

DATE: June 18, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-00606

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant's oldest sister is a citizen of the United States and of Japan, but lives in Japan. She is a professor at a private university. His brother-in-law is a citizen of Japan, and is a software engineer. His sister and brother-in-law have three children, ranging in ages from one to four years of age. The children are also dual nationals. The Applicant's best friend is a U.S. citizen, but resides in Japan. He works at a private university as an administrator. There is no evidence that any member of the Applicant's family or his friend have any connection with a foreign government or is in a position to be exploited by any government. Clearance is granted.

**STATEMENT OF THE CASE**

On February 27, 2003, 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 March 24, 2003.

The case was received by the undersigned on April 21, 2003. A notice of hearing was issued on April 26, 2003, and the case was heard on May 16, 2003. The Government submitted documentary evidence. Testimony was taken from the Applicant. The transcript was received on May 29, 2003. The issues raised here are whether the Applicant's perceived foreign influence militates against the granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations.]

**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 32 years of age, has a Bachelor of Science Degree, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

### Guideline B - Foreign Influence

The Applicant was born and raised in the United States, where he currently resides (Transcript (TR) at page 13 lines 13~17, and Government Exhibit (GX) 1 at page 1).

1.a.~1.e. The Applicant's oldest sister resides in Japan as a dual national, American and Japanese (TR at page 13 line 18 to page 16 line 7, at page 18 lines 4~18, and GX 1 at page 3). She is a professor at a private university, and is married to a Japanese national who is a software engineer (*id*). They have three children, ranging in ages from one to four years of age, and the children are dual nationals (*ibid*). The Applicant's sister and her children visit the U.S. about three times a year, staying with the Applicant's American parents (TR at page 16 lines 8~17, and GX 1 at pages 1~2).

1.f. The Applicant's best friend is a U.S. citizen who lives in Japan (TR at page 18 line 19 to page 20 line 8). He is an administrator for a private university in Japan (*id*). He is married to a Japanese national (*ibid*).

### Mitigation

The Applicant is a valued asset to his employer (Applicant's Exhibit (AppX) A).

## **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 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 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 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's oldest sister resides in Japan. She is a dual national, married to a Japanese national. Both work in the private sector, his sister as a university professor and his brother-in-law as a software engineer. They have three minor children. Neither his sister nor his in-law have any connection with any government, and there is no evidence that their presence in Japan can be exploited by any government. As to his best friend, who is an American residing in Japan, he is a university administrator. He also has no connection with any government, nor is there any evidence that his presence in Japan can be exploited by any government. In addition, I conclude that it would be unlikely that the Applicant would even countenance any such attempt at exploitation of any of his Japanese relatives or of his American friend. Guideline B is thus found in the Applicant's favor.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his alleged foreign influence. The Applicant has thus met the mitigating conditions of Guideline B, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

### **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.

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