

KEYWORD: Foreign Influence

DIGEST: Applicant is a 54 year-old general clerk working for a defense contractor. He fled Cambodia in 1975 and emigrated with his family to the United States. Applicant, his mother, elder half-sister, two sisters, two brothers, and his wife are all naturalized United States citizens residing in the same region of the United States. Applicant's only remaining Cambodian contact is a half-sister of whom he did not know for part of his life. This half-sister has traveled to the United States on a number of occasions and they maintain telephonic contact. Applicant mitigated security concerns and it was found that his communication with this half-sister does not make him vulnerable to foreign influence. Clearance is granted.

CASENO: 02-26053.h1

DATE: 04/27/2005

DATE: April 27, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-26053

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 54 year-old general clerk working for a defense contractor. He fled Cambodia in 1975 and emigrated with his family to the United States. Applicant, his mother, elder half-sister, two sisters, two brothers, and his wife are all naturalized United States citizens residing in the same region of the United States. Applicant's only remaining Cambodian contact is a half-sister of whom he did not know for part of his life. This half-sister has traveled to the United States on a number of occasions and they maintain telephonic contact. Applicant mitigated security concerns and it was found that his communication with this half-sister does not make him vulnerable to foreign influence. Clearance is granted.

STATEMENT OF THE CASE

On April 10, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR). That SOR detailed why, pursuant to Guideline B-Foreign Influence, 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.

In a written statement dated April 27, 2004, Applicant admitted, with explanation, to the four allegations contained in the SOR and requested a hearing based on the submissions. Consequentially, DOHA recommended that the matter be referred to an Administrative Judge to determine whether a clearance should be granted. The Government's case was submitted on August 12, 2004, and a complete copy of the file of relevant material (FORM)⁽¹⁾ was provided to the Applicant. Applicant was afforded the opportunity to file objections and submit evidence in refutation, extenuation, or mitigation. Applicant received a copy of the FORM on August 26, 2004, but did not submit any additional material. The matter was originally assigned to an Administrative Judge on November 1, 2004. It was reassigned to me, for caseload

considerations, on February 17, 2005.

FINDINGS OF FACT

Applicant has admitted to the factual allegations pertaining to foreign influence under Guideline B. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 54 year-old male who has been employed as a general clerk by a defense contractor since May 2001. He was born in the Kingdom of Cambodia in 1950, shortly after it was given independent status within the French Union and four years before it gained full independence. Applicant served as a Second Lieutenant in the Cambodian Army and was a member of its Military Police force. When Communists seized control of the country in 1975, Applicant rendezvoused with his mother, a brother, and two sisters in nearby Thailand. Through the United States Embassy in Bangkok, the family emigrated directly to the United States. After a year at a U.S. military camp, an elder half-sister, who previously had become a naturalized United States citizen, arranged for him to join her in a major metropolitan area. He has remained in that area of the United States ever since. Indeed, he has resided at his current address since 1986, the same year he married a fellow Cambodian emigre.

In 1995, Applicant became a naturalized United States citizen. His mother, two brothers, two sisters, and wife also became U.S. citizens through naturalization. In contrast, his two children are U.S. citizens by virtue of their birth in the United States. This entire extended family resides within the same metropolitan area as Applicant.

Applicant has not returned to Cambodia since his 1975 departure. He states that he may in the future return to Cambodia to visit the ancient temple of Angkor Wat.⁽²⁾ Applicant also admits that he has an intent to visit Cambodia in the future: "Cambodia is my place of birth and I always love my birthplace(.) It is a beautiful country and I grew up there. And another point is to see the 11th Century temple."⁽³⁾

He has no contact with any foreign nationals except for a second half-sister who is a citizen and resident of Cambodia. She is the daughter of a woman with whom his father had an affair, of whose existence he did not know for part of his life. He does not consider his relationship to her to be very close and he does not believe he is susceptible to any type of blackmail, coercion, or duress because of their connection. She is employed by a bank in Cambodia, but Applicant does not know if it is controlled by that government or if it is a private institution. She has not engaged in any illegal activities detrimental to this or any other country. She has traveled to the United States on a number of occasions over the years, at times as frequently as three times per year,⁽⁴⁾ but she has only visited him thrice.⁽⁵⁾ Although their

telephonic contact was limited to two or three calls per year as of 2002, she currently she calls him or his wife ten to twenty times per year; he or his wife call this step-sister one to ten times per year. [\(6\)](#)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, these adjudicative guidelines are subdivided into those that may be considered in deciding whether to deny or revoke one's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to determine one could still be eligible for access to classified information (Mitigating Conditions).

In application, an Administrative Judge is not strictly bound by the adjudicative guidelines. As guidelines, they are part of an amalgam of elements for the Administrative Judge to consider in assessing an applicant in light of the circumstances giving rise to the SOR, as well as in assessing the applicant as a whole. The concept of the "whole person" means that all available, reliable information about the person - whether it is good or bad, present or past - should be considered in making a fair, impartial, and meaningful decision as to his or her suitability to hold a security clearance. To that end, Enclosure 2 also sets forth factors to be considered during this part of the

adjudicative process, including: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individuals 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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Guideline B-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 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. [\(7\)](#)

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security

concerns, pertaining to this adjudicative guideline are set forth and discussed in the next section.

After a full and thorough examination, however, the final assessment must comport with the considerable gravity of the final decision. There is no right to a security clearance⁽⁸⁾ and one seeking access to classified information must be prepared to enter into a fiduciary relationship with the United States Government that is inherently predicated on trust and confidence. Therefore, when the facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has the heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁹⁾ Therefore, any doubts will be resolved in favor of the national security, not the applicant.

Finally, Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Therefore, nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all legal precepts, factors, and conditions, including those described briefly above, I find the following with respect to the allegations set forth in the SOR:

With respect to Guideline B, the Government has established its case. Applicant has been shown to be a person who is a security risk because of his regular contact with a half-sister, a person to whom he is bound by affection, influence, or obligation, who is neither a citizen nor resident of the United States, and may be subject to duress. Regardless of whether she is considered an immediate family member⁽¹⁰⁾ or simply as one with apparently close ties to the Applicant, such a situation raises the potential for vulnerability to coercion, exploitation, or pressure, and the exercise of foreign influence that could result in the compromise of classified information. This raises Foreign Influence Disqualifying Condition (FI DC) 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 or present in, a foreign country*).

The Government also urges application of FI DC E2.A2.1.2.6 (*Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government*), based on Applicant's admissions that he has an intent to visit Cambodia in the future and to visit Angkor Wat, a popular Cambodian tourist destination."⁽¹¹⁾ The Government

argues that an express desire to someday visit Cambodia constitutes conduct that makes Applicant potentially vulnerable to coercion or exploitation. His wording and his goals, however, seem generic and express no immediacy. Given the passage of 30 years, such comments appear to be more like expressions rooted in sentiment and curiosity, triggered by a geographic madeleine evoking a Proustian "remembrance of things past," rather than an expression of probable intent. Moreover, because of the significant changes in the character of today's Cambodia, it does not pose for Applicant the same dangers it posed in 1975. As the Government's exhibits show, Cambodia has survived its bloody past, evolved, and resumed relatively normalized trade with the United States.⁽¹²⁾ On that basis, I do not find an adequate degree of risk exists to apply FI DC E2.A2.1.2.6. Further, inasmuch as such a dream or contingency with regard to future travel does not, by itself, pose a disqualifying condition, I find in favor of Applicant with regard to SOR subparagraph 1.d.

Applicant asserts that he is not particularly close to his half-sister in Cambodia. He vouches that she has never engaged in any illegal activities that would be detrimental to the United States and notes that she agrees with United States policy. Judging by her profession in the banking industry, extensive travel, and financial capability to make numerous international telephone calls, she does not appear to be unduly or necessarily vulnerable to exploitation. Her role with a bank, regardless of its relationship to the Cambodian government, fails to define her as an "agent of a foreign power" under 50 U.S.C. 1801(b)(1)⁽¹³⁾ and there is no other evidence suggesting that she is any form of agent. Furthermore, despite their telephonic contact, addressed *infra*, his relationship with this half-sister is not so close as to make her a source of blackmail, coercion, or duress. Therefore, I find application of Foreign Influence Mitigating Condition (FI MC) FI MC E2.A2.1.3.1 (*A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(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*).

