

KEYWORD: Foreign Influence

DIGEST: This 52-year-old technical specialist was born in South Vietnam in 1953, came to the U.S. in 1975 to escape the Communist takeover, completed his college education, married, began his career, and became a U.S. citizen in 1982. Her first obtained a DoD security clearance in 1989. His elderly parents and siblings remain in Vietnam. He has little contact with them. His fundamental loyalty is to the U.S. and his American family. He convincingly avers he would report any improper contacts, regardless of source. His colleagues and friends consider him to be a man of integrity and dedication to U.S. interests. itigation has been established. Clearance is granted.

CASENO: 04-02487.h1

DATE: 12/20/2005

DATE: December 20, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-02487

**DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

This 52-year-old technical specialist was born in South Vietnam in 1953, came to the U.S. in 1975 to escape the Communist takeover, completed his college education, married, began his career, and became a U.S. citizen in 1982. He first obtained a DoD security clearance in 1989. His elderly parents and siblings remain in Vietnam. He has little contact with them. His fundamental loyalty is to the U.S. and his American family. He convincingly avers he would report any improper contacts, regardless of source. His colleagues and friends consider him to be a man of integrity and dedication to U.S. interests. Mitigation has been established. Clearance is granted.

**STATEMENT OF THE CASE**

On March 4, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons

why DOHA could not make the preliminary affirmative finding required under the Directive that it

is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

On March 23, 2005, Applicant submitted a response to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the basis of the written record, i.e., without a hearing. Department Counsel issued a File of Relevant Material (FORM) on May 18, 2005. Any response to the FORM was due by July 2, 2005, but none was received by DOHA. The case was assigned to me on August 3, 2005.

## FINDINGS OF FACT

Applicant is a 52-year-old technical specialist for a defense contractor. The SOR contains three allegations, 1.a. - 1.c., under Guideline B (Foreign Influence). In his response, Applicant *admits* all three allegations, with explanations. All specific admissions are accepted as Findings of Fact.

After considering the totality of the evidence of record, I make the following Findings of Fact as to each SOR allegation:

### Guideline B (Foreign Influence)

1.a. - Applicant's parents are citizens and residents of Vietnam. They are both in their late 80s. Neither one ever held and position with the Vietnamese government.

1.b. - Applicant's four siblings are citizens and residents of Vietnam. None have ever been connected with the Vietnamese government. Both brothers are farmers and the sisters own a small food store;

1.c. - Applicant traveled to Vietnam in 2001, 2002, and 2003, to visit his elderly parents, whose health has deteriorated (Item 3).

Applicant left Vietnam in 1975 (at the age of 22) because he did not want to live under the new Communist government, and arrived in the US that same year (Item 5). He completed college and began working in his career here. He received a DoD security clearance in 1989 (Item 4 at Question 31). He does not have telephonic contact with his family in Vietnam, but he sends letters twice a year. He believes they would like to leave that country (Item 5). He will defend the US against all other countries, and would take up arms against Vietnam (*Id.*). If approached by anyone to act against US interests, he would immediately contact the FBI (*Id.*).

## POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

## CONCLUSIONS

Applicant was born in what was then the Republic of Vietnam (South Vietnam) in 1953. He came to the United States (U.S.) in 1975, after the fall of Saigon. He became an American citizen in 1982 and first obtained DoD security clearance in 1989. In 1983, he married a 23-year-old woman who was a naturalized American, also born in South Vietnam, in 1960. He currently carries a US passport issued in June 2000.

This is a unique case on its facts. Applicant grew up in South Vietnam when it was a wartime ally of the US. He fled the country when it was taken over by Communist forces in 1975. He has been here ever since, making himself a part of American society, and returning to Vietnam only after the US Government established friendly relations with that nation within the last decade.

His ties to Vietnam are limited to the presence there of his elderly parents and siblings, with whom he has had little contact over the past 30 years. His ties to the United States, on the other hand have become close and deep as he married, prospered and became a part of American society. I note that he was found trustworthy enough in 1989 to obtain a DoD security clearance and there is no evidence of there ever having been any security-related problems. Nothing has changed since 1989 except that Applicant has continued to mature as an American citizen and has risen in his profession. There is nothing in the record to suggest that he might become less protective of U.S. security interests than he has been over the last 26 years.

The SOR states concerns under only Guideline B (Foreign Influence).<sup>(U)</sup> Based on this fact, and the totality of the record, I find no substantive concerns based on anything Applicant has said or done. It is a clearly a case based on the preliminary risk assessment that Applicant's family members might ask him to reveal U.S. classified information and that he might be potentially vulnerable to coercion, exploitation, or pressure" and reveal such classified information.

An analysis under Guideline B focuses on two major aspects: (1) what the relatives might ask Applicant to do and (2) how Applicant might respond. Considering that all of the evidence about the relatives comes from Applicant's own words, which I find to be open and candid, there is no evidence of record that the relatives are agents of the Vietnam government or intelligence agencies, that they have been approached by agents of the same, that they have ever asked Applicant to act improperly, or even that they might do so in the future. Obviously, the fact that no improper contacts have been made in the past doesn't mean it can't or won't happen in the future, but it is evidence that must be considered along with the rest of the record.

The bulk of the evidence comes Applicant himself, what kind of person he is, and how he relates to his adopted country vis-a-vis his relatives and to his country of origin. Applicant has received words of high praise from a number of substantial witnesses. He has spent considerable time explaining how he views his feelings about and relationship with the United States and he credibly avers he would have no problem placing his obligations to this country above that of his relatives in Vietnam. I have carefully considered that the foreign country involved is Vietnam. In retrospect, I conclude that in the absence of specific evidence to the contrary, Applicant's relatives in Vietnam are not agents of that government or in a position to become the "subject of duress" (Guideline B -Foreign Influence - Preface)

The most important question is how Applicant might respond, specifically whether there is a risk that he might feel forced to choose and then to make a choice that is against U.S. security interests. Applicant is aware of hypothetical possibilities involving Vietnam, but based on the totality of the record, I conclude there is little possibility that his relatives in Vietnam would ask him to act improperly. I also conclude there is minimal chance that he would feel he had to choose between his loyalty to his family and to the United States. He convincingly avers he would always act on behalf of U.S. security interests (Tr at 94).

Disqualifying Condition (1) applies since Applicant does have family members in Vietnam However, Mitigating Condition (1) also applies since the evidence suggests that the family's presence in Vietnam does not establish an unacceptable risk, considering Applicant's character and his deep ties to this country.

In conclusion, I find Applicant to be a person of character and integrity. He indicates no reservations about his loyalty to the United States. The record of his life and work demonstrates significant contributions to the national welfare. He is well respected by those who know him best, some of whom hold security clearances themselves, have known Applicant for long periods of time, are familiar with his work ethic, and recommend him wholeheartedly. In summary, the overall record shows Applicant to be a man of integrity and responsibility and one who understands his obligations to his adopted country. Nothing in the evidence suggests otherwise. I conclude he has the judgment, reliability, and trustworthiness required of someone seeking access to the nation's secrets.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline B (Foreign Influence) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. 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.

**BARRY M. SAX**

**ADMINISTRATIVE JUDGE**

1. I note that a sensitive U.S. Government agency previously found that Applicant had not "mitigate[d] the government's concerns under DCID guidelines pertaining to foreign preference and foreign influence" (GX 4. Letter of June 27, 2003). The former concerns are not repeated in the SOR in the present case.