

DATE: April 20, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-24865

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Jr., Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Born in Vietnam, Applicant failed to mitigate security concerns over foreign influence resulting from his ties to Vietnam. He became a naturalized U.S. citizen in 1993. When he returned to Vietnam in 1995, he was repeatedly questioned and threatened by Vietnamese officials and was forced to pay these officials at each meeting. After a local police chief also threatened him, he gave that official a large sum of money. Based on his past response to these threats, there is substantial likelihood that he could be subject to duress again. Thus foreign influence could create a situation that could result in the compromise of classified information. Also, security concerns remain over personal conduct as Applicant falsified his birth date on official government forms. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on August 26, 2003. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. ⁽¹⁾ The SOR alleges specific concerns over foreign influence (Guideline B) in paragraph 1 and personal conduct (Guideline E) in paragraph 2. Applicant replied to the SOR allegations in an Answer notarized on September 12, 2003; he admitted all allegations except subparagraphs 1.c. and 1.h.; he requested a decision on the written record as he did not "need a hearing."

The case was assigned to Department Counsel who on October 16, 2003, prepared a File of Relevant Material (FORM) with 17 items that was forwarded to Applicant on October 22, 2003. Applicant responded on November 5, 2003. (Exhibit A) Department Counsel stated on November 21, 2003, that the government had no objection to his response. The case was assigned to me on December 2, 2003.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following findings of fact:

Applicant, a 52-year-old employee, began working for a defense contractor (Employer #1) in State #1 in May 1999 and completed a Security Clearance Application (Standard Form 86) as he needs a security clearance for the position. He went to a computer center and earned a diploma in 1997 which led him to a technical position from 1998 to 1999 with Employer #2. (Items 4, 5) He became a naturalized U.S. citizen in July 1993. (Item 4)

Foreign Influence

Born in Vietnam, Applicant in 1970 was drafted into the North Vietnamese Army where he served in various assignments as an intelligence officer until August 1982. Although in 1971 he was made an official party member, he later became disenchanted with the Vietnamese communist rulers and began in 1978 to explore ways to get out of Vietnam. He left Vietnam by walking to China through the border in August 1982. He was in a camp in China for ten months with other Vietnamese soldiers who had defected. In 1983 he boarded a Vietnamese refugee sailboat for Hong King where he was transferred to a closed camp. He was interviewed by representatives of the U.S. Government who he later learned were from the Central Intelligence Agency (CIA) and was sent to the U.S. in July 1983. He worked in restaurants from 1986 to 1997 and in retail from 1997 to 1998. (Items 2, 4, 5, 6)

From 1982 to 1988 he received \$25,000 per year from a government agency. He saved his money and has used that money to help his wife's family. (Item 6, p. 5)

In 1995 he decided to return to Vietnam for two months to vacation and seek a wife. On that trip he had contacts⁽²⁾ from the provincial police four times; they questioned him about how he came to the U.S. and asked about others in the Chinese camp. They made him pay a fine for his illegal departure from Vietnam of \$20 to \$30 which he paid in Vietnamese currency. He told them that most Vietnamese people in the U.S. are from the South and "if they knew I was in the North Vietnamese Army, I would loose my head. Therefore, I did not want to gamble with my life." They asked him if he would do something to help them in understanding the Vietnamese community in the U.S. He stated he forgot how he responded to this question and "might have agreed to go along with them." Three weeks later there was a fourth meeting when he was in the home of his bride-to-be. The head of the police department asked Applicant to give him \$1,500 to resolve the issue about his illegal departure in 1982. He handed the official the money as his marriage papers were still in process. He stated that at every meeting, he had to give them \$100. After he left in 1995, he wife told him that her brother had received a letter from an Army Intelligence Agency in Vietnam which gave the impression he was still working for the Vietnam Government. Applicant himself never saw the letter. (Item 5) He also stated that local people called him "comrade" and "may think that I am working for the Vietnamese Government in the United States." (Item 6)

He had gone to Vietnam to find a wife as he could not find a suitable partner in the U.S. People where he worked had assured him it was safe to travel to Vietnam to find a wife. He married her in 1995 in Vietnam, but it took two years for her papers to go through for her to come to the U.S. His wife is in the process of becoming a citizen.⁽³⁾ They have two children⁽⁴⁾ born in 1997 and 1998 who are U.S. citizens. (Items 2, 5, p. 7)

Applicant has no immediate family members in Vietnam except for a sister-in law who has four children; he no longer has any relationship with them and has not been in touch since 1995. He still has a friend in Vietnam with whom he went to military school and whom he visited in 1995, but he has not been in contact with him since 1996.