Applicant has not always known about the existence of the half-sister living in Cambodia and she was not included in the familial exodus from Cambodia to the United States. By his own admission, Applicant does not consider their relationship to be very close, nor does it appear to be close or intimate. As such, their relationship appears to be casual.⁽¹⁴⁾ Furthermore, although she frequently travels to the United States, she has only physically visited him three times in the 30 years he has been in the United States. Such frequency is so low that it does not pose a disqualifying condition and, therefore, I find subparagraph 1.c of the SOR in Applicant's favor. Moreover, up to 2002, telephonic contact was equally infrequent, numbering two to three calls per year. Although telephonic contact between households recently has increased, those calls initiated by Applicant or his wife still remain in the one-to-ten calls per year range. Given the relative ease of modern telephonic communication, I do not find this total - as shared between husband and wife - to be extraordinary or notably frequent. Therefore, I find that FI MC E2.A2.1.3.3 (*Contact and correspondence with foreign citizens are casual and infrequent*) applies. Additionally, given that these phone calls do not, by themselves, raise a disqualifying condition, I find in Applicant's favor with regard to subparagraph 1.b of the SOR.

No proffer has been made by Applicant that he has had contact with his half-sister or any other foreign citizen as a result of government business or given any evidence with regard to any of his financial interests, domestic or foreign. Mitigation, therefore, cannot be predicated upon either FI MC E2.A2.1.3.2 (*Contacts with foreign citizens are the result of official United States Government business*) or FI MC E2.A2.1.3.5 (*Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*). Moreover, Applicant affirmatively notes that he has never been contacted by a foreign government for any reason,⁽¹⁵⁾ thus obviating application of FI MC E2.A2.1.3.4 (*The individual has promptly reported to proper authorities all contacts, requests, or threats from persons or organization from a foreign country, as required*).

In all adjudications, the protection of the national security is the paramount concern. The objective of the security clearance process is the fair minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. To that end, the deliberative process specifically involves the careful weighing of a number of variables considering the "whole person" concept. That concept recognizes that we should view a person by the totality of their acts, omissions, motivations, and other variables such as age and maturity. We cannot ignore, however, the circumstances and the potential risk to the national security.

I have considered all the evidence in evaluating Applicant's risk and vulnerability in protecting our national interests and examined the whole person. Additionally, I have noted how both Cambodia and this Applicant have evolved in the past 30 years. More importantly, I have examined where both Applicant and Cambodia are today.

The government well notes Cambodia's turbulent past. With the Geneva Treaty of 1954, the Kingdom of Cambodia, like Laos and a divided Vietnam, became independent from France. Following a March 1970 coup, Cambodia started its eventual fall to Communism. That fall was completed in 1975 when the Communist Khymer Rouge seized control of Phnom Penh, placed Pol Pot in the position of Premier, and renamed the country "Democratic Kampuchea." As part of its Communist shift to an agrarian economy and because of the new regime's opposition to technology and Western influence, most of the country's vehicles and machines were destroyed. Complementing this regressive economic movement was the process of executing the members of the upper, middle, and educated classes, as well as suspected enemies of the Khymer Rouge Communist movement, in a system of genocide that is estimated to have taken approximately a million and a half lives.⁽¹⁶⁾ The situation worsened in 1979 with the invasion by Vietnamese forces that led to a civil, and bloody guerilla, war. Those forces remained for over a decade.

In 1993, with the help of a United Nations task force, free, democratic elections were held in Cambodia and royalists gained a block of the National Assembly. A few months later, there was both a new constitution and a king. Meanwhile, the influence of the Khymer Rouge waned until it virtually disappeared following the 1998 death of Pol Pot. Since that time, daily strides toward stability have been made. Although the State Department still advises caution with regard to travel within Cambodia - describing it as a poor developing country in which the political situation is relatively calm, but in which the possibility of politically motivated violence remains as a form of retribution for personal and business disputes⁽¹⁷⁾ - its evolution since the time Applicant fled Cambodia cannot be overlooked: "Compared to its recent past, the 1993-2003 period has been one of relative stability for Cambodia."⁽¹⁸⁾

No evidence has been offered indicating any sinister Cambodian intentions or activities with regard to industrial espionage or active collection of foreign economic information directed toward the United States. Unlike a number of countries specifically enumerated as posing a significant threat with regard to foreign economic collection and industrial espionage, Cambodia has no such reputation.⁽¹⁹⁾ In fact, I have seen no indication in the *Annual Reports to Congress on Foreign Economic Collection and Industrial Espionage* prepared by the National Counterintelligence Center, or in the *Intelligence Threat Handbook* published by the Interagency OPSEC Support Staff, commenting on any such activities or threats posed by Cambodia.

