

DATE: August 31, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-23446

DECISION OF ADMINISTRATIVE JUDGE

DAVID S. BRUCE

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was born in the Republic of Vietnam, now the Socialist Republic of Vietnam. He left Vietnam in 1980 and became a U.S. citizen in 1988. Applicant successfully mitigated the foreign influence security concerns raised because his mother, mother-in-law, and eight siblings are citizens and residents of the Socialist Republic of Vietnam. Clearance is granted.

STATEMENT OF THE CASE

On December 6, 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 Review Program*, dated January 2, 1992, as amended and modified (Directive), issued a Statement of Reasons (SOR) to Applicant in response to his application for a security clearance. The SOR detailed why DOHA could not preliminarily determine under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's request for a security clearance.

On December 19, 2004, Applicant responded to each of the SOR allegations and elected not to present his case at a hearing. Department Counsel submitted the government's File of Relevant Materials (FORM) on June 16, 2005. It contained nine itemized documents in support of the allegations. Applicant received the FORM on June 22, 2005, and was given 30 days to file objections and to submit information in support of his position. On July 13, 2005, Applicant submitted a written letter to DOHA further qualifying his responses to the SOR. Department Counsel did not object to the letter being included as a part of the file, and the case was assigned to me on August 1, 2005.

FINDINGS OF FACT

Applicant has admitted with explanations the factual allegations of subparagraphs 1.a. -1.e. of the SOR. The admissions are incorporated herein by reference. After a thorough review of all the evidence in the record and the statements submitted by Applicant to support his position, I make the following additional findings of fact:

Applicant is 47 years old, married with three children, and has worked continuously for several defense contractors as a data base administrator since he completed college in 1991. ⁽¹⁾

He was born in the Republic of Vietnam (RV), now the Socialist Republic of Vietnam (SRV). He left his home country by boat traveling to the Philippines with his future wife in 1980 when he was about 22 years old. They emigrated to the United States on March 28, 1982, ⁽²⁾ and they became naturalized U.S. citizens on April 21, 1988. ⁽³⁾ Applicant's oldest child was born in the Philippines and became a naturalized U.S. citizen on March 21, 1988. ⁽⁴⁾ Applicant's two younger children were born in the U.S. and all three children reside with Applicant and his wife. ⁽⁵⁾

Applicant has a U.S. passport and has not held an active foreign passport in more than seven years. ⁽⁶⁾ He has never served in the U.S. military or the military forces of the RV or SRV. ⁽⁷⁾

Applicant's mother and father were born in the RV. His mother is 85 years old and his father is deceased. ⁽⁸⁾ All eight of his brothers and sisters were born in Vietnam, are Vietnamese citizens, and still reside there. ⁽⁹⁾ Except for his youngest sister, who is unmarried and resides with their mother to care for her, Applicant's other siblings all have families of their own and are all residents of the SRV. Applicant's mother-in-law, age 79, is also a citizen and resident of the SRV. His father-in-law is deceased. ⁽¹⁰⁾

Applicant's elderly mother and mother-in-law no longer work and both are ill and too old and weak to travel. ⁽¹¹⁾ They never worked for any government agencies in the SRV, and none of Applicant's family members residing in the SRV are connected with the government or the military. ⁽¹²⁾ Applicant and his wife have no ties with any government institution or any other persons in the SRV. ⁽¹³⁾ He sends each of his living relatives in Vietnam a \$100.00 gift each year for the Vietnamese New Year. This is the only financial contribution he makes to them. ⁽¹⁴⁾

Applicant has been in the U.S. more than 20 years and has a good financial record. ⁽¹⁵⁾ He has never been charged with any criminal offense, ⁽¹⁶⁾ not even a traffic or parking ticket. ⁽¹⁷⁾ He received a bachelor of science degree from a major U.S. university in 1991. ⁽¹⁸⁾

Applicant traveled to Vietnam in 1996 for 18 days to visit his mother. It is the only time he has traveled to Vietnam or any other country since leaving Vietnam and coming to the U.S. in 1982. ⁽¹⁹⁾ He speaks to his sister, who resides with their mother, about once every three months, and on holidays or occasionally at other times to discuss his mother's health. ⁽²⁰⁾ His sister relates their conversations to other family members. ⁽²¹⁾ The record contains no information regarding any telephone or written contact Applicant has with any other members of his family.

