

DATE: June 25, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-05458

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant, by her own admission, still owes in excess of \$4,100 in past due indebtedness. She is a dual citizen, of both the United States and of Mexico, and retains a Mexican passport. Although her Mexican spouse is not a foreign influence vis-a-vis the Applicant, her dual nationality and possession of a foreign passport shows an unquestioned foreign preference. The Applicant has explained away her alleged personal conduct, but her financial situation and foreign preference militate against the granting of a security clearance. Clearance is denied.

STATEMENT OF THE CASE

On January 15, 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 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 18, 2003

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 April 9, 2003. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received her copy on April 24, 2003, and submitted nothing in reply. The case was received by the undersigned for resolution on May 28, 2003. The issues raised here are whether the Applicant's financial difficulties, foreign preference, perceived foreign influence, and alleged personal conduct militate against the granting of a security clearance. [The Applicant admits the factual basis for all of the allegations, with comments.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, and the File of Relevant Material. The Applicant is 44 years of age, 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.

Financial Considerations

1a.~1.e. The Applicant, by her own admission, owes in excess of \$4,100 in past due indebtedness to two separate creditors (Government Exhibit (GX) 3 at page 9, GX 5 at pages 9~10, and GX 12). In her June 2000 sworn statement, she avers she will address these past due debts, but has done little, if anything, to follow up with her averment (GX 5 at pages 9~10). As to her other three alleged past due debts, they have been paid either through garnishment or through her tax returns being withheld (GX 3 at pages 8~10).

Foreign Preference

2.a.~2.c. The Applicant is a citizen of both the United States and of Mexico (GX 4 at page 1). She retains a Mexican passport which has only recently expired (GX 3 at pages 12~13). She acquired this passport after becoming a U.S. citizen (GX 4 at page 1, and GX 3 at pages 12~13).

Foreign Influence

3.a. and 3.b. The Applicant's spouse is a citizen of Mexico (GX 3 at pages 14~15, and at GX 5 at pages 5~6). He works in landscaping, and now has permanent resident status in the U.S. (*id*). Her former spouse is also a citizen of Mexico (GX 5 at pages 2~3). There are absolutely no bonds of affection remaining between the Applicant and her former spouse (GX 3 at page 7).

Personal Conduct

4.a.~4.d. The Applicant has filed her Federal Income Tax returns for tax years 1993 and 1994 (GX 3 at pages 16~17, and GX 5 at pages 11~12). In June of 1995, the Applicant's car was confiscated when she transported an individual across the U.S./Mexican border, who, unbeknownst to the Applicant, was an illegal alien (GX 5 at page 2). In 1995, she was also acquitted of an unrelated marijuana charge (GX 5 at pages 3~4, GX 9 and GX 11). Finally in 1996, while in the throws of a bitter divorce, the Applicant was fired from her job for missing time at work. Her missing work was directly attributed to the divorce.

Mitigation

The Applicant has submitted sufficient evidence, coupled with her averments, to mitigate the last two allegations, Guidelines B and E (GX 3 at pages 14~17).

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:

Financial Considerations

Conditions that could raise a security concern:

1. A history of not meeting financial obligations;

3. Inability or unwillingness to satisfy debts;

Conditions that could mitigate security concerns:

None

Foreign Preference

Conditions that could raise a security concern:

1. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport;

Conditions that could mitigate security concerns:

None

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 or the United States;

Personal Conduct

Conditions that could raise a security concern:

None

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 F (financial considerations), Guideline C (foreign preference), Guideline B (foreign influence), and Guideline E (personal conduct), 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. Furthermore, an individual who is financially overextended is at risk of having to engage in illegal acts to generated funds. 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

Considering first the Applicant's financial situation, by her own admission she owes in excess of \$4,100 in past due indebtedness. In her June 2000 sworn statement, she averred that she would address these two past due debts. In the intervening three years, she has done nothing to support her averment. Therefore, Guideline F is found against the Applicant.

The Applicant is also a dual citizen of Mexico and of the United States; but has done nothing to renounce her Mexican citizenship. 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 17), she also chooses not to surrender her Mexican passport. Guideline C is also found against the Applicant.

As to her spouse and ex-spouse who are citizens of Mexico, the Applicant has demonstrated that her spouse is not an agent of a foreign power, or in a position to be exploited by a foreign power; and that she has absolutely no "ties of affection" to her former spouse. Thus the first mitigating condition under Foreign Influence is applicable here; and as such, Guideline B is found for the Applicant.

Finally, as to her alleged Personal Conduct, I can find none here. Her explanations are supported by the documentation she has offered, and are consistent with by her prior sworn statement. Furthermore, she was acquitted of the drug charge against her. Guideline E is also found for the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding her financial situation and her foreign preference. The Applicant has thus not met the mitigating conditions of Guidelines F and C, and of Section E.2.2. of the Directive. Accordingly, she has not met her ultimate burden of persuasion under Guidelines F and C.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: AGAINST THE APPLICANT

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

e. Against the Applicant.

Paragraph 2: AGAINST THE APPLICANT

a. Against the Applicant.

b. Against the Applicant.

c. Against the Applicant.

Paragraph 3: FOR THE APPLICANT

a. For the Applicant.

b. For the Applicant.

Paragraph : 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 not clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge