

DATE: November 7, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-22741

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has two sisters, one who is a citizen of Vietnam and resides in Vietnam, and the second who is a citizen of Vietnam and resides in France. His contacts with them are infrequent. He also keeps in contact by email with a number of friends that he has known from Vietnam. 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 individuals and his loyalty to the United States. Applicant has given some money to his sister 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 make him act against United States interests. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On February 13, 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.

In a signed and sworn statement, dated March 10, 2003, Applicant responded to the SOR allegations. He requested that his case be decided on the written record in lieu of a hearing. On June 27, 2003, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant had until July 31, 2003, to file a response to the FORM, but no response was received. The case was assigned to this Administrative Judge on August 1, 2003.

In the FORM, Department Counsel offered five documentary exhibits (Exhibits 1 - 5).

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 and reside in Vietnam. The SOR contains six allegations, 1.a. through 1.f., under Guideline B (Foreign Influence). In his response to the SOR, Applicant admits all six 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, and the documents, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is a 37 year old employee of a defense contractor. He was born in Vietnam in 1966, and he moved to the United States by himself in 1990. He became a naturalized United States citizen in 1996. Applicant's parents subsequently came to the United States and became United States citizens also. He attended college in Vietnam but received no degree there. He received a bachelors degree in science from a United States university in 1996.

Applicant's wife was born in Vietnam and immigrated to the United States in 1978. She is now a United States citizen. They have a two year old daughter.

Applicant has one sister, who is a citizen of Vietnam and resides in Vietnam. He has another sister, who is a citizen of Vietnam and resides in France.

Applicant traveled to Vietnam in 1998 and 2000 to see his sister and her family. He speaks by telephone to his sisters on a monthly or bimonthly basis and emails them occasionally. Applicant gives \$200 to his parents to send it to his sister in Vietnam three or four times a year. Neither his sister nor her husband works for the Vietnam government.

Applicant also keeps in contact by email with approximately 10 friends whom he has known from the time that he lived in Vietnam. Some of these friends reside in Vietnam and some in the United States. None of them works for the Vietnam government.

In a signed, sworn statement made to the Defense Security Service in August, 2001, Applicant stated that he would never do anything to compromise the United States. "If threatened with any hostage situation I would immediately contact [my employer's] Security and the FBI. I could not be compromised or coerced in any way to act against the best interests of the US. I would never divulge any classified information to any unauthorized entity or persons. I am a loyal US citizen." (Exhibit 5.)

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.A2.1.3. 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;

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."

CONCLUSIONS

Based 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 has two immediate family members who are citizens of Vietnam, and one still resides in Vietnam. He also maintains contact with some friends who still reside in Vietnam. The Vietnam citizenship and residency of Applicant's sister and some friends 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 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 and friends, Applicant's history since coming to the United States, and his extremely strong statement about his feelings concerning the United States, I have determined that his sister and friends in Vietnam do not constitute an unacceptable security risk, and Mitigating Condition (MC) 1 applies. MC 3 also applies because Applicant's contacts with his sister and his friends in Vietnam is casual and infrequent. Applicant does contribute some funds to his sister, but the amount is not significant.

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

Subparagraph 1.f.: 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