

KEYWORD: Foreign Influence

DIGEST: Applicant is a 47-year-old U.S.-born citizen, who is a program manager for a defense contractor. In 1999, he married a Vietnamese woman introduced to him by an ethnic Vietnamese co-worker. Since immigrating to the U.S., Applicant's wife has assimilated well and became a U.S. citizen in 2004. As a result of this marriage, Applicant has five in-laws in Vietnam creating a foreign influence concern. Based on the totality of circumstances and the record evidence as a whole, Applicant has successfully mitigated the security concern of foreign influence based on his limited family ties to Vietnam. Clearance is granted.

CASENO: 04-02185.h1

DATE: 03/22/2006

DATE: March 22, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-02185

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Daniel C. Schwartz, Esq.

SYNOPSIS

Applicant is a 47-year-old U.S.-born citizen, who is a program manager for a defense contractor. In 1999, he married a Vietnamese woman introduced to him by an ethnic Vietnamese co-worker. Since immigrating to the U.S., Applicant's wife has assimilated well and became a U.S. citizen in 2004. As a result of this marriage, Applicant has five in-laws in Vietnam creating a foreign influence concern. Based on the totality of circumstances and the record evidence as a whole, Applicant has successfully mitigated the security concern of foreign influence based on his limited family ties to Vietnam. Clearance is granted.

STATEMENT OF THE CASE

On March 11, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating the reasons why DOHA proposed to deny or revoke his access to classified information. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline B for foreign influence. Counsel for Applicant replied to the SOR on April 26, 2005, and requested a hearing. Department Counsel indicated he was ready to proceed on June 3, 2005. Counsel for Applicant submitted a supplemental answer on June 29, 2005, and reiterated his request for a hearing.

The DOHA Hearing Office received the case on June 13, 2005, and it was assigned to another administrative judge on the same day. Due to caseload considerations, the case was reassigned to me on June 20, 2005. On July 8, 2005, DOHA issued a notice of hearing, scheduling the case to be heard on August 2, 2005. The case was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

At the hearing, the Government presented five exhibits, which were marked as Government Exhibits (GE) 1 through 5, without objection. Applicant presented 15 exhibits, which were marked as Applicant Exhibits (AE) A through O, without objection. I left the record open to allow Applicant the opportunity to submit additional matters. Counsel for Applicant timely submitted one additional exhibit, which was marked AE P, without objection. DOHA received the transcript (Tr.) of the proceeding on August 17, 2005. Counsel for Applicant submitted an errata sheet with corrections to the transcript, which was marked AE Q, without objection.

FINDINGS OF FACT

In his Answer, Applicant admitted the SOR allegations. His admissions are incorporated into my findings. After a thorough review of the record, I make the following findings of fact:

Applicant testified during the hearing, and I find his testimony credible. He is a 47-year-old, married man, who was born, raised, and educated in the U.S. He was awarded a bachelor of science degree in June 1993, with a major in mechanical engineering. Applicant is employed as a program manager for a defense contractor and has been with that same employer since November 2000. In conjunction with Applicant's current duties, his employer requested he be granted a secret security clearance. In February 2004, Applicant was granted an interim secret security clearance. That clearance was suspended "within the last one or two months" as a result of these proceedings. Tr. 105.

Applicant was previously married from January 1987 to August 1988. That marriage ended in divorce. During the summer of 1998, an ethnic Vietnamese co-worker offered to introduce Applicant to her 34-year-old single cousin, who lived in Vietnam. The co-worker provided Applicant with her cousin's telephone number in Vietnam. Applicant then called his co-worker's cousin in Vietnam and a friendship ensued. In February 1999, Applicant went to Vietnam to meet his co-worker's cousin. Their relationship developed further and they were married in Vietnam on March 8, 1999.

Shortly after the wedding, Applicant returned to the U.S. to secure a visa for his new bride. In August 2000, all the necessary paperwork had been approved by the U.S. and Vietnamese governments for Applicant's wife to immigrate to the U.S. In August 2000, Applicant returned to Vietnam to bring his wife home to the U.S.

Applicant's wife has assimilated very well to her new home and culture since arriving in the U.S. She has taken English and mathematics courses at a local community college, and has made a number of local friends. She has also learned to play the guitar and electric keyboard. She earns income by babysitting for her niece's child. On September 9, 2004, she became a U.S. citizen. Since becoming a U.S. citizen, she has registered and exercised her right to vote.

As a result of his recent marriage, Applicant has three sisters-in-law and two brothers-in-law, who are resident citizens of Vietnam. Applicant's wife also recently discovered she has a brother living in the Philippines. (2) Being a native-born U.S. citizen, all of Applicant's immediate family members to include his wife are U.S. citizens. In contrast to the number of relatives in Vietnam, Applicant's wife has 37 relatives of Vietnamese descent, living and residing in the U.S. Of those 37 relatives, three are permanent resident aliens, and the remaining 34 are U.S. citizens. The adult relatives living in the U.S. are well educated and work as professionals. AE P.

Since her arrival in the U.S., Applicant's wife has returned to Vietnam once for a vacation in January 2003. Applicant has not returned to Vietnam since he escorted his wife to the U.S. in August 2000. Applicant's wife communicates with her siblings in Vietnam approximately once every two to three months by telephone. Applicant does not participate in these telephone calls and has not communicated with his in-laws in Vietnam since he was last there in August 2000. He does not speak or understand Vietnamese.

In their spare time, Applicant and his wife enjoy hosting barbeques, going camping, and watching television and movies. They recently purchased a home currently valued at \$650,000.00, with a mortgage of \$600,000.00. Applicant and his wife are constantly involved in home improvement projects. Applicant estimates his net worth to be "about \$85,000.00." Tr. 123.

