

DATE: September 5, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-21250

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire , Department Counsel

FOR APPLICANT

John A. Crawford, Jr., Esquire

SYNOPSIS

Applicant is a 31-year-old software engineer, whose family began to leave Vietnam after the Communist takeover in 1975. Applicant arrived in the U.S. in 1991, when she was 19, completed her schooling, began her career, and married an American citizen in 2003. All but one member of her family are now in the U.S., or in the process of emigrating here. She has strong ties to the U.S. and minimal ties to Vietnam. She would respond to any attempt to subvert her by informing her employer. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On February 7, 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 February 19, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made on the written record; i.e., without a hearing. The matter was assigned to me on April 26, 2003. On April 28, Applicant's newly retained counsel, submitted a document stating that Applicant did wish to have a hearing before a DOHA Administrative Judge. A Notice of Hearing was issued on May 5, 2003, and the hearing was conducted on June 12, 2003. At the hearing, Applicant testified and offered one exhibit, which was marked and admitted as Applicant's exhibit (AX) A. The Government did not call any witnesses, but offered two exhibits, which were marked and admitted as Government Exhibits (GX) 1 and 2. The transcript (Tr) was received at DOHA on June 27, 2003.

FINDINGS OF FACT

Applicant is a 31-year-old software engineer⁽¹⁾ for a defense contractor. The SOR contains eight allegations, 1.a. - 1.h., under Guideline B (Foreign Influence) in the Directive. In Applicant's response, she admitted all factual allegations in 1.a. - 1.e, and 1.g. and 1.h. She denied allegation 1.f. The admissions are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Guideline B (Foreign Influence)

1.a. - Applicant's oldest sister, A, is a citizen of Vietnam and currently resides in that country with her family. This sister is "more like an aunt than a sister," since she is about 20 years older than Applicant. Applicant does not feel any sense of affection or obligation toward her (GX 2).

1.b. - A second sister, B, is a citizen of Vietnam and currently resides in that country. This sister is 13 years older than Applicant and is planning to emigrate to the U.S. by the end of 2003, pending the outcome of an interview with the U.S. consulate in Vietnam. Applicant is helping her with those plans (Tr at 42).

1.c. - Applicant visited Vietnam for three weeks in June and July 1995. She went to visit her mother after her father died, and stayed with the two sisters cited above. She has no interest in returning to Vietnam (Tr at 41).

1.d. - Applicant maintains once or twice yearly telephone contact with the two sisters cited above. These calls are made at the request of her elderly mother, who resides with her in the U.S.

(Tr at 39 - 41).

1.e. - Applicant maintains once yearly e-mail contact with two friends/former classmates who are citizens of Vietnam and reside in that country. Applicant last visited them in Vietnam in 1995. The relationship is a casual one, and Applicant feels no sense of obligation toward them (Tr at 28).

1.f. - Applicant's mother is *not* currently a citizen of Vietnam currently residing in that country. Applicant's mother has emigrated to the U.S. and became a U.S. citizen in November 2002. She is living with Applicant.

1.g. - Applicant's brothers, C and D, are citizens of Vietnam but are currently residing in the U.S., and have obtained their Permanent Resident Cards (Green Card).

1.h. - Applicant's sister, E, is also a citizen of Vietnam residing in the U.S. She has married a U.S. citizen and is in the process of becoming a U.S. citizen herself.

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.

Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent to this case:

GUIDELINE B (Foreign Influence)

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. ⁽²⁾

Conditions that could mitigate security concerns include:

1. A determination that the immediate family member(s), cohabitant, or associate(s) in question would not constitute an unacceptable security risk.

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

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

Applicant came to the U.S. on 1991, when she was about 19. She became a U.S. citizen in March 1998, graduated from college in the United States in September 2000 (AX A3), and married an American citizen in April 2003 (AX A4). She is well respected by her friends and work colleagues for her intelligence, dedication, and reliability (AX A1). This is her first application for a security clearance.

The concerns stated in the SOR are cited under Guideline B, and are based on the risk of foreign influence by family members in Vietnam. The presence of an applicant's close relatives who are citizens of and/or resident in a foreign country is certainly a matter of security concern. Just as clearly, however, not all foreign countries create the same level of risk. In the present case, I take official notice that Vietnam has a communist government, which though seeking closer ties with the U.S., certainly cannot be categorized a friendly power (GX 2).

Applicant has extensively discussed her family members and her relationships with them (Tr at 26 - 49). Throughout the extensive testimony, there is no suggestion that relatives are agents of a foreign power, have been approached by a foreign power, or are likely to ask Applicant to betray her obligations to her adopted country. Only two of her family members are still in Vietnam, and one is in the process of emigrating to the U.S. The other one, the oldest sister, is the sibling with whom Applicant has the least emotional ties.

The lack of any effort to blackmail Applicant in the past is a positive factor, but does not necessarily mean that there will be no such effort in the future. At the same time, there is probably less likelihood than in the past. I note that members of Applicant's family fled Vietnam after the Communists seized power in 1975 (when applicant was three) and

appropriated the family home (Tr at 21). Two of her brothers came first, in about 1979 (Tr at 22, 23). Applicant came to live with them in 1991, when she was about 19, and she finished her education here (AX A2). She has worked as a hospital volunteer, and a teaching Assistant at a school (Tr at 24). After becoming a software engineer, she has been with her present employer for about three years.

A number of people who know her professionally and personally, speak very highly of her work ethic and loyalty to the U.S. (AX A1). Applicant considers herself to be an American and has voted in U.S. elections.

After considering the entire record, I conclude there is minimal risk that Applicant will be asked by her relatives and/or friends to reveal any classified information. While the language in Guideline B (Foreign Influence) Disqualifying Condition (DC) 1 indicates that the presence of close family in a foreign country is of concern, that concern can be mitigated by evidence that the risk of pressure being applied is not unacceptable *and* that the applicant is not likely to feel "forced to choose between loyalty to the persons involved and the United States."

I am concerned that the foreign country in question is Vietnam, but that fact is not automatically controlling. That she might be asked to reveal classified information is a reality, but it is also speculative since there is no direct or indirect evidence that it has occurred, or is likely to occur. Based on the totality of the evidence, I conclude there is minimal likelihood that she will be approached by any relative or friends in Vietnam or in the U.S. for improper purposes.

Even more importantly, considering Applicant's view of herself as a loyal American, I conclude she would not respond favorably to any such attempt by a relative or anyone else, but would "go to my boss and . . . tell him what happened . . ." (Tr at 53). On this basis, I conclude that she would not feel that she was being *forced* to choose between her relatives and her country. As to Mitigating Condition (MC) 1, I determine that the family members in question do not constitute an unacceptable security risk. As to MC 3, I conclude that Applicant's contacts and correspondence with her foreign relatives is casual and infrequent. The mitigating evidence substantially outweighs the evidence supporting the SOR. In summary, Applicant has demonstrated that she considers herself to be an American and to be committed to U.S. interests.

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

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

1. She is recently married and has taken her husband's last name. To prevent any confusion, the record will remain under her original name.
2. There is no evidence suggesting the existence of any other disqualifying conditions.