

DATE: June 18, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-26627

## **DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

#### **FOR APPLICANT**

Matthew Bernstein, Attorney At Law

### **SYNOPSIS**

Applicant's foreign contacts, specifically her two brothers and two sisters and mother-in-law and father-in-law who are citizens of and reside in Vietnam, do not pose a security risk. The Applicant's husband, mother, father and sister are permanent legal residents of the United States. The Applicant has minimal contact with those family members in Vietnam, and none of her family, whether it be those residing in the United States or those in Vietnam, are in any way connected with the Vietnamese government. Clearance is granted.

### **STATEMENT OF THE CASE**

On January 31, 2003, 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 February 20, 2003, and requested a hearing before a DOHA Administrative Judge. This case was transferred to the undersigned Administrative Judge on March 21, 2003. A notice of hearing was issued on April 9, 2003. The hearing was held on May 7, 2003, at which the Government presented four exhibits. The Applicant presented eleven exhibits. The Applicant called one witness and testified on her own behalf. The official transcript was received on May 21, 2003.

### **FINDINGS OF FACT**

The Applicant is 27 years old and married. She holds a Bachelor's of Science degree in Biological Engineering. She is employed by a defense contractor as a Computer Programmer, and is seeking to retain her security clearance in connection with her employment.

The Government opposes the Applicant's request for a continued security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she 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 South Vietnam in 1975, the same year the Communists took over. In 1983, at the young age of eight, she left Vietnam by boat, without her family, among other refugees, and arrived in Malaysia. She was later sent to the Philippines. For about two years, she lived in refugee camps before she was able to immigrate to the United States. In 1985, she came to the United States. In 1994, when she became eligible, at the age of eighteen, she applied for citizenship and was naturalized. The Applicant enrolled in college, and graduated with a Bachelor's Degree in Biological Engineering. Since then, the Applicant has returned to Vietnam on only one occasion and that was to get married in 2000.

In November 2001, the Applicant's husband immigrated to the United States. He is a permanent legal resident. He hopes to someday sponsor his parents to come to the United States.

The Applicant's mother, father and sister are also permanent legal residents of the United States and intend on becoming citizens as soon as they are eligible. (*See*, Applicant's Exhibit I). The Applicant's parents presently live with her in the United States. While in Vietnam, her mother was a housewife, and her father served in the South Vietnamese army.

The Applicant's two brothers and two sisters are citizens of and reside in Vietnam. Both of her brothers and one sister are students. The other sister is a housewife. The Applicant contacts her siblings in Vietnam about once every month or two by telephone. She also sends them about \$2,000.00 a year to help with their educational expenses. The Applicant's parents are in the process of sponsoring the Applicant's siblings through the immigration procedures. (*See*, Applicant's Exhibits E, F, G, and H).

The Applicant's mother-in-law and father-in-law are citizens of and reside in Vietnam. They are in the process of being sponsored to come to the United States. The Applicant's sister-in-law would also like to come.

None of the Applicant's family members, including those in the United States and those in Vietnam, presently, or at any time in the past, were connected in any way with the Vietnamese law enforcement, military, or national government.

### Mitigation

A close friend of the Applicant who has known her since she was fourteen years old testified that the Applicant is considered sweet and nice, very honest and trustworthy, and a loyal American.

Letters of recommendation from the Applicant's Manager, Division Manager, and direct supervisor indicate that the Applicant is an outstanding employee and obviously a very nice person. She is dependable, professional and has an impeccable work ethic. She is well respected among her peers and management. (*See*, Applicant's Exhibits A, B and C).

## **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

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.

### Condition that could raise a security concern:

1. An immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country.

### Conditions that could mitigate security concerns:

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 the loyalty of the person(s) involved and the United States.

3. Contacts and correspondence with foreign citizens are casual and infrequent.

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 has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. Foreign influence can raise 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 the Applicant's eligibility for a security clearance, there are mitigating conditions under Guideline B, of DoD5220.6 which are applicable to warrant her access to classified information. I have carefully assessed the degree of actual or potential influence that persons may exercise on the Applicant. I have considered the frequency and nature of her personal contact, her correspondence with the foreign contact, her political sophistication, and the general maturity level of the Applicant. I have carefully considered the Applicant's testimony and her documentary evidence.

The evidence establishes that the Applicant's foreign ties do not subject her to foreign influence. Although she has family members in her native country, specifically her two brothers, two sisters and her mother-in-law and father-in-law, she has very little contact with them. Mitigating condition 3, "contact and correspondence with foreign citizens are casual and infrequent" clearly applies in this case. None of her family members are in any way associated with the Vietnamese government, and she has no business interests in her native country. Mitigating condition 1, "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 and the United States", also applies in this case.

The Applicant's two brothers, two sisters, mother-in-law and father-in-law, who are citizens of and reside in Vietnam, are in the process of immigrating to the United States. As time passes, more and more of her family in Vietnam are migrating to the United States for greater opportunities and the freedoms this society allows us. Under the particular facts of this case, the Applicant is not a security risk.

At the young age of eight, the Applicant risked her life to escape the communist regime in power to find a better life in the United States. She applied for citizenship, at the age of eighteen, as soon as she was eligible. As a citizen, she has excelled academically, and has been a fine employee for her company. The evidence is persuasive and clearly demonstrates that the Applicant is not a security risk under Guideline B. Based on the foregoing, Guideline B is found for the Applicant.

## **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.

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: 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