

KEYWORD: Foreign Influence

DIGEST: Applicant, a naturalized citizen of the United States since 1996, has lived and worked in the U.S. continuously since February 1981. His daughter is a citizen of Viet Nam, although she now lives with Applicant, has permanent resident status, has applied for U.S. citizenship, and has surrendered her Viet Nam passport. Applicant has extremely limited contact with his parents and six siblings who are citizens and residents of Viet Nam. He has mitigated the foreign influence security concern alleged in the Statement of Reasons. Clearance is granted.

CASENO: 03-16803.h1

DATE: 01/11/2005

DATE: January 11, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-16803

**DECISION OF ADMINISTRATIVE JUDGE**

**HENRY LAZZARO**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn D. MacKinnon, Esq., Department Counsel

## **FOR APPLICANT**

Gregory Giordano, Esq.

### **SYNOPSIS**

Applicant, a naturalized citizen of the United States since 1996, has lived and worked in the U.S. continuously since February 1981. His daughter is a citizen of Viet Nam, although she now lives with Applicant, has permanent resident status, has applied for U.S. citizenship, and has surrendered her Viet Nam passport. Applicant has extremely limited contact with his parents and six siblings who are citizens and residents of Viet Nam. He has mitigated the foreign influence security concern alleged in the Statement of Reasons. Clearance is granted.

### **STATEMENT OF THE CASE**

On May 10, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. <sup>(1)</sup> The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline B (foreign influence). Applicant submitted a response to the SOR, dated May 21, 2004, requested a hearing, and admitted all SOR allegations.

The case was assigned to me on September 15, 2004. A notice of hearing was issued on October 27, 2004, scheduling the hearing for November 10, 2004. The hearing was conducted as scheduled. The government submitted three documentary exhibits that were marked as Government Exhibits (GE) 1-3. GE 1 was admitted into the record and administrative notice was taken of the information contained in GE 3 without objection. I refused to take administrative notice of GE 2. Applicant testified, called seven witnesses to testify on his behalf, and submitted 19 documentary exhibits that were marked as Applicant's Exhibits (AE) 1-19. AE 1-18 were admitted into the record without objection, and administrative notice was taken of the information contained in AE 19 without objection. The transcript was received on December 6, 2004.

## FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, testimony, and exhibits, I make the following findings of fact:

Applicant is a 49-year-old man who has been employed as a welder by a defense contractor since January 2001. He was born in Viet Nam, and resided in a small village outside Hue until after the collapse of the South Viet Nam government. His father was a fisherman, and was also employed by the U.S. Navy before the withdrawal of U.S. forces from the country. When the North Vietnamese seized control of the country, Applicant's father's fishing boat was confiscated and Applicant was forced to work as a laborer building roads. Although he was married and his wife was pregnant, Applicant fled the country as one of the boat-people in 1980. He first made his way to Hong Kong, where he worked in a factory, and then was granted entry into the United States in February 1981.

Applicant has been continuously employed since his arrival in the U.S. He was employed as an electrical mechanical inspector from 1984-89, and as a manufacturing specialist from 1990-91. He moved to the region of the country where he now resides in 1992, and worked as a welder for several different companies, until he was hired by his present employer. Applicant's witnesses, letters of recommendation, and awards attest to him being a highly qualified and experienced welder who is self-motivated, dedicated, conscientious, and reliable. His witnesses, consisting of supervisors, co-workers, neighbors, and friends, some of whom are retired U.S. military personnel, establish his reputation for being dependable, loyal, honest, and trustworthy.

Applicant was granted a security clearance on March 24, 2001. No complaints or suggestions have ever been made accusing his on mishandling classified information or otherwise suggesting that he poses a security threat.

Applicant became a naturalized U.S. citizen on October 6, 1996. He explained the reason he waited so long to become naturalized was because he had difficulty learning the history portion of the test he was required to take as part of the naturalization process. Applicant has one daughter who is 24 years old, and who resided with her mother in Viet Nam until 1998. Once Applicant became a U.S. citizen he arranged for the issuance of visas for his daughter and wife. Applicant's daughter arrived in the U.S. in 1998, however, his wife died before she was able to come to this country.

Applicant's father, mother, three brothers, and three sisters are citizens and residents of Viet Nam. He has another brother and cousins who reside in the United States. Applicant's father is 77 years old and his mother is 74 years old. Neither parent works. He believes that his three brothers drive motorcycle taxis, one of his sisters sells food on the streets, another sells goods out of her house, and the third sister is unemployed. He isn't certain what his sisters' husbands do, but believes a couple of them are unemployed. He describes all of his relatives in Viet Nam as extremely poor. None of his relatives have any connection with the Viet Nam government.

Applicant has only returned to Viet Nam on one occasion. He went with his daughter for three weeks in 2000 in order that she might say goodbye to her mother at her grave side. He flew into Ho Chi Minh City, and from there onto Hue, where he visited with his family. He did not travel elsewhere in the country, and he had no contact with Viet Nam officials.

