

KEYWORD: Foreign Influence

DIGEST: Applicant has lived in the United States since 1975. He and his wife are naturalized United States citizens. Their only child was born in the United States. Applicant's parents and 15 siblings live in the United States, and all but one sibling are United States citizens. The one brother who remains a Vietnamese citizen is not an agent of Vietnam, and is not in a position to be exploited by Vietnam. Applicant's loyalty is to the United States. Clearance is granted.

CASE NO: 02-26492.h1

DATE: 06/14/2004

DATE: June 14, 2004

In Re:

SSN: -----

Applicant for Security Clearance

)
)
)
)
)
)
)
)
)

ISCR Case No. 02-26492

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has lived in the United States since 1975. He and his wife are naturalized United States citizens. Their only child was born in the United States. Applicant's parents and 15 siblings live in the United States, and all but one sibling are United States citizens. The one brother who remains a Vietnamese citizen is not an agent of Vietnam, and is not in a position to be exploited by Vietnam. Applicant's loyalty is to the United States. Clearance is granted.

STATEMENT OF THE CASE

On September 30, 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 denied or revoked.

Applicant responded to the SOR in writing on October 20, 2003. The case was assigned to the undersigned on January 29, 2004. A Notice of Hearing was issued on March 17, 2004, and the hearing was held on April 21, 2004. The transcript was received on May 7, 2004.

FINDINGS OF FACT

Applicant is 40 years of age. He is employed as an engineer by a defense contractor.

Applicant was born in South Vietnam. In 1975, at about the time South Vietnam was falling to the Communists, applicant, his parents, and 12 of his 15 siblings, fled Saigon with the help of the U.S. military, and moved to the United States. ⁽¹⁾ Applicant has lived in the United States since 1975. He became a United States citizen in 1984.

Applicant's parents and all of his siblings reside in the United States. All became United States citizens except one brother. The brother, described by applicant as the "black sheep" of the family, will be applying for United States citizenship.

In 1995, applicant married a woman who was born in Vietnam. She became a United States citizen in June 2001. Applicant's five year old son was born in the United States. He was applicant's parents' thirtieth grandchild. All of the grandchildren are United States citizens.

Applicant's mother-in-law and father-in-law are citizens and residents of Vietnam. Applicant and his wife are in the process of helping the in-laws immigrate to the United States.

Since moving to the United States, applicant has visited Vietnam numerous times, the last time about two years ago. He has no current plans to travel there (TR at 27).

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.

CONCLUSIONS

Applicant was born in Vietnam. In 1975, he and his family fled Vietnam immediately prior to the communist takeover of the country and moved to the United States. In 1984, he became a United States citizen. His wife, who was also born in Vietnam, became a United States citizen in 2001. Their child was born in the United States.

All of applicant's immediate family members live in the United States. All of them, except one brother, are United States citizens. The one sibling who is not a United States citizen is a citizen of Vietnam. This fact 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, I conclude that this one immediate family member is not an agent of Vietnam, or in a position to be exploited

by Vietnam in a way that could force applicant to choose between loyalty to him and loyalty to the United States. Accordingly, Mitigating 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.

The evidence clearly establishes that applicant and his immediate family members are anticommunist. They are extremely grateful for the opportunities they have been afforded since moving to the United States, and as evidenced by the large number of extended family members that have been born and raised in the United States since applicant and his family moved here in 1975, the United States is their home. It is clear that applicant's loyalty is to the United States, and that he would not allow his relationship to any Vietnamese citizen to undermine that loyalty.

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

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. One sister remained behind to care for applicant's grandmother. Two brothers were ordered by the South Vietnamese government not to leave because they were of military age (TR at 14).