

DATE: October 29, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-16533

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Esquire, Department Counsel

FOR APPLICANT

Willie Wang, Esquire, Applicant's Counsel

SYNOPSIS

The Applicant has renounced her foreign citizenship, and has surrendered her foreign passport to that country's representative. Her husband has also renounced his foreign country citizenship. Her half-sister resides in the U.S. and is in the process of becoming a U.S. citizen. Her mother-in-law is a housewife, resides in the foreign country of the Applicant's birth, and is not in a position to be exploited by that country's government. The Applicant also answered her 1999 Questionnaire for National Security Positions (QNSP) truthfully, as she did not believe she was a dual national. Clearance is granted.

STATEMENT OF THE CASE

On May 20, 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 June 12, 2002.

The case was received by the undersigned on August 13, 2002. A notice of hearing was issued on September 11, 2002, and the case was heard on September 30, 2002. The Government submitted documentary evidence, and called one witness to testify. Testimony was taken from the Applicant, who submitted exhibits on her own behalf. The transcript was received on October 15, 2002. The issues raised here are whether the Applicant's alleged foreign preference, perceived foreign influence, and related personal conduct 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 43 years of age, has a master's 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.f. The Applicant became a naturalized U.S. citizen in 1989 (Transcript (TR) at page 28 lines 2~6). When she became a U.S. citizen, under the laws of her native country, Country A, she renounced her Country A citizenship (TR at page 42 line 17 to page 43 line 3, and Applicant's Exhibit (AppX) H). She was never asked to surrender her Country A passport. To avoid any confusion, however, she has again renounced her Country A citizenship and has returned her Country A passport to that country's representative in the U.S. (TR at page 69 lines 9~18, and AppXs A and B).

The Applicant's husband and his family are susceptible to a rare form of cancer that is prevalent in Country A (TR at page 32 line 9 to page 35 line 13, *see also* AppXs D and E). Early detection of this cancer is essential to survival, and Country A physicians are practiced in its detection (*id*). Her husband did, in fact, contract this cancer in 1997, and with early detection, was cured (*ibid*). As a result of the cancer threat, the Applicant renewed her Country A passport in 1992 and again in 1997, which permitted her and her family to live in Country A for about 63 months, off and on, during the years 1992~1999 (TR at page 28 lines 7~22, at page 30 line 6 to page 32 line 5).

During her residence in Country A, she was employed by an aerospace firm for three months in 1993 (TR at page 35 line 14 to page 36 line 3, at page 56 lines 1~23, and at page 72 lines 7~10). This aerospace firm was a private company, and had no connection with the government of Country A (*id*). During her residence in Country A, she also acquired two pieces of property, with a combined value of about \$150,000 (TR at page 45 line 11 to page 52 line 1, and at page 69 line 24 to page 70 line 7). She pays \$800 in property taxes each year on the two properties, and has been trying to sell them, but the real-estate market in Country A is depressed (*id*). Her net worth of property in the U.S. is about \$1,350,000 (TR at page 89 line 4 to page 90 line 16).

Guideline B - Foreign Influence

2.a~2.d. The Applicant's husband has recently renounced his Country A citizenship and has returned his Country A passport to that country's representative in the U.S. (TR at page 58 line 17 to page 59 line 7, and AppX F). Her father is dead, and her mother abandoned the Applicant when she was 10 years old (TR at page 24 line 22 to page 26 line 15). She has not seen her natural mother since she was abandoned (*id*). Her half-sister resides in the U.S. and is in the process of becoming a U.S. citizen (TR at page 61 lines 6~18, and AppX G). Her mother-in-law is a housewife, resides in Country A, and is not in a position to be exploited by that country's government (TR at page 60 line 12 to page 61 line 5).

Guideline E - Personal Conduct

3.a. ⁽¹⁾ The Applicant testified credibly that when she answered question 3 on her December 10, 1999, QNSP, she answered the question truthfully and to the best of her knowledge and belief (Government Exhibit (GX) 1 at page 1). The question asks, "Are you now or were you a dual citizen of the U.S. and another country?" (*id*). The Applicant answered "NO" as she thought, in part, that she had renounced her Country A citizenship when she became a U.S. citizen (TR at page 42 line 17 to page 43 line 3). This understanding, in fact, comports with Country A's laws (AppX H).

Mitigation

The Applicant testified candidly and truthfully throughout the hearing.

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;
4. Accepting . . . medical or other benefits . . . from a foreign country;

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;

Personal Conduct

Conditions that could raise a security concern:

None

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), Guideline B (foreign influence) and Guideline E (personal Conduct), 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 her 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 her dual citizenship, first when she became a U.S. citizen, and again most recently to dispel any confusion as to her citizenship. In conjunction with this second renunciation, she surrendered her foreign country passport to that country's representative. 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 she "express a willingness to renounce dual citizenship." She is not a dual national, but only a U.S. citizen with a U.S. passport. Guideline C is therefore found in her favor.

Most of the Applicant's immediate family are U.S. citizens, or in the case of her half-sister is in the process of obtaining U.S. citizenship, and reside in the U.S. As to what foreign influence her mother-in-law may have over the Applicant, I can find none. She has no connection with the government of the country of Applicant's birth; and there is no evidence that her 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.

As to the alleged falsification, I can find no falsification here. The Applicant's response to question 3 on her 1999 QNSP was a reasonable response to the question posited. Under the laws of Country A, and in her own mind, she renounced her Country A citizenship when she took the oath of allegiance to the U.S.; and as such, she was not and is not a dual national.

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

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.

f. For the Applicant.

Paragraph 2: FOR THE APPLICANT

a. For the Applicant.

b. For the Applicant.

c. For the Applicant.

d. For the Applicant.

Paragraph 3: 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

1. The SOR, mistakenly, also styles this subparagraph as 2.a., but it is in fact 3.a.