

DATE: May 20, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-19960

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant is not and was not a dual citizen; and as such, he never held a valid foreign passport while a U.S. citizen. His family and friends, who are foreign nationals, are not agents of a foreign power, nor are they in a position to be exploited by a foreign power. Clearance is granted.

**STATEMENT OF THE CASE**

On December 31, 2001, 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 January 23, 2002.

The case was received by the undersigned on March 12, 2002. A notice of hearing was issued on March 27, 2002, and the case was heard on May 1, 2002. The Government submitted documentary evidence, and called one witness to testify. Testimony was taken from the Applicant. The transcript was received on May 9, 2002. The issues raised here are whether the Applicant's alleged foreign preference and perceived foreign influence militates 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 33 years of age, has a master's Degree, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

Guideline C - Foreign Preference

1.a. The Applicant was born in the Republic of Korea (South Korea) in 1968, but immigrated to the U.S. with his parents and siblings in 1987 (Transcript (TR) at page 22 lines 7~18). He has lived in the U.S. for the last 15 years (*id*), although the rest of his family has returned to South Korea (TR at page 27 lines 2~4). The Applicant became a U.S. citizen in 1997 (TR at page 32 lines 19~21). When he became a U.S. citizen, he lost his South Korean citizenship (TR at page 32 lines 22~25, at page 33 lines 10~19, *see also* Applicant's Exhibit (AppX) A). Although he still held a current South Korean passport, that passport was not valid as he was no longer a South Korean citizen (AppX A). Since becoming a U.S. citizen, he never used the South Korean passport, and has returned it to the South Korean Consulate (TR at page 33 lines 1~9, and AppX A).

Guideline B - Foreign Influence

1.a.~1.c. As stated earlier, the Applicant parents and siblings have returned to South Korea. They are all citizens of South Korea. His mother is a housewife and has no connection with the government of South Korea (TR at page 33 line 23 to page 34 line 7). The Applicant's father is a doctor and has no connection with South Korea's government (TR at page 34 lines 8~17). The Applicant has two sisters, one is a housewife and the other a doctor (TR at page 34 line 18 to page 35 line 1). Neither sister has any connection with the government of South Korea (TR at page 25 lines 2~5).

The Applicant's grandmother is a citizen of and resides in South Korea (TR at page 35 lines 6~9). She is 83 years old, helps his mother with housework, and has no connection with South Korea's government (TR at page 35 lines 9~11). His in laws are both citizens of and reside in South Korea (TR at page 35 lines 22~25). His mother-in-law is a retired school teacher and has no connection with the government of South Korea (TR at page 36 lines 13~18). His father-in-law is a high school teacher, and that is the only arguable connection he has with South Korea's government (TR at page 36 lines 1~12). The Applicant has other family members and friends who are citizens of and reside in South Korea. None have any connection with its government (TR at page 36 lines 19~24).

The Applicant's spouse, who is a citizen of South Korea, is a permanent resident of the U.S., and is in the final stages of her U.S. citizenship application (TR at page 36 line 25 to page 37 line 6). She has no connection with the government of South Korea (TR at page 37 lines 7~10).

**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 PreferenceCondition that could raise a security concern:

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 was not and is not now a dual citizen. When he became a U.S. citizen, he lost his South Korean Citizenship. After becoming a U.S. citizen, he did possess a current but invalid South Korean passport. That passport was never used by the U.S. citizen, and has been returned to the South Korean Consulate. I conclude that he has not only met but has clearly surpassed the requirement of the mitigating condition under Guideline C, which merely requires that he "express a willingness to renounce dual citizenship." He renounced his South Korean citizenship when he became an American; and as such, was never a dual citizen.

As to what foreign influence his friend and family may have over the Applicant, I can find none. Except for his father-in-law, who is a high school teacher, they have no connection whatsoever with the government of South Korea.

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.

Paragraph 2: FOR THE APPLICANT

a. For the Applicant.

b. For the Applicant.

c. 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