

DATE: August 7, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-08310

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 43-year-old technician. He was born in Vietnam in 1960. His family was persecuted by the Communist government after 1973, and he fled by boat in 1979. He arrived in the U.S. in 1980, and became a U.S. citizen in 1986. He calls his elderly mother three or four times a year, but does not have close contact with his family members still in Vietnam, or those who have emigrated. He has credibly expressed strong positive feelings for the U.S. and his intent to reject any efforts to persuade him to violate U.S. security interests. He also expressed an intent to report any such contacts to company security officials. litigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On March 3, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons

why DOHA could not make the preliminary affirmative finding required under the Directive that it

is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

On March 15, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made after a hearing before a DOHA Administrative Judge. The matter was assigned to me on May 5, 2003. A Notice of Hearing was issued on May 19, 2003, and the hearing was conducted on June 3, 2003. At the hearing, Applicant testified and did not offer any exhibits. The Government did not call any witnesses, but offered two exhibits, which were marked and admitted as Government Exhibits (GX) 1 and 2. Applicant testified, but did not offer any exhibits. The transcript (Tr) was received at DOHA on June 18, 2003.

FINDINGS OF FACT

Applicant is a 43-year-old mathematician and consultant. The SOR contains four allegations, 1.a. - 1.d., under Guideline B (Foreign Influence). Applicant's response admits SOR 1.a and denies the other three allegations. The admission is incorporated herein as a finding of fact.

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

Guideline B (Foreign Influence)

1.a. - Applicant's mother is a citizen of and resident in Vietnam;

1.b. - Applicant has six sisters. ⁽¹⁾ One sister is a citizen of Vietnam and lives in Canada (Tr at 25), one sister is now a U.S. citizen and lives in the U.S. (Tr at 24, 25), and four sisters are citizens of and reside in Vietnam. All four are married and are seeking to emigrate to the U.S. (Tr at 17, 23, 24). Applicant has little contact with them (*Id.*), except for the youngest sister, who is taking care of Applicant's mother. Applicant calls his mother and sister three or four times a year (Tr at 26).

1.c. - Applicant provides approximately \$1,000 each year to his mother in Vietnam, when she indicates a need for money, or as a gift on Mother's Day, to show his loyalty and affection for her (Tr at 16). His mother is 71 years old. He may inherit his mother's house when she dies, as the only son, but if that happens, he intends to give the house to the sister caring for his mother. He does not need the money (Tr at 29). Applicant has strong feelings for the United States. He was imprisoned by the Communists and considers himself to be one of the "Boat People," who fled Vietnam in the 1970s in small boats. He landed first in Malaysia and then Indonesia, from where he was able to gain entry into the U.S. in 1980 (Tr at 21). He has about \$15,000 in a savings account in state A and a 401K plan worth about \$39,000 (Tr at 32, 33).

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant

in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (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 pertinent 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, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent to this case:

GUIDELINE B (Foreign Influence)

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

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;

8. A substantial financial interest in a foreign country . . . that could make the individual vulnerable to foreign influence.

Conditions that could mitigate security concerns include:

1. A determination that the immediate family member(s), cohabitant, or associate(s) in question would not constitute an unacceptable security risk.
5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

Applicant was born in Vietnam in 1960. He came to the U.S. in 1980, attended a Technical School in 1981, and has been working as a technician since that time. He has been with his present employer since 1999. He holds a U.S. passport issued in 1994. He does not consider himself to be a dual citizen with Vietnam.

The concerns stated in the SOR are cited under Guideline B and are based on the risk of foreign influence by family members in Vietnam. The fact of Applicant's mother and sisters being citizens of and living in Vietnam is certainly a matter of concern. Although relations between the U.S. and Vietnam have improved in recent years, its government remains Communist, and Vietnam is generally not considered as basically friendly to U.S. interests (GX 2). As in all Guideline B cases, the lack of any past attempts by Vietnam to influence him is a positive factor, but does not necessarily mean that no future attempts will be made. For this reason, the risk of Applicant being asked to disclose classified information by family in Vietnam cannot be ignored. At the same time, the language in Disqualifying Condition (DC) 1 suggests that both the presence of close family in a foreign country *and* whether the applicant would feel himself/herself "forced to choose between loyalty to the persons involved and the United States" are important factors that must be considered.

In the present matter, Applicant has expressed strong feelings about who he is, and where his loyalty, allegiance, and obligations belong. From Applicant's testimony and demeanor, I find his testimony to be highly credible. He suffered under the regime in control of Vietnam, and he fled that country at the risk of his life. That was 23 years ago. He has since made a home in the United States and has committed himself to the security and interests of this country. In this context, even with the nature of the foreign government being considered, I find more important and compelling Applicant's evidence as to how he views his obligations to the United States, and how he would respond to any attempts at coercion.

When asked what he would do if asked by a family member to act against U.S. interests, he responded, "I would refuse and you know I want to tell them I am a citizen of the United States and I serve this country in my honor and I wouldn't do anything that would bring harm to this country because this is the country I stand by - - this is the country that I loved to come here and I would lose my life in order to come here. And I would give that" (Tr at 40). He added that he would report any such contact to his company's security officer (Tr at 41). He concluded by saying emphatically, "I know only one country and the United States of America is my country and the only one." Applicant's explanations as to his relationships with family members in Vietnam, the lack of any problems in the past, and his clear recognition of his

security responsibilities lead me to conclude that there is minimal risk of Applicant acting against U.S. interests.

Foreign Influence Disqualifying Condition 1 (family in foreign country) is applicable but, under Mitigating Condition 1, I conclude the relationships "would not constitute an unacceptable security risk."

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline B (Foreign Influence) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.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.

BARRY M. SAX

ADMINISTRATIVE JUDGE

1. The SOR alleges the existence of a brother in Vietnam. This brother is now deceased.