

DATE: December 18, 2003

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 02-15736

**DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

**APPEARANCES**

**FOR GOVERNMENT**

Peregrine D. Russell-Hunter, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

A native of Laos, Applicant came to the U.S. from a refugee camp in Thailand in 1980 and became a U.S. citizen in 1985. Applicant has immediate family members (parents and four siblings) who are resident citizens of Laos, including a brother who works as a census taker for his local municipality. Two other brothers live in the U.S., one of whom is a U.S. citizen. Having established very strong ties in the U.S., Applicant is not likely to succumb to any undue foreign influence brought to bear on those family members who are citizens and/or residents of Laos. Clearance is granted.

**STATEMENT OF THE CASE**

On February 7, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant. The SOR 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 the Applicant. [\(1\)](#) DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on Foreign Influence (Guideline B) concerns.

On February 26, 2003, Applicant executed an Answer to the SOR and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on June 27, 2003, and a hearing was scheduled for July 16, 2003. At the hearing, one Government exhibit and five Applicant exhibits were admitted and testimony was taken from Applicant and a former boyfriend, as reflected in a transcript received July 28, 2003. At the Government's request, administrative notice was taken of two U.S. Department of State publications pertaining to Laos: *Consular Information Sheet*, dated June 19, 2003 (information current as of July 11, 2003) and *Country Reports on Human Rights Practices-2002*, dated March 31, 2003.

**FINDINGS OF FACT**

DOHA alleged Foreign Influence concerns because of the Laotian citizenship and residency of close family members

(parents, two sisters, two brothers); one brother's employment with his local city government in Laos; the Laotian citizenship of two other brothers who live in the U.S.; her correspondence by letters to her relatives in Laos; her financial assistance provided her parents once every couple of months; and her travel to Laos to visit her family members on two occasions. In her Answer, Applicant corrected the record and indicated that in addition to her parents, one sister and three brothers are resident citizens of Laos; that one of her two brothers living in the U.S. had become a naturalized U.S. citizen in December 2002. Applicant admitted corresponding with her elderly parents through her brother-in-law using his work address as there is no rural delivery available. She also acknowledged sending \$50 every other month to her parents for small holiday gifts and emergency savings, and traveling to Laos to see them in 1992 and 1999. Her admissions are accepted and incorporated as findings of fact. After a thorough review and consideration of the evidence of record, I make the following additional findings of fact:

Applicant is a 44-year-old assembler III employed by a defense contractor since June 1998. She seeks a security clearance for her duties.

Applicant was born in Laos in 1959 to Laotian resident citizens. At the time of her birth, her father was employed as a high school teacher while her mother stayed home to care for their children. Applicant was raised in Laos with her six siblings (a sister and five brothers). With the Communist takeover of Laos in the late 1970s, the Government imposed strict rules on its citizens, including establishment of a curfew. In search of the freedoms she had enjoyed before the takeover, Applicant escaped with a friend to Thailand in 1978. In November 1979, while living in a refugee camp, she married another Laotian she met in the camp, and they had a son in November 1980. Relatives were allowed to visit the refugee camp, and Applicant's mother came to see her once.

Circa late 1980, Applicant immigrated with her spouse and son to the U.S. In July 1982, a daughter was born to them in the U.S. Two years after Applicant came to the U.S., the brother closest in age to Applicant emigrated from Laos to the U.S.

After arriving in the midwestern U.S., Applicant and her immediate family moved to an area with a significant Laotian community and more job opportunities. In 1985, she became a naturalized U.S. citizen. Three years later, her son acquired U.S. citizenship.

In about 1990, another brother immigrated to the U.S. from Laos. Although she did not sponsor him, Applicant picked him up on arrival to the U.S. and allowed him to live with her and her family initially.

In 1992, Applicant traveled to Laos to see her parents and those four siblings, all of whom reside within the same city block. Applicant stayed with her parents in their home during her entire visit of about four or five weeks. The following year, Applicant's mother spent about six months in the U.S.

From 1989 to 1998, Applicant worked as an assembler for a local commercial company. She and her spouse experienced financial difficulties in the mid-1990s because of his unemployment, and they separated by 1997. In November 1999, their divorce was finalized.

In June 1998, Applicant went to work for her present employer, a defense contractor, as the job was closer to her home and presented better opportunities for advancement. In October 1999, Applicant and her then boyfriend--a coworker from her previous job--traveled to Laos to visit her parents and siblings. During their four to five-week stay, Applicant's boyfriend resided with her parents and visited the homes of her siblings. It was a reunion for Applicant with her family members in Laos as she had not seen any of them since her mother's visit to the U.S. in 1993.

Needing a security clearance for her work with the defense contractor, Applicant executed a security clearance application (SF 86) on May 1, 2001. Applicant disclosed the Laotian citizenship of her parents and siblings. With regard to her parents' address, Applicant gave the work address of her brother-in-law in Laos (sister's spouse) as she uses this address when corresponding by letter with her parents in Laos. Applicant indicated on the form that she was unaware of the addresses of her four siblings living in Laos. She provided the addresses for the two brothers living in the U.S.

In August 2001, Applicant traveled to France to see her sister, who was there from Laos visiting her daughter. Applicant spent about a month with her sister and sister's daughter in France.

In November 2001, Applicant was interviewed by a special agent of the Defense Security Service (DSS) about her foreign connections. Applicant informed the agent that her first loyalty was to the U.S. and that if any undue foreign influence were to be placed on her family in Laos, she would report the threats to U.S. authorities. She also explained she had urged her two brothers in the U.S. to acquire U.S. citizenship, but they had not yet done so because they feared the test was too difficult. The brother who had immigrated to the U.S. in 1990 subsequently became a naturalized U.S. citizen in December 2002.

In June 2003, Applicant called her sister in Laos and obtained the correct address information for her parents and siblings. Her sister is the only one in the family who has a telephone. None of the family members in Laos own a computer.

Applicant has feelings of affection and/or obligation toward her parents and siblings. Her father, retired from his job as a high school teacher, and her mother, a homemaker all her life, are elderly and reside on the outskirts of a city in Laos. A younger brother lives with their parents. Applicant provides some financial support for her parents, sending them \$50.00 every two or three months. She corresponds with them by letter once every other month. Applicant sends the letters to her parents care of her brother-in-law (sister's spouse) at his place of employment, a Japanese owned lumber factory, as there is no rural delivery available to her parents' home. Applicant's letters are intended to be read by her siblings as well.

Applicant's siblings in Laos live in close proximity to her parents. Her sister does not work outside the home. The two brothers who have their own homes work as a nurse in a hospital and in road construction in Laos, respectively. The brother who lives in the parents' home is employed as a census taker for the local municipality out of an office in the town hall. None of Applicant's family members have inquired about the nature of her work in the U.S.

The brother who is a U.S. citizen married and moved to another state two years ago. Applicant saw this brother at least once or twice per month when he was living in her area. Applicant's other brother in the U.S. continues to reside in relatively close proximity to her, in a community with a significant Laotian population.

Coworkers who have known Applicant for the past five years have found her to be a competent, reliable employee with a commitment to quality and a reputation for being a team player. Applicant has demonstrated she can follow management directives.

### **POLICIES**

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, 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 which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. 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 criterion 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 emotionally unstable behavior. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

### **Foreign Influence**

E2.A2.1.1. 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.

E2.A2.1.2. Conditions that could raise a security concern and may be disqualifying include:

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;

E2.A2.1.2.3. Relatives, cohabitants, or associates who are connected with any foreign government.

E2.A2.1.3. Conditions that could mitigate security concerns include:

E2.A2.1.3.1. 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.

Under Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

### **Burden of Proof**

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern 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 criterion conduct, it is clearly consistent with the national interest to grant or continue her security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

### **CONCLUSIONS**

Having considered the evidence in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to Guideline B:

A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation are not citizens of the U.S. or may be subject to duress. Applicant's parents and four of her six siblings are resident citizens of Laos, a poor developing country with a socialist authoritarian government. One brother works for the local municipality as a census worker. Another brother, who emigrated from

Laos to the U.S. in 1982, is a Laotian citizen living in a community in the U.S. which has a significant Laotian population. Although she has traveled to Laos to see her family members only twice since she came to the U.S. in 1980 through Thailand, her mother visited her in the U.S. in 1993 and Applicant went to France to see her sister and niece in August 2001. Applicant has very infrequent telephone contact with her Laotian resident relations, but writes to her parents through her brother-in-law and sends them \$50.00 every two to three months. Disqualifying condition E2.A2.1.2.1. must be considered in evaluating Applicant's security suitability. Moreover, since Applicant's brother is directly employed by the local municipality, E2.A2.1.2.3. applies as well.

Foreign influence concerns raised by the foreign citizenship and/or foreign residency of close family members may be mitigated where it can be determined that the relatives 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 (*see* E2.A2.1.3.1.). Not all government employees are agents of a foreign power. There is nothing of record which indicates that Applicant's father, who was a high school teacher before his retirement, or her brother, who presently works as a census taker at the local government level, have ever held a position of influence or authority in the Lao People's Revolutionary Party.

However, Applicant's brother's work may bring him into contact with officials of the centralized authoritarian government in Laos. Given Laos is a Communist one-party state with a poor human rights record, Applicant bears a particularly heavy burden to demonstrate her close family members are not in a position to be exploited by a foreign power, although Laos is not known to target U.S. interests. The risk of undue foreign influence must be evaluated in terms of the possible vulnerability to both coercive and non coercive means of influence being brought to bear on, or through, family members who are not only subject to the laws of a foreign nation, but are physically within the jurisdiction of a government which restricts freedom of speech, the press, assembly, and association. While there is no evidence that Applicant's relatives in Laos have ever engaged in activities in opposition to the current regime, the risk of undue foreign influence can never be completely discounted.

At the same time, Applicant testified persuasively that should some pressure be brought to bear on her relatives in Laos, she would report such improper contact to the U.S. authorities. Applicant has clearly shown her antipathy to the Communist Government in Laos and the Lao People's Revolutionary Party, having fled the country to Thailand when she was only about 18 years old, leaving behind her parents and her siblings. A resident of the U.S. since 1980, Applicant did not delay in acquiring her U.S. citizenship, and she urged her two brothers who had immigrated to also become U.S. citizens. While Applicant admitted it was fair to say that she feels close to her family in Laos, her contacts with them over the years have not been of such frequency as to develop very strong personal bonds. She has traveled to Laos only twice in the last 22 years and to France once to see her relatives. Telephone contact has been limited to once or twice per year, and even the letters more regularly exchanged have concerned general inquiries as to how family members (especially her parents) are doing. Applicant's two children are U.S. citizens who reside in the U.S. It is unlikely she would jeopardize their safety and security by succumbing to any foreign influence through her family members in Laos or her brother in the U.S. who is still a Laotian citizen. Individuals who have had the opportunity for the last five years to observe and assess Applicant on the job attest to her good character and ethics. Favorable findings are warranted as to subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., and 1.g. of the SOR.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to 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

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: 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.

**Elizabeth M. Matchinski**

**Administrative Judge**

1. The SOR was issued under Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4).