

DATE: April 25, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-27607

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant has little contact with his adopted father, his stepmother and minor half-brother, all of whom live in Finland. There is also no evidence that his now retired father, stepmother or half-brother are connected with any country's government, or are in a position to be exploited by any country. As to his past criminal conduct, they involved domestic disputes that occurred in 1995, and twice again in 1997. The Applicant has successfully completed a domestic violence program, completed his probation, and he and spouse have since reconciled. As his last, and only, misdemeanor conviction was more than five years ago, it is distant enough in time so as not to be of present security significance. Clearance is granted.

**STATEMENT OF THE CASE**

On November 21, 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 December 16, 2002.

The case was received by the undersigned on January 30, 2003. A notice of hearing was issued on March 13, 2003, and the case was heard on April 2, 2003. The Government submitted documentary evidence. Testimony was taken from the Applicant. The transcript was received on April 18, 2003. The issues raised here are whether the Applicant's perceived foreign influence and past criminal conduct militate against the granting of a security clearance.

**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 36 years of age, has an Associate's Degree, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

### Guideline C - Foreign Influence

1.a. and 1.b. The Applicant's adoptive father lives in Finland, and was a university professor, both in Germany and later in Finland (Transcript (TR) at page 28 line 10 to page 31 line 7, and at page 41 line 15 to page 42 line 10). He also worked for the European Space Administration (*id*). However, he has now been retired for "over a year;" and as far as the Applicant can ascertain, has no connection, and never had any connection, with any foreign government (*ibid*). The Applicant has "very minimal" contact with his adoptive father (TR at page 37 lines 16~24). There is no evidence that his father's presence in Finland can be exploited by any government, nor would he succumb to any such exploitation (TR at page 42 line 22 to page 43 line 18).

The Applicant' stepmother and minor half-brother are citizens of and also live in Finland (TR at page 27 line 13 to page 31 lines 9~25, and at page 42 lines 11~17). She is an art teacher, and the Applicant has little, if any, contact with either his stepmother or minor sibling (*id*). There is no evidence that they can be exploited by any government, nor would the Applicant succumb to any such exploitation (*ibid*).

### Guideline J - Criminal Contact

2.a.~2.c. The Applicant had a domestic dispute with his spouse in November of 1995 (TR at page 35 at line 21 to page 36 line 19, and Government Exhibit (GX) 7). No charges were filed against the Applicant as a result of this dispute (*id*). In May of 1997, the Applicant was again involved in a domestic dispute with his spouse (TR at page 35 at line 21 to page 36 line 19, and GX 6). No charges were filed against the Applicant as a result of this domestic dispute (*id*). In November of 1997, however, the Applicant was arrested for, and subsequently pled no contest to, Corporal Injury on Spouse or Cohabitant, a misdemeanor (TR at page 32 line 1 to page 35 line 20, at page 36 line 20 to page 37 line 5, GX 2 at pages 4~5, GX 3 at page 2, GX 4 and GX 5 at page 5). As part of his sentence, the Applicant successfully completed a domestic violence program in February of 1999, and his probation ended soon thereafter (*id*). Both the Applicant's spouse and mother-in-law aver that the Applicant is a changed man, as he no longer consumes alcohol and has completed the domestic violence program (*ibid*, and Applicant's Exhibit D).

### Mitigation

Those who work with and know the Applicant think highly of him (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 Influence

#### Condition that could raise a security concern:

1. An immediate family member . . . is a citizen of, or resident or present in, 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;

### Criminal Conduct

#### Conditions that could raise a security concern:

1. Allegations or admission of criminal conduct, regardless of whether the person was formally charged;
2. A single serious crime or multiple lesser offenses;

#### Condition that could mitigate security concerns:

6. There is clear evidence of successful rehabilitation.

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), and Guideline J (criminal 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 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.

If an applicant has demonstrated a lack of respect for the law, there exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

### **CONCLUSIONS**

Considering first the Applicant's alleged foreign influence, his adoptive father is retired, his step mother is an art teacher, and his minor half-brother is just that, only a minor. The Applicant has infrequent contact with his father, and

very little, if any, contact with the other two. They have no connection with any government, and there is no evidence that their presence in Finland 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 found in the Applicant's favor.

As to his admitted past criminal conduct, it is just that, a thing of the past. His misdemeanor conviction occurred more than five years ago; and as such, is not recent. There is also clear evidence of successful rehabilitation, with the completion of a domestic violence program, his probation, and is further evidenced by letters from both his spouse and his mother-in-law. Guideline J is therefore 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 J, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines B and J.

### **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.

Paragraph 2: FOR THE APPLICANT

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