

KEYWORD: Foreign Influence; Personal Conduct; Criminal Conduct

DIGEST: Applicant was born in South Vietnam, but escaped in 1978 and came to the U.S. in 1979. He became a naturalized citizen of the U.S. in 1985 and renounced his Vietnamese citizenship. His parents, three brothers, and three sisters are citizens and residents of Vietnam. In 1995, Applicant was arrested for striking his wife during a domestic dispute, but the charge was dropped. In 2001, he pled guilty to aggravated assault on his wife and related misdemeanor offenses arising from another dispute. Applicant has not mitigated the security concerns relating to possible foreign influence or his history of criminal conduct. Clearance is denied.

CASENO: 03-08097.h1

DATE: 02/24/2006

DATE: February 24, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-08097

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL J. BRESLIN**

**APPEARANCES**

**FOR GOVERNMENT**

Sabrina Redd, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant was born in South Vietnam, but escaped in 1978 and came to the U.S. in 1979. He became a naturalized citizen of the U.S. in 1985 and renounced his Vietnamese citizenship. His parents, three brothers, and three sisters are citizens and residents of Vietnam. In 1995, Applicant was arrested for striking his wife during a domestic dispute, but the charge was dropped. In 2001, he pled guilty to aggravated assault on his wife and related misdemeanor offenses arising from another dispute. Applicant has not mitigated the security concerns relating to possible foreign influence or his history of criminal conduct. Clearance is denied.

**STATEMENT OF THE CASE**

On April 24, 2001, Applicant submitted an application for a security clearance. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive"). On November 18, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under the Directive, specifically Guideline B, Foreign Influence, Guideline E, Personal Conduct, and Guideline J, Criminal Conduct.

Applicant answered the SOR in writing on December 14, 2004. He elected to have a hearing before an administrative judge.

The case was assigned to me on October 6, 2005. With the concurrence of Applicant and Department Counsel, I convened the hearing on November 17, 2005. At the hearing, the government introduced Exhibits 1 through 7. Applicant provided Exhibits A through G. He also presented the testimony of one witness, and testified on his own

behalf. DOHA received the final transcript of the hearing (Tr.) on December 1, 2005.

### **FINDINGS OF FACT**

Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.c, 1.d, 1.e and 1.f of the SOR. (Applicant's Answer to SOR, dated December 14, 2004.) Those admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 2.a, 2.b, 3.a, and 3.b of the SOR. (*Id.*) After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant is 52 years old. (Ex. 1 at 1.) He was born in Vietnam in October 1953. (Tr. at 16; Ex. 1 at 1.) During the Vietnam conflict, he was a college student; he never served in the military. (Tr. at 17.) After South Vietnam fell in 1975 and the communists took over the country, Applicant quit college to stay with his parents. (*Id.*)

He left Vietnam in July 1978 when he was 24 years old, as one of the refugees known as "boat people." (Tr. at 17.) When Vietnamese authorities learned of his escape, his parents were jailed for a few weeks. (Ex. 2 at 3.) Since then, his parents have not faced any other reprisals. Applicant traveled first to Hong Kong, where he stayed for six months. He was then sponsored into the United States, arriving in February 1979. (Tr. at 19.)

In July 1979, Applicant began working for a prominent U.S. aircraft manufacturer as a structural mechanic. (Tr. at 19-20.) After three years, he was laid off. (Tr. at 20.)

Applicant was married in September 1982. (*Id.*) He and his wife owned and operated a convenience store for about one year. Applicant obtained a position with his current employer, a defense contractor, in October 1983, and has continued to work for them until the present. He began as a structural mechanic, then was promoted to a research and development technician. (Tr. at 21.) Applicant's supervisors and managers praise his skill, dedication and integrity. (Exs. A-G; Tr. at 56-57.)

Applicant became a naturalized citizen of the United States in August 1985. (Ex. 1 at 1.) He renounced his Vietnamese citizenship. (Ex. 2 at 4.) His wife became a naturalized U.S. citizen in 1994. (Ex. 1 at 4, 11.)

