

DATE: October 14, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-01423

ECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Thomas M. Abbott, Esq.

SYNOPSIS

The Government established a *prima facie* case under Guideline B based on applicant's two siblings (one a United States citizen living in Cambodia and the other a United States resident for over 25 years but still a Cambodian citizen) and two members of his spouse's immediate family, who have served in, and may still be serving in, the Cambodian government. The applicant has, however, presented overwhelming evidence that he is a loyal United States citizen who would not compromise classified information under any circumstances. I therefore conclude that applicant has rebutted the Government's *prima facie* case. Clearance is granted.

STATEMENT OF THE CASE

On March 22, 2004, 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 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.

Applicant responded to the SOR in writing on April 13, 2004. The case was assigned to the undersigned on June 10, 2004. Notices of Hearing were issued on July 8 and July 12, 2004, and the hearing was held on August 3, 2004. The transcript was received on August 23, 2004.

RULING ON PROCEDURE

At the hearing, SOR Allegation 1c was amended by changing the name of the sister who is alleged to have been residing in Cambodia (TR at 52-53).

FINDINGS OF FACT

Applicant is 44 years of age. He has been employed by the same defense contractor, and has held a DoD security clearance, since 1983.

Applicant was born in Cambodia. In 1975, he and one of his sisters fled to Thailand and then made it to the United States. About six months later most of his remaining family made it to the United States. They fled Cambodia because their lives were in danger after the communist takeover of the country. Applicant became a United States citizen in 1982. His wife, to whom he has been married since 1985, became a United States citizen in the early 1980s. Their two teenage children were born in the United States. Applicant lived in Cambodia for the first 15 years of his life, and has lived in the United States for the past 30 years. He has no real connection to Cambodia, particularly since many of his relatives were killed by Pol Pot. He intends to stay in the United States permanently (TR at 49).

At the present time, applicant has eight living siblings. Seven of them are United States citizens. With respect to the seven United States citizens, five of them definitely reside in the United States. The sixth sibling, a sister, is a United States citizen living in Cambodia. Applicant testified that she returned to Cambodia to "join her husband" who, according to what applicant's siblings have told him, works as a manager or a talk show host at a radio station. In a signed, sworn statement that he gave to the Defense Security Service (DSS) in March 2002, applicant stated that the brother-in-law returned to Cambodia "to become involved in politics and currently serves [a high-ranking Cambodian official] in some political capacity" (Exhibit 2). Applicant has not communicated with his sister or this brother-in-law since before they returned to Cambodia, which was about three years ago (TR at 24, 41). Their relationship is "strained" (Exhibit H). There is no evidence that this sister is connected in any way with the Cambodian government. The seventh sibling, also a sister, moved back to Cambodia four or five years ago. During this four or five year period, she moved back and forth between Cambodia and the United States. She decided last year to move back to the United States permanently (Exhibit H). She has purchased a house here and is presently in Cambodia selling her property (TR at 36-37).

The eighth sibling is a brother who has resided in the United States since 1976, but is still a citizen of Cambodia. Both the brother and the brother's wife have applied to become United States citizens. The brother's son served in the United States Marine Corps. Applicant sees this brother once every four or five years and talks with him on the phone "maybe once a year." Applicant testified that their relationship is "not that close" (TR at 22).

In 1993 the United Nations (UN) sponsored free elections in Cambodia. From the evidence in the record, it appears that applicant's father-in-law, after living in the United States for many years, returned to Cambodia to help a "close friend" run for high political office during the UN sponsored elections. The "close friend" was successful, and he appointed the father-in-law to a high-ranking position with the Cambodian government, which the father-in-law held from 1993 to 2003.⁽¹⁾ Because of subsequent turmoil within the Cambodian government, the father-in-law apparently lost that position in 2003. However, based on the fact that in July 2004 the "close friend" once again assumed a very high-ranking position with the Cambodian government (Exhibit V),⁽²⁾ it is reasonable to assume the father-in-law is once again serving, or is likely to serve, in some high-ranking position in the Cambodian government.

Applicant testified that he respects the father-in-law, but their "relationship has never been close" (TR at 27). He does not feel bound to him by obligation or affection. He speaks with him an average of once a year. This father-in-law has four children, all of whom are United States citizens living in the United States. The father-in-law has homes in Cambodia and the United States. Applicant believes the father-in-law may have to return to the United States some day, but "doesn't know for certain" (TR at 44).

Applicant's brother-in-law (the aforementioned manager or talk show host who returned to Cambodia "to become involved in politics,") and applicant are not close. In fact, as noted above, they have a strained relationship and have not talked in years. They may have last met at applicant's parents' funeral in 2001. Applicant has never discussed his work with either his brother-in-law or father-in-law. Applicant testified credibly that if his wife told him her parents were being pressured and she needed information about his work he wouldn't tell them anything, but instead would inform his supervisor and the company security office (TR at 31-32).

Declarations from nine individuals who have worked with applicant in the defense industry were offered into evidence by applicant. Exhibit A is a declaration from applicant's immediate supervisor from 1986 to 1996. He states that

applicant "has always expressed appreciation for the opportunities he found in the U.S. and it is inconceivable to me that he could or would betray the trust placed in him by this country for any reason." He further states that he is "convinced [applicant] poses no threat to our national security at this time or in the future."

Applicant's immediate supervisor from 1996 to 2002 worked closely with applicant for the past 20 years. In Exhibit B he states that he is "unaware of any question regarding [applicant's] loyalty to the United States over the 20 years that I have known him. I do not believe his relatives in Cambodia have negatively affected or will negatively affect his loyalty to the United States in any way. I am convinced [applicant] poses no threat to our national security at this time or in the future."

Exhibit C is a declaration from a United States government program manager who worked closely with applicant for four years. He states that "during the time I worked with [applicant], his loyalty to the United States was clear, and his performance in security procedures and the safeguarding of classified materials was never in question . . . I do not know of any reason to question [applicant's] honesty or trustworthiness."

The next six declarations (Exhibits D through G, I and J) are similar to the three noted above. The authors of these six declarations speak highly of applicant's reliability, trustworthiness, and dedication to this country.

CONCLUSIONS

Applicant was born in Cambodia. In 1975, he and his family fled Cambodia at the time of the communist takeover of the country and eventually moved to the United States. In 1982, he became a United States citizen. His wife, to whom he has been married since 1985, became a United States citizen in the early 1980s. Their two teenage children were born in the United States.

All but one of applicant's immediate family members live in the United States. One sister, although a United States citizen, lives in Cambodia. All of applicant's immediate family members, except one brother, are United States citizens. Although he has lived in the United States since 1976, this one brother is still a citizen of Cambodia. These facts require application of 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 of or present in, a foreign country*). Based on the evidence presented, I conclude that these two immediate family members are not agents of Cambodia. I further conclude that neither are in a position to be exploited by Cambodia in a way that could force applicant to choose between loyalty to them and loyalty to the United States. The sister and applicant have a "strained" relationship and have not spoken to each other in years. Based on the evidence presented, applicant could not be placed in a position where he would have to choose between competing loyalties. He is loyal to the United States and has no loyalty to this sister. The brother has lived in the United States since 1976 and has applied to be a United States citizen. He has no real connection to Cambodia other than his citizenship, which will likely be relinquished in the near future. Based on the foregoing, Mitigating Condition E2.A2.1.3.1 (*a determination that the immediate family member(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*) is applicable to this case.

With respect to applicant's brother-in-law and father-in-law, there is a rebuttable presumption that applicant has ties of affection for, or obligation to, his spouse's immediate family members. *See*, ISCR Case No. 02-16657 (September 23, 2004) at p. 5. In this case, I conclude that applicant has persuasively rebutted the presumption.

The evidence clearly establishes that applicant and the brother-in-law in question are not close, have not communicated in years, and in fact have what has been described as a "strained" relationship. These facts clearly establish that applicant has no ties of affection or obligation to this brother-in-law. With respect to the father-in-law, as applicant testified, he has respect for the man, but their relationship has never been close. Applicant further testified that he is not bound to him by obligation or affection, and that if his wife told him her family was being pressured and she needed information about his work he wouldn't tell her anything, but instead would report the incident to his supervisor and company security. Based on the solid declarations of support for applicant placed into evidence, which clearly establish that applicant is reliable, trustworthy and clearly loyal to the United States, I find applicant's statements to be credible and worthy of belief.

In conclusion, the Government established a *prima facie* case under Guideline B based on the connections between two of applicant's immediate family members and two of his in-laws to Cambodia. However, when the evidence is viewed as a whole, applicant's credible, persuasive evidence that these family relationships do not pose an unacceptable security risk is sufficient to overcome the Government's *prima facie* case.

FORMAL FINDINGS

GUIDELINE B: FOR THE APPLICANT

Subparagraph 1a: for the applicant

Subparagraph 1b: for the applicant

Subparagraph 1c: for the applicant

Subparagraph 1d: for the applicant

Subparagraph 1e: for the 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.

Joseph Testan

Administrative Judge

1. See declaration from applicant's wife.
2. Although the last name of the "close friend" is spelled differently in Exhibits V and 2, I conclude that it is the same person.