South China Sea. The United States and Australia also work closely in Afghanistan and Iraq, and cooperate closely on efforts to degrade and defeat the Islamic State in Iraq and the Levant and address the challenges of foreign terrorist fighters and violent extremism. The United States and Australia attach high priority to controlling and eventually eliminating chemical weapons, other weapons of mass destruction, and anti-personnel landmines. In addition to AUSMIN consultations, Australia and the United States engage in a trilateral security dialogue with Japan.

The United States and Australia have signed tax and defense trade cooperation treaties, as well as agreements on science and technology, emergency management cooperation, and social security. They also have concluded a mutual legal assistance treaty to enhance bilateral cooperation on legal and counter-narcotics issues. In addition, a number of U.S. institutions conduct cooperative scientific activities in Australia. Our two countries cooperate on global environmental issues such as climate change and preserving marine environments. The United States and Australia are responding to the Zika virus epidemic worldwide, as well as supporting the Global Health Security Agenda to accelerate measureable progress toward a world safe and secure from infectious disease threats.

[3]The facts in the section concerning Australia are quoted from the U.S. Department of State website, Diplomacy in Action, U.S. Bilateral Relations Fact Sheets, *U.S. Relations With Australia* (Feb. 25, 2016), http://www.state.gov/r/pa/ei/bgn/2698.htm. (HE 4)

U.S. Assistance to Australia

The United States provides no development assistance to Australia.

Bilateral Economic Relations

U.S. exports to Australia include machinery, vehicles, optic and medical instruments, aircraft, and agricultural products. U.S. imports from Australia include precious stones/metals, agricultural products, and optic and medical instruments. The United States is by far the largest foreign investor in Australia, accounting for over a quarter of its foreign investment. The 2005 Australia-U.S. Free Trade Agreement has nearly doubled our goods trade and increased our services trade by more than 122 percent.

The two countries share a commitment to liberalizing global trade, and work closely in the World Trade Organization and the Asia-Pacific Economic Cooperation forum. The United States and Australia concluded Trans-Pacific Partnership negotiations to establish a trade agreement between 12 countries in the Asia-Pacific. As founding members of the Equal Futures Partnership, both countries collaborate to expand economic opportunities for women and increase women's participation in leadership positions in politics, civic society, and economic life.

Australia's Membership in International Organizations

Australia and the United States belong to a number of the same international organizations, including the United Nations, ASEAN Regional Forum, Asia-Pacific Economic Cooperation forum, G-20, International Monetary Fund, World Bank, Organization for Economic Cooperation and Development, and World Trade Organization. Australia is a Partner for Cooperation with the Organization for Security and Cooperation in Europe, an Enhanced Partner of the North Atlantic Treaty Organization (NATO), and a member of the Pacific Islands Forum.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." *Id*. at 527. The President has authorized the Secretary of Defense or his designee to grant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules

of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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. Adverse clearance decisions are made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned." *See* Exec. Or. 10865 § 7. *See also* Executive Order 12968 (Aug. 2, 1995), Section 3. 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.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. *See Egan*, 484 U.S. at 531. "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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

Analysis

Foreign Preference

AG ¶ 9 describes the foreign preference security concern stating, "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."

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying in Applicant's 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; . . . ; (3) accepting . . . medical . . . benefits from a foreign country; and (7) voting in a foreign election.

After Applicant became a U.S. citizen in 1986, he applied for and received an Australian passport, which he used to travel between the United States and Australia from 2008 through 2014. He received Australian medical benefits while he lived in Australia from 2008 to 2012, and in 2012, he voted in an Australian election. AG ¶ 10(a)(1), 10(a)(3), and 10(a)(7) apply.

AG ¶ 11 provides conditions that could mitigate security concerns:

> (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
>
> (b) the individual has expressed a willingness to renounce dual citizenship;
>
> (c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;
>
> (d) use of a foreign passport is approved by the cognizant security authority;
>
> (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and
>
> (f) the vote in a foreign election was encouraged by the United States Government.

None of the mitigating conditions fully apply. When Applicant was living in Australia from 2008 to 2012, he followed Australian laws and received Australian benefits. The primary security concern here is Applicant's continued possession of an Australian passport. Foreign preference security concerns are not mitigated.

Foreign Influence

AG ¶ 6 explains the security concern about "foreign contacts and interests" stating:

> 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.

AG ¶ 7 indicates three conditions that could raise a security concern and may be disqualifying 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
>
> (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and
>
> (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.

AG ¶¶ 7(a), 7(b), and 7(e) apply because of Applicant's relationship with his family living in Australia and his savings account in Australia with $45,000 in it.

There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. *See generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). The mere possession of close family ties with relatives living in Australia is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has such a relationship with even one person living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. *See Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion or inducement.

There is no evidence that intelligence operatives, terrorists, or other entities from Australia seek or have sought classified or economic information from or through Applicant, or his family living in Australia. Applicant and his spouse's communications and visits with family living in Australia are sufficiently frequent, to demonstrate affection for family living in Australia. Concern for family is a positive character trait that increases trustworthiness; however, it also increases concern about potential foreign influence. Department Counsel produced substantial evidence to raise the issue of foreign influence. AG ¶¶ 7(a), 7(b), and 7(e) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

> (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.;
>
> (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;
>
> (c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;
>
> (d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(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.

AG ¶ 8(b) applies to mitigate concerns relating to Applicant's family living in Australia. Applicant has "deep and longstanding relationships and loyalties in the U.S." He has strong family connections to the United States. His spouse and his five children are U.S. citizens. Applicant has lived in the United States for most of his life. He is currently employed by a U.S. Government contractor.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by relationships with family living in Australia. It is important to be mindful of the United States' very positive relationship with Australia, especially the history of close military and diplomatic connections between Australia and the United States.

AG ¶ 8(f) applies. Applicant has property interests in the United States, which include his employment in the United States. His U.S. financial connections significantly outweigh the value of the bank account in Australia.

In sum, the primary foreign influence security concern is Applicant's close relationship with his family living in Australia. Applicant has "such deep and longstanding relationships and loyalties in the U.S.," which clearly outweigh his connections to Australia, that he "can be expected to resolve any conflict of interest in favor of the U.S. interest." Foreign influence concerns are mitigated under AG ¶ 8(b).

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 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 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 this guideline, but some warrant additional comment.

Applicant is a 59-year-old employee of a DOD contractor with a specialty in information technology. There is no evidence of record showing any U.S. arrests, illegal drug possession or use, security violations, financial problems, or alcohol-related incidents. Applicant's demeanor, sincerity, and honesty at his hearing are important factors militating towards approval of his access to classified information.

A Guideline B decision concerning Australia must take into consideration the geopolitical situation in Australia, as well as the dangers existing in Australia.[4] The danger of coercion from the Australian Government is less likely than in many other countries. Australia is one of the closest allies of the United States. The strong military, diplomatic, and commercial bonds between the United States and Australia have endured for decades.

I have carefully applied the law, as set forth in *Department of Navy v. Egan,* 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude he has mitigated foreign influence security concerns; however, he has not mitigated the foreign preference security concerns resulting from his continued possession of an Australian passport.

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(1):	For Applicant
Subparagraph 1.a(2):	Against Applicant
Subparagraphs 1.a(3) through 1.a(5):	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a through 2.e:	For Applicant

[4] See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole person discussion).

Conclusion

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

_____
Mark Harvey
Administrative Judge