

DATE: November 10, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23587

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

James B. Norman, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a naturalized U.S. citizen who immigrated to the U.S. from Laos in 1994. She and her husband (also a naturalized U.S. citizen from Laos) claim allegiance only to the U.S. and have two children who are US citizens by birth. Applicant continues to maintain regular contact with her parents who are citizens and residents of Laos and provide small financial support to each of them. She also has six siblings who are citizens and residents of Laos and extended family members (her husband and father-in-law) who are naturalized citizens of the U.S. from Laos. None of Applicant's immediate and extended family members are agents of the Laos government or in a position to be exploited or pressured. Applicant mitigates any potential risk to undue foreign influence concerns. Clearance is granted.

STATEMENT OF THE CASE

On April 28, 2004, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant. The SOR 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, and recommended referral to an administrative judge for determination whether clearance should be granted or continued.

Applicant responded to the SOR on November 19, August 15, 2003, and elected to have his case decided on the basis of the written record. Applicant was furnished the File of Relevant Material (FORM) on February 25, 2004, and received it on March 9, 2004. Applicant responded to the FORM within the 30 days provided him with supplemental documentation regarding his finances. The case was assigned to me April 28, 2004.

SUMMARY OF PLEADINGS

Under Guideline B, Applicant is alleged to (a) have parents who are citizens and residents of Laos with whom she has close bonds of affection, (b) have three siblings who are citizens and residents of Laos, (c) have a father-in-law who was a major in the Royal Lao Army from 1956 to 1975 and (d) send up to \$1,000.00 per year to her parents to help them

when they experience times of hardship.

For her response to the SOR, Applicant admitted each of the allegations, subject to explanations. She claimed she wanted to help her parents live a decent life and her siblings pursue their education and attain good professional jobs and a higher standard of education. She claimed her father was a major in the Royal Laos Army until the Communists took control of the country in 1975 and placed him in a concentration camp, pending his release in 1985 and ensuing emigration to the U.S. in 1986.

FINDINGS OF FACT

Applicant is a 33-year-old wirer for a defense contractor who seeks to obtain a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant's background

Applicant was born and raised in Laos to Laotian parents and immigrated to the U.S. around 1994. She applied for U.S. citizenship soon after her arrival in the U.S. and became a naturalized U.S. citizen in 1999. Applicant and her husband claim the US as their only country of allegiance (*see ex. 4*) and have two children, both of whom are US. citizens.

Applicant's parents are citizens who currently reside in Laos. She retains close bonds of affection with her parents and maintains regular contact with them. She assists them by sending them \$1,000.00 a year to help them through periods of hardship. Applicant has three brothers and three sisters who are citizens and residents of Laos. Her father-in-law, who is a naturalized U.S. citizen, was a major in the Royal Laos Army from 1954 until the Communist takeover in 1975, when he was placed in a concentration camp. He was released from the camp in 1985 in Thailand, where he lived in a refugee camp, until he immigrated to the U.S. 1986.

None of applicant's immediate and extended family members have been identified as agents of the Lao government or persons in a position to be exploited, compromised, or pressured by agents or officials of the Lao government.

Country Status of Laos

Laos is regarded by the US State Department as a poor but developing with a socialist authoritarian government. *See Consular Information Sheet issued by U.S. State Department* (February 2004). Political power is centralized in the Lao People's Revolutionary Party. American tourists traveling to Laos are advised to exercise caution and be vigilant about their personal security. Lao security personnel are known to place foreign visitors under surveillance. Less developed countries like Laos are known to be collectors of technology and proprietary data: notably manufacturing processes, information technology (both software and hardware), and financial information. *See Annual Report to Congress on Foreign Economic Collection and Industrial Espionage - 2002* (NCIX February 2003).

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "[c]onditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Foreign Influence

The Concern: 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.

Disqualifying Conditions:

DC 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.