Moreover, there has been no concerted return to the level of technology Cambodia once possessed prior to the reign of Pol Pot. Today, Cambodia's primary exports, with the U.S. as its major trade partner, consist of garments, shoes, cigarettes, natural rubber, rice, pepper, wood, and fish. Given the fact that its current dependence on foreign aid barely keeps these primarily agrarian efforts afloat, it does not appear that Cambodia poses a significant threat to this Applicant with regard to industrial espionage or information collection now or in the immediate future.

As Cambodia has evolved in the past three decades, so has the Applicant. Thirty years ago, Applicant's family virtually transposed itself, in tact, to the United States; they have remained together as long-standing residents of the same community ever since. In the interim, Applicant married, started and raised a family of his own, maintained steady employment, and integrated himself into his social and professional community. Other than the one half-sister yet remaining in Cambodia, a woman of incidental relation and one who does not pose an unacceptable security risk, Applicant has no tie or link outside of his current community. Given the low level of threat posed by modern Cambodia, the significant change in the character of that country, and the minimal risk of exploitation by that country, as well as all the evidence presented in this matter, including Applicant's statements and his long term, established ties in the United States, I am persuaded that Applicant has mitigated security concerns. Therefore, I find that his communication with his half-sister presents no security significance and, consequentially, find subparagraph 1.a of the SOR in Applicant's favor. Clearance is granted.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.2.5 of Enclosure 3 of the Directive are:

Paragraph 1. Guideline B FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: 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 Appellant. Clearance is granted.

Arthur E. Marshall, Jr.

Administrative Judge

1. The government submitted nine items in support of its case.
2. Item 6 ("Interrogatories Concerning Alcohol," dated December 24, 2003), at 4.
3. Item 3, (Applicant's answer to the SOR, dated April 27, 2004), at 2.
4. *Id.*
5. Item 5 (Original Statement of Applicant, dated January 29, 2002), at 2.
6. No explanation is offered as to the jump in telephonic contact although, given Applicant's sometimes imperfect English, such an apparent jump may be attributable to either limitations with Applicant's written expression or some semantic/linguistic mistake.
7. Directive, Enclosure 2, Attachment 2, Guideline B, ¶ E2.A2.1.1.
8. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
9. *Id.*, at 531.
10. An "immediate family member" is defined at Section E2.A2.1.2 as *spouse, father, mother, sons, daughters, brothers, sisters*. The Directive gives no further definitions as to whether "sister" is meant to include step-sisters and half-sisters. The distinction both at law and in common usage, however, remains.
11. Item 6, *supra* note 2, at 4.
12. Item 7 (U.S. Department of State Background Note: Cambodia, dated April 2004); Item 8 (CRS Report for Congress, Cambodia: Background and U.S. Relations, dated August 21, 2002), at 4-6.

13. One who acts in the United States as an officer or employee of a foreign power, or as a member of a terrorist organization, § 1801(b)(1)(A) ; one who acts for or on behalf of a foreign power that engages in clandestine intelligence activities in the United States contrary to U.S. interests when (1) the circumstances of such persons' presence in the United States "indicate that such person may engage in such activities, or (2) when such person knowingly aids or abets any person, or conspires with any person to engage in such activities." 50 U.S.C. § 1801(b)(1)(B).

14. *See, e.g.*, ISCR Case No. 02-31602.

15. *Id.*

16. *See*, http://www.encyclopedia.com/html/section/cambodia_history.asp (April 11, 2005).

17. Item 9 (*Cambodia*, Travel.State.Gov, dated August 8, 2004).

18. Item 7, *supra* note 12, at 6.

19. *See, e.g.*, *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage* (National Counterintelligence Center, 2000).