

DATE: March 15, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-27028

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's foreign contacts, specifically his family ties in Viet Nam have been mitigated and do not raise a security concern. Clearance is granted.

**STATEMENT OF THE CASE**

On September 2, 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 September 19, 2003, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on January 8, 2004. A notice of hearing was issued on January 16, 2004, scheduling the hearing for February 11, 2004. At the hearing the Government presented five exhibits. The Applicant presented seven exhibits, called four witnesses and testified on his own behalf. The official transcript (Tr.) was received on March 1, 2004.

**FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 42 years of age and is employed as a Senior Engineering Specialist for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

**Paragraph 1 (Guideline B - Foreign Influence).** The Government alleges in this paragraph that the Applicant is ineligible for clearance because he 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 Viet Nam 1961. In 1979, he escaped communist controlled Viet Nam in a small boat. After three days adrift in the South China Sea, he was saved by a Taiwanese ship and brought back to a small island in Taiwan. In June 1980, he was admitted into the United States as a refugee. He became a naturalized United States citizen in 1986. The Applicant obtained his bachelors degree, masters degree and doctorate in engineering at a prestigious American university. (*See, Applicant's Exhibit C*). In August 1980, he registered for the selective service as part of his American duty. (*See, Applicant's Exhibit B*). He became employed in the defense industry in 1988, and has held a security clearance for the past fifteen years without incident.

The Applicant's wife is a naturalized United States citizen and his daughter was born in the United States. The Applicant owns a home and has substantial financial interests in the United States. (*See, Applicant's Exhibit G*). The Applicant has no financial interests in Viet Nam.

The Applicant has a mother-in-law and four siblings who are citizens of Viet Nam and currently reside there. His mother-in-law is a nun in a Buddhist temple in a rural area of Viet Nam. He has little or no contact with her. Three of his four siblings are engineers, the other is a technician. He contacts his siblings by e-mail about once or twice a year. None of his siblings are agents of or associated with the Viet Nam government in any way, nor are they members of the communist party. As part of his cultural tradition, the Applicant has sent between \$400.00 and \$500.00 twice a year to his nephews for Christmas and the Chinese New Year. He no longer sends money to these relatives. He has traveled to Viet Nam to visit his relatives in 1994, 1996, 1999 and 2002.

The Applicant's father was a Lieutenant in the South Viet Nam Army who at one time was an interpreter for the United States Army during the Viet Nam war. (*See, Applicant's Exhibit A*). In April 1975, he was killed by accident when a blast from a North Viet Nam Army cannon hit him. At the time of his death, he was driving a scooter with the Applicant on the back trying to get out of Saigon. The Applicant's father was killed instantly and the Applicant was injured from the blast. The Applicant's mother is also deceased.

Four witnesses, that included the Applicant's supervisor, past supervisor, coworkers and a friend testified on behalf of the Applicant. They each attest to the Applicant's hard working nature and his outstanding character that shows high morals, reliability, trustworthiness and good judgment.

The Applicant has received numerous awards and commendations from management as well from as from the United States Air Force for his contributions to the Defense Department. He is recognized and well respect in his field of expertise. (*See, Applicant's Exhibit D*).

## **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. Contact 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 Guideline B, the evidence establishes that the Applicant is not vulnerable to foreign influence. As a refugee, he chose to seek permission to immigrate to the United States to make it his permanent home. He became a citizen, and has lived his life as an American since then. He owns a home and has other substantial financial interests in the United States. His wife is a naturalized United States citizen and his daughter is a native born American, and these circumstances are unlikely to change.

The evidence shows that the Applicant's mother-in-law and four siblings in Viet Nam are not employed by or connected with the Vietnamese military, law enforcement or a government agency. They are not involved in political, scientific, commercial or other activities where they might benefit from obtaining United States national security information. The Applicant's contacts with his family in Viet Nam are casual and infrequent and not of a nature to influence his security worthiness. He no longer sends money to his nephews in Viet Nam. Accordingly, Mitigating Factors 1 and 3 apply in the case.

Furthermore, the Applicant has significant ties or connections to the United States. He is educated, stable and well respected by his peers. He has met his obligation of registering for the selective service and has been gainfully employed since 1988. Applicant has lived in the United States for the last twenty-five years, which is nearly all of his adult life. Based upon the record as a whole, the facts and circumstances show that the Applicant's family ties to Viet Nam do not pose an unacceptable security concern or risk of foreign influence. Applicant has overcome the case against him and satisfied his ultimate burden of persuasion. Accordingly, Guideline B is found for the Applicant.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

## **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