

KEYWORD: Foreign Influence

DIGEST: Applicant is a fifty-one-year-old male working as a senior systems engineer for a defense contractor. Applicant emigrated to the United States in the wake of Saigon's fall in 1975. Since then, he has matriculated through an American university, married, raised a family, and been continuously employed in the same industry since 1982. Although his in-laws and two brothers live nearby, his parents and four siblings remain in, and are citizens of, Vietnam. He calls his aged parents bimonthly and has visited them four times. He maintains no contact with those siblings residing in Vietnam, except for incidental meetings while visiting his parents. Clearance is granted.

CASENO: 03-19059.h1

DATE: 03/21/2005

DATE: March 21, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-19059

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a fifty-one-year-old male working as a senior systems engineer for a defense contractor. Applicant emigrated to the United States in the wake of Saigon's fall in 1975. Since then, he has matriculated through an American university, married, raised a family, and been continuously employed in the same industry since 1982. Although his in-laws and two brothers live nearby, his parents and four siblings remain in, and are citizens of, Vietnam. He calls his aged parents bimonthly and has visited them four times. He maintains no contact with those siblings residing in Vietnam, except for incidental meetings while visiting his parents. Clearance is granted.

STATEMENT OF THE CASE

On October 27, 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) detailing why, pursuant to Guideline B-Foreign Influence, it 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. Consequentially, DOHA recommended that the matter be referred to an Administrative Judge to determine whether a clearance should be granted.

In a written statement dated November 5, 2004, Applicant admitted, with explanations, to the three allegations contained in the SOR and requested a hearing based on the submissions. The Government's case was submitted on December 20, 2004, and a complete copy of the file of relevant material (FORM) [\(U\)](#) 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 January 4, 2005, but did not submit any additional material. I received this

case on February 11, 2005.

FINDINGS OF FACT

I have thoroughly reviewed the entire record and make the following findings of fact:

Applicant is a fifty-one-year-old male who has been employed as a senior systems engineer by a defense contractor since June 2001. Applicant was born in Vietnam and was attending college on a scholarship from the Japanese government when Saigon fell in 1975. That year, with the sponsorship of a cousin who was married to an American citizen, Applicant and his first wife emigrated to the United States in order to escape Communism. Shortly thereafter, Applicant recommenced his education at a major United States university. While at college, Applicant and his wife divorced. In 1981 he married a woman from Vietnam, and in 1982 Applicant became a naturalized citizen of the United States. Applicant's current wife is also a naturalized United States citizen, as are her mother, her siblings, and two of Applicant's brothers. Applicant's three children are United States citizens by virtue of their birth in the United States.

Remaining in Vietnam are Applicant's parents, an elderly couple whose health is of concern to Applicant. Applicant also has four sibling remaining in Vietnam: He has two brothers there, one is a teacher and the other is a businessman. He also has two sisters in Vietnam, one works in a family restaurant and the other works for a cloth-making business. A third sister lives in France. Her contact with Applicant is rare and is incidental to her visits with her children, who remained with their father, a naturalized United States citizen, after her divorce. He has no other contacts with Vietnam and has no friends with whom he communicates outside of the United States.

Applicant has traveled to Vietnam for pleasure on four occasions, in 1991, 1992, 1998, and 2000. During those trips, he visited his parents. Although he calls his parents bimonthly via telephone, he sends them no money or gifts. He has no contact with this foreign siblings except that which arises incidental to his visits to Vietnam. ⁽²⁾ He has no business travel outside of the United States and, except for customs personnel, has never had any contact with foreign government officials.

Despite a one year hiatus working for a different technological concern, he has been with the same contractor since being naturalized in 1982. Applicant has resided at the same address since 1986. Applicant has no real estate or bank account outside of the United States. His parents' home is expected to pass on to one of the siblings living in Vietnam.

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 to the adjudicative guidelines. As guidelines, they are but 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"⁽³⁾ 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 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 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.⁽⁴⁾

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 Conclusions section below.

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⁽⁵⁾ 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. Moreover, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁶⁾

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's parents and the four siblings who are citizens and residents of Vietnam are immediate family members.⁽⁷⁾ As such, the rebuttable presumption that there exists the potential for vulnerability to coercion, exploitation, or pressure, and the exercise of foreign influence that could result in the compromise of classified information is raised. Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1. may be raised, as here, 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 mere possession of family ties in a foreign country, however, is not, as a matter of law, disqualifying under Guideline B.⁽⁸⁾ Whether an applicant's family ties in a foreign country pose a security risk depends on a common sense evaluation of the overall facts and circumstances of those family ties.⁽⁹⁾

First, I have considered all the Foreign Influence Mitigating Conditions (FI MC) under Guideline B in this case. Applicant has adequately described the occupations of his relatives remaining in Vietnam. None of them appear to be employed by or connected with the Vietnamese military, government, or law enforcement, and there is no indication that they are agents of a foreign power. Moreover, with regard to any potential exploitation that might lead him to make a choice between the lives of his aged parents or siblings and the compromise of classified information, Applicant's assertion that such would not be the case, given the facts before me, is highly credible and I find that the risk is minimal. Therefore, I find application of 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 similarly addressed the extent and depth of his contact with his relatives remaining in Vietnam. He admits to bimonthly telephone contact with his parents and to seeing them on four trips to Vietnam, but cites to their advanced age and understandable health concerns. Applicant also admits that he has siblings in Vietnam, but states that he has no contact with them. Indeed, they do not exchange telephone calls and his only contact with them has been incidental to his parental visits. In light of the fact that Applicant has been in the United States for nearly thirty years, such contact is casual and infrequent. Moreover, it stands in sharp contrast to his present home and family life - intimately surrounded by his wife and teenaged children, and in close proximity to his in-laws, his two brothers, a cousin, and their collateral family members. Therefore, I also find application of FI MC E2.A2.1.3.3. (*contact and correspondence with foreign citizens are casual and infrequent*). None of the other mitigating conditions apply.

Second, I have considered the whole person concept and applied it to Applicant. In 1975, in order to escape a return to a Communized Vietnam, Applicant sacrificed a scholarship at a prestigious Japanese university, sought refuge in the United States, and quickly assimilated into his new country.. Since his arrival, he has enjoyed an American education, entered into a successful second marriage, and both started and raised a family of his own. Moreover, with the exception of a one year hiatus, Applicant has continuously worked for the same employer since 1982 and has held a security clearance for two decades. All of this was accomplished as he lived and worked in the same geographic area for nearly a quarter of a century - surrounded by family, professional peers, and friends. His contact with those in Vietnam is respectful, but cursory; he sends no money back to Vietnam, and he has no real estate or financial ties to that country. He has demonstrated constancy and his focus is here in the United States.

Third, the Government also expresses concern over Vietnam and fears that Applicant might not be afforded the safeguards of United States citizenship should he return for a visit. United States - Vietnam relations remain strained, but that status follows a considerable thaw. Although Vietnam is a Communist totalitarian country, it is no longer involved in open military hostilities with the United States, its interests are not necessarily inimical to those of the United States, and it is currently engaged in normal trade relations with the United States. Indeed, the Government's own submission indicates that we are slowly moving toward expanding political and security ties.⁽¹⁰⁾ Applicant is aware of the situation in Vietnam and travels wisely. His travel is purely for pleasure. His transportation to and within Vietnam has been by commercial carrier and via rental car. When requested, he reports to a local Security Office and participates in briefings and debriefings. The nature of his work remains unknown to those abroad.⁽¹¹⁾ Such facts help further mitigate the Government's concerns and demonstrate minimal risk to Applicant, his fiduciary duties, and the information to which he has access.

Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances.⁽¹²⁾ Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. Acts indicative of foreign influence warrant careful scrutiny. After considering the Enclosure 2 Adjudicative Process factors and the Adjudicative Guidelines, I conclude these ties are not of such a nature as to create any tangible risks of undue pressure on Applicant. Therefore, I find that the foreign influence security concerns raised are mitigated, and find SOR paragraph 1 and subparagraphs 1.a. through 1.c. in Applicant's favor.

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. ⁰ The government submitted 8 items in support of its case.

2. Item 5 (Statement of Applicant, dated June 16, 2003), at 2.
3. ⁰ Directive, at 2-1.
4. ⁰ Directive, Enclosure 2, Attachment 2, Guideline B, ¶ E2.A2.1.1.
5. ⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
6. ⁰ *Id.*, at 531
7. A definition for "immediate family member" is found not under the disqualifying conditions, but under the mitigating conditions (*spouse, father, mother, sons, daughters, brothers, sisters*). See Section E2.A2.1.3.1.
8. See ISCR Case No. 98-0507 (Appeal Board Decision and Reversal Order, dated May 17, 1999), at 10.
9. *Id.*
10. Item 8 (CRS Issue Brief For Congress, The Vietnam-U.S. Normalization Process, dated November 28, 2003), at 3-13.
11. Item 5, *supra* note 2, at 3.
12. *Egan*, *supra* note 5, at 528-529.