The government of the Republic of Vietnam (South Vietnam) collapsed in 1975 as the Vietnam War ended, followed by the establishment of communist SRV in 1976. ⁽²²⁾ The international community did not fully condone reunification of the country and its socialist transformation. Tension with China particularly increased following the Vietnamese invasion of Cambodia in 1978. ⁽²³⁾ Vietnam's tension with its neighbors and its stagnant economy contributed to an exodus of many of its citizens by boat to nearby countries. ⁽²⁴⁾ The grave condition of the country's economy and alienation from the international community prompted leaders of the SRV to ease its hardline communist agrarian and commercial policies, culminating in approval of a new state constitution in 1992. ⁽²⁵⁾

The SRV is a one-party state controlled by the Vietnamese Communist Party. The government has been criticized with respect to human rights issues, likely occasioned by military forces maintaining social order and providing for internal enforcement in matters of national security. ⁽²⁶⁾ There is no evidence, however, that SRV operatives actually conduct intelligence operations or economic espionage against the U.S. ⁽²⁷⁾ The U.S. and SRV established full diplomatic relations in 1995. Although economic growth in the country was slowed in the late 1990's as a result of the Asian financial crisis, ⁽²⁸⁾ the U.S. and SRV entered into a bilateral trade agreement in 2001 resulting in the opening of

Vietnam's commercial markets and promotion of its trade and investment opportunities, including encouragement in the science and technology fields. [\(29\)](#)

Vietnam has experienced a rapidly growing and increasingly diverse ethnic population in recent years. [\(30\)](#) The predominant religion practiced in the country is referred to as a way of life or philosophy, rather than a religion. The resulting Vietnamese family unit is patriarchal in nature with strong family ties. It is not unusual in particularly rural areas to find multiple family generations living in the same household. [\(31\)](#)

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines For Determining Eligibility For Access To Classified Information*, sets forth the criteria which must be evaluated when determining security clearance eligibility. The adjudicative guidelines specifically distinguish between those factors that are considered in denying or revoking an employee's request for access to classified information (Disqualifying Conditions), together with those factors that are considered in granting an employee's request for access to classified information (Mitigating Conditions). By acknowledging that individual circumstances of each case are always different, the guidelines provide substantive standards to assist an administrative judge in reaching fair and impartial common sense decisions.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at well-informed decisions. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the conduct of the applicant and the circumstances in any case, the factors an administrative judge should consider pursuant to the concept are: (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 the 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.

Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interests of national security. Granting an applicant's clearance for access to classified information is predicated on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not just the *actual* risk of disclosure of such information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information in any aspect of his or her life. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. [\(32\)](#) The decision to deny a security clearance request to an individual is not necessarily a determination of the loyalty of the applicant. [\(33\)](#) It is merely an indication the applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

In accordance with the Directive, the government bears the burden of proof in the adjudicative process to first establish conditions which indicate it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. [\(34\)](#) The legal standard for the burden of proof is something less than a preponderance of the evidence. [\(35\)](#) When the government meets this burden, the corresponding heavy burden of rebuttal then falls on the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the position of the government, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance. [\(36\)](#)

Upon consideration of all the evidence submitted in this matter, the following adjudicative guideline is appropriate for evaluation with regard to 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.

CONCLUSIONS

I have thoroughly considered all the facts in evidence in this case and the legal standards required by the Directive. The government has established a *prima facie* case for disqualification under Guideline B - Foreign Influence.

Considering all the evidence, Foreign Influence Disqualifying Condition (FI DC) 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 or present in, a foreign country*), and FI DC E2.A2.1.2.2. (*Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists*), apply in this case. "Immediate family member" in the context of the first paragraph includes a spouse, father, mother, sons, daughters, brothers, and sisters. Applicant's mother and eight siblings and his wife's mother are all citizens of SRV and reside there. This could create the potential for foreign influence that could result in the compromise of classified information. However, the mere possession of family ties with persons in a foreign country is not, as a matter of law, disqualifying under Guideline B. (37) In this case, the number and relationship of Applicant's family members and his mother-in-law living in the SRV does raise a security concern sufficient to require Applicant to present evidence in support of his position to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. (38)

I have considered all the Foreign Influence Mitigating Conditions (FI MC), and specifically considered 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*), and conclude it does apply in this case.

Applicant chose to leave his homeland 25 years ago literally leaving his entire family behind. He came to the U.S. and has made his life here. He has married and is raising a family, he has obtained a university level education, and he has been gainfully employed by defense contractors since graduating from college in 1991. He has been an exemplary U.S. citizen since 1988.

