

KEYWORD: Foreign Influence

DIGEST: Applicant is a 24-year-old native-born citizen of the United States. She has worked for defense contractor since 2000 and successfully held an interim clearance. Applicant's grandmother and aunt are citizens and residents of Vietnam. Applicant's mother stays in contact with them, but Applicant does not. Applicant's two sisters are still citizens of Vietnam, although they live in the U.S. and intend to apply for citizenship. All the remaining members of Applicant's immediate family are citizens and residents of the U.S., including her husband and daughter. Applicant's limited ties to her relatives in Vietnam and her extensive bonds with the U.S. mitigate the security concerns arising from possible foreign influence. Clearance is granted.

CASENO: 02-11089.h1

DATE: 02/17/2005

DATE: February 17, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-11089

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL J. BRESLIN**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a 24-year-old native-born citizen of the United States. She has worked for defense contractor since 2000 and successfully held an interim clearance. Applicant's grandmother and aunt are citizens and residents of Vietnam. Applicant's mother stays in contact with them, but Applicant does not. Applicant's two sisters are still citizens of Vietnam, although they live in the U.S. and intend to apply for citizenship. All the remaining members of Applicant's immediate family are citizens and residents of the U.S., including her husband and daughter. Applicant's limited ties to her relatives in Vietnam and her extensive bonds with the U.S. mitigate the security concerns arising from possible foreign influence. Clearance is granted.

### **STATEMENT OF THE CASE**

On August 24, 2000, Applicant submitted a security clearance application. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On February 25, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline B, Foreign Influence, of the Directive.

Applicant answered the SOR in writing on March 9, 2004. She originally opted to have the matter decided without a hearing. Later, Applicant elected to have a hearing before an administrative judge.

The case was originally assigned to another administrative judge, but was re-assigned to me on August 25, 2004. I initially set the hearing for September 15, 2004, but delayed it due to a scheduling conflict. With the concurrence of the parties, I conducted the hearing on November 16, 2004. At the hearing, Government counsel moved to amend the allegations in ¶ 1.b and ¶ 1.c, without objection, and I granted the motion. [\(U\)](#) The government presented four exhibits. Applicant presented four exhibits and the testimony of one witness. Applicant also testified on her own behalf. DOHA received the transcript (Tr.) on December 6, 2004.

## FINDINGS OF FACT

Applicant denied the allegations in ¶ 1.b of the SOR.<sup>(2)</sup> She admitted the factual allegations in ¶¶ 1.a and 1.c of the SOR, with explanations.<sup>(3)</sup> Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 24 years old.<sup>(4)</sup> She was born in the United States and is a citizen of this country.<sup>(5)</sup> She is married and has one child.<sup>(6)</sup> Applicant and her family reside with her parents, her brother, and her sister.<sup>(7)</sup>

Applicant began working for a defense contractor in June 2000.<sup>(8)</sup> The defense contractor works on classified projects for a military service.<sup>(9)</sup> She began as an administrative assistant and now serves as a senior engineering aide.<sup>(10)</sup> In that capacity, she held an interim clearance and worked in a classified environment, although she did not have access to classified information.<sup>(11)</sup> Applicant was responsible for handling company proprietary information and did so correctly.<sup>(12)</sup> She properly reported her travel abroad.<sup>(13)</sup>

Applicant's supervisor praises her duty performance, describing her as extremely trustworthy, loyal, and hard-working.<sup>(14)</sup> Applicant's co-workers think very highly of her work, and recommend her for a security clearance in the strongest terms.<sup>(15)</sup>

Applicant's parents were born in Vietnam.<sup>(16)</sup> Her father was in the South Vietnamese Army.<sup>(17)</sup> After retiring from the Army, he worked as a mechanic for an American business in South Vietnam.<sup>(18)</sup> He also served as a mechanic for an American company providing special services to the U.S. government in Vietnam.<sup>(19)</sup> Her mother transported fish for the markets and was a seamstress in Vietnam.<sup>(20)</sup>

South Vietnam fell to communist forces in 1975. In about 1976, Applicant's parents left Vietnam to find a better life for themselves and their children.<sup>(21)</sup> They took a small boat to Malaysia where they lived until 1979 when they were allowed to immigrate to the United States.<sup>(22)</sup> Applicant's parents are naturalized citizens of the United States.<sup>(23)</sup>

Applicant has seven older siblings; six were born in Vietnam and one was born in Malaysia.<sup>(24)</sup> All live in the United States.<sup>(25)</sup> Of her five brothers, four have become naturalized citizens of the United States.<sup>(26)</sup> *One brother has completed the process for naturalization and is only awaiting the oath ceremony.*<sup>(27)</sup> *Applicant's two sisters plan to become U.S. citizens, but have not begun the naturalization process.*<sup>(28)</sup> *One is a student and the other a homemaker.*<sup>(29)</sup> *None of Applicant's siblings have ever worked for the government of Vietnam or served in its military forces.*<sup>(30)</sup>

*Applicant has two relatives living in Vietnam—a grandmother and an aunt (her mother's mother and sister). Her grandmother is retired and her aunt works in the rice fields.*<sup>(31)</sup> *Her grandmother has been diagnosed with cancer.*<sup>(32)</sup> *Applicant does not maintain contact with her grandmother or aunt or provide any support.*<sup>(33)</sup> *Applicant's mother calls them about once or twice a month, and sends about \$200.00 to \$400.00 each quarter.*<sup>(34)</sup>

*Applicant traveled to Vietnam for a vacation with her family in 1993, when she was 13 years old.*<sup>(35)</sup> *They also visited their relatives in Vietnam for about one month in 2001 and 2003.*<sup>(36)</sup> *Applicant is not planning any future trips to Vietnam.*<sup>(37)</sup>

*Neither Applicant nor her parents have any assets in Vietnam.*<sup>(38)</sup> *All of Applicant's assets are in the U.S., including an automobile, stocks, and an employee investment account.*<sup>(39)</sup>

## **POLICIES**

*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."*<sup>(40)</sup> *In Executive Order 10865, Safeguarding Classified Information Within Industry (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.*

*To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:*

*Guideline B, Foreign Influence: A security risk may exist when an individual's immediate family, including cohabitants, or other persons to whom he 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. 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.* <sup>(41)</sup>

*Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.*

*"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." <sup>(42)</sup> An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable 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.* <sup>(43)</sup>

*Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. <sup>(44)</sup> Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. <sup>(45)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." <sup>(46)</sup> "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." <sup>(47)</sup>*

*A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. <sup>(48)</sup> It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.*

## **CONCLUSIONS**

*I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following*

*conclusions regarding the allegations in the SOR.*

*Paragraph E2.A2.1.2.1 of the Directive provides that it may be a disqualifying condition if "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." Paragraph E2.A2.1.3.1 defines "immediate family members" to include a spouse, father, mother, sons, daughters, brothers, and sisters. Applicant has two sisters who are citizens of Vietnam, even though they reside in the United States. This "could create the potential for foreign influence that could result in the compromise of classified information."<sup>(49)</sup>*

*mere possession of family ties with persons in a foreign country is not, as a matter of law, automatically disqualifying . . . [it] does raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.<sup>(50)</sup>*

*I conclude this potentially disqualifying condition applies.*

*Under ¶ E2.A2.1.2.2 of the Directive, it may be disqualifying where an applicant is, "[s]haring living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists." Applicant resides with her mother, whose mother and sister are citizens and residents of Vietnam. As noted above, Applicant also lives with a sister who is a citizen of Vietnam. I find this potentially disqualifying condition applies.*

*Under the Directive, these potentially disqualifying conditions can be mitigated under certain conditions. It is potentially mitigating where "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 involved and the United States."<sup>(51)</sup>*

*None of Applicant's relatives are members of the military forces or the government of Vietnam. There is no evidence indicating any one of them is an "agent of a foreign power."<sup>(52)</sup>*

*In assessing whether an applicant is vulnerable to exploitation through relatives in a foreign country, it is helpful to consider several factors, including the character of the government of the relevant foreign country. Vietnam is a communist country.<sup>(53)</sup> Foreign visitors to Vietnam have been arbitrarily arrested, detained, or expelled.<sup>(54)</sup> U.S. citizens who were formerly citizens of Vietnam may be subject to governmental control; they are treated as Vietnamese*

citizen in criminal matters and subjected to military service and taxes. (55) There has been some terrorist activity in Indonesia (although not targeted at Americans) and the State Department is concerned that similar attacks could spread to Vietnam. (56) Under the circumstances, the possibility exists that a foreign power in Vietnam would attempt to exploit or pressure its residents to act adversely to the interests of the United States.

