

KEYWORD: Foreign Influence

DIGEST: Applicant failed to demonstrate that her family members living in Laos were not agents of a foreign government or so situated as to provide a point of influence on Applicant, thus failing to mitigate the foreign influence concerns. Clearance denied.

CASENO: 02-24875.h2

DATE: 05/05/2006

DATE: May 5, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-24875

REMAND DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR.

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esquire, Department Counsel

FOR APPLICANT

August Bequai, Esquire

SYNOPSIS

Applicant failed to demonstrate that her family members living in Laos were not agents of a foreign government or so situated as to provide a point of influence on Applicant, thus failing to mitigate the foreign influence concerns. Clearance denied.

STATEMENT OF THE CASE

On 29 March 2006, the Appeal Board remanded this case to me "for the purpose of locating the [*U.S. Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices: Laos, dated 23⁽¹⁾ February 2001*] and making it part of the record." The Appeal Board concluded that I erred by not including the report in the record forwarded on appeal. As directed, I have attached the requested report to this decision (Tab A). In addition, to complete the record, I have attached copies of the *U.S. Department of State, Bureau of East Asian and Pacific Affairs, Background Note: Laos, dated November 2003* and the *U.S. Department of State, Bureau of Consular Affairs, Consular Information Sheet: Laos, dated 30 December 2003* (Tab B), both of which were officially noticed at the hearing but missing from the case file forwarded to the Appeal Board.⁽²⁾

DISCUSSION

One aspect of the Appeal Board remand that must be addressed is the conclusion that a publication officially noticed over the objection of one of the parties must have hard copy included in the record of trial. The Appeal Board's conclusion ignores an essential component of official notice: that adjudicative facts may be noticed when they are capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned. In other words, you could look it up. The noticed State Department publications are well within this requirement. Although I was not required to take official notice of these publications, it was well within my discretion to do so. Further, while Department Counsel provided hard copy to me and Applicant as a matter of convenience, hard copies were not required for me to take official notice. I could have as easily and properly taken official notice of these publications with only a citation to their locations, whether physically in a library or in an agency on-line reading room. For clarity, I attach a "screen shot" of the State Department's access page to its major reports--notably including human rights reports from 1993-2005 (Tab C). I can easily access and print same report I officially noticed (Tab D) varying only in the number of printed pages. Thus, any interested party can--working from the cite I gave in the record (Tr. 15)--locate the publication that I noticed. Another important component of official notice is the ability to take official notice at any time in the proceeding, whether requested or not. Addressing Applicant's issue that I should not have taken official notice of the 2000 human rights report because it was irrelevant because outdated, I take official notice that the section of the 2000 Human Rights Report upon which I largely based my three-sentence finding about the government of Laos--section 1.f. Arbitrary Interference with Privacy, Family, Home or Correspondence--remains essentially unchanged in subsequent reports through 2005. (See, Tab C)

The Appeal Board remand requires no change to my Findings of Fact, Policies, Conclusions, or Formal Findings. Accordingly, there is no reason to change my decision.

DECISION

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

John G. Metz, Jr.

Administrative Judge

1. The Appeal Board incorrectly states the date of the report because it relies on the exhibit list provided by Department Counsel and not my record identification of the report (Tr. 15) that clearly records the correct date.
2. However, these three publications were in the case file when I issued my decision.