

DATE: February 5, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-16841

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated security concerns over foreign influence resulting from her relatives' citizenship in Vietnam and in France as she has two brothers, and a sister who live in Vietnam and one sister who is a naturalized citizen and resident of France. Given that these relatives have no ties to the government of Vietnam or France, I conclude that it is unlikely that they are foreign agents or in a position to be pressured. Further, there is no substantial likelihood that she would succumb to foreign influence if her family should be subject to duress. Her references attest to her good character and professionalism at work. It is unlikely that foreign pressure on her family could create a situation that could result in the compromise of classified information. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on May 28, 2003. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. ⁽¹⁾ The SOR alleges specific concerns over foreign influence (Guideline B) in paragraph 1. Applicant replied to the SOR allegations in an undated notarized Answer and requested a hearing.

The case was assigned to Department Counsel who attested it was ready to proceed on September 26, 2003. The case was assigned to me on September 29, 2003. Subsequently, a mutually convenient date for hearing was agreed to and a Notice of Hearing issued on October 2, 2003, set the matter for November 3, 2003. At the hearing the Government offered two exhibits for Official Notice and offered one exhibit. All were admitted into evidence (Official Notice I & II and Exhibit 1). Applicant testified and offered four exhibits (Exhibits A through D) which were admitted into evidence. The transcript (TR) was received on November 20, 2003.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, a 28-year-old employee, began working for a defense contractor (Employer #1) in August 2000. She had worked as a student at Employer #2 from December 1999 to July 2000. She was a summer intern at Employer #1 from May 1999 to September 1999. In September 2001 she completed a Security Clearance Application (Standard Form 86) and requested a security clearance which she needs for the position. (Exhibit 1; TR 17-18)

Born in Vietnam, Applicant became a naturalized U.S. citizen in December 2000. She used her passport from Vietnam (in effect from March 1991 to March 1996) to establish lawful admission to become a U.S. resident. She received a BSME degree from a state university in State #1 in July 2000. Her parents and two of her sisters who were born in Vietnam became naturalized citizens of the U.S. in December 2000. (Exhibit 1; Exhibit A) Her father's brothers are also in the U.S., and her mother's parents are also in the U.S. (TR 29-32)

Foreign Influence

Applicant's father served as an officer in the South Vietnamese military and was also an advisor to an agency of the U.S. and worked with Mr. W in 1969. In arch 1992 Mr. W sent a letter to the American Embassy that Applicant's father had served the U.S. Government faithfully and contributed to Mr. W's personal safety. Mr. W and Applicant's father remain friends. Since Applicant's father has come to the U.S. he has had no contact with the Vietnamese Government. (Answer; Exhibit C; TR 34-37)

Applicant has family who remain in Vietnam and who remain citizens there:

- Brother #1, born in 1964, remains in Vietnam; but his parents plan to petition to bring him to the U.S. He will probably not be able to come to the U.S. for two more years as he is married and has a four year old child. He works as a mechanic in a small machine shop which is privately owned. Neither he nor his wife are politically active. Applicant has infrequent contact with him, and communicates mostly on the internet from her home once a month. (Answer; Exhibit 1; TR 18-24, 26-27, 33)
- Brother #2, born in 1968, remains in Vietnam; but his parents have petitioned to bring him to the U.S. and the petition has been approved. He should be allowed into the U.S. in early 2004. He is single and works as a goldsmith and makes jewelry in the private sector. He is not politically active. Once he comes to the U.S. he will apply for U.S. citizenship. (Answer; Exhibit 1; Exhibit A; TR 18-22, 24-25, 27-28, 32-33)
- A sister, born in 1967, remains in Vietnam; but her parents have petitioned to bring her to the U.S. and the petition has been approved. She should be allowed into the U.S. in early 2004. She is a sewing machine operator and works for a private company. Once she comes to the U.S. she will apply for U.S. citizenship. (Answer; Exhibit 1; Exhibit A; TR 18-22; 25-28; 32-33)

Applicant has another sister born in Vietnam in 1970 who is now a citizen of France as she married a citizen of France. Her parents plan to sponsor her to become a U.S. citizen but anticipate a two year delay. Her husband is a mechanic. They are not politically active. She has limited contact with this sister who does not have a phone. (Answer; Exhibit 1; TR 18; TR 58-61)

In an interview with the Defense Security Service (DSS) in May 2002 Applicant was aware of the possibility for undue pressure; she observed that "if the government of Vietnam knew what I did for a living, it would create problems for my two brothers and my sister who currently are citizens of and reside in Vietnam." Her siblings in Vietnam sill think Applicant is a student. (Answer; TR 37-40)

If anyone attempted to pressure her about her family, she would report them to the US authorities, such as the FBI or the security advisor at her company. (TR 40-42)

Applicant has no assets in Vietnam. She owns her own home in the U.S. and has a bank account in the U.S. (TR 43-444)

References

Her first level supervisor at Company #1 (who has known her for three years) commends Applicant as hard working and reliable with good technical performance; also she is friendly. He has given her excellent ratings. She has been promoted quickly as he wants to retain her. She has his full confidence; he recommends Applicant for a security clearance. He is aware she has family in Vietnam, but otherwise has no knowledge of her life outside the workplace. He is sure she would report any undue influence or pressure as she is very compliant with all of the rules. (TR 46-57)

A Company #1 customer sent a letter of commendation for Applicant, and she was given an award for her contributions and for her outstanding effort. (Exhibit D)

A co-worker who also knew her as a student vouches for Applicant as a loyal and dedicated employee who can be trusted with confidential information. She praises Applicant as a "trustworthy, honest individual." (Exhibit B)

Several other co-workers describes Applicant a hard working and trustworthy. (Exhibit B)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

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: (1) not citizens of the United States or (2) 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.

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;

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;

3. Contact and correspondence with foreign citizens are. . . infrequent;

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may

draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Foreign Influence

Applicant has mitigated the Government's security concerns over possible foreign influence raised by Applicant's close ties of affection to citizens of a foreign country: she has three family members who are citizens of Vietnam and live there and one family member who is a citizen of France and lives there. The security concern under Guideline B, Foreign Influence, is that a security risk may exist when an individual's immediate family are citizens of, or resident or present, in a foreign country. These situations could create the potential for foreign influence that could result in the compromise of classified information which Applicant is aware of and acknowledged in her DSS interview. However, she does not share anything about her professional work with her overseas siblings.

While I have considered these concerns, I conclude Applicant has presented sufficient evidence in mitigation⁽²⁾ under MC 1 and 3 to meet the very heavy burden⁽³⁾ those circumstances present. These security concerns are mitigated by the fact that Applicant's family in Vietnam and in France have not in the past been subject to pressure. As they have no ties to the government, it is unlikely that they are foreign agents or in a position to be pressured. Any risk of foreign duress or influence on Applicant and/or her immediate family would appear to be slight and clearly manageable. Moreover, Applicant made evident that if there were any attempt to coerce or pressure her or her family that she would immediately report such coercion to the proper authorities. While the SOR raises as a security concern that Applicant's father was helpful to the U.S. in the past when he served as an officer in the South Vietnamese military and served as an advisor to a U.S. agency, I do not see how this past service to the U.S. would present any current security concern especially as her father is now a naturalized U.S. citizen.

Further, since Applicant has limited contact with the family in Vietnam, I conclude that there is no substantial likelihood that they would be subject to duress and thus exercise foreign influence over Applicant. Given Applicant's history of responsible conduct as evidenced by her many favorable letters of reference from her supervisor and co-workers, I conclude it is highly unlikely that she would succumb to any coercion if any of her family members living in Vietnam or in France would be subject to pressures or create a situation that could result in the compromise of classified information. I conclude Applicant is not vulnerable to duress merely because of these family ties. Further, her references attest to her good character and effectiveness at work. Also, two of the four siblings have been received Notice of Action letters which will allow them to come to the U.S. in the near future; her family intends to apply for the other two siblings to come to the U.S. to join the family.

Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. Acts indicative of foreign influence warrant careful scrutiny. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude these ties are not of such a nature as to create any tangible risks of undue pressure on Applicant, so foreign influence security concerns are mitigated. Thus, I resolve SOR paragraph 1 and subparagraphs 1.a. through 1.d. in Applicant's favor.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline B FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For 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 the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.

2. 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; 2. Contacts with foreign citizens are the result of official United States Government business; 3. Contact and correspondence with foreign citizens are casual and infrequent; 4. The individual has promptly reported to proper authorities all contacts, requests, or threats from persons or organizations from a foreign country, as required; 5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

3. Since the US has had normal diplomatic relations with Vietnam since 1995, the Government presented no evidence of a hostile relationship between the U.S. and Vietnam. The Appeal Board in ISCR Case No. 01-26893 issued on October 16, 2002, outlined a standard that when there is hostility between a foreign government and the U.S. this circumstance places "a very heavy burden on Applicant " to show that family ties there do not pose a security risk.