

KEYWORD: Foreign Influence

DIGEST: Applicant's father was a member of the South Vietnamese Army who fled that country when it fell to the communists in 1975. In 1995, he was able to bring Applicant, her mother, and other family members to the U.S. Applicant's sister remains in Vietnam. Applicant failed to mitigate foreign influence security concerns. Clearance is denied.

CASENO: 04-00116.h1

DATE: 01/20/2006

DATE: January 20, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-00116

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's father was a member of the South Vietnamese Army who fled that country when it fell to the communists in 1975. In 1995, he was able to bring Applicant, her mother, and other family members to the U.S. Applicant's sister remains in Vietnam. Applicant failed to mitigate foreign influence security concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 15 April 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision⁽¹⁾-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in an undated writing and elected to have a hearing before an administrative judge. The case was assigned to me on 6 October 2005. On 16 November 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 2 December 2005.

FINDINGS OF FACT

Applicant was born in October 1972 in Vietnam to Vietnamese parents. Applicant's father was in the South Vietnamese Army. In 1975, after the fall of that government, he escaped and made his way to the U.S. Members of the family who remained in Vietnam, including Applicant, changed their names and fled from the city to the jungle to avoid detection because they feared what the government might do to them. In 1995, Applicant's father was finally able to bring some members of his family to the U.S.-his wife, his son, and three daughters, including Applicant. Two daughters remained

in Vietnam with their husbands and children.

Applicant traveled to Vietnam in 1999 to assist one of her sisters and her sister's family in preparing to emigrate to the U.S.. After two and one-half months there, she accompanied them to the U.S.

Applicant was naturalized in April 2001. She was issued a U.S. passport in 2002. In 2004, Applicant visited Vietnam to assist another sister after that sister's husband suffered a stroke. He had been a taxi driver, but lost the use of one of his arms. Applicant's visit lasted approximately 17 days. Applicant does not send money to her sister in Vietnam, but their parents do.

Applicant's parents, brother, and one sister are citizen residents of the U.S. Two other sisters are alien residents in the U.S. Applicant and her family in the U.S. have been working to bring the remaining sister, her husband, and three children from Vietnam to the U.S.

Applicant graduated from a U.S. university with a bachelor of science degree in July 2001. She is currently employed as a structural design engineer for a defense contractor. Fellow workers and her employer report Applicant is a valued asset to the company and the country.

Vietnam is a one-party state ruled by the Communist Party of Vietnam. The government has a poor human rights record and continues to commit serious abuses. The government does not tolerate most types of public dissent, but has allowed increased freedom of expression in certain approved fora. The government has opened and censored some mail, confiscated packages, regulated e-mail content, and monitored telephone conversations.

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 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

In the SOR, DOHA alleged Applicant's sister and brother-in-law are citizen residents of Vietnam (¶ 1.a); and she traveled to Vietnam in May 1999 (¶ 1.b). Applicant admitted each of the allegations. A security risk may exist when an applicant's immediate family, or other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Directive ¶ E2.A2.1.1.

The Government's evidence established a potentially disqualifying condition under Guideline B. A member of Applicant's immediate family-one of her sister's-is a citizen resident of Vietnam. DC E2.A2.1.2.1. An applicant may mitigate such foreign influence security concerns by establishing that her foreign associates are neither agents of a foreign power nor in a position to be exploited by a foreign power in a way that could force the applicant to choose between loyalty to the foreign associate and loyalty to the U.S. MC E2.A2.1.3.1.

Applicant established that her sister and the sister's husband are not agents of a foreign power as they are not connected to the government. Applicant was unable to establish that her sister is not in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to her sister and loyalty to the U.S. Applicant has done nothing wrong. The evidence established Applicant is a loyal U.S. citizen. Nevertheless, the presence of her sister (and her sister's family) in Vietnam, places Applicant in a vulnerable position. I find against her on ¶ 1.a.

I find for Applicant on ¶ 1.b. Although Applicant traveled to Vietnam in 1999 and 2004, it is not a disqualifying condition to do so. However, I did consider those travels as evidence of Applicant's concern for her sister who still resides there.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: For Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

James A. Young

Administrative Judge

1. As required by Exec. Or. 10865 (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended and modified (Directive).