

DATE: December 17, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-12073

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 37-year-old naturalized U.S. citizen, born in Vietnam, with both parents, three brothers, and several other relatives, who are all citizens and residents of Vietnam. By not mitigating these foreign influence security concerns, Applicant failed to demonstrate it is clearly consistent with the national interest to grant or continue his security clearance. Clearance is denied.

STATEMENT OF THE CASE

On August 22, 2002, pursuant to Executive Order No. 10,865, *Safeguarding Classified Information within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, (Directive), dated January 2, 1992, as amended and modified, the Defense Office of Hearings and Appeals (DOHA) 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant responded to the SOR on September 2, 2002, by admitting the allegations in the SOR and electing to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on October 2, 2002. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the SOR. Applicant received the FORM on October 15, 2002, but failed to respond within the 30 days allotted by the Directive, ¶ E.3.1.7. The case was assigned to me on November 26, 2002.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline B of the Directive because Applicant's immediate family, and other persons to whom he may be bound by affection, influence, or

obligation, are not United States citizens or may be subject to duress. Pursuant to the applicant's admissions to each of the conditions alleged in the SOR, I find as follows:

- (1) Applicant's parents are both citizens of Vietnam and reside there. He maintains contact with them at least every two months and last visited them in Vietnam in October 1996.
- (2) Applicant's three brothers are citizens of Vietnam and reside there.
- (3) Applicant has several relatives who are citizens of Vietnam and reside there.

Although Applicant declined to provide further information, a review of Applicant's security clearance application reveals that he was born in Vietnam in 1965 and became a U.S. citizen on July 17, 1992. He was graduated from an accredited university with a bachelor of science degree in 1992 and has been employed as a senior software engineer by a defense contractor since January 4, 1999.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Order No. 12,968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Exec. Order No. 10,865 § 2. *See* Exec. Order No. 12,968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Order No. 12,968 § 3.1(b).

"A security risk may exist when an individual's immediate family . . . 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." Directive, ¶ E2.A2.1.1. Having immediate family members who are citizens of, and residing in a foreign country, may raise a disqualifying security concern. Directive, ¶ E2.A2.1.2.1. Such security concerns could be mitigated by a determination "that the immediate family members . . . 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, ¶ E2.A2.1.3,

CONCLUSIONS

Based on the evidence of record, including Applicant's admissions, the Government has established reason to deny him a security clearance because of foreign influence: Some of Applicant's immediate family members-both parents and three brothers-are citizens of Vietnam and reside there. The Government also alleged in ¶ 1.c. of the SOR, that Applicant has several other relatives who are citizens of Vietnam and reside there. Although Applicant admitted as much, he did not admit, and the Government neither alleged nor proved, that he may be bound by affection, influence, or obligation to those other relatives. Thus, the Government failed to establish that these other relatives were a disqualifying factor under the Directive.

The Vietnamese citizenship and residency of members of Applicant's immediate family create the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such ties raises a security concern sufficient to require an applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at *33-34 (App. Bd. Feb. 8, 2001). By failing to mitigate these security concerns, Applicant failed to demonstrate that it was clearly consistent with national security to grant him the clearance.

FORMAL FINDINGS

Formal Findings as required by the Executive Order No. 10,865 § 3, ¶ 7 (*See* Directive, ¶ E3.1.25), are as follows:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

James A. Young

Administrative Judge