

KEYWORD: Foreign Influence

DIGEST: Applicant left Vietnam in March 1983 on a refugee boat bound for Thailand. He immigrated to the United States in 1987, and became a naturalized U.S. citizen in 1993. While he has eight siblings who remain resident citizens of Vietnam, he has seen them only once since he left Vietnam, when he traveled there in 1998. The potential for undue foreign influence through his siblings is minimal where none of them are foreign agents and are not in positions where they are likely to be exploited, and Applicant does not have any ongoing contact with them. Clearance is granted.

CASENO: 03-16041.h1

DATE: 07/15/2005

DATE: July 15, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-16041

**DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

Bryan J. Kerman, Esq.

**SYNOPSIS**

Applicant left Vietnam in March 1983 on a refugee boat bound for Thailand. He immigrated to the United States in 1987, and became a naturalized U.S. citizen in 1993. While he has eight siblings who remain resident citizens of Vietnam, he has seen them only once since he left Vietnam, when he traveled there in 1998. The potential for undue foreign influence through his siblings is minimal where none of them are foreign agents and are not in positions where they are likely to be exploited, and Applicant does not have any ongoing contact with them. Clearance is granted.

**STATEMENT OF CASE**

On September 8, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the 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 the Applicant. <sup>(1)</sup> DOHA recommended referral to an administrative judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on foreign influence (Guideline B).

On September 21, 2004, Applicant executed an Answer to the SOR in which he admitted the allegations with explanation, and requested a hearing. The case was assigned to me on February 1, 2005, and I convened a hearing on February 18, 2005.

At the hearing, two government exhibits were admitted and Applicant testified, as reflected in a transcript received on March 2, 2005. At the government's request, I agreed to take administrative notice of a Defense Personnel Security

Research Center document, *Espionage by the Numbers: A Statistical Overview*, and three U.S. State Department publications: *Vietnam Country Reports on Human Rights Practices-2003*, dated February 25, 2004; *Background Note: Vietnam*, dated September 2004; *Consular Information Sheet Vietnam*, dated September 20, 2004 (information current as of January 28, 2005).

## FINDINGS OF FACT

DOHA alleged foreign influence concerns because Applicant has four brothers and four sisters who are resident citizens of Vietnam, whom he last visited in 1998. Applicant admitted the Vietnamese ties, and travel to Vietnam in 1998. He added that since leaving Vietnam at age 13, he had been back only that one time and has had no contact with his siblings in Vietnam for the past three years. Applicant denied having any financial, business, or political interests in Vietnam. Applicant's admissions are incorporated as findings of fact. After a thorough review of the evidence of record, I make the following additional findings:

Applicant is a 35-year-old senior software engineer who has worked for a defense contractor (company X) since he earned his bachelor of science degree in June 1996. He was granted an interim secret-level clearance for his duties that was withdrawn on issuance of the SOR.

Applicant was born in June 1970 into a family of farmers living in a small village in the southern part of what was then South Vietnam. In March 1983, he left Vietnam with his uncle and aunt in a small refugee boat bound for Thailand; he had to swim out to the boat and jump in. In addition to his parents, Applicant left his siblings (then four brothers and three sisters) behind in Vietnam. He stayed with his aunt and uncle in a refugee camp in Thailand until 1987 when they were given permission to emigrate to the U.S. After spending six months in the Philippines studying English and American culture, Applicant came to the U.S. with his aunt and uncle in August 1987. He attended a local public school, graduating in June 1990. From September 1990 to June 1993, he pursued his associate's degree in computer science at a community college.

In September 1993, Applicant became a naturalized U.S. citizen, taking an oath to renounce all foreign allegiances, to support and defend the U.S. Constitution and its laws, and to bear arms or noncombatant service or civilian service on behalf of the U.S. if required. He also began undergraduate studies for his bachelor's degree at a branch of the state university. Applicant worked during college as a housekeeper in a local nursing home. In June 1996, Applicant was awarded his bachelor of science in computer science. That same month, he started working for his current employer as a computer programmer on an air traffic control program for which he did not need a security clearance.

In December 1997, he married a native of Vietnam who he had met in college. She acquired U.S. citizenship in

September 1997. In April 1998, Applicant was issued his U.S. passport. That summer, he and his spouse traveled to Vietnam so that he could introduce her to his parents. Applicant and his spouse stayed one month in Vietnam, visiting with his parents and siblings, including a sister born after he had left Vietnam. They also visited his spouse's grandmother. Applicant and his spouse had some trepidation about traveling to Vietnam, but nothing untoward happened during their visit.

On their return to the U.S. in August 1998, Applicant and his spouse moved in with her parents. Her immediate family (parents and siblings) had immigrated to the U.S. under the protection of the U.S. government. Her father, who, as a captain in the South Vietnamese military, had aided the U.S. government during the war, was imprisoned by the North Vietnamese from 1975 to about 1984. A naturalized U.S. citizen, Applicant's father-in-law works as an assembler in his local community in the U.S. and has no contact with the present government or military of Vietnam.

In November 1999, Applicant and his spouse had their first child, a son. In August 2001, Applicant and his spouse moved into their own home. Under his sponsorship, Applicant's parents immigrated to the U.S. in 2001, leaving Applicant's siblings to work the family rice farm in Vietnam. Applicant's parents now reside with the aunt and uncle with whom Applicant came to the U.S.

In 2001 or 2002, Applicant avoided a job layoff by transferring to a position involving model simulation that requires a security clearance. On December 19, 2002, Applicant completed a security clearance application (SF 86), disclosing the Vietnamese citizenship and U.S. residency of his parents and mother-in-law, and the Vietnamese citizenship and residency of his eight siblings.

