

DATE: September 30, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-18961

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant is a dual national, who fully intends to retain her dual citizenship, and has offered no evidence that she has "surrendered" her foreign passport, as required by the *Money Memo*. She has also offered no evidence that her foreign relatives are not agents of or in a position to be exploited by a foreign power. Clearance is denied.

STATEMENT OF THE CASE

On April 10, 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 May 9, 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 June 21, 2002. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received her copy on July 1, 2002, and Applicant's reply was received on or about July 15, 2002. The case was received by the undersigned for resolution on September 20, 2002. The issues raised here are whether the Applicant's 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 33 years of age, 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 was born in Country A, immigrated to the United States about 1994, and became a U.S. citizen in 1998 (Item 4 at page 1, and Item 5 at page 1). The Applicant is thus a dual citizen of Country A and of the United States (*id*). She has maintained her Country A passport since becoming a U.S. citizen, and has also renewed it since becoming a U.S. citizen (Item 5 at page 2). In April of 1999, she traveled to Country A, using her Country A passport. In a sworn statement executed on February 15, 2000, the Applicant averred, "I declared dual citizenship because I am proud of my . . . [Country A] heritage and want to maintain strong ties to . . . [Country A]" (Item 5 at page 1). She further avers, "I would not be willing to renounce my . . . [Country A] citizenship or relinquish my . . . [Country A] passport if it were to become a condition of access" (Item 5 at page 2). She also states, "I owe my national allegiance to both to the US and . . . [Country A]" (*id*). Finally, in her one page Response to the Government's FORM, the Applicant admits "I will inherit a parcel of land in . . . [Country A] upon disposition of my deceased father's estate. However, even though I do not know the exact value of the property, I do know it is not of substantial value."

Guideline B - Foreign Influence

2.a.~2.i. The Applicant's husband, sister and father-in-law are dual citizens of Country A and of the United States (Item 4 at pages 5 and 6, and Item 5 at page 1). The Applicant's other siblings, two sisters and a brother, two nephews, a niece and an aunt are all foreign nationals and reside outside of the United States (Item 4 at pages 5 and 6, and Item 5 at page 4).

Mitigation

In her Response, the Applicant avers the following:

I recently learned that, as a . . . [Country A] citizen, I do not need a visa anymore to enter . . . [Country A] when visiting, if I do not possess a . . . [Country A] passport. As such, I do not foresee a need to maintain a . . . [Country A] passport, as I could use my US passport to travel to . . . [Country A] without having to obtain a visa.

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;

Conditions that could mitigate security concerns:

none

Foreign InfluenceCondition that could raise a security concern:

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

Conditions that could mitigate security concerns:

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) 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 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 or situation, 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 is a dual citizen of Country A and of the United States. She has expressed allegiance to Country A, in conjunction with her allegiance to the U.S. She has also traveled to Country A, using his Country A passport, in 1999. Despite being appraised of the *Money Memo* ("Guide to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudication Guidelines," dated September 1, 2000) (FORM at page 3), the Applicant only intimates that she does not see the need to "maintain" her Country A passport, but she apparently still maintains it. In light of the *Money Memo*, Guideline C must be found against the Applicant.

As to her foreign relatives who reside outside of the United States, the Applicant has failed to offer any evidence that they "are not agents of a foreign power or [not] in a position to be exploited by a foreign power," as required by the first mitigating condition under Foreign Influence. Therefore, Guideline B is also found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding her foreign preference. The Applicant has thus not met the mitigating conditions of Guidelines B and C, and of Section E.2.2. of the Directive.

Accordingly, she has not met her 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: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.

Paragraph 2: AGAINST THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. For the Applicant.
- f. Against the Applicant.
- g. Against the Applicant.
- h. Against the Applicant.
- i. Against 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 not clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge