

KEYWORD: Foreign Influence

DIGEST: Applicant is a naturalized US citizen who immigrated to the US from Vietnam in 1975 after the fall of the Saigon government. She and her husband (who she met while fleeing from the North Vietnamese in 1975) are devoted US citizens and have three children who are US citizens by birth. Applicant continues to maintain contact with her sister and mother-in-law who are citizens of Vietnam who reside in that country and provide small financial support to each of them. None of Applicant's immediate and extended family members are agents of the Vietnamese government or in a position to be exploited or pressured. Applicant mitigates any potential risk to undue foreign influence concerns. Clearance is granted.

CASENO: 02-26306.h1

DATE: 08/26/2004

DATE: August 26, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-26306

**DECISION OF ADMINISTRATIVE JUDGE**

**ROGER C. WESLEY**

**APPEARANCES**

**FOR GOVERNMENT**

Rita C. O'Brien, Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a naturalized US citizen who immigrated to the US from Vietnam in 1975 after the fall of the Saigon government. She and her husband (who she met while fleeing from the North Vietnamese in 1975) are devoted US citizens and have three children who are US citizens by birth. Applicant continues to maintain contact with her sister and mother-in-law who are citizens of Vietnam who reside in that country and provide small financial support to each of them. None of Applicant's immediate and extended family members are agents of the Vietnamese 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 CASE**

On October 27, 2003, 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 granted, continued, denied or revoked.

Applicant responded to the SOR on November 17, 2003, and requested a hearing. The case was assigned to me on March 12, 2004, and was scheduled for hearing on June 23, 2004. A hearing was convened as scheduled for the purpose of considering whether it is clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At hearing, the Government's case consisted of one exhibit and one document, for which official notice was taken; Applicant relied on two witnesses (including herself) and one exhibit. The transcript (R.T.) of the proceedings was received on July 6, 2004.

## **SUMMARY OF PLEADINGS**

Under Guideline B, Applicant is alleged to have (a) a sister who is a citizen of Vietnam currently residing there, (b) a brother who is a citizen of Vietnam residing in the US and (c) a mother-in-law who is a citizen of Vietnam residing in Vietnam. Additionally, Applicant is alleged to (i) have traveled to Vietnam in 1998, (ii) send (along with her spouse) \$1,000.00 per year to her mother-in-law and (iii) send (along with her spouse) \$1,000.00 a year to her sister in Vietnam. For her answer to the SOR, Applicant admitted each of the allegations without explanation.

## **FINDINGS OF FACT**

Applicant is a 47-year-old structural assembly worker 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 immigrated to the US with her mother and older brother in 1975 after North Vietnam assumed control of the government.. She was 18 years old at the time. Her father expired in 1957 just after Applicant was born. She was naturalized as a US citizen in 1994 and is married to another expatriate of Vietnam: Her husband served as an enlistee in the South Vietnam Air Force (AF) and immigrated to the US following the fall of the Saigon government in 1975. Applicant met her husband on the US Navy boat that picked them up off the South Vietnam coast as they were fleeing from the North Vietnamese.

Applicant and her husband claim the US as their only country of allegiance and have three children, all of whom are US citizens. Applicant has a sister who is a citizen and resident of Vietnam and has an application pending for immigration to the US. Her sister has neither a job nor contact with the Vietnamese government. Applicant talks by phone with her sister about three times a year and last visited her sister in 1998. Her sister has never visited Applicant in the US

Applicant's mother and two brothers are Vietnamese citizens who reside in the US. Her oldest brother immigrated to the US with their mother in 1975. This brother had served in the South Vietnam AF as an enlistee, and fought against the North Vietnamese army (R.T., at 27-29). Her younger brother stayed behind and did not immigrate to the US until 1979. Both brothers reside with their mother in another state. Applicant keeps in touch with her mother and brothers once or

twice a month. Neither Applicant nor her husband own any property (including bank accounts) in Vietnam.

Applicant's mother-in-law continues to reside in Vietnam. She is a housewife who has never worked outside the home and has no contact with the Vietnamese government. Applicant maintains telephone contact with her mother-in-law approximately three times a year. She last visited her mother-in-law in 1998 with her husband.

Applicant, together with her mother and brother, provide financial support to her sister: They send \$300.00 a year to assist her. Applicant and her husband provide similar support to her mother-in-law. In 2002, she and her husband did send \$1,000.00 to both her mother-in-law and her sister. But since 2002, they have been sending each of them just \$300.00 a year.

Neither Applicant nor her husband have any reason to believe Applicant's sister or mother -in-law residing in Vietnam are vulnerable to pressure or coercion.

### **Country Status of Vietnam**

Vietnam is regarded by the US State Department as a poor but developing country controlled by a Communist government. *See Consular Information Sheet issued by US State Department* (June 2004). American tourists traveling to Vietnam are advised to exercise caution and be vigilant about their personal security. Vietnamese security personnel are known to place foreign visitors under surveillance and even have them arbitrarily arrested, detained or expelled from the country for activities that would not be considered crimes in the United States.

### **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 in this proceeding focus on the status of Applicant's sister and mother-in-law who are citizens and residents of Vietnam (and currently receive about \$300.00 a year each from Applicant and her husband). Security concerns also extend to Applicant's younger brother who resides in the U.S. but retains his Vietnamese citizenship.

Because members of Applicant's immediate and extended family are Vietnamese citizens who reside either in Vietnam 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 Vietnam 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 and her husband, neither her spouse nor any of her immediate and extended family members holding Vietnamese citizenship (*viz.*, her sister, older brother and mother-in-law), either residing in Vietnam or the U.S., have any affiliations or connections with the Vietnamese 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 her mother and brothers all demonstrated considerable courage and resolve when they risked their lives and freedom to flee Vietnam after the North Vietnamese government took control of the south in 1975. 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 hypothetical pressure that might be exerted on any of her family members residing either in the U.S. or in Vietnam.

Vietnam, although still controlled by a Communist 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. and has shown its capacity to be interested in attracting Western capital. In balance, though, Vietnam must be considered a country neither allied with nor accommodating to U.S. political and economic interests. Vietnam 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 Vietnam through the materials accepted in the record through official notice.

As for security concerns associated with the presence of Applicant's immediate and extended family members in Vietnam, 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 exhibited actions by Applicant and her family members historically to resist Vietnamese aggression and pressures brought to bear.

Furthermore, the possibility of Applicant's succumbing to pressure from Vietnamese immigration authorities to ensure her sister's successful immigration to the U.S. is still very speculative. To date, her sister has made not visible attempt to enlist Applicant's assistance in expediting her immigration paperwork, and none should be assumed without some tangible request for assistance. Any financial interests Applicant and her husband may have invested in Applicant's sister and mother-in-law appear to be quite minimal (no more than \$300.00 a year provided each) 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 fully 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 and extended family members (*viz.*, her sister, older brother and mother-in-law), who retain their Vietnamese citizenship and residence in either the US or Vietnam, 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 Vietnam. 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

Sub-para. 1.e: FOR APPLICANT

Sub-para. 1.f: FOR APPLICANT

Sub-para. 1.g: 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