

KEYWORD: Foreign Influence

DIGEST: Security concerns were raised regarding a 31-year old Vietnam-born naturalized American Applicant whose husband and two children are already U.S. citizens and residents, and whose parents--both citizens of Vietnam--are permanent residents of the U.S. She also has eight siblings who are citizens and residents of Vietnam. Because it is unclear if any of those siblings work, or ever worked, for any Vietnamese or Communist government agency, military, or intelligence service, I am unable to gauge Applicant's potential vulnerability to coercion, exploitation, or pressure by that foreign government. Accordingly, there remain grave questions and doubts as to her security eligibility and suitability. Clearance is denied.

CASENO: 03-10958.h1

DATE: 08/06/2004

DATE: August 6, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-10958

**DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT ROBINSON GALES**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esquire, Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Security concerns were raised regarding a 31-year old Vietnam-born naturalized American Applicant whose husband and two children are already U.S. citizens and residents, and whose parents--both citizens of Vietnam--are permanent residents of the U.S. She also has eight siblings who are citizens and residents of Vietnam. Because it is unclear if any of those siblings work, or ever worked, for any Vietnamese or Communist government agency, military, or intelligence service, I am unable to gauge Applicant's potential vulnerability to coercion, exploitation, or pressure by that foreign government. Accordingly, there remain grave questions and doubts as to her security eligibility and suitability. Clearance is denied.

### **STATEMENT OF THE CASE**

On February 3, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to 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 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 granted, continued, denied, or revoked.

In a sworn written statement, dated February 13, 2004, Applicant responded to the SOR allegations, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the government's written case on April 13, 2004. A complete copy of the file of relevant material (FORM) [\(1\)](#) was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She took advantage of that opportunity and submitted an unsworn statement, dated April 27, 2004. The case was assigned to me on August 5, 2004.

## FINDINGS OF FACT

Applicant has admitted all of the factual allegations pertaining to foreign influence under Guideline B (subparagraphs 1.a. through 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 same, I make the following additional findings of fact:

Applicant is a 31-year-old employee of a defense contractor seeking to obtain a security clearance the level of which has not been divulged.

Applicant was born in 1972 in what was then the Republic of Vietnam (RVN).<sup>(2)</sup> She resided with her parents and siblings and attended school in the RVN and the successor Socialist Republic of Vietnam (SRVN) until sometime before April 1991.<sup>(3)</sup> Applicant has resided in the U.S. since at least that date.<sup>(4)</sup> Applicant took her oath of allegiance to the U.S. and renounced her Vietnamese citizenship when she became a naturalized citizen of the United States in March 1995.<sup>(5)</sup> She is not a dual citizen and considers herself to be a citizen of only the U.S.<sup>(6)</sup> The government has offered no evidence to rebut Applicant's contention, and I accept it as fact.

In April 1991, Applicant was married to her first husband in the U.S.<sup>(7)</sup> They had one child, born in the U.S. in 1993.<sup>(8)</sup> Applicant and her first husband were divorced in 1998.<sup>(9)</sup> Later that same year, Applicant married her second husband--a Philippine-born U.S. citizen<sup>(10)</sup>--in the U.S.<sup>(11)</sup> Her second, and current, husband became a naturalized U.S. citizen in November 1979.<sup>(12)</sup> They reside together in the U.S.<sup>(13)</sup> with their child, born in the U.S. in 1999.<sup>(14)</sup> Applicant's parents are both Vietnamese-born, permanent U.S. residents currently holding SRVN citizenship.<sup>(15)</sup> They intend to become naturalized U.S. citizens, but still have two more years to wait before they become eligible.<sup>(16)</sup>

Applicant has eight siblings:<sup>(17)</sup> two Vietnamese-born brothers (born in 1980 and 1987, respectively)<sup>(18)</sup> and six Vietnamese-born sisters (born in 1965, 1968, 1971, 1975, 1977, and 1985, respectively),<sup>(19)</sup> all of whom are SRVN citizens and residents.<sup>(20)</sup> It is unclear what they do in SRVN or if they have any relationship with the government, military, or intelligence service of SRVN. Applicant has been actively working to sponsor one of her sisters and her two brothers for entry into the U.S.<sup>(21)</sup> However, since it is her understanding that if she sponsors a sibling it might take 10 years to do so, she intends to turn the task over to her parents once they become naturalized U.S. citizens because

parents have a shorter waiting period to sponsor a child than does one sibling sponsoring another. (22) Applicant used to periodically send her siblings between \$500.00 and \$1,000.00 and speak with them by telephone every two to three months. (23) Her financial contributions finally ceased in about September 2003, (24) and her parents have undertaken the responsibility. (25)

Applicant does not have any foreign property, business connections, or financial interests. (26)

Since Applicant arrived in the U.S., she has returned to visit SRVN on three occasions: in 1993--before she became a naturalized U.S. citizen; in 1997; and in 2001-02. (27)

Applicant has been employed as a senior mechanical assembler by the same government contractor since November 1992. (28) The quality of her performance has not been revealed.

