

DATE: February 6, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-21954

## **DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jennifer Campbell, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a 32-year-old employee of a defense contractor who has old debts of almost \$4,000.00 that are outstanding and unresolved. He did not acknowledge these debts on his Security Clearance Application (SF 86) because he failed to understand the questions. His mother lives in and is a citizen of Viet Nam but poses no security risk. Clearance is denied.

### **STATEMENT OF THE CASE**

On July 15, 2003, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Information Within Industry*, 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 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated August 1, 2003, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to another administrative judge who could not hold the hearing because of his caseload and it was reassigned to me on December 3, 2003. A hearing was held on December 12, 2003. The Government introduced four exhibits at the hearing. The Applicant introduced none. All exhibits were accepted into evidence. The transcript was received on December 31, 2003.

### **FINDINGS OF FACT**

Applicant has admitted some of the specific factual allegations in the SOR and denied others. Those admissions are incorporated herein as findings of fact.

Applicant is a 32-year-old employee of a defense contractor who has debts of almost \$4,000.00 that are outstanding and unresolved. He questioned only one debt to a fitness center for a trial membership. His debts arose over the past several years when he was single. He is now married and he and his wife have a combined annual income over \$100,000.00.

Applicant's father was in the army of the former government of South Viet Nam and emigrated to the U.S. after the fall of Saigon (TR. 17). Applicant emigrated to the U.S. in 1992 and became a citizen in 1999. His mother and father are divorced and she is still a citizen of and resident in Viet Nam. She worked as a manicurist and hair stylist, but now is a housewife. Applicant and his brother intend to sponsor her for citizenship in the U.S.

Applicant and his brother are citizens of Viet Nam since both are regarded as citizens of Viet Nam by that government. He travelled to Viet Nam in 1995 and 1999 to visit his mother and obtained visas for the travel using a U.S. passport (TR. 20). Applicant and his brother have not taken action to revoke their citizenship but are in the process of determining how to contact the Embassy of Viet Nam to take such action (TR. 15).

Applicant falsified information on his Security Clearance Application (SF 86) in that he failed to admit the debts.

Applicant is enrolled in a college program for a degree in information systems (TR. 23).

### POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the Applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

The applicable Guidelines cited in the SOR concern the following Disqualifying Conditions (DC):

#### 1. Financial Considerations Guideline F:

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (DC 1) or an inability or unwillingness to satisfy his debts (DC 3). The guideline provides mitigating conditions (MC) but none are applicable.

#### 2. Foreign Preference, Guideline C:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Conditions that could raise a security concern and may be disqualifying include the exercise of dual citizenship or possession and/or use of a foreign passport.

An applicable mitigating condition is that the individual has expressed a willingness to renounce dual citizenship (MC) 4.

### 3. Foreign Influence, Guideline B:

A security risk may exist when an individual's immediate family, including co-habitants, 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.

Conditions that could raise a security concern and may be disqualifying include the fact that 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.

An applicable mitigating condition is that the family member would not constitute an unacceptable security risk (MC) 1.

### 4. Personal Conduct, Guideline E:

A security issue is raised involving questionable judgment, unreliability and unwillingness to comply with rules and regulations including a deliberate omission from a personnel security application (DC)2.

The guideline also provides for mitigating conditions including the fact that the information was not pertinent to a determination of trustworthiness (MC)1.

## CONCLUSIONS

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

Based on the evidence of record, including Applicant's admissions, the Government has stated reasons to deny him a security clearance because of financial considerations, foreign influence, foreign preference, and personal conduct. Having established such reasons, the Applicant has the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001)

Applicant acknowledges all but one of his debts and advances a plausible explanation for the one he denies. He offered no explanation as to why they had not been paid and accepted the blame for the nonpayment. He failed to report them on his SF 86 and gives as a reason for not doing so that he did not understand the questions when he was filling out the form. Applicant's English language skills and his credibility are such that I believe that the omission was not deliberate as required by the guideline.

Applicant's mother does not create any security problems under Foreign Influence Disqualifying Condition (DC) Guideline B. Mitigating Condition (MC) 1 applies in that immediate family members are not agents of a foreign power or in a position to be exploited by a foreign power and thus do not constitute an unacceptable security risk.

Mitigating Condition (MC) 4 is applicable as to Guideline C in that Applicant is willing to and hopes to renounce dual citizenship. He expressed his strong view against holding dual citizenship with Viet Nam. Applicant has not exercised dual citizenship or taken any other action that might show a foreign preference and mere possession of foreign citizenship does not fall within the scope of Guideline C. ISCR Case No 97-0356 (App. Bd. April 21, 1998)

Applicant has a good record of employment in the U.S. His family came to U.S. after the fall of Saigon in 1974. His

father was in the army of South Viet Nam and is now a citizen of the U.S. Applicant shows great loyalty to the U.S. and no interest in the present government of Viet Nam. He has done well in his employment since his arrival in 1992. However, his failure to resolve his debts indicates a failure to comply with the standards set by Guideline F, so it is premature to grant him a security clearance at this time.

Thus, after considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is not clearly consistent with the national interest to grant clearance to the Applicant.

### **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 F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h : Against Applicant

Paragraph 2 Guideline B: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Paragraph 3 Guideline C: FOR APPLICANT

Subparagraph 3.a.: For Applicant

Paragraph 4. Guideline E: FOR APPLICANT

Subparagraph 4.a.: For Applicant

Subparagraph 4.b.: For Applicant

### **DECISION**

In light of all the circumstances and facts presented by the record in this case, it is clearly not consistent with the national interest to grant a security clearance for Applicant.

Charles D. Ablard

Administrative Judge