It is important to consider the vulnerability to duress of Applicant's relatives in Vietnam. Applicant's grandmother is retired and is ill. Her aunt is self-employed. There is no evidence either has the means or the power to leave the country at will. Under these circumstances, there is some opportunity for adverse influence against Applicant's relatives in Vietnam. However, with regard to Applicant's relatives who are citizens of Vietnam living permanently in the United States, their vulnerability to pressure or duress from a foreign power in Vietnam is very slight.

Another significant factor is Applicant's vulnerability to pressure or duress applied indirectly through her ties with her relatives. Obviously, Applicant is close to her mother and sister. Applicant does not maintain regular contact with her grandmother or aunt in Vietnam. Applicant is a U.S. citizen by birth, and has lived in this country all her life. All her immediate family members, including her husband and daughter, live in the U.S. and most are citizens. All her assets are in this country; she owns no property in Vietnam. She has worked for a defense contractor for several years and was previously granted access to confidential material without adverse incident. Considering Applicant's limited connection to her relatives in Vietnam and her powerful ties to the United States, I find Applicant is not vulnerable to pressure or duress from a foreign power in Vietnam. I conclude the mitigating condition set out in ¶ E2.A2.1.3.1 of the Directive applies.

Under ¶ E2.A2.1.3.3 of the Directive, it may also be mitigating where "[c]ontact and correspondence with foreign citizens are casual and infrequent." Applicant does not stay in contact with her grandmother or her aunt in Vietnam, therefore this mitigating condition applies to the security concerns arising from that relationship. At the same time, Applicant has regular contact with her mother and a sister who is a citizen of Vietnam. This potentially mitigating condition does not apply to those relationships.

I considered carefully all the facts and circumstances in this case in light of the "whole person" concept. I conclude Applicant has mitigated any potential security concerns arising from Applicant's family ties to Vietnam.

### **FORMAL FINDINGS**

My conclusions as to each allegation in the SOR are:

*Paragraph 1, Guideline B: FOR APPLICANT*

*Subparagraph 1.a: For Applicant*

*Subparagraph 1.b: For Applicant*

*Subparagraph 1.c: For Applicant*

**DECISION**

*In light of all of 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. Clearance is granted.*

*Michael J. Breslin*

*Administrative Judge*

*1. Tr. at 39-41.*

*2. Answer to SOR, dated March 9, 2004.*

*3. Id.*

*4. Ex. 1 at 1.*

*5. Id.*

*6. Tr. at 24.*

*7. Id. at 25.*

*8. Ex. 1 at 2.*

*9. Tr. at 18.*

*10. Ex. B; Tr. at 24.*

11. *Tr. at 20.*
12. *Id.*
13. *Tr. at 21.*
14. *Ex. C.*
15. *Ex. B; Ex. C.*
16. *Ex. 2 at 1.*
17. *Id. at 2.*
18. *Id.*
19. *Id.*
20. *Id.*
21. *Tr. at 26-27.*
22. *Id.*
23. *Ex. 1 at 3.*
24. *Id. at 4-5.*
25. *Id.*
26. *Id.; Tr. at 28.*
27. *Tr. at 28.*
28. *Ex. 1 at 4-5.*
29. *Tr. at 27.*
30. *Tr. at 29.*
31. *Ex. 2 at 6.*
32. *Tr. at 37.*
33. *Tr. at 23, 31-32.*
34. *Tr. at 31-32.*
35. *Tr. at 24, 33.*
36. *Tr. at 33-34.*
37. *Tr. at 34.*
38. *Tr. at 35.*

39. *Id.*

40. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

41. Directive, ¶ E2.A2.1.1.

42. Directive, ¶ E2.2.1.

43. *Id.*

44. Directive, ¶ E3.1.14.

45. Directive, ¶ E3.1.15.

46. ISCR Case No. 01-20700 at 3 (*App. Bd. Dec. 19, 2002*).

47. Directive, ¶ E2.2.2.

48. *Exec. Ord. 10865*, § 7.

49. Directive, ¶ E2.A2.1.1.

50. ISCR Case No. 99-0424, 2001 DOHA LEXIS at \*\*33-34 (*App. Bd. Feb. 8, 2001*).

51. Directive, ¶ E2.A2.1.3.1.

52. *See 50 U.S.C.A. § 1801(b)*.

53. *Ex. 3 at 1*.

54. *Id. at 2*.

55. *Id. at 1*.

56. *Id. at 2*.