Mitigating Conditions:

MC 1: A determination that the immediate family members, co-habitant or associate 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 persons involved and the United States.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a

deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Security issues of concern to the Government focus primarily on the status of Applicant's parents (who currently receive about \$1,000.00 a year from Applicant) and siblings who are citizens and residents of Laos. Security concerns also extend to Applicant's father-in-law (a former major in the Royal Lao Army) who is a naturalized U.S. citizen and resident.

Because members of Applicant's immediate and extended family are current or former Laos citizens who reside either in Laos or the U.S., they present potential security risks covered by Disqualifying Condition (DC) 1 of the Adjudication Guidelines for foreign influence. The citizenship/residence status of these relatives in Laos and the U.S., respectively, pose some potential concerns for Applicant because of the risks of undue foreign influence that could compromise classified information under Applicant's possession and/or control.

From what is known from the accounts of Applicant, neither her spouse and family members nor any of her immediate family members holding Laos citizenship and residence (*viz.*, her parents and six siblings) have any affiliations or

connections with the Laos government, have any history to date of being subjected to any coercion or influence, or appear to be vulnerable to the same. Applicant, her husband, and his father, all demonstrated considerable courage and resolve when they immigrated to the U.S. to find better lives. By Applicant's accounts, she has become completely dedicated to preserving U.S. political and economic interests here and can be expected to resist any potential pressure that might be exerted on any of her family members residing either in the U.S. or in Laos.

Laos, although still controlled by a authoritarian socialist government, which lacks any demonstrated respect for human rights and the rule of law by most published accounts, still continues to maintain diplomatic interests with the U.S. In balance, though, Laos must be considered a country neither allied with nor accommodating to U.S. political and economic interests. Laos remains a country of considerable security concern.

The Adjudicative Guidelines governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens/residents of foreign countries in general. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing in the supplied materials and country information about Laos through the materials accepted in the record through official notice.

As for security concerns associated with the presence of Applicant's immediate family members in Laos, and extended family members being expatriates of Laos, any risk of a hostage situation or undue foreign influence brought in the hopes of eliciting either classified information or economic or proprietary data out of Applicant, while still extant, must be discounted in the face of the absence of any evidence of connections to the Lao government by any of Applicant's family members still residing in Laos, or identifiable risk of exploitation, pressure, or compromise by officials of the Lao government. No such risks of compromise have been linked either to Applicant's father-in-law, a naturalized U.S. citizen from Lao and former Lao Army major.

Furthermore, the possibility of Applicant's succumbing to pressure from Laos authorities to ensure her parents financial and personal well being is speculative. To date, none of her parents or siblings have made any visible attempt to enlist Applicant's assistance in responding to any political pressures (real or suspected), and none should be assumed without some tangible request for assistance. Any financial interests Applicant may have invested in her parents appear to be quite minimal (no more than \$1,000.00 a year) and create no manifest security risk. Piecemeal analysis has, of course, been consistently rejected by the Appeal Board when assessing the security risks posed by an applicant's family members residing in a foreign country. *See* ISCR Case No. 01-22693 (September 22, 2003). Applicant may invoke the mitigation benefits of MC 1 (a determination that the immediate family members, co-habitant or associate 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 persons involved and the United States).

Overall, any potential security concerns attributable to Applicant's immediate family members (*viz.*, her parents, siblings) who are citizens and residents of Laos, and father-in-law by dint of his prior military service in Laos, are mitigated sufficiently to permit safe predictive judgments about Applicant's ability to withstand risks of undue influence attributable to her relationships with family members in Laos, or formerly of Laos. Favorable conclusions warrant with respect to the allegations covered by Guideline B.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS and the FACTORS and CONDITIONS listed above, I make the following separate FORMAL FINDINGS with respect to Applicant's eligibility for a security clearance.

GUIDELINE B: (FOREIGN INFLUENCE): FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: FOR APPLICANT

Sub-para. 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 Applicant's security clearance.

Roger C. Wesley

Administrative Judge