

DATE: November 7, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-00661

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant is a dual citizen of the United States and of Greece; and as such, admits allegiance to both countries. He travels to Greece on a yearly basis using a Greek passport, but since December of 2000 has let his Greek passport expire. He owns stock and property in Greece, may have to serve in the Greek Army, and plans to live in Greece when he retires. He also has a cousin who is an officer in the Greek Air Force, and a friend who is an electronic technician for the Greek Air Force. As the Applicant has demonstrated a foreign preference for Greece, and the possibility of influence through his cousin and friend, his employer's request for a security clearance on his behalf is denied. Clearance is denied.

STATEMENT OF THE CASE

On June 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 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 July 19, 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 September 11, 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 September 19, 2002, and Applicant's Reply was received on or about October 16, 2002. The case was received by the undersigned for resolution on November 1, 2002. The issues raised here are whether the Applicant's foreign preference and possible 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 File of Relevant Material and Applicant's Response. The Applicant is 30 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., 1.g. and 1.i. The Applicant was born in the United States to parents who were dual citizens of the United States and of Greece (Government Exhibit (GX 6 at page 1). At age 7 he was taken back to Greece, where he lived until age 17 as a dual national (*id*). At the age of 17, he went to the U.S. embassy, obtained a U.S. passport, and returned to the U.S. (*ibid*). He travels to Greece on a yearly basis, and used his Greek passport to travel there until that passport expired in December of 2000 (GX 6 at pages 2 and 3). His present intention is not to renew his Greek passport (GX 4 at page 3, and Reply at page 3).

1.b.~1.e., and 1.h. He admits equal allegiance to both the U.S. and to Greece (Reply at page 2). He is subject to six months of military service in the Greek Army, but would not bear arms against the United States (GX 4 at pages 4 and 6, GX 6 at page 1, and Reply at page 2). Through his father, he owns property and stock in Greece, and the Applicant plans to live in Greece when he retires (GX 6 at page 3, and Reply at pages 3~4).

Guideline B - Foreign Influence

2.a. The Applicant's parents are dual nationals, as previously mentioned, and both now live in Greece (GX 6 at pages 2 and 3). His father is a retired physician, and his mother is a homemaker (*id*).

2.b. The Applicant's cousin is an officer in the Greek Air Force (GX 6 at page 2, and Reply at page 4).

2.c. The Applicant's friend is an electronics technician for the Greek Air Force (GX 6 at page 2).

Mitigation

The country to which the Applicant admits equal allegiance to is a long-term ally of the U.S.

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;
3. Military service or a willingness to bear arms for a foreign country;
9. . . . acting, so as to serve the interests of another government in preference to interests of the United States.

Conditions that could mitigate security concerns:

None

Foreign Influence

Conditions that could raise a security concern:

1. An immediate family member . . . is a citizen of . . . a foreign country;
3. Relatives . . . or associates who are connected with any foreign government;
8. A substantial financial interest in a country

Condition that could mitigate security concerns:

1. A determination that the immediate family members, (. . . father, mother . . .) . . . are not agents of a foreign power or in position to be exploited by a foreign power

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 Greece and of the United States, he states that he bears equal allegiance to both countries, and he retains an expired Greek passport. 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) (GX 5), he has expressed no intention to surrender that passport. Furthermore, he not only pledges dual allegiance to another country, but he also has a financial interest there and plans to retire in Greece. This shows some preference for Greece over the interests of the United States; and as such, he can not expect to be intrusted with a security clearance from the United States. Guideline C must be found against the Applicant.

As to his parents who reside outside of the United States, the Applicant has demonstrated that his immediate family members "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. The same can not be said, however, for his cousin and a friend who are members of or work for the Greek Air Force. The Applicant has failed to demonstrate that they could not exert a foreign influence over him. Therefore, Guideline B is also found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his 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, he has not 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: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.
- c. For the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.
- g. Against the Applicant.
- h. Against the Applicant.
- i. Against the Applicant.

Paragraph 2: AGAINST THE APPLICANT

- a. For the Applicant.
- b. Against the Applicant.
- c. 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