

DATE: October 29, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-10701

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has done everything possible to renounce his foreign citizenship, and surrendered his foreign passport. He has no financial interest in the country of his birth. His mother and two sisters are citizens of and reside in the country of his birth. His brother is immigrating to Canada. There is no evidence that they are connected with any country's government, or are in position to be exploited by any country. Clearance is granted.

STATEMENT OF THE CASE

On December 26 2001, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an undated Answer to the SOR.

The case was received by the undersigned on August 21, 2002. A notice of hearing was issued on September 9, 2002, and the case was heard on October 8, 2002. The Government submitted documentary evidence. Testimony was taken from the Applicant, who called six witnesses to testify on his behalf. The transcript was received on October 16, 2002. The issues raised here are whether the Applicant's alleged foreign preference and perceived foreign influence militate against the granting of a security clearance.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 45 years of age, has a Bachelor of Science Degree from an American university, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

Guideline C - Foreign Preference

1.a.~1.c. The Applicant became a naturalized U.S. citizen in October of 1985 (Transcript (TR) at page 34 lines 12~16, and Government Exhibit (GX) 3 at page 2). Since becoming a U.S. citizen, he traveled to the country of his birth in 1992, 1995 and again in 2000 (TR at page 23 line 25 to page 24 line 14, at page 43 lines 23~25, and GX 3 at page 3). He used his Country A passport in 1992 and 1995, and his U.S. passport in 2000 to visit his ailing mother (*id*). He used his Country A passport in 1992 and 1995, as "it would have been suicidal" to use his U.S. passport (TR at page 24 lines 2~7). He has recently done everything possible to renounce his Country A citizenship, and has returned his Country A passport to that Country's Consulate (Applicant's Exhibits (AppXs) A and B).

1.d. and 1.e. As to financial interests in Country A, he has none (TR at page 36 line 15 to page 37 line 5, and page 44 lines 6~16). He gave one of his sisters, who reside in Country A, a Power of Attorney to settle their deceased father's affairs (*id*). The proceeds were used to purchase medicines for his ailing mother (*ibid*).

Guideline B - Foreign Influence

2.a. and 2.b. The Applicant's 82 year old mother and two sisters are citizens of and reside in Country A (TR at page 24 line 21 to page 25 line 3, at page 30 lines 7~12, and at page 42 line 1 to page 43 line 18). One sister owns a small toy shop and the other is a teacher. Neither of his sisters nor his mother have any connection to Country A's government, or are in a position to be exploited by Country A (*id*). His brother is a lawyer, who has been granted Canadian citizenship, and is in the process of immigrating to Canada (*ibid*). He is not in a position to be exploited by any foreign government.

Mitigation

The Applicant offered the testimony of six individuals who are his friends and associates (TR at page 10 line 25 to page 16 line 13, and at page 46 line 15 to page 68 line 17). They all think most highly of the Applicant, and would recommend him for a position of trust (*id*).

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. The conditions should be followed in every case according to the pertinent criterion, however, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case. Conditions most pertinent to evaluation of this case are:

Foreign PreferenceConditions that could raise a security concern:

1. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport;

Condition that could mitigate security concerns:

4. Individual has expressed a willingness to renounce dual citizenship.

Foreign InfluenceCondition that could raise a security concern:

1. An immediate family member . . . is a citizen of . . . a foreign country;

Condition that could mitigate security concerns:

1. A determination that the immediate family member(s), . . . are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States;

As set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must make out a case under Guideline C (foreign preference), and Guideline B (foreign influence), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference, or who is subject to a foreign influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

The Applicant has done everything possible to renounced his dual citizenship. In conjunction with this renunciation, he surrendered his foreign country passport to that country's consulate. Although he was forced to use his Country A passport to visit his ailing mother in 1992 and 1995, more recently, in 2000, he has begun to use his U.S. passport for trips to Country A. I therefore conclude that the Applicant has not only met but has clearly surpassed the requirement of the last mitigating condition under Guideline C, which merely requires that he "express a willingness to renounce dual citizenship." He is not now a dual national, but only a U.S. citizen with a U.S. passport. Guideline C is therefore found in his favor.

The Applicant's mother and two sisters are citizens of and reside in Country A. They have no connection with the government of the country of his birth; and there is no evidence that their presence in that country can be exploited by that government. In addition, I conclude that it would be unlikely that the Applicant would even consider any such attempt at exploitation. Guideline B is also found in the Applicant's favor.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his alleged foreign preference, and foreign influence. The Applicant has thus met the mitigating conditions of Guidelines B and C, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines B and C.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.

Paragraph 2: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge