

KEYWORD: Foreign Influence

DIGEST: Applicant's mother and four siblings are citizens and residents of Vietnam. They are not in a position to be exploited by Vietnam in a way that could force Applicant to choose between loyalty to her family members and her loyalty to the United States. Applicant has given some money to her mother in Vietnam, but the amount is not significant. Applicant's strong attachment to the United States and minimal ties to Vietnam makes it unlikely that she would respond favorably to any efforts to act against United States interests. Mitigation has been shown. Clearance is granted.

CASENO: 02-26582.h1

DATE: 02/24/2005

DATE: February 24, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-26582

**DECISION OF ADMINISTRATIVE JUDGE**

**MARTIN H. MOGUL**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

## **FOR APPLICANT**

Lilly Duong

### **SYNOPSIS**

Applicant's mother and four siblings are citizens and residents of Vietnam. They are not in a position to be exploited by Vietnam in a way that could force Applicant to choose between loyalty to her family members and her loyalty to the United States. Applicant has given some money to her mother in Vietnam, but the amount is not significant. Applicant's strong attachment to the United States and minimal ties to Vietnam makes it unlikely that she would respond favorably to any efforts to act against United States interests. Mitigation has been shown. Clearance is granted.

### **STATEMENT OF THE CASE**

On March 11, 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.

On March 17, 2004, Applicant submitted a signed and sworn response to the SOR. Applicant requested a clearance decision based on a hearing record.

On May 20, 2004, this case was assigned to this Administrative Judge to conduct a hearing and issue a written decision. A notice, dated July 1, 2004, indicated that Applicant's employment was terminated on August 31, 2004, and she would not require a security clearance from her employer. After Applicant informed the Government that she had another employment position in which she would again require a security clearance, a Notice of Hearing was issued to the parties on December 21, 2004. The hearing was conducted on January 25, 2005.

At the hearing, Department Counsel offered four documentary exhibits (Exhibits 1 - 4), and no witnesses were called. Applicant offered no documentary exhibits, but she offered her own testimony. The transcript (TR) was received on February 2, 2005. The record was left open after the hearing for Applicant to submit additional evidence. She submitted two one page letters of reference, dated January 25 and January 28, 2005, respectively, which were not objected to and have been entered into evidence as Exhibit A.

### **FINDINGS OF FACT**

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline B of the Directive because Applicant's immediate family, and other persons to whom she may be bound by affection, influence, or obligation, are not United States citizens or may be subject to duress, that she has given some money to her mother in Vietnam, and that she has traveled to her native Vietnam on more than one occasion. The SOR contains seven allegations, 1.a. through 1.g., under Guideline B (Foreign Influence). In her response to the SOR, Applicant admits all seven allegations. These allegations are incorporated as findings of fact.

At the hearing, Department Counsel moved to amend the SOR to add an additional allegation, 1.h., which would state, "Your two sisters-in-law and one brother-in-law are residents and citizens of Vietnam." Applicant did not object, and allegation 1.h. has been added to the SOR. Applicant admitted this allegation.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the documents and the live testimony, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 54 years old. She is employed as an electrical technician by a defense contractor, and she seeks a DoD security clearance in connection with his employment in the defense sector. She was born in Vietnam, and she left Vietnam by boat at night with her family in 1980 to escape the communist ruled Vietnam. She became a naturalized United States citizen in 1990. Her husband, two daughters and one son are also naturalized United States citizens. Her second son, who resides in the United States, took and passed the test to be a United States citizen in 1994, but through some apparent error, which Applicant could not explain, he has never received notice to be sworn in as a U.S. citizen (Tr at 42- 43).

Applicant's father, a Vietnam citizen and resident, died in 1980. Her mother is a citizen of Vietnam and continues to reside there. She is retired and in poor health. She does not now nor has she ever had contact with or worked for the Vietnamese government. Applicant last saw her mother approximately 3 years ago. She has contact with her mother, by telephone, every two or three months. Applicant contributes approximately \$200 to her mother on a yearly basis, although she has sent as much as \$500 in a year, if it was needed.

Applicant also has three sisters and one brother, who are residents and citizens of Vietnam. The sisters all work together in a family business, involving food supply. Her brother is a glasscutter. None of them have ever worked for the Vietnamese government. Her contact with them is limited and sporadic. She also has one brother who resides in the United States and is a U.S. citizen.

Finally, Applicant has two sisters-in-law and one brother-in-law, who are residents and citizens of Vietnam. Neither Applicant or her husband has been in contact with any of them in many years.

Since Applicant first moved to the United States in 1980, she has traveled to Vietnam on two occasions, in 1996, and again at the end of 2001 until January 12, 2002. The latter trip was to see her ailing mother (Tr at 37-38).

Applicant has no financial interest or property in Vietnam.

She testified that she would never do anything to compromise the United States. If her mother or any family member was ever threatened by the government of Vietnam, she would report it to the proper United States authorities (Tr at 34-35).

Applicant submitted two letters of reference from coworkers on her behalf. The letters spoke highly about her honesty and trustworthiness (Exhibit A).

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual's 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 for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (*See* Directive, Section E2.2.1. of Enclosure 2).

### **BURDEN OF PROOF**

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with

the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

**CONCLUSIONS**Based on the evidence of record, the Government has established an initial reason to deny Applicant a security clearance because of Guideline B (Foreign Influence). Applicant's mother and siblings are citizens and residents of Vietnam. The Vietnam citizenship and residency of a member of Applicant's immediate family creates the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such a tie raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. This Applicant has done.

The evidence of family members, who are citizens and residents of Vietnam, comes within Disqualifying Condition (DC) E2.A2.1.2.1. The fact that the foreign country in question is Vietnam, a country under communist rule, is also a concern; but that fact is not automatically controlling. Based on the nature of the overall record and the totality of the evidence, including: the age and lack of government involvement of Applicant's mother and siblings, Applicant's long history since coming to the United States, her ties to all of her family members, who are United States citizens, and her testimony about her feelings concerning the United States, I have determined that her family in Vietnam does not

constitute an unacceptable security risk, and Mitigating Conditions (MC) E2.A2.1.3.1. applies.

Applicant does contribute some funds to her mother under DC E2.A2.1.2.8., but the amount is small. I conclude that MC E2.A2.1.3.5. applies because the financial interests are not significant enough to cause Applicant to do anything which would be contrary to the interests of the United States.

After considering all of the evidence of record on these issues, I conclude that the mitigating evidence substantially outweighs the evidence supporting the SOR, and even in the unlikely event pressure was exerted upon Applicant to compromise classified information, she would resist it, and would report the incident to the proper authorities.

### **FORMAL FINDINGS**

#### **Paragraph 1. Guideline B: FOR APPLICANT**

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: 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 a security clearance for Applicant.

Martin H. Mogul

Administrative Judge