

DATE: February 6, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-22743

**ECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant's 87 year old father-in-law is a former Lieutenant General in Taiwan's Army, and was also a Commissioner of the Taiwan Provincial Government. He retired from the Army nearly 30 years ago, and from his Taiwan Government post more than 20 years ago. His father-in-law now resides in the United States and is a U.S. citizen. The Applicant last visited Taiwan in April of 2000 to attend his mother-in-law's funeral. The Applicant also visited a college friend in Hong Kong in 1996. This friend is in the investment business, and sends an annual Christmas card to the Applicant. Mitigation is shown. Clearance is granted.

**STATEMENT OF THE CASE**

On July 17, 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 August 29, 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 aterial (FORM) on November 21, 2003. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received his copy on November 25, 2003, and Applicant's Response was received on December 17, 2003. The case was received by the undersigned for resolution on January 29, 2004. The issues raised here are whether the Applicant's alleged foreign influence militates against the granting of a security clearance. [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 File of Relevant Material and Applicant's Response. The Applicant is 62 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.

### Guideline B - Foreign Influence

1.a.-1.e. The Applicant's 87 year old father-in-law is a former Lieutenant General in Taiwan's Army, and was also a Commissioner of the Taiwan Provincial Government (Government Exhibit (GX) 4 at page 3, and GX 5 at page 4). His father-in-law retired from the Army in 1975, and he later retired from his foreign government position in 1982 (GX 3 at page 2). His father-in-law now resides in the United States and is a U.S. citizen (Response at pages 2 and 15~17). The Applicant last visited Taiwan in April of 2000 to attend his mother-in-law's funeral (Response at pages 4~5). He also visited the People's Republic of China in 1996, as part of an American vacation tour group, and visited a college friend in Hong Kong during the same trip (GX 3 at pages 3 and 8, and GX 4 at page 5). This friend is in the investment business, and sends an annual Christmas card to the Applicant (GX 3 at page 7).

### Mitigation

The Applicants' Department Manager, his immediate Manager, and a co-worker think most highly of the Applicant, and all would recommend him to a position of trust (Response at pages 24~26). He has also received a number of awards and several accolades for his job performance, to include a letter from a Brigadier General in the United States Air Force (Response at pages 27~33).

## **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

#### 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 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**

There are no disqualifying conditions present in the instant case. The "immediate family member" of concern is the Applicant's father-in-law. Although he once held high positions in both Taiwan's Government and Army, these were held, in the case of the Government position, more than 20 years ago; and in the case of the Army, nearly 30 years ago. Furthermore, his father-in-law is not "a citizen of, or resident or present in, a foreign country," as he is now a U.S. citizen residing in the United States. The Applicant's college friend, who he visited once in Hong Kong eight years ago, and from whom he receives an annual Christmas card, is clearly not "a person to whom the . . . [Applicant] has close ties of affection or obligation," as is cited in the first disqualifying condition under Foreign Influence. Mitigation is shown. Guideline B in found for the Applicant.

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

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