

DATE: August 23, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-25885

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's half-brother, aunt and two uncles are citizens of and reside in Hong Kong. Another aunt is a citizen of and resides in the People's Republic of China. His elderly parents live with the Applicant in the U.S. The Applicant's foreign relatives are not connected to any foreign government, and are not subject to coercion. His mother-in-law is a U.S. citizen. The Applicant co-owns real estate in Hong Kong worth about \$150,000. He is also co-signer of his father's \$75,000 bank account in Hong Kong. These monetary figures, however, pale in comparison to his net worth of about \$1,700,000 in the U.S. The Applicant is also a trustee for a Hong Kong charity that, in part, benefits an American university. The charity has no connection to any government, and the Applicant has no monetary interest in this charity. Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On January 24, 2005, 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 February 10, 2005.

The case was received by the undersigned on April 4, 2005. A notice of hearing was issued on April 7, 2005, and the case was heard on May 4, 2005. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on May 13, 2005. The issues raised here are whether the Applicant's perceived Foreign Influence militates against the granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations, except for subparagraph 1.c.].

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 57 years of age, has a master's degree, 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

The Applicant, who was born in Hong Kong, came to the United States in 1970 to further his education (Government Exhibit (GX) 1 at page 1). He obtained his master's degree in 1973, and became a U.S. citizen in 1982 (*Id*). He is married to a native born American (GX 1 at page 2).

1.a.~1.f. The Applicant's half-brother is a citizen of and resides in Hong Kong (TR at page 42 lines 7~22). He has little contact with this half-brother (*Id*). The Applicant has seen him once in 40 years (*Ibid*). The Applicant's aunt and two uncles are also citizens of and reside in Hong Kong (TR at page 43 line 12 to page 44 line 25). His 64 year old aunt is a retired educator (TR at page 43 lines 12~24). One uncle is 73 years of age and disabled, and the other is 81 years of age and a retired bar tender (TR at page 43 line 25 to page 44 line 25). Another aunt is a citizen of and resides in the People's Republic of China (TR at page 45 lines 2~16). The Applicant has little contact with this aunt (*Id*). He last saw her over 50 years ago (*Ibid*). His parents are in their 80s, and live with the Applicant in the U.S. (TR at page 41 line 4 to page 42 line 6). His mother-in-law is a U.S. citizen, and resides in the United States (TR at page 42 line 23 to page 43 line 11).

1.g.~1.j. The Applicant co-owns real estate in Hong Kong worth about \$150,000 (TR at page 45 line 17 to page 46 line 12). He is also co-signer of his father's \$75,000 bank account in Hong Kong (TR at page 46 line 25 to page 47 line 11). These monetary figures, however, pale in comparison to his net worth of about \$1,700,000 in the U.S. (TR at page 35 line 17 to page 36 line 18, at page 49 line 12 to page 51 line 10, and Applicant's Exhibit (AppX) A). The Applicant is also a trustee for a Hong Kong charity that, in part, benefits an American university (TR at page 47 line 12 to page 48 line 17, and AppXs C~E). The charity has no connection to any government, and the Applicant has no monetary interest in this charity (*Id*, and TR at page 52 line 8 to page 54 line 3).

Mitigation

If anyone were to approach the Applicant and ask questions about national security related matters, the Applicant would report any such inquiry to appropriate U.S. authorities (TR at page 38 line 15 to page 39 line 10).

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 disqualifying 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

The Applicant became a U.S. citizen in 1982, obtained a master's degree from an American university, and has established a personal net worth of about \$1,700,000. He has thus realized the American dream by contributing his talents to his adopted land, and at the same time establishing personal wealth.

The Applicant's half-brother, an aunt and two uncles are citizens of and live in Hong Kong. Another aunt is a citizen of and resides in China. The first disqualifying condition under Foreign Influence is therefore applicable as "[a]n immediate family member . . . is a citizen of . . . a foreign country." The Applicant has seen his half-brother only once in 40 years, and he last saw his aunt, who resides in China, over 50 years ago. The Hong Kong aunt and uncles are all elderly, and either retired and/or disabled. Furthermore, none of the Applicant's immediate family are presently connected with any government, and there is no evidence that their presence in Hong Kong or China 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. The first mitigating condition is therefore applicable as "the immediate family members . . . 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 persons involved and the United States."

The Applicant has some financial interests in Hong Kong. He co-owns \$150,000 in real estate, and is a co-signer of a \$75,000 bank account. The last disqualifying condition is therefore applicable, as there is arguably a "substantial financial interest in a [foreign] country." This is countered, however, by his \$1,700,000 net worth in the U.S., which triggers the last mitigating condition, as his "[f]oreign financial interests are minimal and not sufficient to affect the individual's security responsibilities." Mitigation is shown. Guideline B is found in the Applicant's favor.

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.

f. For the Applicant.

g. For the Applicant.

h. For the Applicant.

i. For the Applicant.

j. 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