

DATE: August 28, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-14794

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

When the Applicant became a U.S. citizen in 2001, he lost his Chinese citizenship. Although he initially retained his Chinese passport, it has since been shredded, at the suggestion of a Defense Security Service (DSS) Agent. The Applicant's parents are citizens of China, but have resided in the U.S. for a number of years. They are medical researchers at an American University. The Applicant's father has been approved for U.S. citizenship. The Applicant's three remaining grandparents are citizens of and reside in China. They are all retired and never worked for the Chinese government. The Applicant's uncle-in-law was a deputy mayor for a Chinese city, but is no longer so employed. He works for a real estate company, and the Applicant has little contact with this distant relative. Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On April 23, 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 or about May 9, 2003.

The case was received by the undersigned on May 29, 2003. A notice of hearing was issued on June 17, 2003, and the case was heard on July 11, 2003. The Government submitted documentary evidence. Testimony was taken from the Applicant, who called one witness to testify on his behalf. 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 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 27 years of age, has a masters Degree in electrical 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

The Applicant came to the U.S. in 1991, at the age of 15 (Transcript (TR) at page 35 lines 16~20, *see also* Government Exhibit (GX) 1 at pages 1~2). He became a U.S. citizen in 2001, and at the same time renounced his Chinese citizenship (TR at page 36 line 12 to page 37 line 8).

1.a. After becoming a U.S. citizen, the Applicant still physically retained his Chinese passport (TR at page 28 lines 4~14, and at page 37 lines 11~17). After being apprised of the *Money Memorandum*, however, the Applicant contacted the Chinese Embassy and inquired as to how to surrender his Chinese passport (TR at page 29 lines 12~17). They did not respond to his inquiries (*id*). The Applicant next sought the advice of a DSS Agent as to how to comply with the *Money Memorandum*, which requires the surrender of any foreign passport (TR at page 29 line 18 to page 30 line 23). The DSS Agent recommended to the Applicant that he shred his passport, which he did (*id*).

Guideline B - Foreign Influence

2.a.~2.d. The Applicant's parents are citizens of China, but have resided in the U.S. for a number of years. His father immigrated in 1989, and his mother joined them in 1996 (TR at page 31 line 4 to page 32 line 4, and at page 39 line 13 to page 41 line 7). They are medical researchers at an American University, and have been so employed since immigrating (*id*). The Applicant's father has also been approved for U.S. citizenship (Applicant's Exhibit (AppX) at pages 2~4). The Applicant's three remaining grandparents, one has passed away, are citizens of and reside in China (TR at page 32 line 5 to page 33 line 7, and at page 41 line 8 to page 42 line 10). They are all retired, and never worked for the Chinese government (*id*). The Applicant's uncle-in-law was a deputy mayor for a Chinese city, but is no longer so employed (TR at page 33 line 8 to page 34 line 14, and at page 43 line 8 to page 44 line 25). He now works for a real estate company, and the Applicant has little contact with this distant relative, his wife's aunt's husband (*id*).

Mitigation

The Applicant's supervisor recommend's him for "a security clearance without reservation" (AppX C at page 1). A co-worker of the Applicant also testified at length as the Applicant's character, and would also recommend him for a position of trust (TR at page 45 line 14 to page 51 line 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:

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 2001, he lost his Chinese citizenship. Although he initially retained his Chinese passport, pursuant to the recommendation of a DSS Agent he shredded his Chinese passport. I conclude this to be a good faith compliance with the *Money Memorandum*. Since obtaining a U.S. passport, he has only utilized it in his travels. I therefore also 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 parent reside in the U.S., and have done so for a number of years. They are researchers at an American University, and his father is in the final stages of acquiring U.S. citizenship. The Applicant's three remaining grandparents are retired in China. None have ever worked for the Chinese government. His uncle-in-law has left the employ of municipal government, and now works for a private firm in real estate. The Applicant has little contact with this distant relative through marriage. None of the Applicant's immediate family are presently connected with any government, and there is no evidence that their presence in China or the U.S. 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