

KEYWORD: Foreign Influence

DIGEST: Applicant mitigated security concerns over foreign influence as her elderly parents have lived in the U.S. and have been permanent residents since 1990. While they have elderly relatives in Vietnam, they have no ties to the government. She has limited or no contact with these elderly relatives and has not visited there since she left as a refugee in 1981. She has no plans to return for a visit. It is improbable that foreign pressure on these relatives would create a situation that could influence Applicant as she persuasively attests that should any such pressure be exerted that she would report it to her security manager and government officials. She became a naturalized U.S. citizen in 1990 and has had a security clearance since 1997. Clearance is granted.

CASENO: 02-27793.h1

DATE: 01/31/2005

DATE: January 31, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-27793

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Jennifer L. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated security concerns over foreign influence as her elderly parents have lived in the U.S. since 1982 and have been permanent residents since 1990. While they have elderly relatives in Vietnam, they have no ties to the government. She has limited or no contact with these elderly relatives and has not visited there since she left as a refugee in 1981. She has no plans to return for a visit. It is improbable that foreign pressure on these relatives would create a situation that could influence Applicant as she persuasively attests that should any such pressure be exerted that she would report it to her security manager and government officials. She became a naturalized U.S. citizen in 1990 and has had a security clearance since 1997. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) ⁽¹⁾ to the Applicant on March 9, 2004. The SOR detailed reasons why the Government could not find that it is clearly consistent with the national interest to grant her access to classified information. The SOR alleges specific concerns over foreign influence (Guideline B) in paragraph 1. Applicant replied to the SOR allegations in an Answer notarized on March 26, 2004, where she denied 1.f. and admitted 1.a., 1.b, 1.c., 1.d., 1.e., and 1.g. She requested a hearing.

The case was assigned to Department Counsel who indicated it was ready to proceed on June 10, 2004. On June 17, 2004, the case was assigned to me. After a mutually convenient date for hearing was identified, a Notice of Hearing issued on June 22, 2004, set the matter for July 12, 2004, at a location near where Applicant works and lives. At the hearing the Department Counsel offered a Stipulation that the government's documents could be admitted without any objection from the Applicant. Consequently, I accepted for Administrative Notice one document (AN I) (State Department Human Rights Report on Vietnam 2000) and two exhibits (Exhibits 1-2; TR11). The Applicant offered one exhibit (Exhibit A) which was admitted into evidence. She testified herself. The transcript (TR) was received on July 28, 2004.

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 additional Findings of Fact:

Applicant, a 33-year-old employee, began working for a defense contractor (Employer #1) in State #1 in October 1997. Applicant was granted a secret clearance in December 1997; at that time she disclosed she had relatives in Vietnam. In May 2002 she completed a Security Clearance Application (Standard Form 86) for a reinvestigation. She went to work for Employer #2 in April 2004; she still needs a secret clearance. (Exhibits 1, 2; TR 14) (Exhibit 1; TR 14, 17-18; 29-31)

Born in Vietnam, Applicant became a naturalized U.S. citizen in June 1990; she obtained a U.S. passport in August 1995. She received a B.S. degree in electrical engineering in May 1995 at a university in State #1. Applicant married a U.S. citizen in November 1998 in State 1. Her husband works for the U.S. government and holds a U.S. Department of Energy "Q" clearance. (Exhibits 1, 2; TR 17-18) All of her assets are in the U.S.: Applicant and her husband own a house in State #1 valued at \$490,000 and she has a 401K. (TR 19)

Foreign Influence

Applicant and her parents are former refugees from Vietnam who left by boat when Applicant was eleven years old. In August 1981 they were rescued and placed in a refugee camp in Hong Kong where they remained until 1982 when they were sponsored by a church group to come to the U.S. They settled in State #1 where her father found a job as a photographer until he retired in 2000. (Exhibit 2; TR 15, 20, 22; 27) When Applicant completed the SF 86 forms, she disclosed that her parents are citizens of Vietnam, but her parents currently resides in the U.S. in State #1 and became permanent U.S. residents in 1990; they do not hold a passport from Vietnam. (Exhibit 1; Answer; TR 15, 23) Her paternal grandfather had worked for the French. Her father had a photography business in Vietnam. Neither her mother or father were affiliated in any way with the Vietnamese communist party, government, or military. Her parents have not had any contact with the Vietnamese government since their arrived in the U.S. in 1982, but they have not become U.S. citizens because of the language barrier and because of their difficulty in learning American history. They are still studying for the test. They have no intent to return to Vietnam. (Exhibit 2; TR 20-21; 29, 32, 36)

