

DATE: September 24, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-18015

## **DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Martin H. Mogul, Esquire, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

The Applicant has renounced his foreign citizenship, and has surrendered his foreign passport to that country's representative. He served in the Army of the country of his birth prior to emigrating to the U.S. His wife, mother, daughter, and two of his three siblings are citizens of and reside in the U.S. His third sibling and in-laws are citizens of and reside in the country of Applicant's birth. There is no evidence that they are connected with that country's government, or are in a position to be exploited by that government. Clearance is granted.

### **STATEMENT OF THE CASE**

On May 21, 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 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 6, 2002.

Applicant elected to have this case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on July 30, 2002. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received his copy on August 7, 2002, and Applicant's reply was received on or about August 9, 2002. The case was received by the undersigned for resolution on September 17, 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 File of Relevant Material and

Applicant's Response. The Applicant is 50 years of age, has a Ph. D 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 July of 1999 (Government Exhibit (GX) 3 at page 5). Prior to emigrating to the U.S., he served in the Army of the country of his birth as a result of its "mandatory service" requirements (GX 5 at page 2). Although the Applicant held a foreign passport, he did not use it after becoming a U.S. citizen. On July 8, 2002, the Applicant renounced his foreign citizenship, and surrendered his foreign passport to that country's representative (Response at pages 2 and 4).

### Guideline B - Foreign Influence

2.a.~2.f. The Applicant's wife, mother, daughter and two of his three siblings are citizens of and reside in the U.S. (3 at pages 1, 3, 4, 6 and 7). His American brother is a Professor at an American college, and his American sister owns an American business (GX 5 at page 3). The Applicant's third sibling "is a self-employed engineer," who is a citizen of and resides in the country of Applicant's birth (GX 5 at page 2). He only contacts this foreign national sibling "once or twice a year by telephone" during the "holidays, such as Christmas and New Years" (*id*). His in-laws are also citizens of and reside in the country of Applicant's birth (GX 4 at page 4). There is no evidence that any of his foreign relations are connected with that country's government, or are in a position to be exploited by that government.

### Mitigation

Almost immediately after receipt of the SOR, the Applicant set in motion the process by which he could renounce his foreign country citizenship (GX 3 at page 1). He accomplished his stated objective less than two months after the issuance of the SOR (Response at page 1).

## **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:

2. Possession and/or use of a foreign passport;
3. Military service . . . for a foreign country;

#### Conditions that could mitigate security concerns:

2. Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship;
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, 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 renounced his dual citizenship. In conjunction with this renunciation, he surrendered his foreign country passport to that country's representative. Although he performed "mandatory service" in the Army of the country of his birth, since becoming a U.S. citizen, he has little contact with that country. There is also absolutely no evidence that he ever traveled to that country, or any other country, using his foreign passport, since becoming a U.S. citizen. 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 with a U.S. passport. Guideline C is therefore found in his favor.

Most of the Applicant's immediate family are citizens of and reside in the U.S. As to what foreign influence his brother

and in-laws may have over the Applicant, I can find none. 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.

Paragraph 2: 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.

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