



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
)  
) ISCR Case No. 21-00002  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey De Angelis, Esq., Department Counsel  
For Applicant: Catie Young, Esq., Applicant’s Counsel

October 5, 2022  
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**Decision**  
\_\_\_\_\_

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On June 4, 2021, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines B and C. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on July 13, 2021, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on February 8, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 14, 2022, scheduling the hearing for June 2, 2022. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 and 2, which were admitted without objection, and Hearing Exhibit (HX) I for Administrative Notice. Applicant testified on his own behalf and called one witness. Applicant offered ten documents, which I marked Applicant’s Exhibits (AppXs) A through J, and as additions to HX I. The

record was left open until July 1, 2022, for receipt of additional documentation. Nothing further was submitted on Applicant's behalf. DOHA received the transcript of the hearing (TR) on June 27, 2022.

### **Procedural Rulings**

At the hearing, the Government and Applicant's Counsel requested I take administrative notice of certain facts relating to Finland. Department Counsel and Applicant's Counsel provided two-page and four-page summaries of the facts, respectively, supported by numerous documents pertaining to Finland, identified as HX I. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports and Applicant's additions. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

### **Findings of Fact**

Applicant admitted to the allegations in SOR ¶¶ 1.a.~1.e., and 1.i. and 1.j. He denied SOR allegation ¶ 1.f.~1.h., 1.k. and 2.a. and 2.b. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 69-year-old Chief Executive Officer (CEO) of a defense contractor. He has been CEO since November of 2015. He does not have a security clearance. He is divorced, and has three adult children. (TR at page 5 lines 15~24, and at page 24 line 1 to page 26 line 5.) Applicant is a dual-national with Finland. (TR at page 16 lines 4~7, and at page 23 lines 8~10.)

### **Guideline B - Foreign Influence**

1.a. Applicant admits that his sister is a citizen and resident of Finland. She is retired from working with an "oil company." He communicates with her through social media on a weekly basis, and physically speaks to her "maybe four times a year." (TR at page 34 line 6 to page 38 line 15.)

1.b. Applicant admits that his one brother is a citizen and resident of Finland. "He is employed . . . [by] a Swedish industrial manufacturer." His communications with this brother are similar to that with his sister, noted above. (TR at page 38 line 16 to page 41 line 21.)

1.c. Applicant admits that his other brother is a citizen of Finland, but is a resident of France. He "runs a business with a business partner." This second brother's business is "in industrial equipment used by the pharmaceutical industry." Applicant has little contact with this brother, "maybe once in two years." (TR at page 41 line 23 to page 45 line 17.)

1.d. and 1.i. Applicant admits that he has a very close female friend who is a citizen of Finland, but who resides with Applicant much of the time in the United States.

“She’s a correspondent for a Finnish newspaper.” They are romantically involved, and they also co-own an apartment in Finland valued at about \$357,000. (TR at page 45 line 18 to page 52 line 15, at page 63 line 3 to page 64 line 12, and at page 68 line 24 to page 70 line 15.)

1.e. Applicant has been an Honorary Counsel for Finland from about January of 2019 to the present. “It’s completely pro bono. . . . no budget, no money, no payment.” He dedicates “two or three hours per month,” to this honorary service to the Finnish government. (TR at page 53 line 9 to page 55 line 2.)

1.f. Applicant denies that he maintains a Finnish bank account with a value of over \$800,000. He avers that it’s value varies between \$10,000~\$50,000. (TR at page 55 line 3 to page 56 line 17.)

1.g. Applicant denies that he maintains bank accounts and business interests, with his three children, in Finland valued at nearly \$2,000,000. He avers that the bank accounts are about \$30,000, and the business investment about \$700,000. (TR at page 58 line 11 to page 62 line 6.)

