

DATE: December 16, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-19364

**ECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL J. BRESLIN**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 48-year-old employee of a defense contractor. He was born in Vietnam, but escaped in 1978 and settled in the United States in 1979. Applicant became a naturalized citizen of the U.S. in 1986, and sponsored his wife and daughter into the U.S. Applicant's brothers and sisters also escaped from Vietnam. Several are citizens and residents of the U.S., and several are citizens and residents of Canada. Applicant's spouse, one of his sisters, and a close friend living in the U.S. applied for but have not yet been granted U.S. citizenship. Also, Applicant's mother-in-law is a citizen and resident of Vietnam. Applicant unintentionally failed to note his travel to Vietnam in 1998 on his security clearance application. Applicant has mitigated the security concerns arising from his relatives and friends who are resident in or citizens of Vietnam. Clearance is granted.

**STATEMENT OF THE CASE**

On December 8, 2000, Applicant submitted an application for a security clearance. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On May 14, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under the Directive, Guideline B, Foreign Influence, and Guideline E, Personal Conduct.

Applicant answered the SOR in writing on May 28, 2004. He elected to have a hearing before an administrative judge.

The case was assigned to me on August 11, 2004. With the concurrence of the parties, I conducted the hearing on September 16, 2004. The government introduced four exhibits and called Applicant as a witness. Applicant presented two exhibits and testified on his own behalf. The government amended ¶ 1.b of the SOR by deleting the words "sister and" and the last "s" from the word "associates" in the second sentence. Tr. at 39. The DOHA received the transcript

(Tr.) on September 30, 2004.

### FINDINGS OF FACT

Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.c, and 1.d of the SOR, with explanations. Applicant's Answer to SOR, dated May 28, 2004. Those admissions are incorporated herein as findings of fact. At the hearing, Applicant denied the allegations in ¶ 2.a. Tr. at 7. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 48 years old. Ex. 2 at 1. He was born in Saigon, Vietnam, in 1956. *Id.* Applicant escaped from Vietnam with his brother in 1978, and traveled by boat to Malaysia. Tr. at 14-16. At the time, he was married with a daughter about 18 months old. Tr. at 21. Applicant was admitted to the United States in arch, 1979. Tr. at 16. He became a naturalized citizen of the United States in February, 1986. Ex. 2 at 1.

After obtaining his citizenship, Applicant sponsored his wife and daughter into the United States. Lacking a marriage certificate, they went through a civil marriage ceremony in Reno, Nevada, in January, 1987. Tr. at 21. Applicant's wife is still a citizen of Vietnam. Tr. at 22. She applied for U.S. citizenship, but could not pass the language portion of the test. *Id.* She intends to try again. Applicant and his wife had a second daughter born in the U.S. in 1988. Ex. 2 at 4; Tr. at 21. Both of his daughters are now U.S. citizens.

Applicant has three brothers and one sister who are citizens and residents of the United States. Ex. 2 at 3-4; Ex. 3 at 2-3; Tr. at 23-24. He also has one sister who is a citizen of Vietnam and lives in the United States. She is married and resides with her husband and family. Tr. at 25. She has applied for her U.S. citizenship, but was unable to pass the language portion of the test. *Id.*

Applicant has no financial interests in Vietnam. Tr. at 35. All his financial interests, including a house, an automobile, and bank accounts, are in the United States. Tr. at 36.

Several of his other family members fled from Vietnam to the refugee camp in Malaysia and were finally admitted into Canada. Tr. at 15. Applicant's father passed away in Canada in 1986. Ex. 3 at 3. At present Applicant's mother, two brothers, and one sister are Canadian citizens and residents. Tr. at 23; Ex. 2 at 3-4; Ex. 3 at 2-3.

Applicant's mother-in-law is still a citizen and resident of Vietnam. Ex. 3 at 4. She is 74 years old. *Id.* Applicant indicated his father-in-law passed away. Tr. at 17. They operated a private business selling refreshments. *Id.* They did not work for the government or military of Vietnam. Tr. at 20. Applicant's wife contacts her mother in Vietnam about twice a year to inquire about her health. Tr. at 19. Applicant's mother-in-law visited Applicant and his family in the U.S. in about November 2003. Tr. at 18-19. Applicant saw his mother-in-law when he visited Vietnam in 1992 and 1998. Tr. at 19. He sends his mother-in-law a gift of about \$400.00 for Chinese New Year. Tr. at 18-19.

A friend of Applicant's family was also a refugee from Vietnam. Tr. at 22-23. He has lived with them for about five or six years. *Id.* He also applied for U.S. citizenship, but has not completed all the necessary steps. Tr. at 26-27.

Applicant traveled to Hong Kong, China, for vacation in 1990. Ex. 3 at 4. In 1992, he visited Bangkok, Thailand, and Vietnam. He also visited his family in Canada at some time. *Id.* In 1998, Applicant traveled to Hong Kong, visited family members in Vietnam for eight days, and stopped in Hong Kong for three days on the return trip. Tr. at 31; Ex. 3 at 4. Applicant stated Vietnamese authorities kept his visa when he left the country. Tr. at 32.

Applicant began working for a defense contractor as a mechanical installer in 2000. Tr. at 10; Ex. 1 at 2. The position requires a security clearance for work on classified projects. Tr. at 10. Applicant received an interim clearance, which he has held for about four years. Tr. at 38. Applicant's interim clearance has never been suspended or revoked, he has never had a problem protecting classified information, and there have been no attempts to exert foreign influence on him or his family members. Tr. at 38-39.

Applicant completed an SF 86, Security Clearance Application, on December 12, 2000. Ex. 2 at 1. At the time, he did not understand the significance of a security clearance. Tr. at 28. Applicant has some difficulty with the English

language, and obtained the assistance of a secretary in the defense contractor's office. Tr. at 29. Question 16 on the SF 86 asked whether Applicant traveled outside the United States on other than official government orders in the last seven years. Applicant answered "yes," and listed a trip to "Hong Kong" for pleasure between "1998/06/?" and "1998/07/?" Applicant did not report his travel to Vietnam in 1998.

At the hearing, department counsel inquired about this omission. Applicant offered two explanations for not reporting his trip to Vietnam in 1998: that he forgot, and that he felt he could not list it because he did not have documentation to prove it. Tr. at 30-32. He offered two photographs of his family in Vietnam to prove his visit there. Ex. A, B. Applicant apologized for the omission. Tr. at 30. He indicated he had nothing to hide. Tr. at 32.

## POLICIES

In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline B, Foreign Influence: A security risk may exist when an individual's immediate family, including cohabitants, or other persons to whom he 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. Directive, ¶ E2.A2.1.1.

Guideline E, Personal Conduct: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (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 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. *Id.*

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. Directive, ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2.

The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR:

### **Guideline B, Foreign Influence**

The Government's documentary matters and Applicant's admissions constitute substantial evidence of a potentially disqualifying condition under Guideline B of the Directive. Paragraph E2.A2.1.2.1 of the Directive provides that it may be a disqualifying condition if, "[a]n 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 Directive defines "immediate family member" to include a spouse and a sister. Applicant's wife is a citizen of Vietnam, residing with Applicant in the U.S. One of Applicant's sisters is a citizen of Vietnam, although she lives in the United States permanently with her family. Applicant has a close friend who is a citizen of Vietnam who has lived with Applicant's family for five or six years. Also, Applicant's mother-in-law is a citizen and resident of Vietnam. I find Applicant's mother-in-law and his friend are persons with whom he has close ties of affection or obligation. These situations could create the potential for foreign influence.

These security concerns can be mitigated where it is determined that "the immediate family member(s) . . . 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 persons(s) involved and the United States." Directive, ¶ E2.A2.1.3.1.

Applicant's spouse, sister, and mother-in-law are homemakers, and Applicant's friend works for a medical supply company in the United States. None of them ever belonged to the Communist Party or worked for the government or military forces of Vietnam. I conclude Applicant's relatives and friend are not agents of a foreign power. *See* 50 U.S.C. § 1801(b).

