

DATE: August 23, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-02957

## **DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Melvin A. Howry, Esquire, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

The Applicant's father is a citizen and resident of Hong Kong. He is a retired chef, having worked for the British Royal Navy for 20 years. His father received a "lump sum" pension payment when he retired in about 1980, 26 years ago. The Applicant, whose net worth in the U.S. is in excess of \$600,000, annually sends about \$2,000 to his father on special occasions. The Applicant would not submit to blackmail or coercion vis-a-vis his father's presence in Hong Kong. In 2002, the Applicant visited his father twice in Hong Kong. In 2002, during a brief period of unemployment, the Applicant also traveled to the People's Republic of China (PRC) to look into possible business options, and to Taiwan to explore employment opportunities. Nothing resulted from these exploratory trips. The Applicant last visited his father in February of 2006. Clearance is granted.

### **STATEMENT OF THE CASE**

On September 16, 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 or about October 24, 2005.

The case was originally assigned to another Judge, but was reassigned to the undersigned on May 1, 2006. A notice of hearing was issued on May 4, 2006, and the case was heard on May 23, 2006. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on June 1, 2006. The issue raised here is whether the Applicant's alleged Foreign Influence militates against the granting of a security clearance. [The Applicant admits the underlying factual basis for all of the allegations.]

### **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 54 years of age, has a Ph.D., 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 80 year old father is a citizen and resident of Hong Kong (TR at page 20 line 3 to page 22 line 17, and at page 31 line 18 to page 32 line 20). He is a retired chef, who worked for the British Royal Navy for 20 years (*Id*). When he retired in about 1980, 26 years ago, the Applicant's father received a "lump sum" pension payment from the Royal Navy (*Ibid*). The Applicant, whose net worth in the U.S. is in excess of \$600,000, sends about \$2,000, annually, to his father on special occasions (TR at page 22 lines 18~22, and Applicant's Exhibit (AppX) A at page 2). The Applicant would not submit to blackmail or coercion vis-a-vis his father's presence in Hong Kong (TR at page 27 line 17 to page 30 line 6, and at page 35 line 19 to page 37 line 20).

In 2002, the Applicant visited his father twice in Hong Kong (TR at page 23 line 23 to page 27 line 4, and at page 33 line 15 to page 35 line 18). In 2002, during a brief period of unemployment, the Applicant also traveled to the PRC to look into possible business options, and to Taiwan to explore employment opportunities (*Id*). Nothing resulted from these exploratory trips (*Ibid*). The Applicant last visited his father in February of 2006, to celebrate his father's 80<sup>th</sup> birthday (TR at page 26 line 10 to page 27 line 4).

### Mitigation

Those who supervise and/or work with the Applicant think most highly of him (AppXs B and C). They would recommend his for a position of trust (*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 that 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 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 father is citizen of and resides in Hong Kong. The first disqualifying condition is therefore applicable as "[a]n immediate family member . . . is a citizen of a foreign country." This is countered, however, by the first mitigating condition, as there is no evidence that his presence in Hong Kong can "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." In addition, I conclude that it would be unlikely that the Applicant would even consider any such attempt at exploitation. Furthermore, the totality of the Applicant's conduct and the circumstances, as set forth above, still warrants a favorable finding under the whole person standard. Mitigation is again shown. Guideline B is found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his 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: Financial 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 national interest to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge