

DATE: August 5, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-13067

## **DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Melvin A. Howry, Esquire, Department Counsel

#### **FOR APPLICANT**

Azin Shobeir Rassaian, Personal Representative

### **SYNOPSIS**

The Applicant has renounced his foreign citizenship and surrendered his foreign passport. His three siblings have either received permanent residence status in the U.S., or have been approved for permanent residence status. He has sold his \$6,000 foreign real-estate interest. Clearance is granted.

### **STATEMENT OF THE CASE**

On April 1, 2002, 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 Answer to the SOR on April 23, 2002.

The case was received by the undersigned on June 13, 2002. A notice of hearing was issued on June 17, and the case was heard on July 11, 2002. The Government submitted documentary evidence, four exhibits. Testimony was taken from the Applicant, who called one witness on his behalf, and submitted 18 exhibits into evidence.. The transcript was received on July 19, 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 52 years of age, has a Ph. D in Applied Mechanics, 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 January of 1986 (Transcript (TR) at page 53 lines 20~23, and Government Exhibit (GX) 4 at page 1). He held dual citizenship, however, and traveled to the country of his birth using that foreign country's passport in 1986, 1993 and 1999 (TR at page 49 line 9 to page 50 line 8, at page 64 line 9 to page 65 line 4, at page 71 lines 3~22, and Applicant's Exhibits (AppXs) A, E and F). He used his foreign passport when traveling there, as he was afraid that his U.S. passport would be confiscated (*id*). Since his last trip, he has recently renounced his foreign citizenship and surrendered his foreign passport (TR at page 47 lines 4~11, at page 50 line 9 to page 51 line 7, at page 74 lines 5~20, and AppXs A and P).

Guideline B - Foreign Influence

2.a. Two of the Applicants three sisters have received permanent residence status in the U.S., and are settling their affairs in the land of their birth before moving permanently to the U.S. (TR at page 42 line 19 to page 43 line 1, at page 57 line 8 to page 58 line 23, at page 79 lines 8~22, and AppX J). His youngest sister has been approved for permanent residence status, but has yet to receive her green card (*id*). His three siblings have no connection with any foreign government (TR at page 74 line 21 to page 76 line 13).

2.b. The Applicant has sold his \$6,000 interest in an orchard in the country of his birth (TR at page 44 line 9 to page 46 line 3, at page 56 lines 11~22, at page 68 lines 9~24, at page 76 lines 14~24, and AppX L). His net worth in the U.S. is in excess of \$600,000 (AppX M).

Mitigation

Those who work with or supervise the Applicant think highly of him, and recommend him for a position of trust (AppX Q).

**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 and seriousness of the conduct and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age 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 renounced his dual citizenship. In conjunction with this renunciation, he has also surrendered his foreign passport to the interest section, in another country's embassy, that represents the interests of the country of his birth in the U.S.. 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." Guideline C is therefore found in his favor.

As to what foreign influence his three siblings may have over the Applicant, I can find none. They all have received or been approved for permanent resident status in the U.S. As to any financial interest in the land of his birth, he has sold his \$6,000 property interest. Guideline B is also found for the Applicant.

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.

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