

DATE: November 8, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-07500

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Candace Le'i, Esquire, Department Counsel

**FOR APPLICANT**

Kurt D. Ferstle, Esquire, Applicant's Counsel

Leigh T. Hansson, Esquire, Applicant's Counsel

**SYNOPSIS**

The Applicant's wife is a citizen of Japan, but resides permanently in the U.S. The Applicant's 89 year old mother is a citizen of Greece, but also resides permanently in the U.S. The Applicant has a cousin, who is a citizen of and resides in Greece. He works in a private bank. The Applicant's foreign relatives are not connected to any foreign government, and are not subject to coercion. The Applicant's deceased father left the Applicant \$700,000 worth of unimproved real-estate in Greece, and a joint interest in a \$100,000 Greek bank account with his mother. At first blush this foreign property interest appears to be significant, but it pales in comparison with the Applicant's \$3,500,000 net worth in the U.S. Mitigation is shown. Clearance is granted.

**STATEMENT OF THE CASE**

On June 10, 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 July 11, 2005.

The case was received by the undersigned on August 18, 2005. A notice of hearing was issued on September 3, 2005, and the case was heard on September 28, 2005. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on October 17, 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 the last subparagraph, as his wife is not yet a U.S. citizen.]

## 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, has a Ph.D. from an American university, 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 came to the U.S. in 1977 to pursue his Ph. D. (TR at page 20 line 6 to page 22 line 12). He applied for and was granted U.S. citizenship in 1988 (*Id*).

1.a.~1.f. The Applicant's wife is a citizen of Japan, but resides permanently in the U.S. (TR at page 28 lines 2~20, and at page 67 lines 2~15). She has applied for U.S. citizenship, and "her hearing date is sometime in November" of 2005 (*Id*). She is an analyst for a car manufacturer (TR at page 19 lines 18~25).

The Applicant's 89 year old mother is a citizen of Greece, but also resides permanently in the U.S. (TR at page 27 lines 4~17, and at page 59 line 6 to page 61 line 19). She was a housewife prior to coming to the U.S. (*Id*). The Applicant also has a cousin, who is a citizen of and resides in Greece (TR at page 25 line 20 to page 26 line 22. And at page 53 lines 20~24). He works in a bank that is not connected with any government (*Id*).

The Applicant's deceased father left the Applicant \$700,000 worth of unimproved real-estate in Greece (TR at page 23 line 14 to page 24 line 22, at page 36 line 24 to page 41 line 8, and at page 76 lines 5~13). His father also gave the Applicant a joint interest in a \$100,000 Greek bank account, which he holds with his mother (*Id*, and Applicant's Exhibit (AppX) B). His net worth in the U.S. is about \$3,500,000 (TR at page 23 line 14 to page 24 line 22, at page 36 line 24 to page 41 line 8, at page 76 lines 5~13, and AppX A).

The Applicant has traveled to Greece about eight times from 1995~2004 (TR at page 28 line 21 to page 33 line 6). He has also traveled to the Ukraine, Russia, the Philippines, Hong Kong and the People's Republic of China, seeking treatment for a painful health condition (TR at page 47 line 7 to page 53 line 4). He has always notified his employer, appropriately, prior to his foreign trips (*Id*).

## **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 1988, obtained a Ph.D. from an American university, and has established a personal net worth of about \$3,500,000. 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 wife is a citizen of Japan. His mother is a citizen of Greece, and he has a cousin, who is a citizen of and resides in Greece. 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's wife has applied for U.S. citizenship, and works for a private firm in the U.S. His mother is elderly and lives in the U.S. His cousin works for a private bank in Greece. Therefore, none of the Applicant's immediate family are presently connected with any government, and there is no evidence that his cousin's presence in Greece 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 (TR at page 41 lines 9~18). 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 Greece. He inherited \$700,000 of unimproved Greek real-estate, and also has a joint interest in a \$100,000 Greek 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 \$3,500,000 net worth in the U.S., which triggers the last mitigating condition, as his "[f]oreign financial interests are minimal [in comparison] 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.

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