

KEYWORD: Foreign Influence

DIGEST: Applicant is a 40-year-old process engineer who has worked for a federal contractor since 1998. Applicant became a naturalized United States citizen from Vietnam in 1996. Applicant's sister and brother-in-law are citizens and residents of Vietnam. Applicant's brother is also a naturalized American citizen, who resides and does business in Vietnam. Applicant loaned his brother \$94,000.00 to purchase a house in Vietnam. No information was provided by Applicant with regards to his contacts with his relatives in Vietnam, his loan agreement with his brother, where his sister and brother-in-law are employed or if they are agents of the government, or if his brother has any contacts with the Vietnamese government. Applicant failed to provide information on salient points and therefore failed to mitigate the security concerns under foreign influence. Clearance is denied.

CASENO: 04-00709.h1

DATE: 10/20/2005

DATE: October 20, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-00709

**DECISION OF ADMINISTRATIVE JUDGE**

**CAROL G. RICCIARDELLO**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 40-year-old process engineer who has worked for a federal contractor since 1998. Applicant became a naturalized United States citizen from Vietnam in 1996. Applicant's sister and brother-in-law are citizens and residents of Vietnam. Applicant's brother is also a naturalized American citizen, who resides and does business in Vietnam. Applicant loaned his brother \$94,000.00 to purchase a house in Vietnam. No information was provided by Applicant with regards to his contacts with his relatives in Vietnam, his loan agreement with his brother, where his sister and brother-in-law are employed or if they are agents of the government, or if his brother has any contacts with the Vietnamese government. Applicant failed to provide information on salient points and therefore failed to mitigate the security concerns under foreign influence. Clearance is denied.

**STATEMENT OF CASE**

On March 2, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.<sup>(1)</sup> The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline B, foreign influence.

In a sworn statement dated March 14, 2005, Applicant responded to the SOR allegations, admitting 1.a., 1.b., and 1.e., and denying 1.c. and 1.d. Applicant elected to have his case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on May 12, 2005. The FORM was received by Applicant on May 19, 2005. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. No information was submitted by Applicant. The case was assigned to me on September 30, 2005.

**FINDINGS OF FACT**

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

Applicant is a 40-year-old process engineer who has worked for a federal contractor since 1998. Applicant is a college graduate and, subsequent to filling out his security clearance application, got married. Applicant was born in Vietnam and became a naturalized United States citizen in 1996. Applicant's mother is a naturalized citizen of the United States and resides here. Applicant has two brothers and three sisters. Applicant, one brother and two sisters all became naturalized citizens on the same day in 1996. They all reside in the United States. Another brother is also a naturalized citizen, but in 1994-1995 he returned to Vietnam and works in business there.

Applicant loaned his brother who lives in Vietnam, \$94,000.00 to purchase a house there. Applicant had previously sold a house in the United States and made a profit. He used this money to loan to his brother.

Applicant at one time paid his brother's automobile insurance. Applicant is now married and no longer pays this insurance for his brother. The SOR did not allege which brother he paid the insurance for.

One of Applicant's sisters and her husband are citizens and residents of Vietnam. At one time Applicant sent his sister \$200-\$300 in monetary gifts each year. Applicant is now married and no longer sends monetary gifts to his sister.

Applicant traveled to Vietnam in 1996, 1997, and 2000. It was while he was a student and he went over during summer break in 1996 and 1997, and Christmas break in 2000.

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole Guideline B, foreign influence, with its respective DC and MC, applies in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation

of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. 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.

The sole purpose of a security clearance determination 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 is something less than a preponderance of evidence.<sup>(4)</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>(5)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(6)</sup>

No one has a right to a security clearance<sup>(7)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(8)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(9)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(10)</sup> 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.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline B-Foreign Influence is a concern because 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 obligations 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 interest 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 would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions below.

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline B.

Based on all the evidence, 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*) applies. Applicant's sister is an immediate family member who is a citizen and resident of Vietnam. Although Applicant's brother-in-law is not an immediate family member, his marital obligation to Applicant's sister places him in this disqualifying category. Applicant's brother, although a citizen of the United States, has been a resident of Vietnam for at least the last ten years. I have considered FI DC E2.A2.1.2.8 (*A substantial financial interest in a country, or in any foreign-owned or operated business that could make the individual vulnerable to foreign influence.*) Applicant loaned his brother in Vietnam \$94,000.00 so the brother could purchase a house. No information was provided about what loan payment arrangements were made, if any. No information was provided whether Applicant receives a monthly repayment, whether he charged interest, or what happens if the brother does not repay him, e.g. does Applicant have a claim on the house? Based on the only information I have before me it appears, at least nominally, that Applicant has some financial interest in Vietnam through his brother.

I have considered all the mitigating conditions and specifically considered 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 and the person(s) involved and the United States*), FI MC E2.A2.1.3.2. (*Contacts and correspondence with foreign citizens are casual and infrequent*), and FI MC E2.A2.1.3.5 (*Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*). Applicant's sister is an immediate family member. No information was provided regarding what type of relationship or contact Applicant may have with her and with her husband. Although Applicant ceased sending money to his sister, no other information such as how often, if at all, he communicates with his sister and brother-in-law. No information was provided about when he visits Vietnam does he visit them. No information was provided as to what types of jobs they hold and whether or not they hold positions with the Vietnamese government or whether they are agents of the foreign government. Therefore, Applicant has failed to provide any mitigating information with regards to his sister and brother-in-law.

Applicant failed to provide any mitigating information with regards to his brother who is an American citizen, but resides in Vietnam. No information was provided as to what type of business his brother is involved in and whether he works with the Vietnamese government in any capacity. No information was provided about how often Applicant communicates with his brother and what type of relationship they have. Applicant lent his brother \$94,000.00, a substantial sum of money. This would indicate that he has more than a casual relationship with his brother. However, even if it was strictly a business decision, the fact remains that in some capacity Applicant has a financial interest in Vietnam because the money was used to buy a house there. Although the interest is through his brother, Applicant's source of recoupment is through a financial interest in Vietnam. Without more information, Applicant has failed to mitigate this concern.

Applicant no longer pays his brother's insurance. It is unclear by the SOR or the response as to which brother Applicant paid the insurance for. In any event, Applicant no longer pays it and it ceases to be a security concern.

Applicant traveled to Vietnam three times since 1996. Although the purpose of the travel was listed for pleasure, no other information was provided, such as whom Applicant may have stayed with or visited.

Without specific and detailed information such as was suggested above, I find no mitigating conditions apply. Therefore, I also find Applicant has failed to meet his burden and mitigate the security concern regarding foreign influence.

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 life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. 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 have considered the whole person and I find Applicant has failed to mitigate the security concerns. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline B is decided against Applicant.

### **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 Foreign Influence (Guideline B) AGAINST THE APPLICANT

Subparagraph 1a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

**DECISION**

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

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
4. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
5. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
6. ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
7. *Egan*, 484 U.S. at 531.
8. *Id.*

9. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

10. Executive Order 10865 § 7.