

KEYWORD: Foreign Influence

DIGEST: The Applicant's casual and infrequent foreign contacts with his two sisters in Vietnam pose no security risk. Clearance is granted.

CASENO: 06-25705.h1

DATE: 07/30/2007

DATE: July 30, 2007

In Re:)	
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-----)	ISCR Case No. 06-25705
SSN: -----)	
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
DARLENE LOKEY ANDERSON**

APPEARANCES

FOR GOVERNMENT

Jennifer I. Goldstein, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's casual and infrequent foreign contacts with his two sisters in Vietnam pose no security risk. Clearance is granted.

STATEMENT OF THE CASE

On February 15, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), 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.

The Applicant responded to the SOR in writing on March 19, 2007, and requested a hearing before a DOHA Administrative Judge. The case was assigned to another Administrative Judge on May 2, 2007. A notice of hearing was issued on May 8, 2007, scheduling the hearing for June 13, 2007. The case was transferred to this Administrative Judge on May 24, 2007. At the hearing the Government presented two exhibits. The Applicant presented seven exhibits, called three witnesses and testified on his own behalf. The official transcript (Tr.) was received on June 26, 2007.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 54 years of age and has a Bachelors of Science Degree in Computer Science and Electrical Engineering. He is employed as a Senior Software Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Vietnam in 1953. He grew up there, and later fled the country in 1975, when the communist regime took control. His cousin, who, at the time, was a high ranking military officer for the South Vietnamese Army, and who was being sponsored by an American family, helped him to get out of Vietnam. For a month or so, the Applicant lived in a refugee camp in Pennsylvania until he was sponsored by an American family in Florida. He later moved to Utah to study Geology for one semester before he decided to move California where he changed his major and completed his studies.

In 1984, he became a naturalized United States citizen. He decided that he wanted to make the United States his permanent home because of the opportunities available to him in this country. The Applicant has been married twice, both of his wives are Vietnamese. His current wife is a naturalized United States citizen and is employed as a high school English teacher. The Applicant

has one child and four step-children. His step-children are all grown and are currently employed in local government or private industry in the United States. The Applicant's only son recently graduated from the University of Texas, with high honors and is planning to attend medical school.

From 1975 until 1990, the Applicant had no contact whatsoever with his family in Vietnam. In 1990, through a friend of the Applicant's, the Applicant received a letter from his father and he began to write him. In 1993, his father passed away. The Applicant continued to write his mother in Vietnam about twice a year and he sent her money on the holidays. In May 2006, his mother passed away. (Applicant's Exhibit A).

The Applicant's two sisters are citizens of and reside in Vietnam. His sisters are elderly and now retired. One of them used to work as a nurse's assistant, the other was a teacher. They are now supported by their children in Vietnam, who are a physician and an Engineer. Presently, the Applicant's only contact with his sisters is about once or twice a year on holidays at the most.

The Applicant's father-in-law, who was also a citizen and resident of Vietnam, passed away in 1983. After his death, his wife, the Applicant's mother-in-law, immigrated to the United States. She passed away about fifteen years ago. (*See Applicant's Exhibits B and C*).

The Applicant traveled to Vietnam in 1992, to visit his father, whom he had not seen since 1975. He traveled to Vietnam again in 2000 and in 2002 to visit his ailing mother. On each occasion, he stayed about three weeks. In 2006, when his mother passed away, he traveled there in order to make her funeral arrangements. The Applicant had no contact with anyone from the Vietnamese Government during any of his visits to Vietnam.

The Applicant has no property, bank accounts, or assets of any kind in Vietnam and no intention of ever returning to Vietnam in the future. He has no intent of ever helping anyone to immigrate from Vietnam to the United States.

Three witnesses, including his Project Manager, Facility Security Officer and his wife testified on behalf of the Applicant. They believe that he is an excellent worker and a responsible person.

Letters of recommendation submitted by the Applicant's Manager, Security Officer, Team Lead, and a coworker collectively indicate that the Applicant is highly regarded in the work place. He is considered hardworking, conscientious and displays great attention to detail. He is extremely dependable, and has been asked to work on some of the most difficult projects that the company undertakes. He displays great integrity in his work and particularly under pressure situations and tight deadlines and has always properly protected classified information. (*See Applicant's Exhibits D, E, F and G*).

I have taken official notice of the fact that Vietnam is a communist country and that its politics, society and human rights records remain inconsistent with United States system of democracy and freedom. It is also noted that the Applicant escaped Vietnam to avoid the impact of communism and to enjoy the liberties and opportunities the United States offers.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Influence

6. *The Concern.* Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this guideline should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Condition that could raise a security concern:

7. (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion.

Conditions that could mitigate security concerns:

8. (a) the nature of the relationships with foreign person, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

8. (b) there is not conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S. , that the individual can be expected to resolve any conflict of interest in favor of the U. S interest;

8. (c) contact or contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between 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 demonstrates that he has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. 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

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts have a direct and negative impact on his suitability for access to classified information.

With respect to Guideline B, the evidence establishes that he is not vulnerable to foreign influence. Disqualifying Condition 7.(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion applies.* However, Mitigating Conditions 8.(a) *the nature of the relationships with foreign person, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;* 8.(b) *there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government or country is minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S. , that the individual can be expected to resolve any conflict of interest in favor of the U. S interest; and, 8(c) contact or contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation* are applicable.

Twenty-three years ago, the Applicant fled Vietnam for fear of communism and chose the United States as his permanent home. He has been a loyal and dedicated United States citizen for more than twenty-two years. Although the Applicant's two sisters are citizens and residents of Vietnam, neither of them are associated with the Vietnamese government or any government, nor are they in a position to place foreign influence on the Applicant, or in a position to be exploited by the Vietnamese Government or any government in a way that could force the Applicant to choose between loyalty to them and loyalty to the United States. Therefore, I conclude that it would be unlikely that the Applicant would ever consider any attempt at exploitation. Furthermore, the Applicant's contacts with his foreign relatives are very limited, and are not of a nature to influence his security worthiness. The Applicant has cut all of his ties with Vietnam, except his once or twice a year contact with his two elderly sisters. The Applicant has made it clear that he understands his

responsibility to the United States in holding a security clearance. Based on the foregoing, the Applicant does not raise a security concern and Guideline B is found for the Applicant.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.
Subparas. 1.a.: For the Applicant
1.b.: For the Applicant
1.c.: For the Applicant
1.d.: For the Applicant.

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge