

DATE: May 19, 2003

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 02-03507

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant is a U.S. citizen. She has renounced her Taiwanese citizenship and surrendered her Taiwanese passport. She has never used her Taiwanese passport since becoming a U.S. citizen. The Applicant's retired parents are citizens of and residents of Taiwan. One of her sisters is also a citizen of Taiwan, but resides in the U.S. There is no evidence that the Applicant's parents or sibling are connected with any country's government, or are in a position to be exploited by any government. Her other two sisters are U.S. citizens, and reside in the U.S. Clearance is granted.

**STATEMENT OF THE CASE**

On January 8, 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 February 3, 2003.

The case was received by the undersigned on March 19, 2003. A notice of hearing was issued on March 31, 2003, and the case was heard on April 17, 2003. The Government submitted documentary evidence. Testimony was also taken from the Applicant. The transcript was received on May 2, 2003. The issues raised here are whether the Applicant's alleged foreign preference and perceived foreign influence militate against the granting of a security clearance. [The Applicant denies most 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 27 years of age, has a "Masters Degree in Science and Electric Engineering" from an American university,

and is employed by a contractor who seeks a security clearance on behalf of the Applicant.

### Guideline B - Foreign Influence

1.a.~1.c. The Applicant's parents are citizens of and reside in Taiwan (Transcript (TR) at page 15 line 23 to page 16 line 17, and at page 17 lines 17~24). Her father is 60 years of age, owned a jewelry store, but is now retired (*id*). Her mother is 51 years of age and is also retired (*ibid*). One of the Applicant's sisters is a citizen of Taiwan, but resides in the U.S. (TR at page 16 line 19 to page 17 line 16). She works at an "Import/Export Company" (*id*). She has resided in the U.S. "for over ten years," and has applied for U.S. citizenship (*ibid*). The Applicant's other two sisters are U.S. citizens and reside in the U.S. (TR at page 18 line 2 to page 19 line 2, at page 20 line 20, and Applicant's Exhibit (AppX) C).

### Guideline C - Foreign Preference

2.a. and 2.b. The Applicant became a naturalized U.S. citizen in September of 1999 (Government Exhibit (GX) 1 at page 1). After becoming a U.S. citizen, she never used her Taiwanese passport, although she retained it as no one told her she had to relinquish it (TR at page 23 line 14~25, at page 22 line 20 to page 23 line 11, and at page 25 line 4 to page 26 line 3). She

has since renounced her Taiwanese citizenship and surrendered her Taiwanese passport (*id*, and AppX B).

### Mitigation

The Applicant's "department supervisor" speaks most highly of the Applicant (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 Preference

#### Condition 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 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 her Taiwanese citizenship and surrendered her Taiwanese passport. Although she retained her Taiwanese passport after becoming a U.S. citizen, she never used it. Once being appraised of the Government's concern, she surrendered it. I therefore conclude that the Applicant has not only met the proscription of the *Money Memo*, but has also clearly surpassed the requirement of the last mitigating condition under Guideline C, which merely requires that she "express a willingness to renounce dual citizenship." She is no longer a dual national, but only a U.S. citizen with a U.S. passport. Guideline C is therefore found in her favor.

The Applicant's retired parents are citizens of and reside in Taiwan. Her sister, although still a Taiwanese citizen, has lived in the U.S. for more than a decade. Neither her parents nor her sister have any connection with any government, and there is no evidence that her parent's presence in Taiwan 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. Guideline B is also found in the Applicant's favor.

Considering all the evidence, the Applicant has rebutted the Government's case regarding her 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, she has 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: 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.

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