

KEYWORD: Foreign Influence

DIGEST: Applicant's mother and two sisters are citizens and residents of Vietnam. He is estranged from his sisters and his mother suffers from a mental disorder to the point she does not recognize him. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from his foreign relatives. Clearance is granted.

CASENO: 03-24941.h1

DATE: 10/31/2005

DATE: October 31, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-24941

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's mother and two sisters are citizens and residents of Vietnam. He is estranged from his sisters and his mother suffers from a mental disorder to the point she does not recognize him. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from his foreign relatives. Clearance is granted.

STATEMENT OF THE CASE

On December 28, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding ⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR set forth security concerns under Guideline B (Foreign Influence).

On January 21, 2005, Applicant's answer to the SOR and request for a hearing was received. On March 23, 2005, I was assigned the case. On May 2, 2005, a Notice of Hearing was issued scheduling the hearing which was held on March 24, 2005. The record was kept open to allow Applicant to submit additional documents, which were received and Department Counsel having no objections, were admitted into evidence without objection. On June 2, 2005, DOHA received a copy of the transcript (Tr.).

FINDINGS OF FACT

The SOR alleges security concerns under Guideline B (Foreign Influence). Applicant admits: his mother and two sisters are citizens and residents of Vietnam, he visited Vietnam in 1997, and he sent his mother \$1,000 in 2003. Those

admissions are incorporated herein as findings of fact. After a thorough review of the entire record, I make the following additional findings of fact:

Applicant is a 39-year-old computer programmer consultant who has worked for a defense contractor since March 2003, and is seeking to obtain a security clearance. Applicant's supervisor rates Applicant as his number one employee of the fifteen employees he supervises. (Tr. 57) His supervisor states, "You will never get a more dedicated, knowledgeable, hard-working employee than him." (Tr. 57) His latest evaluation indicates Applicant is a superstar programmer and technician and that his dedication, work ethic, and knowledge base is unmatched. (App Ex A)

Applicant was born in Vietnam. At age 12 or 13, he went to a refugee camp in Indonesia. (Tr. 42) In 1980, at age 15, Applicant came to the U.S. as one of the many Vietnam boat people. Applicant's father passed away before Applicant came to the U.S. Applicant's parents worked on a farm located in a small village in the southern part of Vietnam. In 1954, Applicant's father, who is now deceased, moved from North Vietnam to South Vietnam because he could not stand the communists. (Tr. 33) His two sisters continue to work on the farm and are not agents of a foreign power. Applicant's mother put him on the boat because she did not see a future for him in Vietnam. She did not want him growing up to be a Vietnamese farmer. (Tr. 22) His whole family have always been farmers. (Tr. 26)

Applicant attended junior high school through college in the U.S. He has spent twice as much time in the U.S. as he has in Vietnam. From January to December 1999, he attended a city community college. From January 2000 through May 2001, he attended a different university. He received high marks in school, receiving all "A," but one "B," and received his BS in computer science. In March 2002, he became a naturalized U.S. citizen.

Applicant's mother, now 75 years old, lives in Vietnam and suffers from mental illness, most likely a form of schizophrenia. He has two sisters also living in Vietnam. One of his sisters is seven years older than he is and the other is 16 years older than him. One sister is a widow and the other is married to a farmer. None of his relatives work for the government. His culture encourages children to support their parents. There are no nursing homes and all family members are expected to contribute to a parent's welfare. In 2003, he provided \$1,000 for his mother's care. Although he calls, his mother's illness prevents her from recognizing him. (Tr. 30) His mother lives with his widowed sister. His family in Vietnam is close.

Applicant's brother is a research scientist, who lives in the U.S. and became a naturalized U.S. citizen in 1994. The previous Vietnamese government and Japan had a relationship that allowed his brother to have a full scholarship in Japan. After graduation he moved to Canada to teach at a university. His brother has a PhD in physics and lives in an adjacent state.

In August 1997, Applicant visited Vietnam for the first time since he left 17 years earlier. On his return, he felt he no longer fit in there. Applicant's mother and sisters do not understand Applicant's written Vietnamese and they do not read

English, so he does not write them. He is estranged from his sisters because of philosophical differences. He told each of his sisters that he did not approve of what they were doing and if they continued to do it there would be consequences. (Tr. 47) Applicant periodically telephones his 25-year-old niece who is a farmer. Calls last five minutes to twenty-five minutes to mainly check on his mother's health. His last call was three months before the hearing. His brother has taken over most of the telephone calls because his understanding of Vietnamese technical terms is better. Applicant gets most of his reports on his mother and sisters from his brother, which is why he has not talked to his niece in three months.

It is unlikely his mother or sisters will ever come to the U.S. His sisters think Applicant acts like a robot and would not want to live like that. His mother and sisters do not know what type of work Applicant is involved in nor do they even know if he has a job.

Applicant wanted to become a U.S. citizen because he wanted to make a difference with his vote. Additionally, there were the employment opportunities.