Applicant's spouse has worked for company X as a software engineer since about 1997. She has a security clearance for her duties as a software engineer with company X. In Fall 2004, she and Applicant had their second child.

As of February 2005, Applicant's siblings were still farming rice in Vietnam. Applicant has not seen them since his visit to Vietnam in 1998. He has no direct communication with them. What he knows of their activities comes from his parents, who telephone their children in Vietnam once a month. Applicant does not intend to travel to Vietnam in the future. His parents plan to sponsor the U.S. immigration of his three youngest siblings, who were born in the 1980s and are unmarried. Applicant has an aunt who resides in Germany and telephones him on occasion. She owns a restaurant and has no relationship with the Vietnamese government.

## **POLICIES**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, 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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

After considering all the evidence in this case, the following adjudicative guideline is pertinent:

**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 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. (E2.A2.1.1.)

## **CONCLUSIONS**

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of the Applicant, I conclude the following:

In determining whether an applicant's family ties in a foreign country pose an unacceptable security risk, the

administrative judge must consider the record evidence as a whole. Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohabitant, or close associate is improperly influenced, brought under control, or even used as a hostage by a foreign intelligence or security service.

Applicant's siblings are resident citizens of Vietnam. 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 or present in, a foreign country*, applies because of the foreign residency and citizenship of his eight siblings.

Under the Directive, the foreign influence concerns raised by the foreign citizenship and foreign residency of these family members may be mitigated where it can be determined they 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 Applicant to choose between loyalty to them and the United States (*see* MC E2.A2.1.3.1.). Before their immigration to the U.S., Applicant's parents worked on the family rice farm located in a small village in the southern part of Vietnam. His eight siblings continue to work on the farm and are not agents of a foreign power. The only foreign government connection is through his father-in-law, who, as a captain in the South Vietnamese military during the Vietnam war, served the interests of the South Vietnamese and U.S. governments. Imprisoned after the war by the Communist regime, Applicant's father-in-law did not act on behalf of the Socialist Republic of Vietnam, and he currently has no government connection. He works as an assembler in a plant in the U.S. and enjoys the protections of U.S. citizenship.

The inquiry in a foreign influence case is not limited to consideration of whether the foreign family members are agents of a foreign power. Rather, the foreign connections must also be evaluated in terms of whether they place an applicant in a position of vulnerability to be influenced by coercive or noncoercive means, even if there is no evidence that a foreign country has sought to exploit that vulnerability. (*See* ISCR Case No. 00-0628, February 24, 2003)

Notwithstanding Vietnam's poor human rights record and history of hostility to the U.S.,<sup>(2)</sup> the risk of undue foreign influence is very minimal. Applicant does not have a close relationship with his siblings. His purpose in traveling to Vietnam in 1998 was to introduce his spouse to his parents, who have since immigrated to the U.S. under Applicant's sponsorship. Although he visited with his siblings during his stay in Vietnam, he has had no contact with these relatives since. He does not telephone, write, or correspond by electronic mail with them. Contact with foreign citizens is mitigated where it is casual and infrequent (*see* E2.A2.1.3.3.). There is a rebuttable presumption that contacts with immediate family members are not casual.<sup>(3)</sup> Applicant's contacts with his siblings do not even rise to the level of casual and infrequent. When he left Vietnam, he was three months shy of his 13<sup>th</sup> birthday. One brother was only two months old and his youngest sister had not even been born. He has not developed the personal bonds with his siblings that come from shared experiences and attitudes.

Applicant's ties to the U.S. are relevant in assessing whether he is in a position to be forced to choose between his family members and his obligations to the United States. As a young teen, Applicant made a life-altering choice (albeit motivated by a desire for adventure) when he chose to swim out to the refugee boat carrying his aunt and uncle to Thailand. After four years in a refugee camp, he immigrated to the U.S. where he was then exposed to the social and cultural influences of his American peers. After he graduated from high school, he pursued college studies in computer science. In September 1993, he voluntarily acquired U.S. citizenship, taking a new name that would be easier for his English-speaking friends and acquaintances to pronounce. Married and the father of two young children, Applicant has

been employed by the same defense contractor since June 1996. Despite their years of separation, Applicant has bonds of affection or obligation with his parents, as evidenced by his sponsorship of their U.S. immigration. Since his parents have ongoing monthly contact with his siblings in Vietnam, the potential for undue foreign influence through his parents must be considered. However, in light of the entire record here, I conclude Applicant is not likely to jeopardize the security of his immediate family members by succumbing to any undue foreign influence on siblings with whom he has no direct contact. Any concerns about Applicant increasing his personal vulnerability by traveling to Vietnam are mitigated by the fact that he does not intend to travel to Vietnam in the future. SOR ¶¶ 1.a. and 1.b. are resolved in Applicant's favor.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline B: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: 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.

**Elizabeth M. Matchinski**

## Administrative Judge

1. The SOR was issued under the authority of Executive Order 10865 (as amended by Executive Orders 10909, 11328, and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4).
2. In its *Background Note: Vietnam*, the U.S. State Department reports that although Vietnam remains a Communist state, economic development has taken priority over adherence to ideological orthodoxy. Since the U.S. normalized diplomatic relations with Vietnam in July 1995, U.S. and Vietnam have broadened political exchanges and economic trade.
3. See DOHA Appeal Board's decision in ISCR Case No. 02-15339, dated April 29, 2004.