The government of RVN collapsed in 1975, coinciding with the establishment of the Communist SRVN. Full diplomatic relations were established between the U.S. and SRVN in 1995, and, in 2001, a bilateral trade agreement between the two countries finally commenced. Under that agreement, *temporary*--later modified to *conditional*--normal trade relations (formerly known as most-favored nation status) were extended by the U.S. SRVN has also given the U.S. modest support in the war against terrorism. While SRVN has a Communist totalitarian government, the Department Counsel has offered no evidence to indicate SRVN conducts intelligence operations or economic espionage against the United States.

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set

forth in the Adjudicative Process provision set forth in Section E.2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider are: (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.

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: 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: (1) not citizens of the United States or (2) 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.**

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, are set forth and discussed in the Conclusions section below.

Since the protection of the national security is the paramount determinant, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security," [\(29\)](#) or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded that both standards are one and the same. In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences that are grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate that it is clearly

consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that 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. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

### CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts and factors, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

The government has established its case under Guideline B. Applicant has been portrayed as a person who is a potential security risk because members of her immediate family or persons to whom she is bound by affection, influence, or obligation--in this instance, eight siblings--are either not citizens or residents of the United States or may be subject to duress. These situations raise the potential for vulnerability to coercion, exploitation, or pressure, and the exercise of foreign influence that could result in the compromise of classified information. However, the mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B:

The language of [Guideline] B (Foreign Influence) in the Adjudicative Guidelines makes clear that the possession of such family ties *may* pose a security risk. Whether an applicant's family ties in a foreign country pose a security risk depends on a common sense evaluation of the overall facts and circumstances of those family ties. *See* ISCR Case No. 98-0419 (April 30, 1999) at p. 5. [\(30\)](#)

The citizenship status of Applicant's siblings, when considered in light of the nature of the government in SRVN--a Communist totalitarian country that is no longer involved in open military hostilities with the United States, and whose interests are not necessarily inimical to the United States, and currently is engaged in normal trade relations with the U.S.--facilitates an analysis involving the adjudicative guidelines and the various applicable conditions set forth therein. Applicant's husband, two children and both her parents are already residents of the U.S., and all but her parents are already U.S. citizens. With regard to her entire immediate family, only the continuing SRVN citizenship of her parents and the SRVN citizenship and residency of her siblings raises the issue of potential foreign influence. In this regard, see Foreign Influence Disqualifying Condition (FI DC) 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*).

However, also applicable, in this instance, is Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1. (*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*). After an examination of the evidence, I determine that it is highly unlikely that Applicant can be forced to choose between loyalty to her parents and the U.S. simply because of the potential vulnerability occasioned only by the nature of her parents' citizenship. As noted above, both parents are already permanent U.S. residents, and the likelihood of exploitation by SRVN because of their citizenship is deemed nil. The same, however, cannot be said for her siblings. Because of the paucity of evidence, I am unable to determine if any of those siblings work, or ever worked, for any SRVN or Communist government agency, military, or intelligence service. Accordingly, I am unable gauge Applicant's potential vulnerability to coercion, exploitation, or pressure by that foreign government.

In analyzing Applicant's financial interests, it is noted that she has none in SRVN. In this regard, see FI MC E2.A2.1.3.5. (*foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*).

I do not take this position lightly, but based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my evaluation of the evidence, and my application of the pertinent conditions and factors under the Adjudicative Process, Applicant has failed to mitigate or overcome the government's case. The evidence leaves me with grave questions and doubts as to Applicant's continued security eligibility and suitability. Accordingly, allegation 1.b. of the SOR is concluded against Applicant. Allegations 1.a., and 1.c. through 1.e. of the SOR are concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is not suitable for access to classified information.

## **FORMAL FINDINGS**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline B: AGAINST THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the 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. Clearance is denied.

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**Robert Robinson Gales**

**Chief Administrative Judge**

1. The government submitted six items in support of its contentions.
2. Item 4 (Security Clearance Application, dated December 6, 2001), at 1.
3. *Id.*, at 2.



4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*, at 3.
8. *Id.*, at 6.
9. *Id.*, at 3.
10. *Id.*
11. *Id.*
12. *Id.*, at 6.
13. *Id.*, at 3.
14. *Id.*, at 6.
15. Item 3 (Response to SOR, dated February 13, 2004, at 1.
16. *Id.*
17. The SOR and Applicant's Response to SOR both refer to seven siblings, rather than eight. However, Applicant identified eight different siblings in her Security Clearance Application although two of them were each mentioned twice. Item 4, *supra* note 2, at 4-5.
18. *Id.*
19. *Id.*
20. *Id.*
21. Item 3, *supra* note 15, at 1.
22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.*
26. Item 4, *supra* note 2, at 6.
27. Item 3, *supra* note 15, at 2.
28. *Id.*, at 2.
29. Exec. Or. 12968, "*Access to Classified Information*," as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program*," dated January 1987, as amended by Change 3, dated November 8, 1995. However, the Directive uses both "clearly consistent with the national interest" (Sec. B.3; Sec. C.2.; and Sec. D.2.; Enclosure 3, Sec. 1.; and Sec. 25), and "clearly consistent with the interests of national security" (Enclosure 2 (Change 3),

Adjudicative Guidelines, at 2-2).

30. ISCR Case No. 98-0507 (Appeal Board Decision and Reversal Order, May 17, 1999), at 10.