With the changes that have occurred in Vietnam since he left the country, it is reasonable that he would want to communicate with his family. The primary contact he has with them is through his mother, with the assistance of his sister. He does not communicate directly with any of his other relatives. No one in his family works for the current Vietnamese government, and his mother, mother-in-law, and siblings have never been agents of the Vietnamese government or any other foreign power. The limited information he has provided is understandable given the limited contact he has with his family and that it occurs only through his elderly mother. He has seen his family once in the last 25 years when he visited his mother in 1996. No member of his family has ever visited Applicant and his wife in the United States. This level of contact Applicant has with his family is easily characterized as infrequent. The information he has provided appears credible considering all the circumstances.

Exploitation of Applicant's family members in the SRV is always possible. It is not likely, however, that any of them would have any particular knowledge of Applicant's personal circumstances in the U.S. concerning his employment, thereby logically reducing the ability of the government to exploit any of them. Under these circumstances, the opportunity for adverse influence against Applicant's relatives in Vietnam is negligible. His closest family member is his wife who is also a naturalized U.S. citizen who left Vietnam with him 25 years ago. Their three children are U.S. citizens, two of whom were born in the United States. The family lives together in the U.S. negating any vulnerability from pressure or duress that might be applied to any of them in an effort to gain access to classified information.

Finally, I have considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. He has been an exemplary U.S. citizen for 17 years. I am persuaded by the totality of the evidence in this case that Applicant is not vulnerable to pressure or duress from the government of the SRV. His one trip to Vietnam

in 1996 was motivated entirely to see his family again, and was not a part of any questionable planned pattern of visits. His gifts to his family members each year for the Vietnamese New Year are modest, and appear motivated only by cultural significance. I conclude Applicant has successfully mitigated and overcome the government's case under Guideline B.

FORMAL FINDINGS

In accordance with Section E3.1.25 of Enclosure 3 of the Directive, the following are the formal findings as to each allegation of the SOR:

Paragraph 1. Foreign Influence (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

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.

David S. Bruce

Administrative Judge

1. Item 3 (Applicant's Application for Security Clearance dated March 18, 2003), at 2-4.
2. Applicant's letter to Department Counsel dated July 13, 2005.
3. Item 3, *supra* note 1, at 1 and 8.
4. *Id.*, at 8.
5. *Id.*, at 7.
6. *Id.*, at 8.
7. *Id.*
8. *Id.*, at 3.
9. *Id.*, at 4-5. (There are several references in the file referring to Applicant's six siblings. Applicant actually lists eight siblings ranging in age from 39 - 65 in response to Question 9 of his SF 86).
10. *Id.*, at 6.
11. Item 2 (Applicant's response to SOR dated December 20, 2004), at 1.
12. Item 4 (Applicant's sworn statement dated May 9, 2002 provided to special agent of the Defense Security Service), at 2.

13. *Id.*
14. Item 2, *supra* note 11, at 1.
15. Item 3, *supra* note 1, at 12.
16. *Id.*, at 9-10.
17. *Supra* note 2.
18. Item 3, *supra* note 1, at 12.
19. *Id.*, at 9. See also Item 4, *supra* note 12, at 2.
20. Item 2, *supra* note 11, at 1.
21. Item 4, *supra* note 12, at 2.
22. Item 7 (Background Note: Vietnam, United States Department of State, Bureau of Asian and Pacific Affairs, dated April 2005), at 3.
23. *Id.*
24. *Id.*
25. *Id.*, at 4.
26. Item 8 (U.S. Department of State, Country Reports on Human Rights Practices - 2003), at 2-5.
27. Item 9 (Espionage by the Numbers: A Statistical Overview), 1-7.
28. Item 7, *supra* note 15, at 5.
29. *Id.*, at 5-6.
30. Item 6 (United States Department of State - Post Reports: Vietnam, dated July 12, 2004) at 2.
31. *Id.*
32. Directive, Enclosure 2, Para. E2.2.2.
33. Executive Order 10865 § 7.
34. ISCR Case No. 96-0277 (July 11, 1007) at p. 2.
35. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
36. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Para. E3.1.15.
37. ISCR Case No. 99-0424, 2001 DOHA LEXIS at 33-34 (Appeals Board February 8, 2001).
38. *Id.*