His wife has parents and a brother and sister in Vietnam. They have provided some financial assistance to his wife's parents in the past. In 1998 and in 1999 they sent them \$5,000 three times and also \$1,000, \$3,000 and \$1,000 through wire transfers. They planned to send no money in 2000 or 2001. He has limited contact with his wife's parents when she calls them once a month. (Item 5, pp 7-8; Item 6, pp 4-5; Items 8, 9, 13) In March 2001 he sent \$2,000 to his wife's sister in Vietnam so she could start school. (Item 6, p. 4; Item 12)

Applicant stated he is loyal to the U.S. as he feels "reborn in America. . . ." (Item 5, p 9; Item 6, p. 5) He stated that since he came to the U.S. he "has been and will be under the U.S. government's control" and has followed U.S. policies.

(Exhibit A)

He has not had any contact with anyone representing a foreign government, agency, or organization. If he were ever contacted, he would contact the security office of his company as he could not be pressured, coerced or influenced by anyone to do anything that would go against national security. (Item 5)

A U.S. Department of State (DOS) "Background Note: Vietnam" provides details on the history of the country and the changing relationship between the U.S. and Vietnam, including the normalization of diplomatic relations in July 1995. There has been increasing trade and large scale U.S. investments in Vietnam. In 1999 the U.S. private sector committed \$120 million to Vietnam, the seventh-largest foreign investor. (Item 15) A 2003 DOS Consular Information Sheet Vietnam advises that Vietnamese security personnel may place foreign visitors under surveillance or communications may be monitored or possessions searched. Local security officials have called in some U.S. citizens of Vietnamese origin for "discussions" not related to any alleged violation of law. (Item 16) A Human Rights Watch World Report 2003 Vietnam reports that the government continues to stifle free expression and restricts the exercise of other basic human rights." Bilateral political and economic relations between the U.S. and Vietnam continue to improve slowly. (Item 17)

Personal Conduct

Although Applicant was born in February 1952, his wife had changed his birth certificate to 1962 when it was translated in 1995 when he was there to get married. He explained that it is common in Vietnam to have inaccurate records due to "local corruption and a way of life." He also noted his birth date was incorrect when he worked for a restaurant, but he did not correct it. He has his correct birth date on his state driver's license. However, he used the 1962 date on a certificate he gave to the Social Security Administration (SSA) in 1998. He believed his age was keeping him from getting a job; so he used 1962 as his birth year in order to obtain a job in 1999. He also used the 1962 date on his security clearance application as he did not want the company to discover that he had lied about his age on the application. (Item 5, p. 9-10; Items 6, 7)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. The mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I applied relevant Adjudication Guidelines as set forth below:

Guideline B - Foreign Influence

The concern: 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: (1) not citizens of the United States or (2) 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.

Conditions that could raise a security concern and may be disqualifying include:

1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;
6. Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government;
7. Indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, coercion or pressure;

Conditions that could mitigate security concerns include:

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;
3. Contact and correspondence with foreign citizens are. . . infrequent;
5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

Guideline E - Personal Conduct**Conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.****Conditions that could raise a security concern and may be disqualifying also include:**

2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

Conditions that could mitigate security concerns include:

None

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS**Foreign Influence**

Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Acts indicative of foreign influence warrant careful scrutiny. Security concerns under Guideline B, Foreign Influence, are raised based on Applicant's conduct in Vietnam in 1995. Under Disqualifying Condition (DC) 6, concerns remain based on conduct that may make an individual vulnerable to coercion, exploitation, or pressure by a foreign government, and under DC 7, concerns remain when there are indications that representatives or nationals from a foreign country act to increase the vulnerability of an individual to possible future exploitation, coercion or pressure.

Although he became a naturalized U.S. citizen in 1993, Applicant reported when he returned ⁽⁵⁾ to Vietnam in 1995 for a visit of several months, he was questioned and threatened by Vietnamese officials and was forced to pay these officials to procure his release. Also, after a local police chief threatened him, he gave that official a large sum of money because of that threat in order to assure his marriage to his Vietnamese fiancée would take place. These actions support the Government's security concerns over possible foreign influence.

To his credit Applicant did report this coercion as part of his security investigation when he spoke to the DSS

investigator in 2000 and again in 2001. However, there is no evidence as to whether or not he promptly reported these contacts to proper authorities when he returned to the U.S. in 1995. A 2003 DOS Consular Information Sheet Vietnam advises that Vietnamese security personnel may place foreign visitors under surveillance or communications may be monitored or possessions searched. Local security officials have called in some U.S. citizens of Vietnamese origin for "discussions" not related to any alleged violation of law. Also, a Human Rights Watch World Report 2003 Vietnam discloses that the government continues to stifle free expression and restricts the exercise of other basic human rights." Thus, given the incidents of pressure in 1995 where he was identified and threatened, I conclude that there remains substantial likelihood that he could be subject to duress again.

