

KEYWORD: Foreign Influence; Personal Conduct

DIGEST: Applicant is a 41-year-old employee of a defense contractor who emigrated to the U.S. from Viet Nam at age 13. He has a second wife, a mother-in-law, and seven in-laws living in Viet Nam. He sends his wife \$100.00 every month to pay for lessons in English. He traveled to Viet Nam five times between 1998 and 2000. Clearance is denied.

CASE NO: 02-27728.h1

DATE: 04/26/2004

DATE: April 26, 2004

In Re:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-27728

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT*Pro Se***SYNOPSIS**

Applicant is a 41-year-old employee of a defense contractor who emigrated to the U.S. from Viet Nam at age 13. He has a second wife, a mother-in-law, and seven in-laws living in Viet Nam. He sends his wife \$100.00 every month to pay for lessons in English. He traveled to Viet Nam five times between 1998 and 2000. Clearance is denied.

STATEMENT OF THE CASE

On September 29, 2003, the Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Information Within Industry* as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed 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 Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated October 27, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on December 22, 2003. A complete copy of the file of relevant material (FORM), consisting of seven documents, was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not do so. The case was assigned to, and received by me on March 22, 2004.

FINDINGS OF FACT

Applicant has admitted three of the four factual allegations pertaining to foreign influence under Guideline B. Those admissions are incorporated herein as findings of fact. He denied one Guideline B allegation and the allegation pertaining to Guidelines E. After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made.

Applicant is a 41-year-old employee of a defense contractor who emigrated to the U.S. from Viet Nam at age 13. He has a second wife, a mother-in-law, and seven in-laws living in Viet Nam. He sends his wife \$100.00 every month to pay for lessons in English. He traveled to Viet Nam five times between 1998 and 2000.

He failed to register for the selective service upon reaching the age of 18 as he was then required to do.

All of Applicant's siblings are U.S. citizens except one who resides in the U.S. but is a citizen of Viet Nam.

Although diplomatic relations between the U.S. and Viet Nam have been resumed, relations between the countries remain strained.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As

Commander in Chief, 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." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

"A security risk may exist when an individual's immediate family and other persons to whom he or she 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." Directive, ¶ E2.A2.1.1. Having immediate family members who are citizens of, and residing in a foreign country, may raise a disqualifying security concern. Directive, ¶ E2.A2.1.2.1.

CONCLUSION

Based on the evidence of record, including Applicant's admissions, the Government has established reasons to deny him a security clearance because of foreign influence. Having established such reasons, the Applicant has the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at**33-34 (App. Bd. Feb. 8, 2001).

Under the Directive the Government has alleged a number of Disqualifying Conditions (DC) all of which relate directly or stem from his marriage to a citizen of Viet Nam and the various in-laws that he acquired by that marriage. The allegations set forth sufficient information to justify a finding against Applicant under Guideline B. (DC 2)

No evidence was offered by the Applicant to indicate that the mother and siblings of his wife are not agents of a foreign power that might mitigate the allegation (MC 1) nor can it be mitigated on the theory that contacts with foreign citizens are only casual (MC 3) since he is now married to a foreign citizen. There is a rebuttable presumption that Applicant has ties to and affection for his wife and in-laws and nothing has been submitted to rebut that presumption.

Such security concerns could be mitigated by a determination "that 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(s) involved and the United States." Directive, ¶ E2.A2.1.3 No evidence has been offered to justify the application of a mitigating condition.

Applicant did not register for the Selective Service and offers as an excuse only that no one told him to do so. That is not a sufficient answer to mitigate the disqualifying condition by failing to comply with rules and regulations. Directive E2.A5.1.1.

FORMAL FINDINGS

Formal Findings as required by the Directive, ¶ E3.1.25, are as follows:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

DECISION

After full consideration of all the facts and documents presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Charles D. Ablard

Administrative Judge