

DATE: July 31, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-32986

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Brian A. Laird, Esq.

SYNOPSIS

Applicant fled Vietnam as a teenager, and immigrated to the United States. She became a naturalized United States citizen, and obtained a college degree. She is unmarried and 31-years-old She works for a defense contractor. She has six siblings in the United States, two of whom are citizens. Her elderly parents and three siblings remain in Vietnam. Applicant's ties to the United States are so substantial as to outweigh any possible foreign influence or pressure. Applicant established it is clearly in the national interest to grant her a security clearance. Security clearance is granted.

STATEMENT OF THE CASE

On February 12, 2003, the Defense Office of Hearings and Appeals (DOHA), under 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) to Applicant. The SOR detailed reasons under the personnel security Guideline B (Foreign Influence) 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. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, dated February 27, 2003, Applicant responded to the SOR allegations. She requested a hearing. This case was originally assigned to Administrative Judge Joseph Testan on April 28, 2003. The case was reassigned to me on May 8, 2003 due to caseload considerations. A Notice of Hearing was issued on May 27, 2003, setting the hearing for June 30, 2003. On that date, I convened the hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government presented one exhibit which was admitted into evidence. The Government also offered for administrative judicial notice a "Congressional Research

Service (CRS) Issue Brief for Congress on the U.S.-Vietnam Normalization Process." Applicant appeared and testified. Applicant submitted seven exhibits into evidence. After the hearing, Applicant's counsel submitted a legal memorandum in support of Applicant's position, including two cases by other administrative judges in which Vietnam refugees were given security clearances, and requesting a speedy decision in this case. I received the transcript (Tr.) of the hearing on July 10, 2003.

FINDINGS OF FACT

Applicant admitted all of the allegations contained in the SOR (subparagraphs 1.a., 1.b., 1.c., 1.d., and 1.e.). Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 31-year-old unmarried woman employed as a software engineer by a defense contractor. She was born in what was formerly South Vietnam. She fled in a small boat with her sister and that sister's family to Thailand in 1987. In Thailand she lived in a refugee camp in very basic conditions until 1990. At that time she was accepted for immigration to the United States. She went to the Philippines for 7 months to study English and American culture. She came to the United States in 1991. She moved to a city, attended school, and worked in a pharmacy. After graduation from college in 2000, she took a job with a defense contractor and moved to another city in the southwestern United States, where she rents an apartment at present. She is currently enrolled in a master's program for computer information systems. She received awards from her employer for her work efforts and favorable comments from her managers. (Tr. 17-20, 22, 31-33, 49, 50, 54, 56; Exhibits C, D, E, F and G)

Applicant has siblings who also escaped from Vietnam and fled to the United States. Two of them, a brother and a sister, escaped in 1980 and became United States citizens. The other three sisters and one brother do not have United States citizenship because their English language skills are not good and they have not had time to study English to pass that part of the citizenship test. They intend to apply again in the future for citizenship. Applicant is one of ten children, with seven being older than she is and two siblings are younger. (Tr. 22, 23, 26, 27, 36, 40, 43, 53)

Applicant's parents live in the southern part of Vietnam. Her father, a former member of the South Vietnamese military, is 77 years old. He was sent to a reeducation camp after the collapse of South Vietnam in 1975. Her mother is 71 years old. Neither of them are in good health. Applicant's remaining two sisters, and youngest brother live in Vietnam. They are farmers. They did try to escape years ago, but were captured and returned to Vietnam. When Thailand would no longer accept refugees, they decided not to attempt to escape. (Tr. 24, 33, 34, 37, 41, 44; Answer at 1).

Applicant was only 14 ½ years of age when she fled Vietnam. She could not be educated past the 9th grade in Vietnam because of her father's military service to the South Vietnamese government. Applicant never had a Vietnamese passport. Applicant does not exist to the Vietnamese government because she was young when she fled. Applicant became a United States citizen in February, 1998. Applicant now has a United States passport. Applicant registered to vote in the United States in April, 2003. She does not have any property in Vietnam. Her bank accounts are in her state of residence. (Tr. 25, 28, 38; Exhibits A, B)

Applicant talks to her parents once a year on the telephone at Christmas, and sends them \$100 at that time. Applicant visited her parents for three weeks from December, 1995 to January, 1996, because they were ill. Applicant had not seen them since she escaped from Vietnam in May, 1987. She used her savings from her college jobs to pay for the trip. Applicant kept to herself when she was visiting them on the farm. Applicant has not traveled to Vietnam since 1996. (Tr.25, 26, 39, 47)

Applicant's family is not connected to Vietnamese law enforcement, military, or a national government agency. No family member is involved in political, scientific, commercial, or other activities which might benefit from Applicant having access to classified information. Applicant was alone in the refugee camp for three years, and is not close to her family as a result of that experience.

(Tr. 27, 42, 45, 56)

Applicant would not reveal classified information. She would report any inappropriate contacts to her supervisor or

manager. (Tr. 29)

Applicant testified during the hearing. I found her testimony to be credible and true.

Since July, 1976, Vietnam has been officially known as the Socialist Republic of Vietnam. The government is a Communist Party-dominated constitutional republic. The controlling party is the Vietnamese Communist Party. After a 20-year break in diplomatic ties, the United States government normalized diplomatic relations with Vietnam in 1995. (CRS study)

POLICIES

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. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

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., Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

GUIDELINE B: Foreign Influence

The Concern: 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. Directive, ¶ E2.A2.1.1.

Conditions 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 or present in, a foreign country. Directive, ¶ E2.A2.1.2.1.

Conditions that could mitigate security concerns include:

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. Directive, ¶ E2.A2.1.3.1.

CONCLUSIONS

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 each allegation set forth in the SOR:

The Government established its case under Guideline B, Disqualifying Condition 1 because three of her siblings and her parents are citizens of and resident in Vietnam. An applicant with connections to Vietnam deserves additional scrutiny because of the Communist totalitarian nature of its government.

In mitigation, Applicant fled Vietnam at an early age because of her desire for freedom and to get an education to advance herself. She has accomplished much in the past 16 years, and all of it seems to be by her own efforts. She lived alone as a teenaged female in a refugee camp, and came to the United States alone. Those experiences obviously affected her by making her more self-reliant than she would have been otherwise, and making her commitment to the United States stronger.

She is not close to her family members in this country or Vietnam because of her lonely struggle over the past 16 years to get to where she is today. Her contacts with her parents are only annually by telephone. She does not talk to her three siblings who remain in Vietnam. She obviously feels some filial obligation or she would not continue to call her aged parents. Her relationship with her parents is infrequent, but not casual. Her communications with her siblings in the United States, both the U.S. citizens and those who have not yet become U.S. citizens, are no more than telephone conversations three or four times per year. Her relationships are infrequent, but the family relationship makes them more than casual.

However, Applicant never had a Vietnamese passport. Her family is substantially in the United States (seven of ten children are in the United States and three, including Applicant, are citizens of the United States), and the members remaining in Vietnam did try to escape and have no connection to the Vietnamese government or power structures. It is clear Applicant does not have connections to Vietnam which would make her a security concern after 16 years of her effort to come to the United States and build a better life for herself. In fact, her connections to the United States are substantial. The depth of her commitment to the United States, demonstrated by her efforts to get here, obtain an education, and make a better life for herself, and her testimony at the hearing, showed me convincingly that her filial relationships do not make her vulnerable to coercion or influence. Therefore, Mitigating Condition 1 applies to this Applicant. Guideline B is decided for 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

Subparagraph 1.e.: For Applicant

DECISION

In light of all the circumstances and facts presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Philip S. Howe

Administrative Judge