

DATE: March 30, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-23826

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq. , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant emigrated to the U.S. as a refugee from Cambodia in 1981, finished high school in the U.S., graduated from a community college, and became a U.S. citizen. Applicant's mother is a citizen of Cambodia and lives there. Since coming to the U.S., Applicant traveled to Cambodia in 1993 and most recently in 2002 to visit his mother and introduce her to his wife. He telephones his mother once a month and sends her \$100.00 a month. She lives in a rural area and does not work for or have any intelligence connections with the Cambodian government. Applicant has a family in the U.S. and has invested in U.S. real estate valued at over \$1 million. His commitment to the U.S. mitigates any disqualification relating to his mother. Clearance granted.

STATEMENT OF THE CASE

On September 30, 2004, the Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry* 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) 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated November 17, 2004, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on January 14, 2005, and a Notice of Hearing was issued the same day for a hearing that was held on February 10, 2005. The Government introduced two exhibits at the hearing and the Applicant introduced one. All were accepted into evidence. The Applicant testified on his own behalf. The transcript was received on February 23, 2005.

FINDINGS OF FACT

Applicant admitted all of the factual allegations with explanatory information. Those admissions are incorporated herein as findings of fact. After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made:

Applicant is a 38-year-old employee of a defense contractor working in digital electronics. He emigrated to the U.S. from Cambodia in 1981 at age 14 as a refugee from the Pol Pot regime. Two brothers and his father had disappeared during the regime. He came with another brother under the care of an uncle. He finished high school in the U.S. in 1985 and graduated from a community college with an associate degree in 1989. He became a U.S. citizen the same year.

Applicant's mother and step-father live in and are citizens of Cambodia. They live on a farm in a rural area of the country. Since coming to the U.S., Applicant has traveled to Cambodia in 1993 and again in 2002 to visit his mother and introduce her to his wife. He telephones his mother once a month and sends her \$100.00 every month. He prides himself as a loyal son and describes his relationship as being her "secret admirer" for what she has done for him as she was instrumental in getting him out of the country. His mother has no connection with the Cambodian government or any intelligence connections with any government. His one sibling who emigrated with him lives in Canada where he was admitted when the two of them left Cambodia. He now has very little contact with him.

The Government of Cambodia has made some progress towards democratization since the fall of Pol Pot, however much remains to be done. Drug exportation and rampant HIV-AIDS are major problems, but economic intelligence gathering or other forms of espionage are not (Exh. 2).

Applicant has invested in real estate and owns two apartment buildings consisting of three units in each building. He lives in one unit, rents and manages the others, and plans on buying a house soon with income from the rents. He values the property at over one million dollars. He intends to continue to make other investments to save for the education of his children.

Applicant and his wife, who is also a naturalized U.S. citizen, have two children born in the U.S. ages seven and fourteen who are in school. His wife is employed and together they have family income of approximately \$100,000.00 per year. He is well regarded in his work and hopes to have additional responsibilities with his company and that is the reason for the application for a security clearance.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

"A security risk may exist when an individual's immediate family 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." Directive, ¶ E2.A2.1.1. Having immediate family members who are citizens of, and residing in a foreign country, may raise a disqualifying security concern. Directive, ¶ E2.A2.1.2.1.

CONCLUSION

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR:

The applicable guideline concerning foreign influence (Guideline B) provides as a disqualifying condition (DC) that a security risk may exist when an individual's family and foreign associates to whom she has close ties of affection or obligation are not citizens of the United States or may be subject to duress. (E2.A2.1.1.) Such facts could create the potential for foreign influence that could result in the compromise of classified information.

Conditions under Guideline B that could raise a security concern and may be disqualifying include an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident in a foreign country. (E2.A2.1.2.1.) Possible mitigating conditions (MC) that might be applicable are a determination that the family members and associates 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 involved and the U.S. (E2.A2.1.3.1.), or that foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities. (E2.A2.1.3.5.)

Based on the evidence of record, including Applicant's admissions, the Government established reasons to deny him a security clearance because of foreign influence. Having established such reasons, the Applicant had the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Applicant is a sincere, dedicated, and hard-working person who is doing an effective job for his company and benefitting from the economic advantages for himself and his family from American citizenship. He does have close ties of affection to his mother as illustrated by his description of their relationship and the financial assistance he provides. His financial investments in U.S. property and the circumstances of his emigration speaks clearly as to his future commitments to the U.S. and his value judgments as to his citizenship.

The evidence submitted at the hearing by Applicant is sufficient to justify a conclusion in his favor. The contacts with his mother are strong, but there is no showing that such relationship is sufficient to overcome his commitment to the U.S., his family's welfare, and his financial investments in his adopted country. These are critical ties for a person who has escaped a totalitarian regime to live successfully in a democracy. His family in Cambodia is in a rural area and not likely to be used for any hostile purposes by that government. Not only does he not have any foreign financial ties, he has substantial U.S. financial ties. He has been educated in the U.S. from high school through advanced technical college education. He is assimilated and shows clearly the benefits of the American dream.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

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

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge