

DATE: February 7, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-11289

## **DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

This 30-year-old technical designer was born in Laos, but came to the U.S. as a small child. He grew up as part of an American family, went to school here, became a U.S. citizen at 18, and married an American woman. He has long and extensive ties to the U.S., and warm but not close ties to his birth family in Laos. He has demonstrated by word and deed that he is not vulnerable to any pressure intended to coerce him to act against U.S. interests. Mitigation has been established. Clearance is granted.

### **HISTORY OF THE CASE**

On May 25, 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, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On June 15, 2004, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The matter was assigned to me for resolution on July 16, 2004. A Notice of Hearing was issued on August 10, 2004, setting the hearing for September 1, 2004. At the hearing, the Government introduced three exhibits (GX 1 - 3). Applicant testified and introduced seven exhibits (AX A - G). All exhibits were admitted as marked. The transcript was received at DOHA on September 15, 2004.

### **FINDINGS OF FACT**

Applicant is a 30-year-old technical designer for a defense contractor. The May 25, 2004 SOR contains seven allegations under Guideline B (Foreign Influence). In his Response to the SOR, Applicant does not dispute the factual

bases of the allegations, but since he does not specifically admit them, I am constrained to treat them as denials.

After considering the totality of the evidence, I make the following additional FINDINGS OF FACT as to the status, past and present, of each SOR allegation:

#### Guideline B (Foreign Influence)

1.a. - Applicant's father and mother are citizens of Laos, and currently reside in that country;

1.b. - Applicant's parents were arrested in Laos in 1983 when they attempted to leave that country. They were incarcerated for two years;

1.c. - Applicant's five siblings are citizens of Laos and currently reside in that country;

1.d. - Applicant maintains infrequent contact with one of his siblings, through e-mail;

1.e. - Applicant occasionally sends his parents as much as \$500, as a gift. The frequency of such gifts had decreased as his family obligations in the U.S. grow;

1.f. - Applicant traveled to Laos from November through December 1995, to visit his family.

Applicant identifies with the United States and his life here. He does not feel the close bonds of affection or loyalty for his family members in Laos that he has with his family members in the U.S. and for this country (Tr 54 - 56).

His mother-in-law has known him for many years and thinks highly of him as a son-in-law and as a person, and sees him a man of integrity (Tr at 60 - 62) (*see, also AX A*).

### POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant

in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding

the conduct, to include knowing 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Because each security case presents its own facts and circumstances, it should not be assumed that the factors cited above exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable financial judgment and conduct.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. In reaching the fair and impartial overall common sense determination based on the "whole person" concept required by the Directive, the Administrative Judge is not permitted to speculate, but can only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must

make

critical judgments as to the credibility of witnesses.

In the defense industry, the security of classified information is entrusted to civilian workers

who must be counted on to safeguard classified information and material twenty-four hours a day.

The Government is therefore appropriately concerned where available information indicates that an

applicant for a security clearance, in his or her private life or connected to work, may be involved

in conduct that demonstrates poor judgment, untrustworthiness, or unreliability. These concerns include consideration of the potential, as well as the actual, risk that an applicant may deliberately

or inadvertently fail to properly safeguard classified information.

An applicant's admission of the information in specific allegations relieves the Government

of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either

by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

### CONCLUSIONS

Under Guideline B, "a security risk may exist when [members of ]an individual's immediate family . . . are (1) not citizens of the United States or (2) may be subject to duress." These situations may create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of foreign countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Applicant makes the point that although he admittedly has family members in Laos, he left that country when he was four years old, sent by his parents because they opposed the incoming communist regime and thought he was young enough to start over in the U.S. (Tr at 21). He spent a year in a refugee camp in Thailand and then came to the U.S. with his grandparents (Tr at 20 - 22). His parents also attempted to leave, but they were detected and imprisoned by the Communists (Tr at 25). He has seen them only once since that time, in 1995 (Tr at 33). He was raised from childhood by an American family. He became a U.S. citizen as soon as he was age-eligible, at 18. His U.S. citizenship is his "most valued possession" (Response to SOR). He is now 30.

He is not interested in going back to Laos because he is concerned about conditions in that country (Tr at 32). In terms of closeness, his contacts with those in Laos are limited. His parents have no phone or computer, and he has not communicated with his brother for more than 17 months, as of the date of the hearing (Tr at 41). Some relatives in Laos have expressed an interest in coming to the U.S., but Applicant views this as a burden on top of his taking care of his

American family (Tr at 34).

He married an American woman about two years ago and is apart of a large extended family with strong religious beliefs (Tr at 27, 28, 30). His mother in Laos has always been a homemaker. Because of financial constraints requiring a second mortgage on his home, he sends money to his parents in Laos only periodically, and not yearly. His father and mother have intentionally lived unobtrusively for more than 30 years to escape attention from the regime in power (Tr at 38).

Applicant does religious missionary work and he identifies himself as an American (Tr at 51). As he views himself, "what I have at stake here in this county is far too valuable to me, and that's not something I'm willing to put on the line" (Tr at 53). He concluded by stating that the ties of "affection, influence, or obligation" are "here with this country. There is no other country [for me] (Tr at 55, 56). I found his attitude to be one of candor and sincerity, and I find his testimony to be credible.

While relatives in any foreign country may present a risk, this factor is not an automatic bar to holding a security clearance. Fairness and common sense require an analysis of the entire record and an overall common sense determination. The lack of any improper contact in the past is not evidence establishing that it will not happen in the future, but it is a positive factor that must be considered along with all other evidence, including, but not limited to, Applicant's statement that his allegiance is only to the United States. Based on the totality of the record, I conclude (1) that Applicant has done nothing to suggest any preference for Laos; and (2) there is minimal risk that Applicant's relatives will be pressured into contacting Applicant for improper purposes. In addition, based on his long history of residence in and involvement with this country, there is even less risk that Applicant would respond to any such contact by agreeing to act against U.S. interests. I find Applicant to be highly credible and a person of high integrity.

Since the SOR does not contain any allegations of any preference for Laos, I have considered this factor only in the context of evaluating whether Applicant might be vulnerable to foreign influence, when considered under Guideline B or the general guidelines found in Section E2.2.1 of the Directive. In any case, I conclude that these abstract questions as to risk are outweighed by Applicant's certainty as to how he would respond if ever asked to do something against U.S. interests. Based on the totality of the evidence, I conclude on the basis of the integrity he has shown during the two decades he has spent in the U.S. that he is not vulnerable to improper pressure, even from his own family. The facts and circumstances surrounding his family members in Laos and his relationship with them suggests affection for his family, but not to the point of overwhelming his affection for the United States, and appreciation for the opportunities it has given him.

### ***Disqualifying and Mitigating Conditions***

Disqualifying Conditions - (1). An immediate family member . . . is a citizen of, or resident or present in, a foreign country; and (3) relatives who are connected with any foreign government.

Mitigating Conditions - MC 1 requires 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." This conclusion is not by itself determinative. The applicability or nonapplicability of a specific disqualifying or mitigating condition from the Adjudicative Guidelines is not solely dispositive of a case. <sup>(1)</sup> Rather, decisions should be based on "articulated . . . reasons all . . . reflecting a plausible interpretation of the evidence in this case, for why [the Administrative Judge] concluded Applicant was not vulnerable to foreign influence." <sup>(2)</sup>

### **FORMAL FINDINGS**

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline B (Foreign Influence) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f. For the Applicant

Subparagraph 1.g. For the Applicant

Subparagraph 1.h. For the Applicant

Subparagraph 1.i. For the Applicant

Subparagraph 1.j. 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.

**Barry M. Sax**

**Administrative Judge**

1. *Id.*, citing ISCR Case No. 02-11810 (June 10, 2003), at page 5

2. *Id.*, at pages 3, 4.