

DATE: September 4, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-19839

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Nygina T Mills, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's wife, a citizen of Vietnam, resides with him in the United States. Applicant has a grandfather and mother-in-law, who are citizens of and reside in Vietnam, but his contacts with them are infrequent. None of these people are in a position to be exploited by Vietnam in a way that could force Applicant to choose between loyalty to these family members and his loyalty to the United States. Applicant has given some money to his mother-in-law in Vietnam, but the amount is not significant. Applicant's strong attachment to the United States and minimal ties to Vietnam makes it unlikely that he would respond favorably to any efforts to act against United States interests. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On February 21, 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, 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 denied or revoked.

On March 17, 2003, Applicant submitted a signed and sworn response to the SOR. Applicant requested a clearance decision based on a hearing record.

On May 5, 2003, this case was assigned to another Administrative Judge, but on May 6, 2003, because of caseload consideration, the case was reassigned to me to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on May 7, 2003, and the hearing was held on May 21, 2003.

At the hearing, Department Counsel offered three documentary exhibits (Exhibits 1 - 3), and no witnesses were called. Applicant offered 10 documentary exhibit (Exhibit A- J) and offered his own testimony and the testimony of two other witness. The transcript (TR) was received on June 2, 2003.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline B of the Directive because Applicant's immediate family, and other persons to whom he may be bound by affection, influence, or obligation, are not United States citizens or may be subject to duress, that he has given some money to his mother-in-law and grandfather in Vietnam, and that he has traveled to his native Vietnam on a number of occasions. The SOR contains five allegations, 1.a. through 1.e., under Guideline B (Foreign Influence). In his response to the SOR, Applicant admits all five allegations. These allegations are incorporated as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the documents and the live testimony, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is a 36 year old employee of a defense contractor. He was born in Vietnam in 1966, and together with his family, he moved to the United States in 1981. He became a naturalized United States citizen in 1989. Applicant's parents and siblings also became citizens of the United States. He received a bachelors degree in science from a United States university in 1997.

Applicant's wife was born in Vietnam, married the Applicant in the year 2000 and immigrated to the United States in 2001. She is now a permanent legal resident of the United States and plans to apply to become a naturalized United States citizen when she is eligible in 2004. (Tr at 27, 28.)

Applicant's mother in-law and grandfather are citizens of and reside in Vietnam. In the year 2002 Applicant contributed approximately \$1,500 to his mother-in-law and nothing to his grandfather. In 2003, at the time of the hearing, he had thus far contributed \$500 to his mother-in-law and nothing to his grandfather. (Tr at 28-30.) Applicant communicates by telephone to his grandfather approximately once a month and sporadically to his mother-in-law. Applicant's grandfather is over 80 years old and a retired carpenter. Applicant's mother-in-law is an ex-street vendor. Neither of them has ever worked for the Vietnam government. (Tr at 31, 32.)

Applicant has traveled to Vietnam in 1994 and 2000 to see his grandfather. He also visited Vietnam twice in the year 2000, and once more in 2001, to arrange for his marriage to his wife and to bring her to the United States. (Tr at 45-47.)

Applicant testified that he considers himself to be an American since he has lived in the United States longer than he lived in Vietnam, and this country has been very good to him. He testified that he would never do anything to compromise the United States. (Tr at 59, 60.)

In addition to Applicant, two witnesses testified on behalf of Applicant. The first witness

is the direct supervisor of Applicant for the company by which Applicant is employed. The witness testified that he has worked closely with Applicant for the last four years, and Applicant is an exemplary employee. He further testified that he has submitted hundreds of employees for a security position and of all these people, he holds Applicant in the highest regard. (Tr at 62-71.)

The second witness was Applicant's wife. She testified that she intends to stay in the United States and become a United States citizen as soon as she is eligible, which she believes will be in 2004. She also hopes to have children and raise them in the United States. (Tr at 75-78.)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

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.

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, Section E2.2.1. of Enclosure 2).

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:

FOREIGN INFLUENCE (GUIDELINE B)

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 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 in, a foreign country;

E2.A2.1.2.8. A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence.

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

E2.A2.1.3.1. A determination that the immediate family member(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;

E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent;

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

BURDEN OF PROOF

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with

the U.S. Government that is predicated upon trust and confidence. Where 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 he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the 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."

CONCLUSIONSBased on the evidence of record, the Government has established an initial reason to deny Applicant a security clearance because of Guideline B (Foreign Influence) . Applicant's wife is a citizen of Vietnam, and he has two immediate family members who are citizens of and reside in Vietnam. The Vietnam citizenship and residency of members of Applicant's immediate family create the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him.

The evidence of a wife, who is a citizen of Vietnam, and the existence of immediate family members, who are citizens of and reside in Vietnam comes within Disqualifying Condition (DC) 1. The fact that the foreign country in question is Vietnam, a country under Communist rule, is also a concern, but that fact is not automatically controlling. Based on the nature of the overall record and the totality of the evidence, including: the lack of government involvement of Applicant's family members, Applicant's history since coming to the United States, and his extremely strong testimony about his feelings concerning the United States, I have determined that his wife and his family members in Vietnam do not constitute an unacceptable security risk, and Mitigating Conditions (MC) 1 applies. MC 3 also applies because Applicant's contacts with his foreign relatives in Vietnam is casual and infrequent.

Applicant does contribute some funds to his mother-in-law under DC 8, but the amount is not significant . I conclude that MC 5 applies because the financial interests are not significant enough to cause Applicant to do anything which would be contrary to the interests of the United States.

After considering all of the evidence of record on these issues, I conclude that the mitigating evidence substantially outweighs the evidence supporting the SOR and even in the unlikely event pressure was exerted upon Applicant to compromise classified information, he would resist it, and would report the incident to the proper authorities.

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

Subparagraph 1.e.: 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 Applicant.

Martin H. Mogul

Administrative Judge