

DATE: December 11, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-23699

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's close and continuing foreign contacts, including his mother, four brothers and five sisters who are citizens of and reside in Vietnam, create the potential for foreign influence that could make him vulnerable to coercion, exploitation or pressure. The Applicant has created a financial interest in Vietnam, by sending an average of \$2,000.00 a year to his mother in Vietnam over the years. This shows a strong emotional attachment to his foreign national relatives. The record does not indicate whether any of the Applicant's family members in Vietnam are agents of, or employed with, or associated in any way with the Vietnamese government. These foreign contacts create the potential for foreign influence that could result in the compromise of classified information. Sufficient mitigation has not been shown. Clearance is denied.

**STATEMENT OF THE CASE**

On June 27, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing, received at DOHA on July 22, 2003, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on October 21, 2001. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on October 28, 2003, and he submitted no reply.

The case was assigned to the undersigned for resolution on December 3, 2003.

## FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, and the six exhibits. The Applicant is 52 years of age and holds a Bachelors Degree in Mechanical Engineering. He is employed as a Principal Development Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Vietnam in 1951. He immigrated to the United States and became a naturalized citizen in 1987. His wife, who was also born in Vietnam, is a naturalized citizen of the United States. His family, including his mother, four brothers and five sisters, are citizens of and reside in Vietnam. The Applicant maintains contact with his mother in Vietnam by telephone two or three times a year and by letter two or three times a year. He sends his mother an average of \$2000.00 a year to help support her. In 1993 while the Applicant traveled to Vietnam he visited his mother, and his four brothers and five sisters.

The Applicant has one brother who is a citizen of Vietnam that is currently living in the United States.

The Applicant has admitted each of the allegations set forth in the SOR. The record does not indicate whether the Applicant's family members in Vietnam are agents of, or employed with, or associated in any way with the Vietnamese government. The Applicant has not provided this Administrative Judge with any evidence in mitigation that would negate the negative impact his foreign contacts have on his security worthiness

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

### Foreign Influence

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: (1) not citizens of the United States or (2) 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:

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;
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.

#### Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline B (Foreign Influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

## **CONCLUSIONS**

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the written record, this Administrative Judge concludes that the Government has

established its case as to all allegations in the SOR, and that Applicant's foreign preference have a direct and negative impact on his suitability for access to classified information.

The Applicant has a number of relatives to whom he has close ties of affection or obligation in Vietnam. These foreign ties or contacts include his mother, and four brothers and five sisters who could potentially influence him. Thus, Disqualifying Condition 1, under Guideline B of the Directive applies. Although the Applicant owns no real estate and has no bank accounts in Vietnam, he has created a financial interest in Vietnam by sending an average of \$2,000.00 a year to his mother on a regular basis. Thus, Disqualifying Condition 8, under Guideline B of the Directive also applies. Furthermore, there is no evidence in the record indicating to what extent, if any, the Applicant's family members are associated with the Vietnamese government. Therefore, there is a possibility that a situation could arise that could create the potential for foreign influence that could result in his compromise of classified information. The Applicant has failed to respond to the FORM, and has not provided this Administrative Judge with any evidence to negate the negative impact his foreign contacts have on his security worthiness. None of the mitigating conditions under Guideline B apply. Under the particular facts of this case, the Applicant's request for a security clearance must be denied under Guideline B.

Considering all the evidence, the Applicant has met not the mitigating conditions of Guidelines B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guidelines B.

### **FORMAL FINDINGS**

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subparas. 1.a.: Against the Applicant

1.b.: Against the Applicant

1.c.: Against the Applicant

1.d.: Against the Applicant

1.e.: Against the Applicant

1.f.: Against the Applicant

1.g.: Against the Applicant

### **DECISION**

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge