

DATE: September 17, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30935

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 44 years old. He was born in the former South Vietnam. He fled Vietnam after the collapse of the South Vietnamese government in 1975. After becoming a U.S. citizen in 1983, he worked for a defense contractor. He is married and has children in this country. Applicant has a sister in Vietnam whom he did not disclose on his security clearance application. One sister living in the United States is a citizen of Vietnam. His wife and her family are citizens of Canada. Applicant mitigated the foreign influence guideline concerns. Clearance is granted.

STATEMENT OF THE CASE

On February 21, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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. The SOR detailed reasons under Guideline B (Foreign Influence) 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 conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, dated March 8, 2003, Applicant responded to the SOR allegations. He requested his case be decided on the written record in lieu of a hearing. On June 13, 2003, Applicant was given a complete copy of the file of relevant material (FORM) [\(1\)](#). He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Nothing in the record indicates Applicant filed a response to the FORM by the July 30, 2003, due date. This case was assigned to me on September 3, 2003.

FINDINGS OF FACT

Applicant admitted to the allegations in the SOR. Those admissions are incorporated herein as findings of fact. After a complete review of the record evidence, I make additional findings of fact:

Applicant is 44 years old and married. He owns a home and a car. He came to the United States as a refugee from Vietnam in 1975. He became a naturalized U.S. citizen on April 4, 1983. He has two children, both of whom were apparently born in the United States. He works for a defense contractor. (Item 4 at 1; Item 5 at 1; Item 6 at 1)

Applicant disclosed on his security clearance application, signed on April 8, 2002, that he has one brother and two sisters living. All three live in the United States. He failed to disclose one sister who lives in Vietnam. Of his three siblings living in the United States, two are citizens of the United States and one is a citizen of Vietnam. (Item 5 at 3, 4, and 9)

Applicant's wife is a citizen of Canada, having been born in Vietnam and emigrating after the war ended in 1975. She has applied for United States citizenship. Her parents and her siblings (three brothers and one sister) are Canadian citizens and live in Canada, except for the one sister who lives in the United States. There is no record evidence that any of Applicant's wife's family are employees or agents of the Canadian government. Applicant does not have frequent contact with them or his siblings. He has not seen his sister in Vietnam since 1975 and has not communicated directly with her by phone or mail. He sends an annual gift to her at Christmas of about \$60 in value in conjunction with his siblings. Applicant does not like communism and has no desire to return to Vietnam. (Item 3; Item 5 at 4; Item 6 at 1, 2)

Applicant's parents were residents and citizens of Vietnam, but are now deceased. They were not employees of the Vietnamese government. There is no evidence that Applicant's sister in Vietnam is an employee or agent of the Vietnamese government. (Item 5 at 3)

Vietnam is a communist governed country with a poor record of respect for human rights and democratic institutions. Free elections are not conducted, and all candidates belong to one party. The United States has diplomatic relations with Vietnam. (Item 7)

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, ¶ E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

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 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. Directive ¶ E2.A2.1.1.

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. Directive ¶ E2.A2.1.2.1.

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. Directive ¶ E2.A2.1.3.1.

(3) Contact and correspondence with foreign citizens are casual and infrequent. Directive ¶ E2.A2.1.3.3.

(5) Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities. Directive ¶ E2.A2.1.3.5.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to each allegation set forth in the SOR:

Applicant has relatives by birth and marriage in two foreign countries, Vietnam and Canada, respectively. These relatives are citizens of each of these countries (his sister in Vietnam is a citizen of Vietnam, and one sister in the United States is a citizen of Vietnam; and his wife and her family of Canada). Disqualifying Condition (DC)1 applies.

None of Applicant's relatives or his wife's relatives are agents or employees of either the Vietnamese or Canadian governments. Mitigating Condition (MC) 1 applies. Furthermore, Applicant has no contact with his sister in Vietnam. There is a rebuttable presumption that an Applicant has ties of affection or obligation to immediate members of his spouses's family. However, her family members are Canadian citizens living in North America. His contacts with his wife's relatives are limited to once a year by telephone at Christmas time. These contacts are casual and infrequent, and MC 3 applies. Neither his wife nor members of her family represent a security threat. He has rebutted the presumption. The contact with his one sister in the United States who is a citizen of Vietnam is not clear from the record, but because it is a sibling any contact cannot be casual, and may not be frequent. Applicant's wife and sister are in the United States and any security concerns are minimal at best. Because the whole person concept and a common sense determination are used in these deliberations, the result of that process is that Applicant's relationships with his wife and sister are mitigated on the security concerns and there is no foreign influence from them.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline B: 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 and facts presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Philip S. Howe

Administrative Judge

1. The Government submitted seven items in support of the SOR.