

DATE: June 17, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-04592

## **DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Melvin A. Howry, Esquire, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

When the Applicant became a U.S. citizen in 1999, he lost his Chinese citizenship. Although he physically retained his Chinese passport, it has been cancelled by the Chinese consulate. Since becoming a U.S. citizen, the Applicant has only traveled to China on a U.S. passport. His mother and mother-in-law are both citizens of and presently reside in China. His mother is a retired nurse, and his mother-in-law a retired professor. Both are seeking to immigrate to the U.S. Two of his brothers are citizens of and reside in China. Both brothers work for private companies. Another brother is a citizen of and resides in Canada. There is no evidence that any member of the Applicant's family has 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 December 18, 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 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 or about February 7, 2003.

The case was received by the undersigned on March 31, 2003. A notice of hearing was issued on April 15, 2003, and the case was heard on May 12, 2003. The Government submitted documentary evidence, and testimony was taken from the Applicant. The transcript was received on May 28, 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 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 48 years of age, has a Ph. D. in electrical engineering, and is employed by a defense contractor who seeks a security clearance on behalf. 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 C - Foreign Preference

1.a. The Applicant first came to the U.S. in 1989, to attend graduate school (Transcript (TR) at page 24 line 18 to page 35 line 3). He obtained permanent residence status in 1993, and was naturalized in 1999 (TR at page 28 line 18~21, at page 35 lines 11~17, and Applicant's Exhibit (AppX) A at Attachment 10). When he became a U.S. citizen, the Applicant renounced his Chinese citizenship (TR at page 22 lines 18~20). Since becoming a U.S. citizen, he has only used a U.S. passport to travel (TR at page 21 lines 6~12, *see also* Government Exhibit (GX) 5 and AppX A at Attachment 11). He has tendered his Chinese passport to the Chinese consulate, and it has been "cancelled" (TR at page 39 lines 13~23, at page 40 line 24 to page 41 line 13, and AppX A at Attachment 11).

### Guideline B - Foreign Influence

2.a. and 2.b. The Applicant's mother is a citizen of and resides in China (TR at page 23 line 15 to page 24 line 10, and at page 41 line 23 to page 43 line 3). She "is in her 70's," and a retired nurse (*id*). She worked for a private organization (*ibid*). The Applicant has petitioned for her to become a permanent resident in the U.S. (TR at page 48 line 5 to page 49 line 11, and AppX A at Attachment 12). The Applicant's mother-in-law is a citizen of and resides in China (TR at page 24 lines 11~22, and at page 43 lines 4~15). She "is in her 80's," and is a retired university professor (*id*). She taught at a private university (*ibid*). The Applicant has also petitioned for her to become a permanent resident in the U.S. (TR at page 48 line 5 to page 49 line 11, and AppX A at Attachment 12).

2.c. and 2.d. Two of the Applicant's three brothers are citizens of and reside in China (TR at page 25 lines 8~25, and at page 43 line 24 to page 44 line 23). His older brother "works with fishponds" in the agricultural sector for "a small, private company" (TR at page 43 line 24 to page 44 line 10). His middle brother works with computers, also with a "private company" (TR at page 44 lines 11~20). The Applicant's younger brother is a citizen of and resides in Canada (TR at page 26 lines 1~12, and at page 24 line 24 to page 45 line 8). "He's a computer IT system engineer" for a private firm (*id*).

### Mitigation

The Applicant is highly thought of in the field of electrical engineering, and has received numerous accolades for his work (AppX A at Attachments 3~8).

## **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 . . . 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 disqualifying 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**

When the Applicant became a U.S. citizen in 1999, he lost his Chinese citizenship. Although he physically retained his Chinese passport, it has been cancelled by the Chinese consulate. Since becoming a U.S. citizen, the Applicant has only traveled to China on a U.S. passport. I therefore conclude that the Applicant has not only met but has clearly surpassed the requirement of the last mitigating condition under Guideline C, which merely requires that he "express a willingness to renounce dual citizenship." He was never a dual national, and is now only a U.S. citizen with a U.S. passport.

Guideline C is therefore found in his favor.

The Applicant's mother and mother-in-law are both citizens of and presently reside in China. His mother is a retired nurse, and his mother-in-law a retired professor. Both are seeking to immigrate to the U.S. Two of his brothers are citizens of and reside in China. Both brothers work for private companies. Another brother is a citizen of and resides in Canada. He also works for a private firm. None of the Applicant's immediate family are presently connected with any government, and there is no evidence that their presence in China or Canada can be exploited by any government. In addition, I conclude that it would be unlikely that the Applicant would even consider 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 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.

d. 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