

DATE: August 9, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-02861

ECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's parents and three siblings are citizens of and reside in the People's Republic of China (PRC). He has frequent contact with them, and visits these immediate relatives on a yearly basis. The Applicant has failed to offer any evidence that his relatives are not agents of the PRC or of any other foreign power. Furthermore, he has failed to offer any evidence that their presence in the PRC could not be exploited by a foreign power. Mitigation is not shown. Clearance is denied.

STATEMENT OF THE CASE

On April 21, 2004, 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 May 18, 2004.

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 June 22, 2004. 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 June 28, 2004, and submitted nothing in reply. The case was received by the undersigned for resolution on July 29, 2004. The issues raised here are whether the Applicant's 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 40 years of age, 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 B - Foreign Influence

1.a.~1.f. The Applicant's 78 year old father and 70 year old mother are citizens of and reside in the PRC (Government Exhibit (GX) 4 at page 4). His 46 year old brother, 47 year old sister and 51 year old half-brother are also citizens of and reside in the PRC (GX 4 at pages 4~5). The Applicant maintains monthly telephone contact with his parents, and regular contact with his siblings (GX 3 at page 1). He has traveled to the PRC to visit his relatives every year since graduating from an American university with a master's degree in December of 1999 (GX 3 at page 1, and GX 4 at page 2). Furthermore, the Applicant intends to continue to travel to the PRC each year (GX 3 at page 1).

Mitigation

The Applicant offers absolutely nothing in the way of mitigation.

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. Furthermore, 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 or situation, 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

The Applicant's parents, brother, sister and half-brother are "citizen[s] of . . . [and] present in, a foreign country," the PRC. The first disqualifying condition is therefore applicable. Furthermore, there is absolutely no evidence offered by the Applicant showing that these relatives are not "connected with . . . a foreign government;" and as such, the third disqualifying condition is also arguably applicable. There are no mitigating conditions applicable under Foreign Influence, as the Applicant's contact with his foreign relatives is more than infrequent, and he has failed to demonstrate that he would not be subject to coercion by a foreign power due to his immediate family's presence in the PRC. Guideline B is therefore found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his foreign influence. The Applicant has thus not met the mitigating conditions of Guideline B, and of Section E.2.2. of the Directive. Accordingly, he has not 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: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against 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 not clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge