

DATE: March 2, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-00709

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On March 2, 2005, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision--security concerns raised under Guideline B (Foreign Influence), of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision based on the written record. On October 20, 2005, Administrative Judge Carol G. Ricciardello denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Administrative Judge erred in concluding that the presence in Vietnam of Applicant's brother, sister and brother-in-law is a security concern that Applicant failed to mitigate.

The dispositive Administrative Judge's findings of fact are as follows:

Applicant is a 40-year-old process engineer working for a federal contractor since 1998. Applicant was born in Vietnam and was naturalized as a United States citizen. Applicant's mother is a naturalized citizen of the United States and resides here. Applicant has two brothers and three sisters. Applicant, one brother and two sisters all became naturalized U.S. citizens on the same day in 1996. They all reside in the United States. Another brother is also a naturalized U.S. citizen, but in 1994-1995 he returned to Vietnam and works in business there (SOR ¶1.a).

Applicant loaned his brother who lives in Vietnam, \$94,000.00 to purchase a house there (SOR ¶1.b). Applicant had previously sold a house in the United States and made a profit. He used that money to loan to his brother.

One of Applicant's sisters and her husband are citizens and residents of Vietnam. At one time Applicant sent his sister \$200-\$300 in monetary gifts each year (SOR ¶1.d). Applicant is now married and no longer sends monetary gifts to his sister.

Applicant traveled to Vietnam in 1996, 1997, and 2000 (SOR ¶1.e). That travel occurred while Applicant was a student and he went over during summer break in 1996 and 1997, and Christmas break in 2000.

Preliminarily, Applicant's appeal supplements the record with additional facts and explanations concerning each paragraph in the SOR; however, no new evidence shall be received or considered by the Appeal Board. Directive ¶

E3.1.29. Accordingly, the Board cannot consider this new information or claims of error based on it.

Considering his *pro se* status, the Board construes Applicant's brief as raising the issue of whether the Administrative Judge reasonably concluded that the presence in Vietnam of Applicant's brother, sister, and brother-in-law is a security concern that Applicant failed to mitigate. In this regard, the Judge specifically considered mitigation under Foreign Influence Mitigating Conditions 1 [\(1\)](#), 3 [\(2\)](#) and 5 [\(3\)](#), as well as a whole person analysis. An applicant must present witnesses and other evidence to rebut, explain, extenuate or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive ¶ E3.1.15. Considering the sister's and brother-in-law's presence in Vietnam and the brother's presence in Vietnam for living and business purposes, the brother's significant investment there, and the limited information provided to the Judge by Applicant in his case in mitigation, the Judge reasonably could have concluded that Applicant failed to mitigate security concerns caused by the presence in Vietnam of Applicant's brother, sister and brother-in-law. The Judge's formal findings are sustainable.

Accordingly, the Administrative Judge did not err in denying Applicant a clearance.

Order

The decision of the Administrative Judge denying Applicant a clearance is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Member, Appeal Board

Signed: Michael D. Hipple

Michael D. Hipple

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

1. "A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question 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" (Directive ¶ E.2.A2.1.3.1).

2. "Contact and correspondence with foreign citizens are casual and infrequent" (Directive ¶ E2.A2.1.3.3).

3. "Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities" (Directive ¶ E2.A2.1.3.5).