

KEYWORD: Foreign Influence

DIGEST: Applicant has lived in the United States since the 1970s. He became a United States citizen in 1985. He has one elderly sibling living in Vietnam; all of his other immediate family members reside in the United States. Clearance is granted.

CASENO: 06-25936.h1

DATE: 06/12/2007

DATE: June 12, 2007

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In Re:)	
)	
-----)	ISCR Case No. 06-25936
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
JOSEPH TESTAN**

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

____ Applicant has lived in the United States since the 1970s. He became a United States citizen in 1985. He has one elderly sibling living in Vietnam; all of his other immediate family members reside in the United States. Clearance is granted.

STATEMENT OF THE CASE

On February 15, 2007, 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, (as administratively reissued on April 20, 1999), issued a Statement of Reasons (SOR) to applicant which detailed 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 applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on March 14, 2007. The case was assigned to the undersigned on April 16, 2007. A Notice of Hearing was issued on May 8, 2007, and the hearing was held on May 30, 2007. The transcript was received on June 8, 2007.

FINDINGS OF FACT

Applicant is a 54 year old employee of a defense contractor.

Applicant was born in Vietnam. In 1972, he moved from South Vietnam to the United States to attend college. He intended to return to South Vietnam after he completed his studies; however, when the Communists took over South Vietnam, he decided to remain in the United States. He married his current wife in the United States in 1974. They both became United States citizens in 1985. Their only child was born in the United States.

When South Vietnam fell to the Communists, applicant's parents and three siblings fled Vietnam with the help of the United States military. These family members settled in the United States. In 1978, another four of applicant's siblings left Vietnam and settled in the United States. Applicant's only immediate family member still living in Vietnam is an elderly sister who was too sick to flee Vietnam. She is retired and has been a widow for over 30 years (TR at 25). Applicant provides monetary support to her and other extended family members still living in Vietnam. He maintains a bank account in a Vietnamese bank to distribute the money to these relatives. He funds the Vietnamese bank account by wiring funds directly from his bank account in the United States.

The three relatives referred to in SOR Paragraph 1.b. are applicant's wife's three siblings. They moved to the United States in 2006 and were granted permanent resident status.

Between March 1998 and June 2006, applicant visited Vietnam nine times. He testified credibly that he made these trips to visit and care for his sister. He made the trips because he is the one sibling out of his family who can afford to travel there. While in Vietnam, he had no contact with Vietnamese government officials, and nobody showed an interest in what he did for a living. Applicant further testified that he has no reason to go back to Vietnam after his elderly sister passes away (TR at 46).

Applicant has a home in the United States in which he has \$500,000.00 to \$600,000.00 in equity. He also has a 401k plan with a balance of \$180,000.00 to \$200,000.00. The bank account he has in Vietnam, in which he keeps a small amount of money, is the only asset he has in Vietnam.

Applicant testified that the United States is the best country in the world and he wouldn't do anything to jeopardize its interests.

Letters from applicant's supervisors, coworkers, and customers in the defense industry were admitted into evidence. These letters describe applicant as a hardworking, dedicated employee who is extremely trustworthy and loyal.

CONCLUSIONS

The evidence establishes that applicant has an elderly sister still living in Vietnam, and that he travels to Vietnam to visit and care for her. On a common sense basis, applicant's contacts with his sister, particularly his contacts with her when he travels to Vietnam, create a heightened risk of foreign exploitation. Accordingly, Disqualifying Conditions 7.a (*contact with a foreign family member . . . 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*), 7.b (*connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information*) and 7.i (*conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country*) are applicable.

The foreign influence concerns raised by the foreign citizenship and/or residency of an applicant's immediate family member may be mitigated when it can be determined that "*the nature of the relationships with foreign persons, 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 United States*" (Mitigation Condition 8.a), and/or "*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 so 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*" (Mitigating Condition 8.b).

With respect to Mitigating Condition 8.a, applicant's sister is in her mid-70s and retired. She is not an agent of Vietnam, and does not engage in activity that is likely to call attention to her activities. The country in which she is located is somewhat problematic because countries run by Communist regimes with a record of human rights abuses, such as Vietnam,¹ are generally regarded as presenting more of a risk than counties with strong democratic institutions and respect for the rule of law. At the same time, the U.S. State Department reports that although Vietnam remains a Communist state, economic development has taken priority over adherence to ideological orthodoxy. Since the United States normalized diplomatic relations with Vietnam in July 1995, the United States and Vietnam have broadened political exchanges and economic trade. In December 2001, the United States and Vietnam entered into a bilateral trade agreement, expanding Vietnamese exports and direct United States investment in the Vietnamese economy. This was a significant milestone for Vietnam's economy and for normalization of U.S.-Vietnamese relations. Without a doubt, U.S.-

¹Despite laws to the contrary, as recently as 2006, Vietnam continued to arrest and detain citizens for their political activities (Exhibit 1).

Vietnamese relations “have become deeper and more diverse” in the years since political normalization. *See Background Note: Vietnam.*² These facts lead me to conclude that Vietnam is much less likely than in previous years to jeopardize its diplomatic and economic ties with the United States by using applicant’s sister to pressure or coerce applicant. Based on the foregoing, I conclude Mitigation Condition 8.a is applicable.

Mitigation Condition 8.b is also applicable. Applicant clearly has a sense of obligation to his sister in Vietnam. However, when compared to his bonds to his wife, child, and siblings residing in the United States, and his long-standing ties and loyalty to the United States, I am persuaded that, in the unlikely event he was forced to choose between his loyalty to his sister and loyalty to the United States, he would resolve this conflict in favor of the United States.

Based on the foregoing, I conclude there is no reasonably foreseeable risk that applicant’s ties to his sister can be exploited to the detriment of the United States.

FORMAL FINDINGS

GUIDELINE B: FOR THE APPLICANT

DECISION

In light of all 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 applicant.

Joseph Testan
Administrative Judge

²Exhibit 2.