Applicant's only contact with his relatives in Viet Nam is once yearly when he speaks with them by phone to wish them a happy new year. Applicant's daughter has more frequent telephone contact with her grandparents in Viet Nam, however, when she speaks with them and offers the telephone to Applicant his normal practice is to decline to speak with them because he feels he has nothing to talk to them about. He also sends his relatives about \$50.00 to \$100.00 annually as a new year's gift. He wrote his relatives letters when he first came to the U.S., but has not done so since about the time that his wife passed away. None of Applicant's foreign relatives have visited with him in the U.S. Applicant credibly testified he would report any attempt to obtain information from him either directly or through his foreign relatives by foreign agents to the proper authorities.

Applicant resides with his daughter in a house he owns in the United States that he purchased for \$185,000.00. He presently owes about \$145,000.00 on the house loan. He does not own any property in Viet Nam. Applicant's daughter is attending school and working. She has permanent resident alien status, has applied for U.S. citizenship, and surrendered her Viet Nam passport. Applicant is dating a woman who is a U.S. citizen of Viet Nameese origin.

### **POLICIES**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline B, pertaining to foreign influence with its respective DC and MC, is most relevant in this case.

### **BURDEN OF PROOF**

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(2)</sup> The government has the burden of proving controverted facts.<sup>(3)</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence,<sup>(4)</sup> although the government is required to present substantial evidence to meet its burden of proof.<sup>(5)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(6)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>(7)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(8)</sup>

No one has a right to a security clearance<sup>(9)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they  
<sup>(10)</sup>

must, on the side of denials." Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security. [\(11\)](#)

## CONCLUSIONS

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.

Based upon the allegations in the SOR, Disqualifying Condition (DC) 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* must be evaluated in determining whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant under Guideline B. I have considered the possible application of DC 2: *Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists* as it may apply in regards to Applicant's daughter. I am satisfied she does not provide the potential for adverse foreign influence or duress considering her relatively limited contact with her grandparents, the surrender of her Viet Nam passport, and her application for U.S. citizenship.

DC 1 does apply in this case because Applicant's parents and six siblings are citizens and residents of Viet Nam. Once the government meets its burden of proving controverted facts [\(12\)](#) the burden shifts to an applicant to present evidence demonstrating extenuation, mitigation, or changed circumstances. [\(13\)](#) Further, the government is under no duty to present evidence to disprove any Adjudicative Guideline mitigating conditions, and an Administrative Judge cannot assume or infer that any particular mitigating condition is applicable merely because the government does not present evidence to disprove that particular mitigating condition. [\(14\)](#)

The following Mitigating Conditions (MC) must be evaluated in determining whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant under Guideline B: MC 1: *A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitants, 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;* and MC 3: *Contact and correspondence with foreign citizens are casual and infrequent.*

Applicant has extremely limited contact with his parents and siblings living in Viet Nam. He speaks with them by telephone annually to wish them a happy new year, and generally declines additional offers to speak with them on those occasions when his daughter calls her grandparents because he feels he has nothing to talk to them about. Applicant did not return to Viet Nam for 18 years after fleeing the country, and when he did return with his daughter it was to allow her to visit her mother's grave site.

There is no evidence to suggest that Applicant's family members are, or ever have been, agents of Viet Nam, so the issue under MC 1 is whether

they are in a position to be exploited by Viet Nam. Considering all evidence in this case, it is clear that Applicant has for all intents and purposes dissociated himself from all ties connecting him to Viet Nam, including his relatives who still reside there. They have essentially become his relatives in name only. Neither he nor they have ever been contacted by foreign operatives, and Applicant credibly testified he would take the necessary and proper steps to alert U.S. officials if any such overtures were ever attempted.

Applicant bears the burden of demonstrating his family ties with relatives living in Viet Nam do not pose a security risk. To that end he has introduced evidence of his minimal contacts with his relatives in Viet Nam, his strong ties to the U.S., and the recommendations of responsible security clearance holders who work with him on a daily basis, former U.S. military personnel, neighbors, and friends. Considering all those factors, I am satisfied that MC 1 applies. The minimal contact he has with his Viet Nam relatives also makes clear the applicability of MC 3.

In all adjudications the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. I am satisfied Applicant has presented sufficient evidence of refutation, extenuation, and mitigation to overcome the case against him. Accordingly, Guideline B is decided for Applicant.

### **FORMAL FINDINGS**

SOR ¶ 1-Guideline B: For the Applicant

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: 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.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id* at 531.
11. *Egan*, Executive Order 10865, and the Directive.
12. Directive, Additional Procedural Guidance, Item E3.1.14
13. Directive, Additional Procedural Guidance, Item E3.1.15
14. ISCR Case No. 99-0597 (December 13, 2000)