

KEYWORD: Foreign Influence

DIGEST: Security concerns were raised regarding a 41-year old Vietnam-born naturalized American Applicant whose husband, child, parents, and three of four siblings are U.S. citizens residing in the U.S. She has one sister--a citizen of Vietnam--who resides in the U.S. as a permanent resident, as well as an 80-year-old mother-in-law who is both a citizen and resident of Vietnam. The security concerns have been mitigated by the evidence developed herein. Clearance is granted.

CASENO: 03-13511.h1

DATE: 08/06/2004

DATE: August 6, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-13511

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Security concerns were raised regarding a 41-year old Vietnam-born naturalized American Applicant whose husband, child, parents, and three of four siblings are U.S. citizens residing in the U.S. She has one sister--a citizen of Vietnam--who resides in the U.S. as a permanent resident, as well as an 80-year-old mother-in-law who is both a citizen and resident of Vietnam. The security concerns have been mitigated by the evidence developed herein. Clearance is granted.

STATEMENT OF THE CASE

On December 4, 2003, 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 January 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 March 30, 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 additional documents that were received on April 26, 2004. The case was assigned to me on August 5, 2004.

FINDINGS OF FACT

Applicant has admitted three of the four factual allegations pertaining to foreign influence under Guideline B (subparagraphs 1.a., 1.b., and 1.d.). Those admissions are incorporated herein as findings of fact. She denied the remaining allegation (subparagraph 1.c.).

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 41-year-old employee of a defense contractor seeking to retain the SECRET security clearance previously granted to her in April 1999.⁽²⁾

Applicant was born in 1963 in what was then the Republic of Vietnam (RVN).⁽³⁾ She resided with her parents and siblings and attended school in the RVN and the successor Socialist Republic of Vietnam (SRVN) until sometime before June 1987.⁽⁴⁾ Applicant has resided in the U.S. since at least that date.⁽⁵⁾ 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 May 1994.⁽⁶⁾ She is not a dual citizen and considers herself to be a citizen of only the U.S.⁽⁷⁾ The government has offered no evidence to rebut Applicant's contention, and I accept it as fact. Applicant attended a U.S. university and expected to receive a B.S. degree in engineering in December 2001.⁽⁸⁾

In December 1992, Applicant married to her Vietnamese-born husband in the U.S.⁽⁹⁾ Her husband is a naturalized U.S. citizen, having received his citizenship in April 1993.⁽¹⁰⁾ They reside together in the U.S.⁽¹¹⁾ They have one child, born in the U.S. in 1995.⁽¹²⁾ Applicant's parents--both Vietnamese-born--are naturalized U.S. citizens residing in the U.S.⁽¹³⁾ They were both naturalized in March 2003.⁽¹⁴⁾ Applicant has two Vietnamese-born brothers, both of whom are naturalized U.S. citizens residing in the U.S.⁽¹⁵⁾ One brother was naturalized in February 1993,⁽¹⁶⁾ and the other one was naturalized in December 1993.⁽¹⁷⁾ Applicant also has two Vietnamese-born sisters residing in the U.S.⁽¹⁸⁾ One sister was naturalized in March 1993,⁽¹⁹⁾ and the other one received her permanent residence card indicating she has resided in the U.S. since February 2004. She remains a citizen of SRVN. Applicant's mother-in-law (born in 1924)⁽²⁰⁾ remains both a citizen and resident of SRVN.⁽²¹⁾

The frequency, if any, of Applicant's contacts with her mother-in-law, as well as the nature of the relationship, are unknown as such information has not been developed in the record.

Applicant does not have any foreign property, business connections, or financial interests. (22)

Since Applicant arrived in the U.S., she has returned to visit SRVN on two occasions: in 1996, for 18 days; and in 2001, for 21 days. (23)

Applicant has been employed as a production test specialist by the same government contractor since March 1999. (24)
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,"⁽²⁵⁾ 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, one of her sisters and her mother-in-law--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. [\(26\)](#)

The citizenship status of Applicant's one sister and her mother-in-law, 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 entire immediate family--her husband, child, parents, and four siblings are already residents of the U.S., and all but one sister are naturalized U.S. citizens. With regard to her entire immediate

family, only the continuing SRVN citizenship of her one sister 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 one sister and the U.S. simply because of the potential vulnerability occasioned only by the nature of the sister's citizenship. As noted above, that sister is already a permanent U.S. resident, and the likelihood of exploitation by SRVN because of that sister's citizenship is deemed nil.

Applicant also has an 80-year-old mother-in-law who is both a citizen and resident of SRVN. Other than mere speculation that their relationship is such that they maintain close ties of affection or obligation, there is no evidence of the nature of that relationship which might support that speculation.

The government's position is that the potential vulnerability of Applicant is too great for her to be granted a security clearance. To the contrary, based on the evidence presented, the government's contention in this regard is simply too tenuous and calls for too much speculation. As recently stated by the Appeal Board: "An applicant does not have the burden of disproving a controverted fact; rather the burden of proving controverted facts falls on Department Counsel." [\(27\)](#) Moreover, since "suspicions and doubts, on their own, cannot support findings and conclusions that disregard the burdens of proof set by the Directive," [\(28\)](#) I conclude that such suspicions and doubts, as presented by the government are insufficient to support the government's position.

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*). Considering all of the above, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the government's case with respect to Guideline B. Accordingly, allegations 1.a. through 1.d. of the SOR are concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is 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: 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

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. Clearance is granted.

Robert Robinson Gales

Chief Administrative Judge

1. The government submitted six items in support of its contentions.
2. Item 4 (Security Clearance Application (SF 86), dated September 26, 2002), at 9.
3. *Id.*, at 1.
4. *Id.*, at 4.

5. *Id.*, at 1.
6. *Id.*
7. *Id.*
8. *Id.*, at 2.
9. *Id.*, at 4.
10. *Id.*, at 6.
11. *Id.*, at 4.
12. *Id.*, at 5.
13. *Id.*, at 4.
14. *Id.*, at 5-6.
15. *Id.*
16. *Id.*, at 6.
17. *Id.*
18. *Id.*; Response to FORM (Permanent Resident Card, undated, and State Driver License, issued April 16, 2004).
19. *Id.*, Item 4.
20. *Id.*, at 5.
21. *Id.*
22. Item 4, *supra* note 2, at 7.
23. *Id.*
24. *Id.*, at 2.
25. 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).
26. ISCR Case No. 98-0507 (Appeal Board Decision and Reversal Order, May 17, 1999), at 10.
27. ISCR Case No. 02-24452 (August 4, 2004), at 4.
28. *Id.*