When necessary, the defense contractor "surplused" Applicant to various positions within the corporation. He worked for a time on the janitorial staff for a classified project. (Tr. at 21.) Applicant obtained a security clearance in 1995 to work within the controlled area. (*Id.*)

In October 1995, Applicant and his wife got into an argument at home. (Tr. at 30.) Applicant's wife thought Applicant destroyed part of a telephone bill to hide evidence that he had multiple conversations with a female friend, causing her to further suspect Applicant was unfaithful. According to Applicant, she ripped his shirt and scratched his chest, and he slapped her. (Tr. at 30.) She called the police, who arrested Applicant for Battery. (Ex. 3 at 2; Tr. at 30.) After his release, he examined the telephone bill, showed her the calls were listed on the reverse side, and assured her the calls occurred when she was present. (Tr. at 30.) Applicant's wife declined to go forward with the case and the state dropped the charges. (*Id.*)

In March 1996, Applicant returned to Vietnam to visit his father who was then hospitalized. (Tr. at 4; Ex. 1 at 4.) Vietnamese officials retained his passport and required Applicant to report to a passport office every two or three days. (Ex. 2 at 4.)

In August 2000, local police arrested Applicant after a domestic dispute with his wife. (Tr. at 25.) According to Applicant, it began when he helped his brother-in-law write a love letter to his girlfriend. (Tr. at 24.) The couple subsequently married. Later, Applicant's wife learned of the letter and became jealous; she accused Applicant of improper behavior. (Tr. at 24.) During an argument, Applicant broke the television in the family room. (Tr. at 25.) He also pushed his wife, striking her with a camera he was holding, resulting in a cut on her forehead. (Tr. at 25, 44.) The fight occurred in the presence of his children. His wife called the police, who arrested Applicant.

Shortly after the arrest, one of Applicant's daughter's attempted suicide because of the family fight and the arrest. (Ex. 2 at 2.) The hospital reported the attempt to local authorities, who took custody of the child for about one week. (*Id.*) Applicant and his family attended counseling, and the child was returned to the family. (*Id.* at 3.)

Authorities charged Applicant with Aggravated Assault (a felony) and Domestic Violence for the assault on his wife, and four counts of Cruelty to Children because the alleged assault took place in their presence. (Ex. 4.) Applicant retained counsel and negotiated a plea agreement. On April 30, 2001, Applicant pled guilty to the Aggravated Assault and Cruelty to Children charges; the state did not prosecute the Domestic Violence allegation. (Ex. 4 at 7-8.) For the Aggravated Assault offense, the court sentenced Applicant to 10 years confinement to be served on probation, three month's on work release through the diversion center, a \$1,000.00 fine, and court costs and fees. (*Id.*; Tr. at 26-27.) The court also required Applicant to undergo evaluation for substance abuse, and to receive counseling for anger/violence and parenting stress. (Ex. 4 at 7.) The court also sentenced Applicant for the misdemeanor offenses, to run concurrently. (*Id.* at 8.) Applicant completed the counseling requirements. (Tr. at 27-28.) He is still on unsupervised probation. (Tr. at 51, 52.)

On April 24, 2001, Applicant completed an SF 86, Security Clearance Application. (Ex. 1.) Question 21 on the form asked whether Applicant had ever been charged with or convicted of a felony offense. Applicant answered, "No." In response to question 26, Applicant denied that he had been arrested for, charged with, or convicted of any other offense within the preceding seven years.

At the hearing, Applicant denied any intent to falsify the response to the security clearance application. (Tr. at 31-32.) He claimed he misunderstood the questions. Noting the references in the question to the Uniform Code of Military Justice and the Federal Controlled Substances Act, he said he believed the questions only related to federal offenses. (*Id.*)

Applicant's parents are citizens and residents of Vietnam. (Ex. 1 at 2; Tr. at 33.) His father is a retired school teacher, now 80 years old. (Tr. at 33.) When the communists took over Vietnam in 1975, Applicant's father was sent to a re-education camp for three months, then released. (Tr. at 36, 42.) He receives no governmental benefits because he taught under the former government. (Tr. at 33.) His mother is 84 years old and is also retired. She previously operated a small shop selling food. (Tr. at 18.) None of his parents ever worked for the government. (Tr. at 33.) Applicant's brothers provide support for his parents; Applicant also sends between \$500 and \$1,000.00 per year to his parents for their support. (Ex. 2 at 4; Tr. at 33.) Applicant calls his parents about once every four to eight weeks. (Tr. at 34.) He visited his parents in Vietnam in 1996 and 2004. (Tr. at 34-35.)

Applicant has three brothers and three sisters who are citizens and residents of Vietnam. (Tr. at 36.) He does not maintain regular contact with them, but may speak with them if they are present when he calls his parents. (Tr. at 39.) His two older brothers served in the South Vietnamese Army; when the communists took over, they were sent to reeducation camps for four or five months. (Tr. at 43-44.) His oldest brother is now a policeman. (Tr. at 37.) His second brother is handicapped, after being injured by a munition during the war. (*Id.*) Applicant's youngest brother makes and sells cakes to support his family. (*Id.*)

Applicant's oldest sister is the wife of a policeman. (Tr. at 38.) His second sister sells fruits and vegetables, and his youngest sister is the wife of a construction worker. (Tr. at 37-38.) Applicant states none have ever worked for the government of Vietnam, nor have they been involved with any political parties or organizations. (Tr. at 38.) Applicant is working on an action to sponsor his youngest sister's family to come to the United States. (Tr. at 36.)

His wife's father is deceased. (*Id.*) Her 79-year-old mother is a citizen and resident of Vietnam. She raises and sells fruits and vegetables. (Tr. at 38-39.)

The Socialist Republic of Vietnam is a constitutional republic dominated by the Communist Party. (Ex. 5 at 1, 4.) After the Vietnam conflict, the U.S. had no diplomatic relations with Vietnam for about 20 years. In July 1995, the U.S. began

normalizing diplomatic relations with Vietnam. (Ex. 5 at 8.) Since then, the two countries entered into agreements on trade, counter-narcotic operations, and air transportation, and engaged in dialogues on human rights and regional security. (*Id.*) Trade between the two countries has increased dramatically over the last decade. The U.S. State Department reports the Vietnamese government's record on human rights is poor. (Ex. 7 at 1.)

## POLICIES

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." (*Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988)). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline B, Foreign Influence: A security risk may exist when an individual's immediate family, including cohabitants, or 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. (Directive, ¶ E2.A2.1.1.)

Guideline E, Personal Conduct. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the applicant may not properly safeguard classified information. (Directive, ¶ E2.A5.1.1.)

Guideline J, Criminal Conduct: A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. (Directive, ¶ E2.A10.1.1.)

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security

concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." (Directive, ¶ E2.2.1.) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. (*Id.*) An administrative judge should consider the following factors: (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 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. (*Id.*)

Initially, the Government must present evidence to establish controverted facts alleged in the SOR that may disqualify the applicant from being eligible for access to classified information. (Directive, ¶ E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, ¶ E3.1.15.) An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002)). "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.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, § 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

### **Guideline B, Foreign Influence**

Paragraph E2.A2.1.2.1 of the Directive provides that it may be disqualifying if "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." Paragraph E2.A2.1.3.1 defines "immediate family members" to include a spouse, father, mother, sons,

daughters, brothers, and sisters. Applicant's parents, brothers, and sisters are citizens and residents of Vietnam. The evidence raises this potentially disqualifying condition.

The Directive, ¶ E2.A2.1.2.2, also provides that it is potentially disqualifying if an applicant is "sharing living quarters with a person, regardless of their citizenship status, if the potential for adverse foreign influence exists." Applicant lives with his wife, whose mother is a citizen and resident of Vietnam. His wife maintains close ties of affection with her mother. The evidence also raises this concern.

Under ¶ E2.A2.1.2.3 of the Directive, it may be disqualifying where an applicant has "[r]elatives, cohabitants, or associates who are connected with any foreign government." Applicant's brother and brother-in-law are policemen in Vietnam, and are connected to a foreign government, therefore this potentially disqualifying condition applies.

Under the Directive, these potentially disqualifying conditions may be mitigated under certain circumstances. The Government produced substantial evidence establishing disqualifying conditions, thus Applicant had the burden to produce evidence to rebut, explain, extenuate, or mitigate the conditions. (Directive, ¶ E3.1.15.) The government never has the burden of disproving a mitigating condition. (ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005)).

Paragraph E2.A2.1.3.1 of the Directive provides that it is potentially mitigating where the "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 involved and the United States." Notwithstanding the facially disjunctive language, applicants must establish: (1) that the individuals in question are not "agents of a foreign power," and (2) that they are not in a position to be exploited by a foreign power in a way that could force the applicant to choose between the person(s) involved and the United States. (ISCR Case No. 02-14995 at 5 (App. Bd. Jul. 26, 2004)).

In 50 U.S.C.A. § 438(6), the federal statute dealing with national security and access to classified information, the U.S. Congress adopted the definitions of the phrases "foreign power" and "agent of a foreign power" from 50 U.S.C.A. § 1801(a) and (b). 50 U.S.C. § 1801(b) defines "agent of a foreign power" to include anyone who acts as an officer or employee of a foreign power in the United States, engages in international terrorism, or engages in clandestine intelligence activities in the U.S. contrary to the interests of the U.S. or involving a violation of the criminal statutes of the United States. None of Applicant's relatives meet the definition of "agent of a foreign power" under 50 U.S.C.A. § 1801(b).

The Appeal Board, however, has adopted a broader definition of the phrase "agent of a foreign power." The Appeal Board has held that, "An employee of a foreign government need not be employed at a high level or in a position involving intelligence, military, or other national security duties to be an agent of a foreign power for purposes of Foreign Influence Mitigating Condition 1." (ISCR Case No. 02-24254, 2004 WL 2152747 (App. Bd. Jun. 29, 2004); *see also* ISCR Case No. 03-04090 at 5 (App. Bd. Mar. 3, 2005) (employee of the Israeli government is an agent of a foreign



power) and ISCR Case No.02-29143 at 3 (App. Bd. Jan. 12, 2005) (a member of a foreign military is an agent of a foreign power)). Applying this broader definition, Applicant's brother and brother-in-law who are policemen would be "agents of a foreign power" because they are employees of a foreign government.

The second prong of the test is whether the relatives in question are "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." The federal statute, 50 U.S.C.A. § 1801(a), defines "foreign power" to include: a foreign government; a faction of a foreign nation; an entity openly acknowledged by a foreign government to be controlled by that foreign government; a group engaged in international terrorism; a foreign-based political organization; or an entity directed and controlled by a foreign government. The Appeal Board also construes the term "foreign power" broadly.

In assessing whether an applicant is vulnerable to exploitation through relatives or associates in a foreign country, it is necessary to consider all relevant factors. As noted above, ¶¶ E2.2.1, E2.2.2, and E2.2.3 of the Directive specifically require each administrative judge to consider all the facts and circumstances, including the "whole person" concept, when evaluating each individual case. To ignore such evidence would establish a virtual *per se* rule against granting clearances to any person with ties to persons in a foreign country, contrary to the clear terms of the Directive.

An important factor for consideration is the character of any foreign power in question, including the government and entities controlled by the government, within the relevant foreign country. The Appeal Board has specifically held that it is error for an administrative judge to fail to consider a hostile relationship between the U.S. and a foreign country. (ISCR Case No. 02-13595 at 4 (App. Bd. May 10, 2005)). The Appeal Board has held that "a country's poor human rights record and its differences with the United States on important security issues such as terrorism are factors" that a judge must consider. (ISCR Case No. 04-05317 at 5 (App. Bd. June 3, 2005); *see also* ISCR Case No. 03-24933 at 7 (App. Bd. July 28, 2005)). This factor is not determinative; it is merely one of many factors which must be considered.

Of course, nothing in Guideline B suggests it is limited to countries that are hostile to the United States. (*See* ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002); ISCR Case No. 00-0489 at 12 (App. Bd. Jan. 10, 2002)). The Appeal Board repeatedly warns against "reliance on overly simplistic distinctions between 'friendly' nations and 'hostile' nations when adjudicating cases under Guideline B." (ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002)). It is well understood that "[t]he United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." (ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004)). Distinctions between friendly and unfriendly governments must be made with extreme caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Moreover, even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, friendly nations have engaged in espionage against the United States, especially in economic, scientific, military, and technical fields. (ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002)).

Nevertheless, the relationship between a foreign government and the U.S. may be relevant in determining whether a foreign government or an entity it controls is likely to attempt to exploit a resident or citizen to cause an applicant to act

adversely to the U.S. The nature of the foreign government might also relate to the question of whether the foreign government or an entity it controls would risk jeopardizing its relationship with the U.S. by exploiting or threatening its private citizens in order to exploit a U.S. citizen to betray this country. A friendly relationship is not determinative, but it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that foreign country. The Vietnamese government's and the Communist party's history of strained relations with the U.S., despite recent improvement, and Vietnam's poor record of protecting human rights, suggests it is more likely that Vietnam would attempt to exploit its residents or citizens to act adversely to the interests of the United States.

Another factor which must be considered is Applicant's relatives' vulnerability to exploitation by foreign powers in Vietnam. Applicant's parents never worked for the government and are now retired, thus the extent of governmental influence is reduced. Applicant's brother and brother-in-law, as employees of the government, have some increased vulnerability because of their positions as policemen. However, all these family members still reside in Vietnam and are subject to governmental control. Considering all the circumstances, Applicant has not persuaded me that this potentially mitigating condition applies.

