

DATE: August 5, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-29522

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Jason Perry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, born in Burma (renamed Myanmar by the country's military government) and granted political asylum in the U.S. in 1991 before he became a naturalized U.S. citizen, has immediate and extended family members who are citizens and residents of Burma, where they remain potentially vulnerable to pressure or coercion. Despite his demonstrated courage and loyalty to the U.S., his ties to his immediate and extended family members, which he cannot contact out of fear he could place them in danger with the Burmese government, create security risks that cannot be reconciled with Guideline B. Applicant is unable to mitigate foreign influence security concerns associated with his having family members who are both citizens and residents of Burma. Clearance is denied.

STATEMENT OF CASE

On May 27, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, 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, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on July 17, 2004, and requested a hearing. The case was assigned to me on October 1, 2004, and was scheduled for hearing on ay 23, 2004. A hearing was convened on May 27, 2005, for the purpose of considering whether it is clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of two exhibits and three State Department reports on Burma, for which official notice was taken; Applicant relied on one witness (himself) and one exhibit. The transcript (R.T.) of the proceedings was received on June 1, 2005.

SUMMARY OF PLEADINGS

Under Guideline B, Applicant is alleged as follows: (a) His parents are citizens and residents of Burma; (b) his mother currently is employed by the Government of Burma (renamed Myanmar by the military government); (c) he exchanges telephone calls with his parents twice a year; (d) his sister is a Burmese citizen residing in Burma; (e) his brother is a citizen of Burma currently residing in Thailand; and (f) he was sent to prison in 1988 by the Burmese Government for four months for demonstrating against the Burmese Government (thereafter fleeing to Thailand in 1988).

For his answer to the SOR, Applicant admitted each of the allegations with explanations. He claimed the last time he talked to his mother over a year ago she was requesting to the government to retire. Applicant claims that under the current military government in Burma, lives of people are under tight control and that when he left Burma in 1988 his parents were forced to disown their son because of his political in democracy and human rights in the country. He claims he no longer has regular contact with his parents in recognition of the danger they would be placed in were the Burmese government to find out. He claims his brother's Burmese citizenship was revoked by the military government of the country many years ago because of his political participation. And he claims his 1988 arrest by the Burmese government was precipitated by his involvement in a student uprising that peacefully demanded democracy and human rights; after which he fled to Thailand to avert political persecution and illegal imprisonment by the military government.

FINDINGS OF FACT

Applicant is a 37-year old network engineer for a defense contractor who seeks to obtain a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant's background

Applicant was born and raised in Burma to Burmese parents. In 1988, while he was a student in Burma, Applicant participated in a peaceful human rights demonstration on a Burmese street. He was arrested by riot police and imprisoned for four months by the military government. After he was released from prison, he and many of the other student demonstrators fled to Thailand. He entered Thailand in 1990 (R.T., at).

In 1991, Applicant received political asylum status from the U.S. Government and emigrated to the U.S. where he went to work for his current defense contractor. He was naturalized as a U.S. citizen in June 2001 (*see ex. 2*). Applicant owns no property in Burma and has returned to the country just once since immigrating to the U.S. He has no plans to return to Burma in the future. His wife is also Burmese by birth and received political asylum in the U.S. several years ago. She is expecting a child, holds permanent residency status, and plans to apply for U.S. citizenship in the near future (R.T., at 55-56).

Applicant's immediate and extended family members and his contacts with them

Both of Applicant's parents are citizens of Burma who reside in the country. Both his father and grandfather were one imprisoned by the military government, but are not currently. Applicant is unsure whether any of his other family members (both immediate and extended) are in prison. His father has never worked for the Burmese government. His mother works for Burmese government's department of construction (R.T., at 37). When he last talked to her over a year ago, she indicated to him she had expressed her desire to retire from the government. Since he hasn't spoken to his mother since, he doesn't know whether she retired.

After Applicant left Burma in 1988, the Burmese government forced his mother to sign a document that she would never contact Applicant and would be prosecuted if she did. Still, he continued to exchange phone calls twice a year with his mother. When she told him in a 2003 telephone exchange that she was fearful of losing her job and being arrested if she talked to Applicant, Applicant then ceased all contacts with her, in the knowledge that the Burmese government has a very sophisticated system of intelligence (R.T., at 37-38, 44-45). He has not had any contacts with his father in four years (R.T., at 38). Neither of Applicant's parents support the Burmese government and would leave the country if they had the money to do so. None of his family members residing in Burma have visited him in the U.S., and none plan to because of the political situation in Burma. Applicant, in turn, assures that he would not return to Burma for any reason (even to attend a funeral) for so long as the military junta remains in power (R.T., at 35, 41). Applicant's

assurances appear sincere and are accepted.