1.h. and 1.k. Applicant denies that he maintains joint bank accounts with an individual and with two businesses in Finland, in the Netherlands, and in England. He is, in fact, CEO and co-owner of a U.S. business worth between \$6,000,000 and \$20,000,000. (TR at page 13 line 8 to page 21 line 25, at page 26 line 14 to page 29 line 10, at page 64 lines 16~24, at page 70 line 16 to page 71 line 12, and AppX A.)

1.j. Applicant admits that he co-owns investments in Finland valued at about \$2,750. This amount is diminutive in light of Applicant’s other foreign assets.

### **Guideline C - Foreign Preference**

2.a. As a dual-national, Applicant voted in the Finnish Presidential election in about January of 2018. (TR at page 79 line 13 to page 82 line 6.)

2.b. Applicant will receive a monthly pension of about \$2,283 from Finland upon his retirement. (TR at page 82 line 7 to page 84 line 1.)

### **Notice**

I take administrative notice of the following facts about Finland: The United States established diplomatic relations with Finland in 1919, following its 1917 declaration of independence from the Russian Empire. The United States and Finland have enjoyed decades of close and cordial relations. Finland and the United States belong to a number of the same international organizations. Finland has most recently applied for admission into the North Atlantic Treaty Organization (NATO).

## 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 national security eligibility will be resolved in favor of the 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter 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 (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 B - Foreign Influence

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

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

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

(a) contact, regardless of method, 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;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology;

(e) shared 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;

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest; and

(h) indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion.

Applicant is a dual national citizen of Finland. He is an Honorary Consul for Finland. Applicant has substantial financial interests in Finland, which he shares with his children and with his Finnish co-habitant. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 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 United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, 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; 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.

Applicant has strong connections to Finland: dual-citizenship, a Finnish Government appointed consulate position, a Finnish co-habitant, and co-ownership of about \$1,000,000 in Finnish bank accounts, business interests, and property interests. Foreign Influence is found against Applicant.

### **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 provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. By itself; the

fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

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

- (a) applying for and/or acquiring citizenship in any other country;
- (b) failure to report, or fully disclose when required, to an appropriate security official, the possession of a passport or identity card issued by any country other than the United States;
- (c) failure to use a U.S. passport when entering or exiting the U.S.;
- (d) participation in foreign activities, including but not limited to:
  - (1) assuming or attempting to assume any type of employment, position, or political office in a foreign government or military organization; and
  - (2) otherwise acting to serve the interests of a foreign person, group, organization, or government in any way that conflicts with U.S. national security interests;
- (e) using foreign citizenship to protect financial or business interests in another country in violation of U.S. law; and
- (f) an act of expatriation from the United States such as declaration of intent to renounce U.S. citizenship, whether through words or actions.

Applicant is a dual citizen of the United States and Finland. He exercised his Finnish citizenship by voting in a recent Finland Presidential election. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate foreign preference security concerns are described under AG ¶ 11. Five are potentially applicable:

- (a) the foreign citizenship is not in conflict with U.S. national security interests;
- (b) dual citizenship is based solely on parental citizenship or birth in a foreign country, and there is no evidence of foreign preference;
- (c) the individual has expressed a willingness to renounce the foreign citizenship that is in conflict with U.S. national security interests;

(d) the exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen; and

(e) the exercise of the entitlements or benefits of foreign citizenship do not present a national security concern.

None of these mitigating conditions apply. Applicant, through his Finnish Consulship; and participation in Finland's 2018 Presidential election, has shown a Foreign Preference.

### **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(d):

(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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant is well respected in his workplace and in his community. However, 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 the Foreign Influence and Foreign Preference security concerns.

### **Formal Findings**

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

Paragraph 1, Guideline B:

AGAINST APPLICANT

Subparagraphs 1.a~1.c:

For Applicant



Subparagraphs 1.d~1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraphs 1.j~1.k:	For Applicant
Paragraph 2, Guideline C:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	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 national security eligibility and a security clearance. Eligibility for access to classified information is denied.

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Richard A. Cefola  
Administrative Judge