

DATE: September 21, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30004

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire, Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esquire

SYNOPSIS

This 45-year-old engineer/scientist was born in Vietnam in 1958, came to the U.S. with his family when he was 17, and became a U.S. citizen in 1985. His immediate family is all in the U.S. Only his wife's two sisters remain in Vietnam. He has held a DoD security clearance for almost two decades, with no apparent problems. He has returned to Vietnam only three times in 29 years, the last time in 1998, each time so his wife could visit her sisters. He sees himself only as an American and he has no emotional or other ties with Vietnam. He credibly avers he would reject and promptly report any improper contacts. litigation has been established. Clearance is granted.

STATEMENT OF THE CASE

On November 5, 2003, 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, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On November 24, 2003, Applicant submitted a response to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The matter was assigned to me for resolution on April 7, 2004. On May 15, 2004, a Notice of Hearing was issued, setting the hearing for ay 24, 2004. At the hearing, the Government did not present any witnesses but offered three (3) exhibits, Government Exhibits (GX) 1-3. Applicant testified, called four other witnesses, and offered 19 exhibits, which were marked as Applicant's Exhibits (AX) A-S. All exhibits were admitted without objection. The transcript (Tr) was received at DOHA on June 14, 2004.

FINDINGS OF FACT

Applicant is a 45-year-old engineer/scientist for a defense contractor. He was born in 1958 in North Viet Nam. He came to the United States (U.S.) in 1975, at age 17, became a U.S. citizen in April 1985, and obtained a U.S. passport in 1990. He first obtained a DoD Confidential level security clearance in 1985 and Secret in 1993 (Tr at 61 and attachment to response to SOR). All of his close family members are U.S. citizens and reside in the U.S. (GX 2). His only ties with Vietnam are through his wife's family members, but the relationship is not a close one. He does not send them any money (Tr at 52), nor do any of his relatives in the U.S. (Tr at 58 -60). His loyalties and closest ties are with the U.S. and he feels none toward Vietnam (Tr at 51 - 53). The SOR contains four allegations under Guideline B (Foreign Influence). Applicant admits the factual allegations in all SOR allegations, some with explanations. The specific admissions are incorporated into this decision and are deemed to be findings of fact.

After considering the totality of the evidence derived from the hearing testimony and all evidence of record, I make the following FINDINGS OF FACT as to each SOR allegation:

Guideline B (Foreign Influence)

1a. - Applicant's brother is a citizen of the Socialist Republic of Viet Nam (Vietnam) currently residing in the U.S. He is eligible to obtain U.S. citizenship but Applicant is not aware of when that might happen (Tr at 63).

1.b. - Applicant's father-in-law is a citizen of Vietnam and currently resides in the U.S. The 80-year-old father-in-law took the citizenship test and failed it. The mother-in-law, cited in the SOR as a citizen of Vietnam, became a naturalized U.S. citizen in 2002, and resides in the U.S.

1.c. - Applicant's two sisters-in-law are citizens of Vietnam and currently reside in Vietnam.

1.d. - Applicant traveled to Vietnam in 1992, 1995, and 1998. He traveled there to allow his wife to visit her sisters. He followed security guidelines and reported each visit to his company security officer (GX 2). These were the only visits to Vietnam since leaving there 29 years ago (Tr at 54).

Applicant submitted a number of exhibits (letters and memoranda from work colleagues and friends) who view Applicant as "meticulous and honest" (AX A); "diligent and trusted" (AX B); "demonstrat[ing] high ethical behavior" (AX C); "honest, forthcoming, and trustworthy" (AX D and AX E); "conscientious and well respected" (AX F); and acts with "integrity, openness, and honesty" (AX G). He has also won numerous awards for his accomplishments at work (AX H, AX I, AX J, AX K, and AX L (15 years of valued service) and AX M). His performance evaluations consistently show high marks. (AX N, AX O, AX P, AX Q, AX R, and AX S).

Applicant's witnesses from work also hold security clearances and have known Applicant for years. They all think highly of Applicant and have no reservations about his having access to the nation's secrets (Tr at 25 - 51). Applicant avers a credible intent to report any improper contact from whatever source (Tr at 60, 61).

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant

in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (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 pertinent 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, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

Guideline B - The underlying concern is that a "security risk may exist when an individual's immediate family member, including cohabitants, 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.

Disqualification and Mitigation

Condition that could raise a security concern and may be disqualifying:

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;

Condition that could mitigate security concerns include:

1. 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;

Analysis - As with any case involving immediate family members in a foreign country, there is a risk in the abstract, but each such case must be evaluated on its specific circumstances. I have carefully considered that the other country is Vietnam. Based on the totality of the evidence, I conclude that Applicant has no ties to or contacts with that country is substantial enough to establish that a risk exists. His family fled Vietnam in 1975 because his parents were opposed to the new Communist government. He arrived here at 17 and has been immersed in U.S. culture since then. His only contacts are with his wife's family in Vietnam, which consists of two sisters-in-law who are in small businesses with no apparent contacts with the Vietnam government. There is no evidence suggesting that the sisters-in-law are at risk of being asked to pressure Applicant to act against U.S. interests . . . Although this is not conclusive evidence that no such contact will be made in the future, it can at least be considered in evaluating such risk.

Other than the passage of decades without any improper contacts, and relatives with no ties to government intelligence agencies, there is not much that an applicant can show to mitigate the general or abstract risk that he will be asked to act improperly. In the present case, I find that risk to be minimal. Going one step further, I find that Applicant is clearly aware of his responsibilities when it comes to national security, and he has stated his intent to promptly report any such attempt to the proper authorities, clearly and convincingly. Applicant has become an American and is committed to the nation's welfare to the point that he would act responsibly even if his parents were to become involved.

Overall, I conclude that Applicant is man of integrity and one who takes his obligations seriously. Considered separately and together, the allegations have no or minimal current security significance. I conclude there is minimal risk that Applicant's sisters-in-la would be asked to influence Applicant or that they would agree to do so. More important, I conclude that Applicant would not feel "forced to choose" between his in-laws and his obligations to the U.S., but would

promptly report any such contact it to U.S. authorities.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline B (Foreign Influence) 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

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 Applicant.

Barry M. Sax

Administrative Judge