

KEYWORD: Foreign Influence

DIGEST: Applicant is a 28-year-old engineer working for a defense contractor. Applicant's father is a citizen of Viet Nam but lives in the United States. His two aunts and an uncle live in Viet Nam. Applicant has been in the U.S. since 1986 and became a citizen in 1993. He traveled to Viet Nam once in 1995 and began traveling once a year in 1999 while courting his fiancé who is now his wife as of March 2003. His wife's father is a farmer and her mother is a housewife still living in Viet Nam. They have no connections with the government of Viet Nam. Clearance is granted.

CASENO: 03-16665.h1

DATE: 09/10/2004

DATE: September 10, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-16665

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Jennifer Campbell, Esq. , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 28-year-old engineer working for a defense contractor. Applicant's father is a citizen of Viet Nam but lives in the United States. His two aunts and an uncle live in Viet Nam. Applicant has been in the U.S. since 1986 and became a citizen in 1993. He traveled to Viet Nam once in 1995 and began traveling once a year in 1999 while courting his fiancé who is now his wife as of March 2003. His wife's father is a farmer and her mother is a housewife still living in Viet Nam. They have no connections with the government of Viet Nam. Clearance is granted.

STATEMENT OF THE CASE

On January 27, 2004, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry* 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 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated February 17, 2004, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on May 10, 2004. A complete copy of the file of relevant material (FORM), consisting of six documents, was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did so on June 21, 2004. The case was assigned to, and received by, me on July 17, 2004.

FINDINGS OF FACT

Applicant is a 28-year-old engineer working for a defense contractor. He has admitted all of the factual allegations pertaining to foreign influence under Guideline B. Those admissions are incorporated herein as findings of fact. After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made.

Applicant's immediate family, and other persons to whom he may be bound by affection, influence, or obligation, are either United States citizens or living in the U.S. Two aunts and an uncle still live in Viet Nam. Applicant has been in the U.S. since 1986. He was sponsored by his brother who escaped and came to the U.S. in 1975 with their mother and sisters. His father is still a citizen of Viet Nam but lives in the U.S.

He traveled to Viet Nam once in 1995 and began traveling once a year in 1999 while courting his fiancé who is now his wife. Applicant sponsored her for entry into the U.S. They were married in March 2003 and are living in the U.S. His wife's father is a farmer and her mother is a housewife still living in Viet Nam. They have no connections with the government of Viet Nam.

He has very little contact with his aunts and uncle and has no particular ties of affection to them. They are not involved with the government of Viet Nam. One aunt is a hairdresser and the uncle is an architect. The occupation of the second aunt is unknown to him.

Applicant has been employed by his present employer for the past five years after graduating from a major U.S. university. His record indicates that he has been a model citizen.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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 (E2.2.1) Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."(E2.2.2.) "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

Based on the evidence of record, including Applicant's admissions, the Government has established reasons to deny him a security clearance because of foreign influence. Having established such reasons, the Applicant has the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. (Directive , E3.1.15)

"A security risk may exist when an individual's immediate family 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."
(E2.A2.1.1.) Having immediate family members, or a person to whom the individual has close ties of affection or obligation, who are citizens of, and residing in a foreign country, may raise a disqualifying security concern.
(E2.A2.1.2.1.)

Such security concerns could be mitigated by a determination "that the immediate family members (*spouse, father, mother, brothers, sisters*) 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." (E2.A2.1.3.1.) Another mitigating factor is that there are minimal financial interests abroad. (E2.A2.1.3.5.) Applicant has no financial interest in Viet Nam. A further factor is that current contacts and correspondence with foreign citizens are casual and infrequent. (E2.A2.1.3.3.) This factor is also applicable to this case.

Since the preparation of the SOR the circumstances of this matter have changed. The reason for the annual travel to Viet Nam has concluded with Applicant's marriage and his wife's move to the U.S. He has no desire to travel to visit his aunts and uncles who are not immediate family. Both of his parents are in the U.S. While he now has parents-in-law in Viet Nam they are not persons who would likely be subject to pressure by that government. Therefore, I conclude that he has mitigated the disqualifying condition and that a security clearance should be issued to him.

FORMAL FINDINGS

Formal Findings as required by the Directive (E3.1.25) are as follows:

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

DECISION

After full consideration of all the facts and documents presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Charles D. Ablard
Administrative Judge