Her parents call their relatives in Vietnam three times a year. For six years she provided financial support of \$2,000 to her parents. She learned that they have used it on an intermittent basis to help relatives in Vietnam. Her parents sent clothes or divided the money and had it delivered personally by their friends. She has not provided any money for the past 18 months once she learned it was a security concern. (Exhibit 2, page 3; TR 16-17, 21) She has no future intent to provide any money to anyone in Vietnam. (TR 26)

Applicant has several other relatives who are citizens of Vietnam and reside in Vietnam. In 1982 after Applicant and her parents fled the Government of Vietnam took control of her uncle's family photo business and forced him to retire. Since then the communist government has taken no action against her family in Vietnam. She has no recent contact with her father's relatives in Vietnam. She has not had any contact since 1980 with her paternal uncle in his mid-70's who is a retired photographer nor with her paternal aunts who are in their 70's who had husbands who were photographers. She has had yearly telephone contact of five to ten minutes with her maternal aunt who is 70 and a housewife; her husband was a construction worker. She has fifteen cousins but only knows two of them; she has not communicated with them in 23 years. None of her relatives have worked for the Government of Vietnam. None are members of the communist party in Vietnam. (Exhibit 2; TR 15-16, 23-25; 27-29)

Applicant attests she will not be pressured or influenced by any foreign power or by her foreign relatives; if there was any effort to pressure or coerce her into disclosing classified information she would immediately report it to her security manager or the Federal Bureau of Investigation (FBI). She has not visited Vietnam since she left and has no plans to return or visit. (Exhibit 2, pages 4-5)

References

Applicant was recommended for a security clearance by three professional colleagues. (Exhibit A; TR 12)

A program manager who has known her since 1997 states that she is an excellent performer and very professional. She has a sense of "love and gratitude for her adopted country, and recognition of what her freedoms are worth." He stated she is an excellent security risk. (Exhibit A)

A staff systems engineer who is a professional colleague who has known her for seven years attests that Applicant's work conduct and professionalism have always been exceptional. He has observed that she is "someone you can trust." (Exhibit A)

A corporate engineering manager recommended her for a security clearance. He has known her for six years as her colleague, manager and friend. She has handled her responsibilities "with high integrity and professionalism" (Exhibit A)

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 casual and 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

Applicant has had a security clearance since 1997. She mitigated the Government's security concerns over possible foreign influence raised by Applicant's close ties of affection to her elderly parents who are citizens of Vietnam but who have resided in the U.S. since 1982 and over her parents relatives with whom she has no contact or very limited contact. She overcame the security concern under Guideline B, Foreign Influence, that a security risk may exist when an individual's immediate family, . . . and other persons to whom he may be bound by affection, influence, or obligation are: (1) not citizens of the United States.

While I have considered these concerns and the documents submitted for administrative notice, I conclude Applicant has presented evidence to meet the burden these circumstances present. These security concerns are mitigated by several facts: Applicant's parents have lived in the U.S. since 1982 and have been permanent residents of the U.S. since 1990. They are in the process of applying to become naturalized citizens. Applicant's only family ties to Vietnam are her elderly relatives with whom she has limited or no contact since 1981; she has no contact with her cousins. She has not visited Vietnam since she left as a refugee in 1981. Thus, any risk of foreign duress or influence on Applicant and/or her immediate family would appear to be slight and clearly manageable.

Further, should any duress be attempted, Applicant credibly stated she would report such an attempt to her security officer or the FBI. In addition, she has references from three professional colleagues and supervisors who endorse her trustworthiness for a security clearance. Thus, I find there is no substantial likelihood that she would be subject to duress merely because of these family ties as the family have no ties to the government. It is unlikely they or she could be exploited by the government in Vietnam in a way that could force Applicant to choose between loyalty to those relatives and loyalty to the United States.

While for six years she provided money to her parents who in turn used it to help relatives in Vietnam, she no longer provides such money to her parents and has not done so for eighteen months since she learned to do so could raise a security concern. 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. After considering the 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.g. 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

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: 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 DoD Directive 5200.6, dated January 2, 1992 (Directive).