

DATE: August 18, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-07017

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has renounced his Canadian citizenship. He has a Canadian old age pension plan worth about \$24,000, and a Canadian bank account worth only about \$1,200. These Canadian financial interests are not significant when compared to his net worth in the U.S. of more than \$345,000. His wife and two minor children are Canadian citizens, but live with the Applicant in the U.S. His wife is a homemaker, and his 11 and 13 year old sons are members of the Boy Scouts of America. The Applicant is a Scout Master. His 70 year old Canadian mother is also a homemaker. The Applicant has three siblings. One is a dual national living and working in the U.S. The other two are dual nationals living in Canada, one is an aerobics instructor, and the other is a grocery clerk. He has little contact with his step-siblings. Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On February 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 March 26, 2003.

The case was received by the undersigned on May 27, 2003. A notice of hearing was issued on June 25, 2003, and the case was heard on July 10, 2003. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript was received on July 21, 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 admits the underlying factual basis for 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 40 years of age, has a Bachelor's Degree in Computer Engineering, and is employed by a defense contractor that 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 C - Foreign Preference

1.a.~1.c., and 2.g. The Applicant was born in the U.S. to Canadian nationals (Transcript (TR) at page 24 lines 7~21). Two years later, his parents divorced, with his mother taking their children to Canada (*id*). The Applicant was educated, married, worked and lived in Canada as a dual national until 1997 (TR at page 24 line 22 to page 25 line 18, and Government Exhibit (GX) 1 at page 3). He moved to California five years ago where he works for his present employer (TR at page 24 line 22 to page 25 line 18). While working in Canada he accrued an old age pension worth about \$24,000 (TR at page 16 line 13 to page 17 line 3, at page 20 line 17 to page 21 line 25, and Applicant's Exhibit (AppX) A at page 5). This pension will not be available for another 25 years TR at page 16 line 13 to page 17 line 3, at page 20 line 17 to page 21 line 25, and AppX B at pages 1 and 12). His net worth in the U.S. is as follows: \$200,000 of equity in his house, more than \$85,000 in a money market fund, and more than \$60,000 in his employer's stock (TR at page 22 lines 1~20, at page 33 line 14 to page 34 line 3, and AppX A at pages 6~7). He has voted in local Canadian elections, but now is registered to vote in the U.S. (TR at page 17 lines 3~15, at page 26 line 20 to page 27 line 3, and AppX A at page 2). Last month, the Applicant formally renounced his Canadian citizenship by filing the appropriate paperwork with the nearest Canadian Consulate (AppX at pages 1~6).

Guideline B - Foreign Influence

2.a.~2.f, and 2.h. The Applicant's wife and two minor sons are Canadian citizens (TR at page 18 line 15 to page 19 line 13, and at page 27 line 4 to page 28 line 17). His wife is a homemaker (*id*). He is seeking U.S. citizenship for his two sons, who are members of the Boys Scouts of **America**, and the Applicant is their Scout Master (*ibid*). His 70 year old Canadian mother is also a homemaker (TR at page 28 line 18 to page 29 line 2, and at page 37 lines 11~13). He has three dual nation siblings, two of which live in Canada, and the other in the U.S. (TR at page 29 lines 3~13, and at page 37 line 21 to page 38 line 4). One of his Canadian siblings is an aerobics instructor, and the other is a grocery clerk (*id*). He has little, if any, contact with his Canadian step-siblings (TR at page 29 lines 14~18, and at page 29 line 24 to page 30 line 7). His Canadian parents-in-law are retired school teachers (TR at page 29 lines 8~17). None of the Applicant's Canadian relatives have any connection with the Canadian Government, or are in a position to be coerced by any foreign government (TR at page 18 lines 8~14). The Applicant also has about \$1,200 in a Canadian bank account (TR at page 19 line 25 to page 20 line 16, and AppX A at page 4).

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

Conditions that could raise a security concern:

1. The exercise of dual citizenship;
4. Accepting educational . . . or other benefits, such as retirement . . . from a foreign country;
8. Voting in foreign elections.

Condition that could mitigate security concerns:

4. Individual has expressed a willingness to renounce dual citizenship.

Foreign Influence

Conditions that could raise a security concern:

1. An immediate family member . . . is a citizen of . . . a foreign country;
8. A substantial financial interest in a country . . . that could make the individual vulnerable to foreign influence.

Conditions 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;
5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

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 formally renounced his Canadian citizenship. 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 is not now a dual national, but only a U.S. citizen. Although he has voted in local Canadian elections, he will not do so again as he is no longer a Canadian citizen. He is now only a registered U.S. voter. Guideline C is therefore found in his favor.

The Applicant's Canadian mother, and two dual national siblings, reside in Canada. His 70 year old mother is a homemaker, and his siblings are an aerobics instructor and a grocery clerk. His parent-in-laws are retired school teachers. None of his Canadian relatives have any connection with any government, and there is no evidence that their presence in 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.

As to his current financial interests in Canada. His \$24, 000 old age pension will not mature for another 25 years, and his \$1,200 in a Canadian bank pales in comparison with his \$345,000 U.S. net worth. 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.
- b. For the Applicant.
- c. For the Applicant.

Paragraph 2: 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.
- g. For the Applicant.
- h. 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