

DATE: September 29, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-25436

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant fled the Communist takeover of Vietnam in 1975. After he arrived in the United States, he served honorably in the United States Navy. In 1982, he became a United States citizen. He is not close to his two sisters who remain in Vietnam. These sisters are not agents of Vietnam, and are not in a position to be exploited by Vietnam in a way that could force applicant to choose between loyalty to his sisters and loyalty to the United States. Clearance is granted.

STATEMENT OF THE CASE

On February 23, 2004, 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.

Applicant responded to the SOR in writing on March 9, 2004. The case was assigned to the undersigned on June 9, 2004. A Notice of Hearing was issued on July 8, 2004, and the hearing was held on August 12, 2004. The transcript was received on August 31, 2004.

FINDINGS OF FACT

Applicant is a 47 year old employee of a defense contractor.

Applicant was born in South Vietnam. In 1975, at about the time South Vietnam was falling to the Communists, applicant and three of his four brothers⁽¹⁾ fled Vietnam by boat. After traveling around the world for six to nine months, they landed in the United States. Applicant's three brothers live in the United States.⁽²⁾

Applicant served in the United States Navy from 1978 to 1981. He received an honorable discharge. In 1982, he became a United States citizen. In 1995, he married a Vietnamese citizen who he had met during a trip to Vietnam in 1990. She became a United States citizen in 1999. They have two children, both of whom were born in the United States.

Applicant has two sisters who are residents of Vietnam. They do not support the communist way of life. In fact, during the war, they actively worked for the South Vietnamese government against the Communists. When the Communists assumed power, the sisters fled to the city to avoid being sent to a reeducation camp. One assumed a new identity to avoid capture. Since they did not turn themselves in to the communist authorities as they were required to do, it is unclear if they are considered citizens of Vietnam. In essence, they live anonymously in Vietnam. Applicant speaks to them by phone once or twice a year. Applicant testified that he loves his sisters because "they are [his] blood." However, he added that given the fact he has lived in the United States the last 28 years, and the fact it's hard for him to communicate and share things with them, he does not consider himself to be "close" with them (TR at 35).

Applicant's mother-in-law, brother-in-law, and sister-in-law are citizens and residents of Vietnam. Applicant's father-in-law is deceased. None of these relatives is a communist. None works directly for the Vietnamese government. Applicant's wife speaks with them on a monthly basis. The wife has started the paperwork to bring her sister and brother to the United States, but the process could take another ten years to complete.

Since moving to the United States, applicant has visited Vietnam four or five time times, the last time about two years ago.

It is clear from the evidence that applicant is extremely grateful for the life he has in the United States, and that he is a loyal United States citizen.

Applicant did not intentionally provide a false response to Question 9 on the Security Clearance application he executed in December 2000. He clearly misunderstood the question.

CONCLUSIONS

Applicant was born in Vietnam. In 1975, he and his three brothers fled Vietnam immediately prior to the communist takeover of the country and moved to the United States. In 1982, he became a United States citizen. His wife, who was also born in Vietnam, became a United States citizen in 1999. Their two children were born in the United States.

Applicant's two adult sisters are residents of Vietnam. This fact, standing alone, requires application of Disqualifying Condition 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 of or present in, a foreign country*).

Based on the evidence presented, it is clear that applicant's two sisters are opposed to the Communists. Indeed, they spent years of their lives fighting against them. I conclude that these two immediate family members are not agents of Vietnam. Applicant testified that he loves his sisters because "they are [his] blood." However, he explained that after spending his entire adult life in the United States, serving in the U.S. Navy, and starting and raising a new family here, he and his sisters are not "close." In essence, they live completely different lives. Based on the evidence presented, I conclude that applicant is not in a position to be exploited by Vietnam in a way that could force him to choose between loyalty to his sisters and loyalty to the United States. Based on the foregoing, itigating Condition 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*) is applicable to this case.

Applicant's contacts with his in-laws, none of whom work for the Vietnamese government, are casual and infrequent. Applicant therefore qualifies for itigating Condition E2.A2.1.3.3 (*contact and correspondence with foreign citizens are casual and infrequent*).

The evidence clearly establishes that applicant (and his immediate family members) are anticommunist, and that applicant is extremely grateful for the opportunity he has been afforded since moving to the United States. It is clear that applicant's loyalty is to the United States, and that

he would not allow his relationship to any Vietnamese citizen or resident to undermine that loyalty. Accordingly, Guideline B is found for applicant.

FORMAL FINDINGS

GUIDELINE B: FOR THE APPLICANT

Subparagraph 1a: for the applicant

Subparagraph 1b: for the applicant

Subparagraph 1c: for the applicant

Subparagraph 1d: for the applicant

Subparagraph 1e: for the applicant

Subparagraph 1f: for the applicant

GUIDELINE E: FOR THE 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.

Joseph Testan

Administrative Judge

1. The remaining brother was captured by the communists and put in prison. After he was released from prison he died.
2. Because of his work for the United States, one of his brothers was one of the most wanted men in Vietnam after the communist takeover.