Applicant has one sister who is a citizen and resident of Burma. Based on his last contact with her in 1998, she works for a local Burmese business. When she found out her mother was in danger because of him, she stopped contacting him altogether.

Applicant also has a brother of Burmese descent. His brother's citizenship was revoked by the Burmese military government many years ago because of his political participation in opposition politics. Applicant has had no contact with his brother who currently resides in Thailand. He has a cousin, too, who, along with her husband recently fled Burma and gained political asylum in the U.S. with her husband (R.T., at 49-50).

Applicant has aunts and uncles on both his mother's and father's side who are citizens and residents of Burma (R.T., at 51-52). He has had no contact with any of them since he immigrated to the U.S.

Applicant's wife (who is expecting a child) also has immediate and extended family members residing in Burma. She has parents, grandparents, aunts and uncles who are citizens and residents of Burma. She has had limited contact with her grandparents since immigrating to the U.S., but not apparently with any of her other family members. To the best of her knowledge, none of the family members have ever worked for the Burmese government (R.T., at 54).

Applicant is considered honorable and reliable by his superior and coworkers who have worked with him and know him (*see* exs. A and B; R.T., at 61-63). Applicant is very supportive of junior personnel in his office and oft-helps them. Applicant is known to be loyal to the U.S. and dedicated to its principles (R.T., at 61).

Burma's country status

Under British control for the first half of the 20th century, Burma enjoyed strong administrative institutions, a transformed economy (from subsistence farming to a large-scale export economy). Britain acceded to Burma's post-World War II demands for independence. But after a constitution was drafted in 1947, and independence was extended a year later, Burma's anointed leader and his cabinet were assassinated before the constitution could be put into effect. The new government was wracked with widespread conflict and internal struggles over the ensuing 15 years that culminated in a military coup in 1962 and ensuing abolishment of the constitution and destabilization of the country's economy and business conditions. *See Background Note: Burma*, U.S. Department of State Country Reports (September 2004) (*hereinafter*, *Background Note*).

Although the ruling military government changed the country's name to Myanmar and its capital to Yangon in 1989, the democratically elected parliament of 1990 (never recognized by the ruling junta) does not recognize the name change, and the democratic opposition maintains use of the name Burma. *See Background Note: Burma, supra*. Because of its unyielding support of the democratically elected leaders, the U.S. Government likewise continues to refer to the country as Burma. The country name issue has become even more politically contentious of late because of the United Nations recognition of the name change. Pending any change in State Department policy regarding the official name of the country, though, the country will continue to be identified as Burma in official DOHA proceedings.

The student disturbances that broke out in 1988 over the worsening economic situation regime disputes resulted in massive demonstrations of students (expanding to the general public) and severe government crackdowns on the participants that claimed the lives of over 1000 demonstrators. The leader of the elected opposition in 1990 was placed under house arrest and has been in and out of house arrest ever since (R.T., at 45-47). The military government in control today is operated by a ruling junta that maintains rigid authoritarian rule over the people of Burma through strict censoring of information, harsh repression of individual rights, and suppression of ethnic minority groups. *See Background Note, supra*.

U.S.-Burmese relations remain very strained. Official relations between the U.S. and Burma have been cool since the 1988 military coup and violent suppression of pro-democracy demonstrations. *See Background Note, supra*. The U.S. has responded with broad sanctions against Burma, most notably a ban on the export of financial services, a freeze on the assets of certain Burmese financial institutions and extended visa restrictions on certain Burmese officials. Because of its particularly severe violations of religious freedom, the U.S. has designated Burma a country of particular concern

(CPC) under the International Religious /freedom Act.

Burma remains the subject of numerous documented human rights violations, as well as internal displacement of ethnic minorities. The government's extremely poor human rights record

even shows signs of worsening amidst reports of extrajudicial killings, disappearances, torture, rape, and arbitrary arrests and detentions, forced relocation of persons, forced labor, conscription of child soldiers, and reestablished forced conscription of the civilian populations into militia units. *See Burma*, U.S. Department of State Country Reports on Human Rights Practices-2003 (February 2004) (*hereinafter Burma-2003*).

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Foreign Influence

The Concern: A security risk may exist when an individual's immediate family, including co-habitants, and other persons to whom he or she may be bound by affection, influence, or are 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.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a

deliberately or inadvertently fail to safeguard classified information.

CONCLUSIONS

Born and raised in Burma, Applicant is a highly regarded network engineer for a defense contractor, who sought political asylum in the U.S. and immigrated to this country in 1991. Unable to contact his family members in Burma (both his immediate family and his wife's family) out of concern hi family members could be placed at risk to coercion

and influence, Applicant has avoided all contacts with his family for over a year now. Whether these risks of coercion and influence associated with his family members in Burma can be reconciled with Applicant's holding a security clearance under these circumstances is the security issue posed.

The continued citizenship and residence of Applicant's immediate and extended family members in Burma (*i.e.*, his immediate family members-his parents and his sister and brother-and his wife's immediate family members) raises potential concerns about their being vulnerable to future pressure or duress that could result in the compromise of classified information. The issues, as such, raise concerns over the risk of potential for members of Applicant's immediate and extended family being exposed to risks of pressure or duress to induce Applicant to divulge classified information he might be privy to.

The Government finds security risks associated with (a) Applicant's parents and siblings being citizens of Burma and residents of the same country (save for Applicant's brother who is living in Thailand) and (b) his wife's family members being citizens and residents of Burma. Although Applicant's ties to his wife's aunts and grandparents do not appear to be particularly close, they are enough to invite application of Disqualifying Condition (DC) E2.A2.1.2.1 (*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*) of the Adjudicative Guidelines for foreign influence.

The Adjudicative Guidelines governing collateral clearances do not dictate *per se* results or mandate particular outcomes for any chosen set of guidelines covering risks of foreign influence. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing. Personnel security assessments continue to be governed by the same Change 4 requirements of the Directive for appraising the security risks associated with the individual's having family abroad, which include both common sense assessments of country risks and information available from public sources. *See* ISCR Case No. 03-24933 (July 2005).

So, under these adjudicative guidelines, while an applicant with immediate family domiciled in a hypothetical hostile country might pose a risk of a hostage situation, he might conversely be able to neutralize material risks of exploitation of immediate and/or extended family members residing in a friendly country. By all published State Department country reports, Burma is a country with a very poor human rights record and reputation for imposing harsh physical and psychological treatment on persons considered non-cooperative or threats to the government. Burma cannot be characterized as an ally of the US in State Department official publications. Based on reported government abuses of both its own citizens and foreigners, Burma cannot be deemed to provide an acceptable political environment for managing hostage risks. Its military junta continues its harsh rule and systematic human rights abuses and generally maintains its strict authoritarian rule over the people of Burma through information censoring, repression and suppression of ethnic minorities. Within such an authoritarian political environment, no reasonable conclusions can be reached that Applicant's immediate and extended family members are not in a position to be exploited by Burmese authorities.

While the foreign influence provisions of the Adjudicative Guidelines are ostensibly neutral as to the character of the subject country, they should not be construed to ignore the geopolitical aims and policies of the particular foreign regime involved. Burma continues to be governed today by a hardened military regime that seized power by military coup and keeps its elected prime minister under house arrest. Burma is also a country with a considerable history of extrajudicial harsh treatment of those (both young and old) who challenge the authority and bona fides of the regime's hierarchy. Burma's government and institutions, both in their official and extrajudicial capacities, have shown considerable disrespect and hostility towards America and its longstanding institutional respect for human rights and the rule of law.

Because Burma remains an embedded military government with a poor track record for respecting human rights and the rule of law, the risk of a pressure or influence situation involving an immediate or extended family member of Applicant's cannot be safely discounted. Burma's strategic location and political character create security concerns over risks of direct or indirect pressure or influence of an immediate or extended family member of Applicant's by Burmese authorities. These concerns preclude safe predictive judgments about Applicant's ability to withstand risks of exploitation and pressure attributable to his familial relationships in Burma.

So, given the continued presence of Applicant's immediate and extended family members in Burma, their presence presents potential risks of pressure and coercion. Their Burmese citizenship and residence constitute an unacceptable risk, for which the mitigation benefits of E2.A2.1.3.1 (*A determination that the immediate family members, co-habitant or associate 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 persons involved and the United States*) of the Adjudicative Guidelines may not be availed of by Applicant. Mindful of Applicant's avoidance of contact with his parents and family members in Burma in recent years, his lack of contact is more a reflection of the concerns he has for the safety of his family than any perceived casual relationship with any of them. Accordingly, application of mitigating condition E2.A2.1.3.3 (*Contact and correspondence with foreign citizens are casual and infrequent*) is very limited under these circumstances and not dispositive. Applicant fails to mitigate foreign influence concerns, and unfavorable conclusions warrant with respect to subparagraphs 1.a through 1.f of Guideline B.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in E2.2.1 of the Adjudicative Process of Enclosure 2 of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS and the FACTORS and CONDITIONS listed above, this Administrative Judge makes the following separate FORMAL FINDINGS with respect to Appellant's eligibility for a security clearance:

GUIDELINE B: (FOREIGN INFLUENCE): AGAINST APPLICANT

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

Sub-para. 1.d: AGAINST APPLICANT

Sub-para. 1.e: AGAINST APPLICANT

Sub-para. 1.f: AGAINST 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 Applicant's security clearance.

Roger C. Wesley

Administrative Judge