

KEYWORD: Foreign Influence

DIGEST: Applicant's father, mother, brother and sisters are citizens and residents of Vietnam. None of them works for or is associated with the Government of Vietnam. He has limited contact with his parents and no regular contact with his siblings. They are not in a position to be exploited by Vietnam in a way that could force Applicant to choose between loyalty to these family members and his loyalty to the United States. Applicant has given some money to his parents 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 he would respond favorably to any efforts to act against United States interests. Mitigation has been shown. Clearance is granted.

CASENO: 03-22029.h1

DATE: 05/09/2005

DATE: May 9, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-22029

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's father, mother, brother and sisters are citizens and residents of Vietnam. None of them works for or is associated with the Government of Vietnam. He has limited contact with his parents and no regular contact with his siblings. They are not in a position to be exploited by Vietnam in a way that could force Applicant to choose between loyalty to these family members and his loyalty to the United States. Applicant has given some money to his parents 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 he would respond favorably to any efforts to act against United States interests. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

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, dated November 26, 2004, 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 December 20, 2004, Applicant submitted a signed and sworn response to the SOR. Applicant requested that a clearance decision based on a hearing record.

On February 23, 2005, this case was assigned to this Administrative Judge to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on March 16, 2005, and the hearing was conducted on April 5, 2005.

At the hearing, Department Counsel offered four documentary exhibits (Exhibits 1 through 4), and at the request of Applicant, the Government called the witness as part of its case in chief. Applicant offered one documentary exhibit

(Exhibit A) and offered his own testimony and that of three other witnesses. The transcript (Tr) was received on April 18, 2005.

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 father and mother are not United States citizens and reside in Vietnam, and Applicant has traveled to his native Vietnam on three occasions. The SOR contains three allegations, 1.a. through 1.c., under Guideline B (Foreign Influence). In his response to the SOR, Applicant admits all three allegations. These allegations are incorporated as findings of fact.

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 55 year old. He is employed by a defense contractor as an Electronic Field Service Technician, and he seeks a DoD security clearance in connection with his employment in the defense sector. He received an Associates of Arts degree in electronics.

Applicant was born in North Vietnam. In 1954, at the age of five, his family and he moved to South Vietnam to escape the rule of the Communists. He remained there, and in 1969, he joined the South Vietnamese Air Force. In 1975, after the fall of South Vietnam, Applicant was placed in what was essentially a prison for 3 years. In 1979, he was able to escape from Vietnam with 104 other people on a small fishing boat. He arrived in Indonesia, where he remained until 1980, when he was allowed to immigrate to the United States (Tr at 17-20).

Applicant became a naturalized United States citizen in 1990. His wife was born in Vietnam, and, like her husband, she also became a naturalized United States citizen in 1990. They have two children, who were born in the United States and are United States citizens (Tr at 38-39). All of Applicant's wife's family resides in the United States.

Applicant's father and mother are citizens and residents of Vietnam. His father had been in the military of South Vietnam, but both his parents have been retired for many years. Applicant last saw his parents in 1999. He speaks to his father by telephone approximately four times a year, but because of illness and a loss of hearing, he is unable to speak to his mother. Applicant contributes approximately \$100 a month to his parents (Tr at 23-27).

Since he first moved to the United States in 1980, Applicant has traveled to Vietnam on three occasions, the last one occurred in 1999. They were all casual trips, either to see his parents or to show his children the country in which his

parents were born (Tr at 31).

While it was not alleged in the SOR, Applicant's brother and four sisters are also Vietnamese citizens and residents. None of them works for or is associated with the Government of Vietnam. He has no regular contact with any of them.

Applicant has no financial interest or property in Vietnam. He estimated that his net worth in the United States is approximately \$600,000. Applicant has voted in every election in the United States, since he became a U. S. Citizen. He testified that if his parents were ever threatened by the government of Vietnam, he would report it to the proper United States authorities (Tr at 34-35, 38).

Applicant had three witnesses testify on his behalf, a friend whom he has known since he lived in Vietnam, a former teacher who is also a mentor, and a supervisor. They all spoke highly about him, citing his honesty and trustworthiness, and also speaking about his devotion to the United States (Tr at 36-51).

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."

CONCLUSIONSBased 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 parents and siblings are citizens and residents of Vietnam. The Vietnam citizenship and residency of members 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, 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, adds to the 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 parents, his extremely limited contact with his other family members, Applicant's long history since coming to the United States, his ties to his wife and children, who are United States citizens, and his testimony about his feelings concerning the United States, I have determined that his 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 his parents, which could be considered adversely under DC (E2.A2.1.2.8.), but the amount is small. I conclude that C (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, he 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

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