

DATE: September 9, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-13600

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esquire, Department Counsel

**FOR APPLICANT**

Robert E. Carey, Jr., Esquire, Applicant's Counsel

**SYNOPSIS**

The Applicant has renounced his foreign citizenship, and had previously destroyed his foreign passport. His parents and a brother, who live in the country of his birth, have no connection with that country's government, and are not in a position to be exploited by that government. Clearance is granted.

On February 19, 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 March 25, 2002.

The case was received by the undersigned on May 31, 2002. A notice of hearing was issued on June 17, 2002, and the case was heard on July 24, 2002. The Government submitted documentary evidence, in the form of four exhibits. Testimony was also taken from the Applicant, who submitted three exhibits. The transcript was received on July 31, 2002. The record, however, was left open until August 30, 2002, for the receipt of additional documentation. 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 47 years of age, has a Ph. D in Aeronautics, 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 December of 1990 (Government Exhibit (GX) 2 at page 1). He held a dual citizenship, however, and traveled to the country of his birth on about six occasions, using both his U.S. and foreign country passport (Transcript (TR) at page 28 line 1 to page 30 line 12, at page 48 lines 14~23, GX 1, and Applicant's Exhibit (AppX) B). He used his U.S. passport to enter and exit the country of his birth, and his foreign country passport to stay there for an extended period of time (*id*). In 1999, a "DoD investigator" appraised the Applicant that maintenance of a foreign country passport could affect the Applicant's security clearance; and as a result, the Applicant destroyed his foreign country passport (TR at page 27 lines 10~25, at page 35 lines 5~24, and GX 1). He most recently traveled to the country of his birth in August of 2000, using only his U.S. passport (TR at page 29 line 21 to page 30 line 5, and AppX B).

1.d. and 1.e. The Applicant had a bank account in the country of his birth with about \$20 in it (GX 3 at page 2). At present, the Applicant has absolutely no access to this account, and is unsure it even exists. He states, ". . . I don't have any records, any papers showing that I have [an] account in . . . [the country of his birth]. I don't remember which bank. I don't remember the account number" (TR at page 32 lines 5~7). The Applicant does not own any property in the country of his birth. He may, however, inherit a house in that country, worth about \$100,000, upon the demise of

his parents (TR at page 32 line 11 to page 34 line 18). His present net worth in the U.S. is over \$1,500,000 (TR at page 19 line 17 to page 20 line 5).

### Guideline B - Foreign Influence

a. The Applicant's parents, and one of his three brothers, live in the country of his birth (TR at page 24 line 8 to page 25 line 7). They have no connection, what so ever, with the government of the country of the Applicant's birth (*id*). His two other brothers are naturalized U.S. citizens, and reside in the U.S. (TR at page 23 line 10 to page 24 line 6).

### Mitigation

Those who work with the Applicant think highly of him, and recommend him for a position of trust (AppX C at tab E the last 6 pages).

## **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 Preference

#### Conditions 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 Influence

#### Condition 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 destroyed his foreign country passport years ago. When he traveled to the country of his birth, he only used his foreign country passport to stay in that country for an extended period of time. He always used his U.S. passport when entering or exiting that country. His last trip to the country of his birth was in August of 2000, and he only used his U.S. passport. Furthermore, the Applicant has only a minimal property interest in the country of his birth, far outweighed by his financial interests 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." He is not a dual national, but only a U.S. citizen. Guideline C is therefore found in his favor.

As to what foreign influence his parent and sibling brother may have over the Applicant, I can find none. They have no

connection, whatsoever, with the government of the country of his birth; and there is absolutely 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.

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