

DATE: December 28, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-08512

**DECISION OF ADMINISTRATIVE JUDGE**

**MARTIN H. MOGUL**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn Antigone Trowbridge, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 43 year-old naturalized United States citizen, born in the Laos. Her three brothers and one sister are citizens and residents of Laos. Her mother and two brothers are citizens of the United States, but remain residents of Laos. The extremely limited evidence offered into the record could not demonstrate that Applicant's family is not in a position to be exploited, and could not mitigate the foreign influence security concerns of the United States Government. Clearance is denied.

**STATEMENT OF THE CASE**

On April 21, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the 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 a clearance should be denied or revoked.

In a signed and sworn undated statement, Applicant responded to the SOR allegations. She requested that her case be decided on the written record in lieu of a hearing. On July 27, 2004, Department Counsel prepared the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant, and she was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed a response to the FORM. The case was assigned to this Administrative Judge on September 13, 2004.

Department Counsel offered 5 documentary exhibits (Exhibits 1-5), and Applicant offered one documentary evidence (Exhibit A), all of which have been admitted without objection into the record.

**FINDINGS OF FACT**

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline B of the Directive because Applicant's immediate family members are not United States citizens or may be subject to duress. The SOR contains three allegations, 1.a., through 1.c., under Guideline B. In her response to the SOR, Applicant admits all three allegations. The admitted allegations are incorporated herein as Findings of Fact.

Unfortunately, in this case the evidence offered into the record regarding Applicant's background and the allegations alleged in the SOR is extremely limited. After a complete and thorough review of the evidence that has been entered in the record, including Applicant's Answer to the SOR and the admitted documents, and upon due consideration of that evidence, I make the additional Findings of fact:

Applicant is 43 years old. She is employed as a Financial Analyst, by a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector. Applicant received a General Office diploma in 1986, and she is married.

Applicant was born in the Laos in 1961, apparently to United States citizens. She indicated on her Security Clearance application that she became a naturalized United States citizen in 1986, although if her parents were United States citizens that would not have been required. Her husband became a naturalized United States citizen in 1983 (Exhibit 2).

Applicant's mother and two brothers are citizens of Laos and reside in the United States (Exhibit 2). The frequency of her contact with them, their employment positions in the United States, and their contact with employees or representatives of the Laotian Government is all unknown.

Applicant maintains contact with three brothers and one sister who are citizens and residents of Laos (Exhibit 2). The frequency of her contact with them, their employment positions in Laos, and their contact with employees or representatives of the Laotian Government is all unknown.

Applicant traveled to the Laos on three occasions, in the years 1991, 1996, and 1999 (Exhibits 2 and 3). The reason for her trips, and whether she visited Laos any additional time(s) after 1999 is unknown.

It is also not known if Applicant has any financial interest in Laos or whether she keeps in contact with other individuals in the country. Finally, she never offered evidence as to what she would do if the Laotian Government threatened her family if she did not cooperate with the Government.

### POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case.

As set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct

- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of alcohol abuse and criminal conduct that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future."

The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

### **BURDEN OF PROOF**

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with

the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

### **CONCLUSIONS**

Based on the evidence of record, the Government has established initial reason to deny Applicant a security clearance because of foreign influence. Applicant's immediate family members, including her three brothers and one sister, are citizens and residents of Laos. Her mother and two brothers are also Laotian citizens. The Laotian citizenship and residency of members of Applicant's immediate family create the potential for foreign influence that could result in the

compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet her burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for her. ISCR Case No. 99-0424, 2001 (App. Bd. Feb. 8, 2001). This Applicant has not done.

The evidence of existence of immediate family members, some who are citizens of Laos and others who are citizens and residents of Laos comes within 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 in, a foreign country. There has been no evidence offered into the record from which I could determine that Applicant's family members do not constitute an unacceptable security risk. I find that no Mitigating Condition applies.

Accordingly, Applicant has not mitigated the security concerns, which would demonstrate that it is clearly consistent with national security to grant her a security clearance. Guideline B is found against Applicant.

### **FORMAL FINDINGS**

Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

### **DECISION**

In light of all 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.

Martin H. Mogul

Administrative Judge