Neither Applicant nor his wife have any assets in Vietnam, nor does Applicant's wife expect to inherit any assets in Vietnam. Applicant has not had any dealings with anyone in Vietnam since he was last there in August 2000.

None of Applicant's in-laws in Vietnam have ever served in the Vietnamese military or held a position within the government. Nor are any of those relatives in Vietnam aware of who Applicant works for, nor are they aware of the specific role Applicant has with his employer.

Applicant is highly respected and valued by his employer and co-workers. It is clear from the evidence that he has made significant contributions to the national defense and those contributions will only be enhanced if granted a security clearance. Applicant also enjoys a reputation among his colleagues and within the community as being a true patriot with unwavering loyalty to the U.S. In short, the record evidence supports the notion that Applicant's character is above reproach.

In 1995, President Clinton announced the formal normalization of diplomatic relations with Vietnam on July 11, 1995. This process continues to this date. GE 4, GE 5, AE K, AE L, AE M, AE N, AE O.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security-clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each applicable guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on 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.

BURDEN OF PROOF

The only 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.⁽³⁾ There is no presumption in favor of granting or continuing access to classified information.⁽⁴⁾ The government has the burden of proving controverted facts.⁽⁵⁾ The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than a preponderance of the evidence.⁽⁶⁾ The DOHA Appeal Board has followed the Court's reasoning on this issue, establishing a substantial-evidence standard.⁽⁷⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁸⁾ Once the government meets its burden, an applicant has the burden of presenting evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.⁽⁹⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁰⁾

As noted by the Court in *Egan*, "it should be obvious that no one has a 'right' to a security clearance," and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹¹⁾ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

CONCLUSIONS

Under Guideline B for foreign influence, a security concern 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 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. 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 brought under control or used as a hostage by a foreign intelligence or security service.

Here, based on the record evidence as a whole, the government has established its case under Guideline B. Applicant has family ties to Vietnam, as evidenced by his three sisters-in-law and two brothers-in-law who are resident citizens in Vietnam. Applicant has no direct contact with any of his in-laws in Vietnam; however, his wife has periodic telephone contact with her relatives in Vietnam. Applicant's two trips to Vietnam are also evidence of his family ties. Taken together, these circumstances raise a security concern under DC 1. [\(12\)](#)

I have reviewed the MC under Guideline B and conclude that MC 1 [\(13\)](#) applies for Applicant.

The record evidence shows that Applicant's in-laws are not Vietnamese agents or agents of any other foreign power, [\(14\)](#) and so the issue under MC 1 is if the family members are in a position to be exploited by the Vietnamese government. Although Vietnam is a communist-controlled country, the U.S. and Vietnam normalized diplomatic relations in 1995, and the normalization process continues to date. More specific to this case, his in-laws are not employed by or connected to the Vietnamese military or a governmental agency or some other organization that may have an interest in U.S. classified information. Given these circumstances, his family members are not in a position where they could be subject to exploitation.

MC 3 is clearly applicable given the fact Applicant never speaks to his in-laws and his limited affiliation with them occurs vicariously through his wife's telephone calls to them which occur every two to three months. [\(15\)](#)

In addition to MC 1 and MC 3, MC 5 [\(16\)](#) applies for Applicant, as neither he nor his wife have any financial interests in Vietnam. Applicant earns his income by working hard for a U.S. government contractor, Applicant and his wife own a home in the U.S., and conduct all of their banking and maintain all of their investments in the U.S.

The analysis does not necessarily end with the formal mitigating conditions, as other matters under the whole-person concept may mitigate the security concern. First, Applicant's commitment to the U.S. is very high. His decision to marry an ethnic Vietnamese woman came later in life. Applicant's wife has embraced her new life in the U.S. by doing everything she can to assimilate such as learning English, taking course, and most importantly becoming a U.S. citizen. Second, Applicant's ties or connections to the U.S. are very strong. He has lived in the U.S. for his entire adult life. Since his wife's arrival here, she can fairly be described as a model immigrant. Like her U.S. born husband, her ties to the U.S. are very strong. She has 37 relatives of Vietnamese descent living in the U.S., 34 of whom are U.S. citizens. Also, of those 37 relatives living in the U.S., 26 of them live within 100 miles of her.

Moreover, Applicant's professional career and financial interests are in the U.S. and that situation is unlikely to change. These are examples of ties that bind most members of a participatory democracy such as the U.S. To sum up, the record evidence demonstrates Applicant has all the indicators of a self-reliant, industrious, mature, responsible, and trustworthy individual. After weighing the record evidence as a whole, I conclude Applicant has successfully mitigated the foreign influence security concern raised by his family ties to Vietnam. Accordingly, Guideline B is decided for Applicant.

To conclude, Applicant has met his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I have considered the whole-person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive.

FORMAL FINDINGS

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

SOR ¶ 1-Guideline B: For the Applicant

Subparagraph 1.a : For the Applicant

Subparagraph 1.b: 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.

Robert J. Tuider

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. At the time the SOR was issued, this brother had not been heard from since he disappeared in 1988 from Vietnam leaving behind a wife and child and was presumed dead. This brother surfaced after the SOR was issued and Applicant promptly notified DOHA of his existence. Applicant has never met this brother-in-law and his wife has not seen him since 1988. Applicant's wife does not enjoy a close relationship with her brother.
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
5. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
6. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).
7. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
8. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
9. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
10. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
11. *Egan*, 484 U.S. at 528, 531.
12. 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."
13. 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 to the person(s) involved and the United States."
14. *See* 50 U.S.C. § 1801(b), which defines the term of art "agent of a foreign power."
15. E2.A2.1.3.3. "Contact and correspondence with foreign nationals are casual and infrequent."
16. E2.A2.1.3.5. "Foreign financial interests are minimal and not sufficient to affect the individual's security

responsibilities."