

DATE: February 12, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-24238

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

A month prior to his hearing, the Applicant renounced his Canadian citizenship. His brother is a Canadian, and owns a private business in Canada. There is, however, no evidence that the Applicant's brother is connected with any country's government, or is in a position to be exploited by any government. All other members of the Applicant's immediate family are Americans, living in the United States. Although the Applicant does have some financial interest in Canada, a future \$200 per month pension and an investment plan, a plan he is currently drawing down, his foreign financial interests are minimal. Clearance is granted.

STATEMENT OF THE CASE

On August 13, 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 August 26, 2002.

The case was received by the undersigned on November 14, 2002. A notice of hearing was issued on November 26, 2002, and the case was heard on January 8, 2003. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript was received on January 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.

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 53 years of age, and is employed by a contractor who seeks a security clearance on behalf of the Applicant.

Guideline C - Foreign Preference

1.a. and 1.b. The Applicant was born in the United States to Canadian citizens in 1949 (Government Exhibit (GX) 1 at pages 2 and 5). As a result, he became a dual national of both Canada and the United States (*id*). He lived in Canada from 1990~1999, while working for a U.S. firm (GX 2 at page 5). While living in Canada, he voted in two local elections, but also voted "in the U.S. presidential elections" (Transcript (TR) at page 23 line 16 to page 24 line 12). In December of 2002, the Applicant renounced his Canadian citizenship (TR at page 21 lines 3~9, and Applicant's Exhibit (AppX) A). In his renunciation, the Applicant states the reason as being, "I want to assert my full allegiance to a single country: the U.S.A." (TR at page 32 lines 8~20, and AppX A at page 1). For the last 25 years, he has only possessed a U.S. passport (TR at page 21 lines 18~20).

Guideline B - Foreign Influence

2.a. and 2.b. The Applicant's bother is a Canadian citizen, and resides in Canada (TR at page 24 line 22 to page 25 line 13). He is a geophysicist, who "owns a private business in Canada" (*id*).

2.c. and 2.d. The Applicant has \$49,000 in savings in a Canadian investment plan (TR at page 26 line 12 to page 28 line 12). He is currently drawing down this plan and transferring its funds to the U.S. (TR at page 26 line 12 to page 28 line 12, and AppX C at page 2). His total net worth in the U.S. is about \$139,000 (AppX C at page 1). Because he worked in Canada for ten years, he also expects to receive a future pension of about \$200 per month when he retires (*ibid*).

Mitigation

The Applicant's supervisor testified on behalf of the Applicant and spoke highly of him (TR at page 49 line 4 to page 51 line 12).

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;
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 renounced his dual citizenship. Furthermore, for the past 25 years, he has only held a U.S. passport. 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 with a U.S. passport. Although he also voted in two local Canadian elections, he will not do so again as he is no longer a Canadian citizen. Guideline C is therefore found in his favor.

The Applicant's brother, a private businessman, is a citizen of and resides in Canada. He have no connection with any government, and there is no evidence that his 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. Although it can be argued that \$49,000 is fairly substantial, the Applicant is actively drawing this amount down by transferring the funds to the U.S. As to the future pension \$200 per month, I find that this foreign financial interest to be minimal, at best, when compared with his 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.

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