

KEYWORD: Foreign Influence

DIGEST: Applicant is a 40-year-old electronic technician working for a defense contractor. A naturalized citizen since 1992, he resides with his father, mother, wife, and children, all of whom are United States citizens, as well as with a brother and a sister who are citizens of Vietnam. Also citizens of Vietnam, as well as current residents, are two additional sisters, a brother, and a brother-in-law. Applicant is currently supporting the entry of one sister into the United States and expresses a desire to seek similar entry for the rest of his family. Applicant failed to provide any evidence in mitigation regarding the security concern raised by the potential existence of foreign influence. Clearance is denied.

CASENO: 04-02634.h1

DATE: 06/10/2005

DATE: June 10, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-02634

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 40-year-old electronic technician working for a defense contractor. A naturalized citizen since 1992, he resides with his father, mother, wife, and children, all of whom are United States citizens, as well as with a brother and a sister who are citizens of Vietnam. Also citizens of Vietnam, as well as current residents, are two additional sisters, a brother, and a brother-in-law. Applicant is currently supporting the entry of one sister into the United States and expresses a desire to seek similar entry for the rest of his family. Applicant failed to provide any evidence in mitigation regarding the security concern raised by the potential existence of foreign influence. Clearance is denied.

STATEMENT OF THE CASE

On October 19, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR). That SOR detailed why, pursuant to Guideline B (Foreign Influence), it 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 Applicant. By letter of October 27, 2004, Applicant admitted to three of the allegations contained within the SOR in full, but he denied in part and admitted in part to the fourth allegation. Additionally, he requested that an administrative determination be made based on the submissions.

The Government's case was submitted on February 8, 2005, ⁽¹⁾ and a complete copy of the file of relevant material (FORM) ⁽²⁾ was provided to Applicant. He was then afforded the opportunity to file objections and submit evidence in refutation, extenuation, or mitigation. Applicant signed for a copy of the FORM on February 21, 2005, but chose not to submit additional materials or argument. I was assigned this case on April 13, 2005.

FINDINGS OF FACT

Applicant has admitted three of the allegations set forth in the SOR and admitted in part, and denied in part, the fourth. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 40-year-old electronic technician who has worked for the same defense contractor since May 1995. Born in the former city of Saigon, Vietnam, Applicant emigrated to the United States at some time unspecified by the record evidence. He became a naturalized United States citizen in 1992. Shortly before commencing his current employment, Applicant enrolled in, and a year later completed, a certificate program from a local technical school. In 1997 he married a fellow émigré from Vietnam. The couple has three children and Applicant has a stepchild. Also residing at their address is Applicant's mother and father, both naturalized U.S. citizens, (3) as well as a brother and a sister of Vietnamese citizenry. Applicant's father-in-law and mother-in-law, both naturalized U.S. citizens, live in the same town as Applicant and his family.

Currently residing in Ho Chi Minh City, the former Saigon, are Applicant's elder brother and two younger sisters. Also in Vietnam is a brother-in-law. (4) Applicant is currently sponsoring one of these sisters in to come to the United States. He has the expressed desire to bring his other family members over, as well. Contact is maintained with his family members in Vietnam via weekly e-mail correspondence.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, these adjudicative guidelines are subdivided into those that may be considered in deciding whether to deny or revoke one's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to determine one could still be eligible for access to classified information (Mitigating Conditions).

In application, an Administrative Judge is not strictly bound to the adjudicative guidelines. As guidelines, they are but part of an amalgam of elements for the Administrative Judge to consider in assessing an applicant in light of the

circumstances giving rise to the SOR, as well as in assessing the applicant as a whole. The concept of the "whole person" means that all available, reliable information about the person - whether it is good or bad, present or past - should be considered in making a fair, impartial, and meaningful decision as to his or her suitability to hold a security clearance. To that end, Enclosure 2 also sets forth factors to be considered during this part of the adjudicative process, including: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable 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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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

Guideline B - Foreign Influence. 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 obligation 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. ⁽⁵⁾

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, pertaining to this adjudicative guideline are set forth and discussed in the Conclusions section below.

After a full and thorough examination, however, the final assessment must comport with the considerable gravity of the final decision. There is no right to a security clearance ⁽⁶⁾ and one seeking access to classified information must be prepared to enter into a fiduciary relationship with the United States Government that is inherently predicated on trust and confidence. Therefore, when the facts proven by the Government raise doubts as to an applicant's judgment, reliability, or trustworthiness, the applicant has the heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." ⁽⁷⁾ Therefore, any doubts will be resolved in favor of the national security, not the applicant.

Finally, Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Therefore, nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all legal precepts, factors, and conditions, including those described briefly above, I find the following with respect to the allegations set forth in the SOR:

With respect to Guideline B (Foreign Influence), the Government has established its case. Applicant admits that he has two sisters, a brother, and a brother-in-law who are citizens of, and residents in, Vietnam, and that he maintains regular contact with them. He further admits that he has a sister and a brother who are citizens of Vietnam, but who currently live with him in the United States. These facts raise a security concern under Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1 (*[a]n 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*).

When the Government's initial burden has been met and a disqualifying condition raised, as here, the burden shifts to the Applicant to go forward with evidence in rebuttal, explanation, or mitigation which is sufficient to overcome or outweigh the Government's case. As such, it is his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him a security clearance; this includes presenting sufficient evidence to warrant application of Adjudicative Guidelines mitigating conditions, to warrant favorable conclusions under the general factors of Directive, Section 6.3 and Enclosure 2, Item E2.A2.1.3, or both. Here, he has directly demonstrated that his mother is a naturalized U.S. citizen, thus rebutting one portion of the allegation set forth in subparagraph 1.d of the SOR. Other than that one issue, however, he has failed to address or provide any information or evidence on any allegation or individual named in the SOR.

As a consequence, the record is as silent as to Applicant's foreign family members as it is to his relationship with them. This silence results in a record devoid of additional facts, mitigating or otherwise. ⁽⁸⁾ Because he has failed in his burden to show that any of the mitigating conditions apply, I find for the Government with regard to subparagraphs 1.a through 1.d of the SOR. ⁽⁹⁾

Additionally, I have considered the Applicant under the "whole person" concept and note that although there is no basis in the record to question Applicant's character or integrity, the DOHA Appeal Board has determined that even good people can pose security risks. ⁽¹⁰⁾ Having considered carefully all of the facts and circumstances herein, I conclude that Applicant has failed to carry his burden. Consequentially, I find that Applicant has failed to mitigate FI DC E2.A2.1.2.1.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.2.5 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: 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 for Applicant.

Arthur E. Marshall, Jr.

Administrative Judge

1. The FORM was incorrectly dated as February 8, 2004, rather than February 8, 2005.

2. ⁰ The government submitted 5 items in support of its case.

3. The original SOR, at subparagraph 1.d, included Applicant's mother as one of those family members who reside with him, but is a citizen of Vietnam. As shown by Applicant, she had become a naturalized U.S. citizen prior to

the issuance of the SOR. Applicant's Response to the SOR (dated October 27, 2004), at 2.

4. The record does not indicate whether this man is his wife's sibling or the spouse of one of his sisters.

5. Directive, Enclosure 2, Attachment 2, Guideline B, ¶ E2.A2.1.1.

6. ⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

7. ⁰ *Id.*, at 531.

8. *e.g.* whether the family members are not agents of a foreign power or in a position to be exploited.

9. To the extent that 1.d. excludes applicability to Applicant's mother.

10. ISCR Case No. 01-26893 (October 16, 2002), at 8.