

DATE: May 20, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-06904

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Thomas M. Abbott, Esquire

SYNOPSIS

The Applicant's retired parents are citizens of and reside in Germany. The Applicant's brother is also a German citizen and resides in Germany. He is a graphics designer. Her mother-in-law is deceased, but her 92 year old father-in-law is a citizen of and resides in Greece. Her Greek brother-in-law is a retired engineer, her Greek sister-in-law is a book editor. Finally, her Greek niece is only 15 years of age. There is no evidence that any of the Applicant's foreign relatives are connected with any country's government, or are in a position to be exploited by any country. Clearance is granted.

STATEMENT OF THE CASE

On January 6, 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 11, 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 taken from the Applicant. The transcript was received on May 2, 2003. The issues raised here are whether the Applicant's perceived foreign influence militates against the granting of a security clearance. [Except as it refers to her deceased mother-in-law, 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 44 years of age, has a Ph.D. in Physics and Chemistry from an American university, and is employed by a

contractor who seeks a security clearance on behalf of the Applicant.

Guideline B - Foreign Influence

The Applicant emigrated from Germany to the U.S. on 1980 (Transcript (TR) at page 17 lines 8~18). She married an American of Greek descent in 1983 (TR at page 18 lines 12~17). She attended an American university from 1983~1988, where she was awarded a Ph.D. in 1988 (TR at page 19 lines 1~8). She also became a U.S. citizen in 1988 (TR at page 19 lines 21~23).

1.a. and 1.b. The Applicant's parents are both retired (TR at page 15 lines 15~25). Her mother is 65 and her father is 70, and both are citizens of and reside in Germany (*id, see also* Government Exhibit (GX) 1 at pages 2~3). Her mother was a seamstress, and her father was a machinist (TR at page 15 lines 17~18). They have no connection with the German government (TR at page 17 lines 3~7, and Applicant's Exhibit (AppX) F). The Applicant's brother is a graphics designer (TR at page 15 lines 18~20). He also has no connection with the German government (AppX G).

1.c.~1.f. The Applicant's mother-in-law is deceased (TR at page 26 lines 16~17). Her Greek father-in-law is 92 years of age, and is a retired bank president (TR at page 26 line 18 to page 27 line 2). He resides in Greece, but has no connection with the Greek government (*id, AppX's E*). Her brother-in-law and sister-in-law also reside in and are citizens of Greece (TR at page 24 line 21 to page 25 line 8). Her brother-in-law is a retired engineer, and her sister-in-law is a book editor (TR at page 27 lines 3~17). Neither of these in-laws have any connection with the Greek government (AppX E). Finally, the Applicant's Greek niece is only 15 years of age, and obviously has no connection with the Greek government (TR at page 27 lines 18~24).

Mitigation

The Applicant's program director, current and prior supervisors, and security advisor all think highly of the Applicant (AppX A~D). They all know of her foreign connections through her birth and her marriage, and would recommend her for a position of trust (*id*).

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 retired parents are citizens of and reside in Germany. Her German brother also resides in Germany. Neither her parents nor her brother have any connection with any government, and there is no evidence that her parent's and brother's presence in Germany can be exploited by any government. As to her Greek relatives through marriage, her 92 year old father-in-law, 15 year old niece, and brother and sister-in-law have no connection with the Greek government, nor is there any evidence that their presence in Greece 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 her German or Greek relatives. Guideline B is thus found in the Applicant's favor.

Considering all the evidence, the Applicant has rebutted the Government's case regarding her alleged foreign influence. The Applicant has thus met the mitigating conditions of Guideline B, and of Section E.2.2. of the Directive. Accordingly, she has met her 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