Vietnam is a communist country. The government's human rights record remains poor, and it continues to commit serious abuses (Gov Ex 2). The Government restricts citizens' privacy rights, although the trend toward reduced government interference in the daily lives of most citizens continues. The government significantly restricts freedom of speech, freedom of the press, freedom of assembly, and freedom of association. The government continues its longstanding policy of not tolerating most types of public dissent and increases efforts to monitor and control citizens' access and use of the internet. The government continues to deny citizens the right to change their government and denies some citizens the right to fair and expeditious trials. The government continues to hold political and religious prisoners. The government continues to arrest and detain citizens for the peaceful expression of their political and religious views. The right of assembly is restricted by law.

Applicant stated the government requires household registration. A block warden system is employed that imposes surveillance of all citizens. The Vietnamese government does not intrude on most citizens, but focuses its attention on dissenters or those involved in unauthorized political or religious activities. His family members in Vietnam maintain a low profile.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, administrative judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the

relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an applicant's lack of security worthiness.

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. 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. I conclude the relevant guideline to be applied here is Guideline B (Foreign Influence).

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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. The President has restricted eligibility for access to classified information 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." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the Government must establish, by substantial 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. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "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 clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

A security risk may exist when an individual's immediate family, including cohabitants, and 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.

Applicant's mother and two sisters are resident citizens of Vietnam. Disqualifying condition 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*, applies because of the foreign residency and citizenship of his mother and two sisters.

In determining whether an applicant's family ties in a foreign country pose an unacceptable security risk, the administrative judge must consider the record evidence as a whole. Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohabitant, or close associate is improperly influenced, brought under control, or even used as a hostage by a foreign intelligence or security service.

Under the Directive, the foreign influence concerns raised by the foreign citizenship and foreign residency of these family members may be mitigated where it can be determined they are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to them and the United States (*see* E2.A2.1.3.1.). Applicant's parents worked on a farm located in a small village in the southern part of Vietnam. His two sisters continue to work on farms and are not agents of a foreign power.

The inquiry in a foreign influence case is not limited to consideration of whether the foreign family members are agents of a foreign power. Rather, the foreign connections must also be evaluated in terms of whether they place an applicant in a position of vulnerability to be influenced by coercive or noncoercive means, even if there is no evidence that a foreign country has sought to exploit that vulnerability. (*See* ISCR Case No. 00-0628, February 24, 2003) The Vietnamese government's human rights record remains poor and the government continues to hold political and religious prisoners, restricts citizens' privacy rights, and continues its longstanding policy of not tolerating most types of public dissent. Notwithstanding Vietnam's poor human rights record and history of hostility to the U.S., ⁽²⁾ the risk of undue foreign influence is very minimal.

Applicant has been a resident of the United States for 25 years, and a citizen for three years. He has traveled to Vietnam only once since coming to the U.S. Applicant's ties to the U.S. is relevant in assessing whether he is in a position to be forced to choose between his family members and his obligations to the United States. As a young teen, Applicant underwent a life-altering experience of being in a refugee camp before immigrating to the U.S. After attending junior high school, and graduating from high school, he pursued college studies in computer science. In March 2002, he voluntarily acquired U.S. citizenship. In light of the entire record here, I conclude Applicant is not likely to succumb to any undue foreign influence placed on his siblings with whom he has no direct contact. Considering all those factors, I am satisfied that MC 1 applies.

There is a rebuttable presumption that contacts with immediate family members are not casual.⁽³⁾ However, Applicant does not have a close relationship with his mother or sisters. Applicant has no immediate plans to travel to Vietnam, but would like to see his mother one more time before she dies. However, if he did visit her she would not recognize him because of her illness. He is estranged from his two sisters. His contact with his mother and sisters is limited. He does not telephone, write, or correspond by electronic mail with them. He telephones his niece every few months to check on his mother's health. Currently, Applicant gets most of the information concerning his mother and sisters from his brother who is lives in the U.S. and is a U.S. citizen. Contact with foreign citizens is mitigated where it is casual and infrequent (*see* E2.A2.1.3.3.).

Applicant left Vietnam when he was 12 or 13 years old. With his one sister 16 years older than him, the other seven years older, and only seeing them one time during the last twenty five years, he has not developed the personal bonds with his siblings that come from shared experiences and attitudes.

In 2003, Applicant sent \$1,000 to his mother for her care. Taking care of one's parents is cultural for Applicant. It is unlikely his mother, due to her illness, even knew he had provided the funds. Still, Applicant bears the burden of demonstrating his family ties with relatives living in Vietnam do not pose a security risk. To that end he has introduced evidence of his extremely minimal contacts with his relatives in Vietnam and his strong ties to the U.S.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline B (Foreign Influence): FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: 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. Clearance is granted.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.
2. ⁰In its *Background Note: Vietnam*, the U.S. State Department reports that although Vietnam remains a Communist state, economic development has taken priority over adherence to ideological orthodoxy. Since the U.S. normalized diplomatic relations with Vietnam in July 1995, U.S. and Vietnam have broadened political exchanges and economic trade.
3. ⁰See DOHA Appeal Board's decision in ISCR Case No. 02-15339, dated April 29, 2004.