In assessing whether an applicant is vulnerable to exploitation by a foreign power through relatives or associates, it is necessary to consider several factors. First, it is helpful to consider the character of the government of the foreign country concerned to assess the risk that it might attempt to force or coerce a resident or citizen to act adversely to the interests of the United States. Vietnam is a communist country that is not an ally of the United States. Ex. 4. The United States and Vietnam are developing better relations since the end of the war between our countries. U.S. citizens are permitted to travel in Vietnam, including those who were formerly citizens of that country, however they do not enjoy the same legal rights and privileges expected in other nations. *Id.* The government of Vietnam is more restrictive than others. *Id.* at 1-3. "Foreign visitors have been arbitrarily arrested, detained or expelled for activities that would not be considered crimes in the United States." *Id.* at 2. Additionally, personal security is a greater concern in Vietnam. *Id.* at 3-4. Thus, there is some risk that the government of Vietnam might attempt to pressure or influence its citizens or residents in a manner adverse to the interests of the United States.

Secondly, it is important to consider the vulnerability of Applicant's relatives and associates to potential pressure. Significantly, his wife, sister, and friend all reside permanently in the United States, greatly reducing the possibility of foreign influence. Each has demonstrated their commitment to the U.S. by applying for citizenship. Applicant's mother-in-law is a citizen and resident of Vietnam, raising a somewhat greater security concern. I note she is 74 years old, and not a government employee or retiree. There is no indication the government of Vietnam attempted to exert pressure upon her in the many years following Appellant's escape from that country, or during the four years he held an interim clearance. Under all the circumstances, I conclude the vulnerability of Applicant's relatives and friend to improper foreign influence is minimal.

Another significant factor is Applicant's vulnerability to pressure or coercion exerted through his spouse, sister, mother-

in-law, and friend. Applicant has ties of affection and obligation to each of these individuals. At the same time, he has extensive familial ties to the United States and our close ally, Canada. He has several brothers and a sister who are citizens and residents of the United States, and his daughters are U.S. citizens. Applicant has lived in this country many years—all his financial resources are in the United States. His mother and several more brothers and sisters, and their families, are citizens and residents of Canada. Finally, Applicant has clearly demonstrated his rejection of the government and policies of Vietnam and his preference for and commitment to the United States, in his struggle to escape that country and bring his family to the United States. Under all the circumstances, Applicant's vulnerability to adverse foreign influence is exceptionally low.

I considered all the circumstances in light of the "whole person" concept. I conclude Applicant has mitigated the security concerns that arise because his spouse, sister, mother-in-law and friend are citizens of or resident in Vietnam.

### **Guideline E, Personal Conduct**

Under ¶ E2.A5.1.2.1 of the Directive, "[t]he deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire" could raise security concerns and may be disqualifying. Here, in response to a question about travel outside the United States within the preceding seven years, Applicant failed to list his trip to Vietnam in 1998. Applicant contends the omission was not deliberate, and that he was not attempting to conceal anything.

I considered carefully all the facts and circumstances surrounding the matter. It is troubling that Applicant remembered to list the trip to Hong Kong but did not mention the longer visit to Vietnam. At the same time, I note Applicant has some difficulty with the English language, he needed help to complete the form, he did not appreciate the significance of the security clearance requirement at the time of his application, and he did not have documentation reflecting the dates of his travel to Vietnam. More importantly, I considered Applicant's credibility during his testimony at the hearing. I find Applicant's incomplete answer resulted from his confusion and uncertainty, and that it was not a deliberate attempt to conceal or falsify relevant and material facts. I conclude the substantial evidence does not raise a potentially disqualifying condition under Guideline E.

### **FORMAL FINDINGS**

My conclusions as to each allegation in the SOR are:

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

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

### **DECISION**

In light of all of 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. Clearance is granted.

Michael J. Breslin

Administrative Judge