

DATE: June 2, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-06801

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esquire, Deputy Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated security concerns over foreign influence resulting from his relatives' citizenship in Vietnam; he has parents, two brothers, and three sisters who live in Vietnam. Given that these relatives who are rice farmers have no ties to the government of Vietnam, I conclude that it is unlikely that they are foreign agents or in a position to be pressured. Further, there is no substantial likelihood that he would succumb to foreign influence if his family should be subject to duress. His references attest to his good character and professionalism at work. Given his 15 year history of responsible conduct in the US, I think it unlikely that foreign pressure on his family could create a situation that could result in the compromise of classified information. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on December 18, 2002. 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. Applicant replied to the SOR allegations in an Answer notarized on January 10, 2003, and requested a hearing.

The case was assigned to Department Counsel who attested it was ready to proceed on February 20, 2003. The case was assigned to me that day. Subsequently, a mutually convenient date for hearing was agreed to and a Notice of Hearing issued on March 14, 2003, set the matter for April 7, 2003. At the hearing the Government offered one exhibit for Official Notice and offered one exhibit; both were admitted into evidence (Exhibit I and Exhibit 1). Applicant testified and offered twelve exhibits (Exhibits A through L) which were admitted into evidence. The transcript (TR) was received on April 16, 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 28-year-old employee, began working as an engineer for a defense contractor (Employer #1) in January 2001; earlier he had worked there as a co-op student from May 2000 to August 2000. In January 2001 he completed a Security Clearance Application (Standard Form 86) and requested a security clearance which he needs for the position. (Exhibit 1; Exhibits E, G, TR 18)

Born in Vietnam, Applicant and his brother left Vietnam on a boat in 1988 when he was 12 years old. The boat was picked up by the Malaysian government, and he spent eight months in a refugee camp until he was granted refugee status under a United States (US) government program. Another brother left by boat the next year. He and his two brothers came to the US in 1990; he was in foster care until he finished high school. He started to work in 1990 and has worked every year since then and contributed to social security. He went to a community college for two years and then transferred to a state university to complete his bachelor of science (BS) degree. He financed his education with student loans. (Exhibit 1; Exhibits A, F, G; TR 13, 15-16, 19, 22)

Applicant became a naturalized U.S. citizen in February 1998. He registered for the selective service in 1994. In August 2000 he married a US citizen who was originally from Vietnam; he owns a home and pays US taxes. Also, he has served on a jury in 2001. He has two brothers who are US citizens. He got a US passport in 2001. (Exhibit 1; Exhibits B, C, D; TR 14, 16-18, 30-33, 37)

Foreign Influence

Applicant has been in the US for over fifteen years. He was raised in the US by foster care parents and is not close to his birth family. (TR 35) While he has family in Vietnam, his parents are rice farmers and his siblings help on the rice farm. They live in a small village and have no connection to the Vietnamese⁽²⁾

government. He has three brothers (ages 20, 18, and 16) and two sisters (ages 30 and 22) in Vietnam. None of them have served in the Vietnamese military. He sends his family money to assist them; last year he sent them \$1,300 from himself and his two brothers; he contributed \$1,000. He plans to send them \$1,000 twice a year. (Answer; TR 21-29, 35-36, 38; Exhibits I, K, L)

Applicant presented his telephone records from January 2002 to April 2003 to document his calls to his parents in Vietnam. (TR 22-23; Exhibit J) He returned to Vietnam in 1997 to visit his family and did so with a re-entry permit. (TR 28, 30-32; Exhibit L) He writes to his family once a year, and they write to him once a year. He called them once in sixteen months. It is unlikely he will visit them again. (TR 34-36, Exhibit J) Since he left when he was 12, he owns no property in Vietnam. (TR 36) No foreign person or institution has ever solicited him for any classified material. If anyone attempted to pressure his family, he would report them to the US authorities or his supervisors. He thinks any pressure would be unlikely as he has minimal contact with his family in Vietnam. (TR 36-37, 39) He promises that he would not release any classified information to foreign agents and would remain loyal to the US. (TR 43)

References

His manager at the corporation (who has know him from 1999 to present) commends Applicant as a "competent hard working engineer with a stable personality" who is well liked by his colleagues. He recommends Applicant for a security clearance. (TR 20-21, Exhibit H)

A co-worker who is the custodian of the classified materials has known Applicant for two years; she praises Applicant as "a nice and intelligent young man, who has struggled and work very hard to put himself through college. He is liked by his co-workers. (Exhibit H)

A co-worker who has known him for three years describes Applicant as a "hard worker, friendly and trustworthy." (Exhibit H)

Another co-worker who has know him for two hears assesses Applicant as "an honest hard-working individual" who is

very reliable, dedicated to his job and the company and sets an excellent example for all his peers. He sees "no risks with granting his clearance." (Exhibit H)

Applicant's foster mother for eight and a half years reports Applicant was "a pleasure to raise." He has always been a hard worker. She has known Applicant for fourteen years and considers him "very honest and a very good person." (Exhibit H)

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. But 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 weighed 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;

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;

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

Applicant has mitigated the Government's security concerns over possible foreign influence raised by Applicant's close ties of affection to citizens of a foreign country: he has family members who are citizens of Vietnam and live there. The security concern under Guideline B, Foreign Influence, 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.

While I have considered these concerns, I conclude Applicant has presented sufficient evidence in mitigation⁽³⁾ under MC 1 and 3 to meet the very heavy burden⁽⁴⁾ those circumstances present. These security concerns are mitigated by the fact that Applicant's family in Vietnam have not in the past been subject to pressure. Since they are rice farmers with no ties to the government, it is unlikely that they are foreign agents or in a position to be pressured. Any risk of foreign duress or influence on Applicant and/or his immediate family would appear to be slight and clearly manageable. Moreover, Applicant made evident that if there were any evidence of any coercion or pressure on himself or the family that he would immediately report such coercion to the proper authorities.

Further, since Applicant has limited contact with the family in Vietnam, I conclude that there is no substantial likelihood that they would be subject to duress and thus exercise foreign influence over Applicant. He has seen them only once in the 15 years he has lived in the US; and he has limited contact by telephone and letters. He gives them a minimal amount of support. Given Applicant's history of responsible conduct as evidenced by his many favorable letters of reference from his supervisor, co-workers, and foster family, I conclude it is highly unlikely that he would succumb to any coercion if any of his family members living in Vietnam would be subject to pressures or create a situation that could result in the compromise of classified information. I conclude Applicant is not vulnerable to duress merely because of these family ties. Further, his references attest to his good character and professionalism at work.

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). Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. Acts indicative of foreign influence warrant careful scrutiny. After considering the Enclosure 2 Adjudicative Process factors and the Adjudicative Guidelines, I conclude these ties are not of such a nature as to create any tangible risks of undue pressure on Applicant, so foreign influence security concerns are mitigated. Thus, I resolve SOR paragraph 1 and subparagraphs 1.a. through 1.b. in Applicant's favor.

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 FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For 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 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. Vietnam is a poor agrarian country. The Government's security concern over Applicant's family in Vietnam is based

solely on the fact that the country is controlled by a communist government and a fear that his family could be pressured so that he would be forced to choose between his loyalty to the US and his family. (Exhibit I, TR 41-42) The US resumed regular diplomatic relations with Vietnam in 1995.

3. 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.

4. Since the US has had normal diplomatic relations with Vietnam since 1995, the Government presented no evidence of a hostile relationship between the U.S. and Vietnam. 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.