Under ¶ E2.A2.1.3.3 of the Directive, it may also be mitigating where "[c]ontact and correspondence with foreign citizens are casual and infrequent." Applicant maintains close contact with his parents and-to a lesser extent-his siblings. I conclude this potentially mitigating condition does not apply to these family members.

I considered carefully all the potentially disqualifying and mitigating conditions in this case in light of the "whole person" concept, keeping in mind that any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor of the national security. Applicant is a mature individual with strong ties to this country. He chose to leave Vietnam and make the U.S. his permanent home. His wife and children are citizens and residents of the U.S. Nonetheless, Applicant still has strong ties to Vietnam through his parents and siblings living there. I conclude Applicant has not mitigated the potential security concerns arising from his personal ties to relatives in Vietnam.

### **Guideline E, Personal Conduct**

The Directive sets out various factors relevant to an applicant's personal conduct that may be potentially disqualifying. Under ¶ E2.A5.1.2.2 of the Directive, "[t]he deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire" may be disqualifying. When completing the SF 86, Security Clearance Application in April 2001, Applicant did not report his arrest for Battery in 1995 or his arrest for Aggravated Assault and other offenses in 2000. Applicant admitted his answers were incorrect but denied any intent to deceive, claiming he thought the questions only referred to federal offenses. After lengthy questioning of Applicant at the hearing, I note he has some difficulty understanding the English language and is inclined to answer without full reflection on the meaning of the question. Considering all the evidence, I conclude Applicant did not intentionally provide false statements in response to the questions on the security clearance application. I conclude this potentially disqualifying condition does not apply.

## Guideline J, Criminal Conduct

Paragraph E2.A10.1.2.1 of the Directive provides that "allegations or admission of criminal conduct" may be disqualifying. Similarly, under ¶ E2.A10.1.2.2 of the Directive, it may be disqualifying where an applicant committed "a single serious crime or multiple lesser offenses." Applicant's guilty plea to felony Aggravated Assault in 2001 is evidence of a "single serious crime." I find these potentially disqualifying conditions are raised in this case.

The SOR, ¶ 3.b, alleges Applicant violated Title 18 U.S.C. § 1001 by providing false official statements to the government as part of his security clearance application, specifically, in response to questions 21 and 26. As discussed above, I find Applicant did not deliberately provide false information in response to these questions; therefore I conclude the evidence does not support the allegation that this constituted criminal conduct.

Under the Directive, the security concerns arising from a history of criminal conduct may be mitigated in certain circumstances. Under ¶ E2.A10.1.3.1 of the Directive, it may be mitigating when "the criminal behavior was not recent." The Directive does not define the term "recent"; the recency of an incident is determined by considering all the circumstances, including the Applicant's age, his pattern of behavior over a period of time, and the number of years since the last incident relative to the entire course of conduct. The offense resulting in conviction occurred in 2000, but there was a previous, similar incident in 1995. This reflects a long-term pattern of conduct. More significantly, Applicant is still on probation for the felony offense. Considering all the facts, I conclude this potentially mitigating condition does not apply.

The Directive, ¶ E2.A10.1.3.2, also provides that it may be mitigating where "the crime was an isolated incident." As noted above, Applicant has a record of two incidents of physical violence stemming from domestic disturbances. His crime was not an isolated incident; therefore, this potentially mitigating condition does not apply.

Paragraph E2.A10.1.3.4 of the Directive states it may be mitigating where "the factors leading to the violation are not likely to recur." Similarly, under ¶ E2.A10.1.3.6 of the Directive, it may be mitigating where "there is clear evidence of successful rehabilitation." It has been about six years since Applicant's last offense. I note Applicant and his family received counseling, and Applicant acknowledged it was beneficial. At the same time, Applicant's two incidents of domestic violence occurred about five years apart. Significantly, Applicant is still on probation following his conviction. Although Applicant has come along way, it is too soon to find "clear evidence of successful rehabilitation." I conclude these potentially mitigating conditions do not apply.

I carefully balanced the potentially disqualifying and mitigating conditions in this case, in light of the "whole

person"concept. Although Applicant is a mature individual, his repeated involvement with domestic incidents raises concern about his judgment and stability. I am encouraged by the fact that he has had no further incidents in recent years. However, Applicant is still on probation for a serious offense. At this time, Applicant has not mitigated the security concerns arising from his history of criminal conduct.

### **FORMAL FINDINGS**

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline B: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Paragraph 3, Guideline J: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: For Applicant

**DECISION**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Michael J. Breslin

Administrative Judge