

KEYWORD: Foreign Influence

DIGEST: Applicant is a naturalized U.S. citizen whose mother and five sisters are Vietnamese resident citizens. Applicant visited them in Vietnam in 1995, 1999, 2000, 2001, and 2002. He sends one of his sisters between \$100 and \$300 every few months for the care of their mother. The foreign influence concerns presented by the foreign citizenship and residency of his family members are mitigated where they are not agents of a foreign government nor in positions where they are likely to be exploited, and Applicant can be expected to act consistent with U.S. interests in the unlikely event of undue foreign influence. Clearance is granted.

CASENO: 04-00880.h1

DATE: 01/23/2006

DATE: January 23, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-00880

**DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

**APPEARANCES**

**FOR GOVERNMENT**

Daniel F. Crowley, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a naturalized U.S. citizen whose mother and five sisters are Vietnamese resident citizens. Applicant visited them in Vietnam in 1995, 1999, 2000, 2001, and 2002. He sends one of his sisters between \$100 and \$300 every few months for the care of their mother. The foreign influence concerns presented by the foreign citizenship and residency of his family members are mitigated where they are not agents of a foreign government nor in positions where they are likely to be exploited, and Applicant can be expected to act consistent with U.S. interests in the unlikely event of undue foreign influence. Clearance is granted.

**STATEMENT OF CASE**

On April 11, 2005, 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 April 28, 2005, Applicant responded to the SOR and requested a hearing. The case was assigned to me on July 18, 2005. On July 20, 2005, I scheduled a hearing for August 11, 2005. At the hearing convened as scheduled, the government submitted one exhibit. Applicant and his supervisor, who also assisted Applicant in his presentation, testified on Applicant's behalf, as reflected in a transcript received on August 26, 2005.

At the government's request, I agreed to take administrative notice of three publications of the U.S. Department of State: *Country Reports on Human Rights Practices-2004 Vietnam*, dated February 28, 2005; *Background Note: Vietnam*, dated April 2005; and *Consular Information Sheet Vietnam*, dated May 9, 2005 (information current as of July 7, 2005).

## FINDINGS OF FACT

DOHA alleged foreign influence concerns because Applicant's mother and five sisters are resident citizens of Vietnam, he visited them in 1995, 1999, 2000, 2001, and 2002, and he sends one of his sisters about \$100 every couple of months for the care of their mother. Applicant admitted the allegations. His admissions are accepted and incorporated as findings of fact. After a thorough review of the evidence of record, I make the following additional findings:

Applicant is a 51-year-old machinist employed by a university-affiliated research and development laboratory. He had worked for the laboratory with a secret-level security clearance from October 1997 to May 2000, when he was laid off due to lack of seniority. He was recalled to work there in August 2002, and initially granted an interim secret clearance. As of August 2005, he held no clearance pending the results of his personnel security background investigation and adjudication.

Applicant was born in September 1954 in what was then North Vietnam into a family of farmers. When he was a child, the family fled to South Vietnam where they would be free to practice their religion. His father worked as a carpenter until he died when Applicant was 16 or 17 years old. Applicant's mother stayed home to care for the children: five daughters born in 1949, 1951, 1958, 1960, 1965, and two sons, Applicant and a brother born in 1962.

From about 1972 to 1975, Applicant served in the South Vietnamese Army in munitions supply. After the war ended, Applicant worked as a farmer and carpenter. In about 1982, his brother died in an accident in a well.

In about 1985/86, Applicant fled Vietnam on a refugee boat bound for Indonesia, leaving behind his mother and sisters. After about a year in the camp, Applicant was allowed to emigrate to the U.S. because of his past service on the American side during the Vietnam War. Shortly after his arrival in the U.S., he was sent to a technical school where he studied the machine shop trade for seven or eight months. In March 1988, Applicant started working as a machinist in the U.S.

In August 1992, 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 perform noncombatant service or civilian service on behalf of the U.S. if required. Applicant's acquisition of U.S. citizenship did not automatically revoke his Vietnamese citizenship and he has filed no formal application to renounce his Vietnamese citizenship.<sup>(2)</sup>

In late 1995, Applicant traveled to Vietnam to see his mother and sisters. During his three or four weeks in Vietnam, he stayed with his mother. He also married a Vietnamese woman whom he had known before he left Vietnam in the mid-1980s. They were members of the same Catholic parish. She immigrated to the U.S. and subsequently acquired U.S. citizenship.

In October 1997, Applicant went to work as a machinist for his present employer, where he was granted a secret-level security clearance. In August 1999, he traveled to Vietnam to see his relatives. He cleared his trip with the laboratory's security personnel before he left. In May 2000, Applicant was laid off from his job at the laboratory due to lack of seniority. Since he was out of work, he took the opportunity that August to visit his mother and sisters in Vietnam. Experiencing marital difficulties, Applicant returned to Vietnam in January 2001 and remained about seven months. His divorce was finalized in May 2001 when he was in Vietnam. His ex-spouse remained in the U.S. after their divorce. That November, Applicant went back to Vietnam to see his mother and stayed through the holidays.

Recalled to work at the laboratory in August 2002, Applicant executed a security clearance application (SF 86) for a secret-level security clearance, which is required to work at the laboratory. Applicant responded "No" to whether he was or had ever been a dual citizen of the U.S. and another country.<sup>(3)</sup> He disclosed his possession of a current U.S. passport issued in June 2002, the Vietnamese citizenship and residency of his mother and five sisters, as well as his travels to Vietnam for pleasure in August 1999, August 2000, January 2001, and November 2001. Applicant was granted an interim secret level security clearance that has been withdrawn pending the adjudication of his clearance.

Applicant has not been back to Vietnam since before he returned to work for the defense contractor. His mother, who is almost 84-years-old, lives in a suburb of Ho Chi Minh City (formerly Saigon). During his trips to Vietnam to see his mother primarily, he also visited with his sisters. Applicant's eldest sister, who is 56-years-old, does not work outside the home. She is married to an unskilled laborer, who finds work when he can. The next eldest (born in 1951) and her husband are both farmers who reside in a village more than 50 miles distance from her mother's home. The oldest (born in 1958) of Applicant's three younger sisters resides near their mother. She is a married homemaker. Applicant is not certain what her spouse does for a living other than general labor when needed. The next sister, who is 45-years-old, helps her husband, who has a small shoelace making business that he operates out of their home. Every few months, Applicant sends this sister \$100, sometimes \$300, for the care of their mother. He has not sent any money since about April 2005. Applicant converses with this sister by telephone once every couple of weeks to check on his mother. Applicant's youngest sibling, who was born in 1965, stays at home to care for her children. She is also married to a laborer. None of Applicant's relatives in Vietnam has a connection with the Vietnamese government.

As he did before, Applicant intends to clear any future travel to Vietnam with security personnel at the laboratory. In the event the trip is not approved, he will not travel. Should he be detained or questioned by Vietnamese officials during a

visit to Vietnam, Applicant avers he will inform U.S. authorities.

Applicant rents a studio apartment in the U.S. He usually works 60 hours per week (ten hour shift six days a week) at the laboratory where he makes parts. His limited facility with English and his high skill in machining parts keeps him in the machine shop rather than in assembly or on field assignments. His supervisor, the director of the machine shop, has overseen Applicant's work since Applicant first started at the facility. He has found Applicant to be an excellent worker ("a wiz-bang" in computer-aided machining) and trustworthy. Applicant spends his limited time outside of work doing chores (laundry, food shopping). On Sundays, he attends church. As of August 2005, Applicant had eight weeks of vacation saved up because he spends so many hours at work. He has no ongoing contact with his ex-wife. Applicant has one close friend in the U.S., whom he met shortly after his arrival. Applicant owns no assets in Vietnam.

## 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 authorities 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 co. habitants, 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 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 Applicant and his supervisor, I conclude the following with respect to Guideline B:

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 mother and sisters are resident citizens of Vietnam. Applicant has a close relationship with these family members, whom he has visited five times since 1995. Understandably, he has a particularly strong bond with his elderly mother. He stays with her when he is in Vietnam and sends his sister between \$100 and \$300 every few months for the care of their mother. 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.* The government also argued for the applicability of ¶ E2.A2.1.2.6. *Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government* because of his travels to Vietnam. The U.S. State Department reports that local security officials in Vietnam have called in some U.S. citizens of Vietnamese origin for "discussions" not related to any suspected or alleged legal violation, although action has not normally been taken against the U.S. citizen. Moreover, foreign visitors to Vietnam have been arbitrarily detained. *See* the U.S. State Department's *Consular Information Sheet Vietnam* (information current as of July 7, 2005). While the risk of coercion, exploitation or pressure is increased simply by Applicant placing himself within Vietnam's borders, where his activities could be monitored unwillingly, there is no evidence that Applicant has brought undue attention to himself during his trips to Vietnam or that he has had other than routine contact with Vietnamese authorities at the border. Moreover, any concerns in this regard are overcome by Applicant's credible intention not to travel to Vietnam in the future without prior approval of laboratory security.

As for the foreign influence concerns raised by the foreign citizenship and foreign residency of Applicant's family members in Vietnam, they may be mitigated where it can be determined the family members 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 U.S. (*see* MC ¶ E2.A2.1.3.1.). Applicant's mother never worked outside of the home. None of Applicant's sisters nor their spouses are government employees or engaged in occupational pursuits likely to call attention to their activities. There is no evidence that any of his family members in Vietnam have ever been agents of a

foreign power, but 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 non coercive 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) Although not specifically stated in the adjudicative guideline, the particular foreign country of which the close relative or associate is a citizen or resides is relevant in determining the likelihood of foreign influence being brought to bear on its citizens/residents. Countries with strong democratic institutions and respect for the rule of law are generally regarded as presenting less of a risk than totalitarian regimes with a record of human rights abuses, support for terrorist activities, or hostility to the U.S.

Vietnam has a poor human rights record and history of hostility to the U.S. As recently as 2004, Vietnamese authorities continued to detain some foreign visitors and Vietnamese citizens for peaceful expression of political and religious views. See *Country Reports on Human Rights Practices-2004*, dated February 28, 2005. At the same time, 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, the U.S. and Vietnam have broadened political exchanges and economic trade. In December 2001, the U.S. and Vietnam entered into a bilateral trade agreement, expanding Vietnamese exports and direct U.S. investment in the Vietnamese economy. See *Background Note: Vietnam*, dated April 2005. Vietnam is less likely than in previous years to jeopardize its diplomatic and economic ties with the U.S., and there is nothing about his relatives' positions or activities that place them at heightened risk of pressure or coercion. Yet, the risk of undue foreign influence cannot be completely discounted as long as his relatives remain in Vietnam.

Applicant does not have close personal bonds to individuals in the U.S. that could minimize his vulnerability in the event undue coercion, pressure, or influence was to be placed on his relatives in Vietnam. Estranged from his ex-wife, he lives alone in the U.S., where he concentrates on his work. Other than church, his social interactions are limited to the workplace and to one friend. However, despite the affections for his mother, he elected to flee Vietnam on a refugee boat, and establish a new life for himself in the U.S. Obviously, his ties to his family members were not enough to keep him in Vietnam, and he has no loyalty to the Communist government in Vietnam. He served in the South Vietnamese Army, which was allied with the U.S. in the Vietnam War.

Applicant has also shown that he can be counted on to comply with the requirements of a clearance, and that he is willing to place the government's interests ahead of his own. During his previous employ with the laboratory from October 1997 to May 2000, Applicant held a security clearance without adverse incident. He cleared his trip to Vietnam in 1999 with laboratory security before he left. Subsequent trips to Vietnam took place before he returned to the laboratory, but he testified credibly that he intends to clear all future travel to Vietnam with his employer, and if prior approval is not obtained, he will not travel. His supervisor, the director of the machine shop, has found him to be trustworthy. While there is a risk, albeit minimal, of undue foreign influence because of his bonds of affection and/or obligation to immediate family members in Vietnam, I am persuaded Applicant will act in favor of U.S. interests should he find himself in a position of having to choose between his loyalties to his family members and the U.S. SOR ¶¶ 1.a., 1.b. and 1.c. are resolved in his 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

Subparagraph 1.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.

**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. See the U.S. State Department's *Country Reports on Rights Practices-2004* for Vietnam, dated February 28, 2005, p. 12. The Vietnamese government considers anyone born in Vietnam to be a citizen, even if they have acquired another country's citizenship, unless a formal renunciation of citizenship has been approved by the president. There is no evidence that Applicant has formally applied to renounce his Vietnamese citizenship.
3. While he may well be a dual citizen of the U.S. and Vietnam, no negative inferences are drawn from his denial of dual citizenship on his SF 86 as he does not consider himself a dual citizen and it is not clear he knew he would have to formally apply to renounce his Vietnamese citizenship.