Applicant provided limited mitigating evidence: only a statement that he believed that he had "never done anything without 'guidelines, suggestions, and recommendations from our government.'" In his 2000 DSS statement he stated has not again had any contact with anyone representing a foreign government, agency or organization. If he were ever contacted, he would contact the security office of his company as he could not be pressured, coerced or influenced by anyone to do anything that would go against national security. However, he failed to clarify these personal statements and provide any additional evidence to support a history of responsible conduct in the U.S. (such as by letters of reference and performance evaluations or awards). Consequently, I conclude Applicant provided insufficient evidence to mitigate⁽⁶⁾ these concerns.

In addition, Applicant's wife's family remain citizens of Vietnam and he provides financial support to them. Another security concern under DC 1 is that a security risk may exist when an individual's immediate family are citizens of, or resident or present, in a foreign country. These situations could create the potential for foreign influence that could result in the compromise of classified information.

On the other hand Applicant is not vulnerable to duress merely because of these family ties. He has no immediate family members alive in Vietnam and himself has limited contact with his wife's family. Thus, I conclude Applicant has presented sufficient evidence to meet the very heavy burden⁽⁷⁾ those circumstances present. His wife who lives in the US is seeking to become a U.S. citizen and will be removed from any potential pressure points. Any risk of foreign duress or influence on his wife's family would appear to be slight under MC 3 as Applicant's contact and correspondence with his wife's family are casual and infrequent. While in the past he provided them some financial support, they planned to send no money in 2000 or 2001. On balance he meets MC 5, as his support is minimal and not sufficient to affect his security responsibilities given his overall assets in the U.S. After considering the adjudicative process factors and the adjudicative guidelines, I conclude that those concerns over family ties are mitigated and resolve subparagraphs 1.e., 1.f., 1.g., and 1.h. for Applicant. However, security concerns remain under SOR subparagraphs 1.a., 1.c. and 1.d., so I resolve SOR paragraph 1 against Applicant.

Personal Conduct

Applicant's personal conduct raised security concerns because he altered his Vietnamese birth certificate to reflect a 1962 birth date instead of his actual 1952 birth date. He submitted this altered birth certificate to SSA. Although not alleged in the SOR, Applicant also falsified his birth date on his SF 86 . He believed his age was keeping him from getting a job, so he also used the 1962 date on his security application as he did not want the company to discover that he had lied about his age on the application. These derelictions led the Government to raise security concerns over personal conduct issues as reflecting questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations.

Applicant failed to overcome these Government's security concerns or to mitigate⁽⁸⁾ this concern. At the DSS interview Applicant was confronted about his information in his second DSS interview in 2001 as he failed to volunteered the information in the earlier interview. There is no evidence in the DSS statement that Applicant made any prompt, good-faith efforts to correct the omissions before being confronted with the facts. Also, the falsification was not an isolated incident as he falsified his SF 86 along with his SSA documents. After considering the adjudicative process factors and the adjudicative guidelines, I rule against Applicant on subparagraph 2.a. under SOR Paragraph 2.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline B AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: [\(9\)](#)

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

DECISION

In light of all 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 the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. In his Answer to SOR 1.c., Applicant denied that he was detained by these officials; however, in his DSS interviews in October 2000 he reported he was contacted by the police about five times. At every meeting he "had to give them \$100: and in one meeting he gave an official \$1,500 to settle his illegal departure in 1982. In the July 2001 statement, he stated that when he went back in 1995 he was "very nervous that the government would try and punish me for my defection." He had to see the police four times. (Items 5, 6)
3. Department Counsel concedes that Applicant's spouse has become a U.S. citizen. (FORM, p. 6)
4. Applicant denies he has an illegitimate son in Vietnam. (Items 6, 14) This issue was not alleged in the SOR.
5. In his Answer Applicant stated he returned to Vietnam in 1995 as he thought he "got a green light from CIA"; however, he did not expand on this answer and provide a basis for mitigation. (Item 2)

6. Conditions that could mitigate security concerns include:

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;

2. Contacts with foreign citizens are the result of official United States Government business;

3. Contact and correspondence with foreign citizens are casual and infrequent;

4. The individual has promptly reported to proper authorities all contacts, requests, or threats from persons or organizations from a foreign country, as required;

5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

7. The Appeal Board in ISCR Case No. 01-26893 issued on October 16, 2002, outlined a standard that when there is hostility between a foreign government and the U.S. this circumstance places "a very heavy burden on Applicant " to show that family ties there do not pose a security risk.

8. Conditions that could mitigate security concerns include: 1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability; 2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily; 3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts; 4. Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided; 5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress; 6. A refusal to cooperate was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information; 7. Association with persons involved in criminal activities has ceased.

9. There is no allegation 1.b. in the SOR. (Items 1, 2)