

DATE: December 8, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-28256

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Alan Edmunds, Esq.

SYNOPSIS

Applicant is a 28-year-old U.S. citizen who is employed as an engineer for a defense contractor. His wife is Laotian and is waiting to be sworn in as a naturalized U.S. citizen. Applicant's wife's two sisters, parents and grandfather are Laotian citizens. Applicant's wife's sister, parents and grandfather live in Laos. Her other sister and a brother live in the U.S. Her brother is a naturalized citizen and her sister is preparing the paperwork to become a naturalized citizen. Applicant's father-in-law was imprisoned for a short period of time by the government of Laos and three of his children were granted political asylum in the United States, including Applicant's wife. Based on the relationship Applicant has with his wife and her family, it is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

HISTORY OF THE CASE

On February 25, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B, foreign influence. Applicant submitted a response to the SOR, dated March 19, 2004, and requested a hearing. In his SOR response, Applicant admitted all the allegations contained in the SOR, and provided explanations in an effort to extenuate and mitigate the security concerns raised by the allegations.

The case was assigned to me on October 18, 2004. A notice of hearing was issued on October 18, 2004, scheduling the hearing for November 3, 2004. The hearing was conducted as scheduled. The government submitted three documentary exhibits that were marked as Government Exhibits (GE) 1-3. They were admitted into the record without objection. The Applicant testified on his own behalf, and submitted documentary exhibits that were marked as Applicant's Exhibits (AE) A-H. All of Applicant's exhibits were admitted without objection. Four character witnesses were called and testified on Applicant's behalf. The transcript was received on November 22, 2004.

FINDINGS OF FACT

Applicant is a 28-year-old engineer who works for a defense contractor. His wife is a citizen of Laos and a permanent resident of the U.S. She has completed her application to be a U.S. citizen, passed the test, and is waiting to be sworn in. Applicant's wife entered the U.S. 13 years ago with her brother and sister. She was 15 years old and the oldest of the siblings. They lived with their uncle. They were granted political asylum because her father, in Laos had been prosecuted and jailed. He was not incarcerated for a long time. No evidence was presented as to the specifics regarding his incarceration. Her parents and younger sister remained in Laos. Applicant's brother-in-law is now a U.S. citizen. His sister-in-law, who lives in the U.S. is a citizen of Laos, but is applying for U.S. citizenship. Applicant's wife's grandfather lives in Laos and does not work.

Applicant's father-in-law is a rice picker in Laos and does not work for the government. His mother-in-law does not work. His sister-in-law, who remained in Laos, is 19 years old and a student. Applicant and his wife would like for her sister and parents to come to the U.S. Applicant's wife does not own any property in Laos and has no intention of returning and living in Laos. Applicant and his wife went to Laos in July 2003, for a few weeks to visit her family. Applicant does not speak Laotian and could not communicate with his in-laws.

Applicant's wife contacts her family in Laos monthly. Applicant and his wife were visited by her family, once for their engagement party, and later for their wedding. Applicant's wife used to send approximately \$20.00 to her sister for her birthday, but stopped when Applicant's security clearance became an issue. Applicant does not believe his wife's family knows what he does for a living. Applicant's wife works for a defense contractor as a configuration analyst. She does not have a security clearance.

Applicant is a U.S. citizen. He graduated from college in 1998, works full time, and attends law school in the evenings. He and his wife have been married four years. Applicant does not have any Laotian party affiliation or belong to any groups in the U.S. with Laotian affiliation. Applicant stated he would immediately inform his superiors if there was any attempt to garner classified information from him. Applicant is considered honest, reliable, hard working, and trustworthy by those he works for and with. He has earned excellent performance evaluations by his employer.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline B, pertaining to foreign influence, with its respective DC and MC, applies in this case.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²⁾ The government has the burden of proving controverted facts.⁽³⁾ The burden of proof is something less than a preponderance of evidence,⁽⁴⁾ although the government is required to present substantial evidence to meet its burden of proof.⁽⁵⁾ Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.⁽⁶⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

No one has a right to a security clearance⁽⁹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Any reasonable doubt about whether an applicant

should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. (11) The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. (12) It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSION

Under Guideline B, 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 obligations 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 interest in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Based on the allegations in the SOR, DC 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*, must be evaluated in determining whether it is clearly consistent with the national interest to grant a security clearance to Applicant under Guideline B. DC 1 applies in this case because Applicant's wife, until sworn in is a citizen of Laos, her parents, sister and grandfather reside in Laos, and her sister is a citizen of Laos, residing in the United States.

The following information about Laos was provided in GE 2 and 3. Laos is a poor, developing country with a socialist authoritarian government. Its political power is centralized in the Lao People's Revolutionary Party. The U.S. State Department issued a security advisory in January 2004, regarding attacks in public markets, transportation facilities, and all forms of ground transportation. It is believed the attacks are politically motivated. The laws are significantly different than those in the U.S., and do not afford the protections available to the individual. Persons violating the law may be expelled, arrested or imprisoned. The government has very strict rules on contact by foreign citizens with Laotian nationals. To get married, permission must be obtained from the government and the chief of the village where the Lao national resides. In certain instances, the Lao national may be jailed without a trial and the foreign national may be interrogated, detained, arrested, or jailed. The government of Laos claims to permit religious freedom, but restricts the importation of religious texts and artifacts. The government registers and controls all associations, including religious groups. Meetings, even in private homes, must be registered and those held outside established locations may be broken up and the participants arrested.

The following mitigating conditions must be evaluated in determining whether it is clearly consistent with the national interest to grant a security clearance to Applicant under Guideline B, MC 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*, and MC 3: *Contact and correspondence with foreign citizens are casual and infrequent*.

Applicant's wife's family members are not agents of the Laos government, so the issue under MC 1 is whether they are in a position to be exploited by Laos. Applicant's wife maintains close contact with her family in Laos. She and Applicant would like her sister and parents to join them in the U. S. Prior to the issue of Applicant's security clearance she sent customary gifts to her sister. Applicant's in-laws visited them for their engagement party and wedding and Applicant and his wife visited them in Laos. Applicant's wife calls her parents monthly. Although Applicant's wife does not have a financial obligation with her family, based on her relationship, she maintains a familial obligation. Due to the close relationship Applicant's wife has with her family it creates a position of vulnerability for Applicant. This vulnerability could be exploited by the socialist authoritarian government of Laos, in a way that could force Applicant to choose between his loyalty to his wife and her family and his loyalty to the U.S. Applicant's father-in-law was already jailed by the government, so it is likely the government maintains a record of his incarceration. Applicant's relationship with his wife and her relationship with her family, both in the U.S. and in Laos are not casual and infrequent. I find MC 1 and MC 3 do not apply.

In all adjudications the protection of our national security is the paramount concern. The objective of the security-

clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes we should view a person by the totality of their acts, omissions, motivations and various other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence in this case, including Appellant's appearance, demeanor and credibility while testifying. I have also considered him under the "whole person" concept. Accordingly, I find Applicant has not mitigated the security concerns that arose from the foreign influence concerns. In reaching my decision, I have also considered the appropriate factors and guidelines in SECNAVINST 5510.30A, and DoD Regulation 5200.2-R, as amended.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline B AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

DECISION

In light of all the circumstances 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.

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Section E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p.3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p.2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, Section E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Section E3.1.15.
9. *Egan*, 484 U.S. at 528, 531.
10. *Id.* at 531.
11. *Egan*, Executive Order 10865, and the Directive.

12. Executive Order. 10865.§ 7.