

KEYWORD: Foreign Influence

DIGEST: Applicant's minimal ties to distant family members and a friend who are citizens and residents of Burma do not create a security concern. Clearance is granted.

CASENO: 04-03481.h1

DATE: 01/24/2007

DATE: January 24, 2007

In re:)	
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-----)	ISCR Case No. 04-03481
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
HENRY LAZZARO**

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's minimal ties to distant family members and a friend who are citizens and residents of Burma do not create a security concern. Clearance is granted.

STATEMENT OF THE CASE

On August 1, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.¹ The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline B (foreign influence). Applicant submitted a response to the SOR that was received by DOHA on August 29, 2006, admitted all SOR allegations and requested a hearing.

The case was assigned to another administrative judge on October 13, 2006, and reassigned to me on October 31, 2006, to be conducted with other hearings I had scheduled in the same region. A notice of hearing was issued on November 1, 2006, scheduling the hearing for November 30, 2006. The hearing was conducted as scheduled.

The government submitted seven documentary exhibits that were marked as Government Exhibits (GE) 1-7. GE 1-3 were admitted into the record and administrative notice was taken of the relevant information contained in GE 4-7 without objection. Applicant testified and submitted three documentary exhibits that were marked as Applicant's Exhibits (AE) 1-3, and admitted into the record without objection. The transcript was received on December 8, 2006.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, testimony, and exhibits, I make the following findings of facts.

Applicant is an unmarried 29-year-old woman. She was born in Burma and immigrated to the United States with her father and brother in 1998 when she was 20 years old. Those family members' entries into the U.S. were sponsored by Applicant's paternal grandmother who was herself a naturalized U.S. citizen. Because Applicant's older sister was 21 years old and no longer considered dependent on her father, the grandmother could not sponsor her entry into the U.S. Thus, Applicant's mother and older sister remained in Burma until such time as their entry could be sponsored by Applicant's father. Applicant's mother immigrated to the U.S. in 2002, now has permanent resident alien status, and is awaiting the time when she will be eligible to apply for U.S. citizenship. Applicant's sister first went to England, but now has immigrated to the U.S., attained permanent resident alien status, and is awaiting the time when she will be eligible to apply for U.S. citizenship.

Applicant graduated from high school in Burma in 1994, and immediately began studies at a medical school. Following her move to the U.S., she began studies at a major public university in 1998, and obtained a bachelor of science degree in computer science in May 2002. She was hired as an software engineer associate by a defense contractor in June 2003. She has since been promoted

¹ This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

to senior software engineer and earns approximately \$73,000 annually. She rents an apartment for herself, but in 2004 purchased a house for her parents. She applied about \$27,000 she had accumulated in savings to the \$135,000 purchase price of the house. Applicant does not own any property in Burma.

Applicant's mother was a self-employed physician in Burma. She has not worked outside the home since coming to the United States. Applicant's father worked as a factory manager in Burma until he quit that job in about 1989, and thereafter stayed home with the children. Applicant's sister is 30 years old, worked as a physician in Burma, and is now completing her medical residency at a private U.S. medical center. Applicant's brother is 26 years old, completed his college education at a major U.S. public university, and is employed as a computer engineer by a U.S. company.

Applicant traveled to Burma in December 2000 to visit her mother and sister who were still resident there. She used a Burmese passport for that travel because she was still a Burmese citizen. That passport expired in 2001, has not been renewed, and cannot be located.

Applicant traveled to Burma in January 2005 with her boyfriend to vacation and attend a seven-year memorial service for her deceased grandmother. Having become a naturalized U.S. citizen in May 2003, and having acquired a U.S. passport that same month, Applicant used her U.S. passport for that travel. Before traveling to Burma in 2005, Applicant notified her employer's security office of her intended travel. She also checked in with the U.S. Embassy in Burma upon arrival in that country. She did not have any contact with Burmese government officials on either occasion.

Applicant's is engaged to be married to the boyfriend she vacationed with in Burma in 2005. He is also a naturalized citizen of the U.S., having emigrated from Burma in the mid-1990s. Until the 2005 trip to Burma with her, Applicant's fiancé had not returned to that country since immigrating to the U.S. He does not have any contact with anyone in Burma.

Applicant has a maternal aunt and two maternal uncles who are citizens and residents of Burma. She visited with those relatives while in Burma in 2000 and 2005. She has telephone contact with those relatives about once a month when she calls them so her mother can speak with her siblings. Applicant never called her aunt or uncles before her mother immigrated to the U.S., and never contacts them now other than to arrange for her mother to speak with them.

Applicant has six cousins who are citizens and residents of Burma. She never contacts those people and only speaks with them if they happen to be present when she calls her aunt or uncles. Applicant had three friends who were citizens and residents of Burma when she was interviewed by an investigator from the Office of Personnel Management in January 2006. One of those friends is now a permanent resident alien in the U.S., and another is a student in Singapore who has no intention of ever returning to reside in Burma. Applicant visited with the third friend during her trip to Burma in 2005, but has had no contact with her since then other than to exchange greeting cards.

Senior engineering managers with Applicant's employer who she has worked for wrote letters of recommendation on her behalf. Those individuals consider her to be an extremely diligent and model engineer. She has established a reputation at work for being hardworking, conscientious,

and dependable. They note her care in handling classified material and security awareness and recommend most strongly that she be granted access to classified information.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline B, pertaining to foreign influence with its respective DC and MC, is most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.² The government has the burden of proving controverted facts.³ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁴ although the government is required to present substantial evidence to meet its burden of proof.⁵ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁶ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁷ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁸

² ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

³ ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

⁴ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

⁶ ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

⁷ ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

⁸ ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15

No one has a right to a security clearance⁹ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁰ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹¹

CONCLUSIONS

Foreign Influence. A security risk may exist when an individual’s immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

The record evidence clearly establishes that Applicant does not have close ties of affection or obligation to anyone in Burma. Applicant’s immediate family members are either citizens and residents or permanent residents of the United States. The only family members she has who are citizens and residents of Burma are an aunt, two uncles, and six cousins. Although she visited with them on the trips she took to Burma in 2000 and 2005, the only continuing contact she has with any of those relatives is when she calls her aunt or uncles to arrange telephone conversations between them and her mother. Two of the three friends alleged in the SOR no longer reside in Burma, and Applicant has not had any contact with the third since she visited Burma in January 2005, other than an exchange of greeting cards.

No Disqualifying Condition applies to the facts of this case. Further, whatever minimal ties of affection or obligation that could be deemed to apply to Applicant’s relatives and friends in Burma are overwhelming outweighed by application of Mitigating Condition (MC) 3: *Contact and correspondence with foreign citizens are casual and infrequent.*

In all adjudications the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person’s trustworthiness and fitness for access to classified information. Indeed, the “whole person” concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. I am satisfied Applicant has presented sufficient evidence of refutation, extenuation, and mitigation to overcome the case against her. Accordingly, Guideline B is decided for Applicant.

⁹ *Egan*, 484 U.S. at 528, 531.

¹⁰ *Id* at 531.

¹¹ *Egan*, Executive Order 10865, and the Directive.

FORMAL FINDINGS

SOR ¶ 1-Guideline B: For the Applicant

Subparagraphs a-c: 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. Clearance is granted.

Henry Lazzaro
Administrative Judge