

KEYWORD: Foreign Influence

DIGEST: Applicant is one of many boat people who left Vietnam after the collapse of South Vietnam in 1975. He is a 39-year-old man who, at the age of 18, fled Vietnam in 1984. He was allowed to immigrate to the U.S. as a refugee and has since obtained a college education, registered for the selective service, and is now a U.S. citizen. He is employed as a structural analyst for a large defense contractor. The majority of Applicant's family have since immigrated to the U.S., however, he has two sisters who are presently resident citizens of Vietnam. Based on the record evidence as a whole, Applicant has successfully mitigated the security concern of foreign influence based on his family ties to Vietnam. Clearance is granted.

CASENO: 04-03461.h1

DATE: 4/17/2006

DATE: April 17, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-03461

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is one of many boat people who left Vietnam after the collapse of South Vietnam in 1975. He is a 39-year-old man who, at the age of 18, fled Vietnam in 1984. He was allowed to immigrate to the U.S. as a refugee and has since obtained a college education, registered for the selective service, and is now a U.S. citizen. He is employed as a structural analyst for a large defense contractor. The majority of Applicant's family have since immigrated to the U.S., however, he has two sisters who are presently resident citizens of Vietnam. Based on the record evidence as a whole, Applicant has successfully mitigated the security concern of foreign influence based on his family ties to Vietnam. Clearance is granted.

STATEMENT OF THE CASE

On March 24, 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.

Applicant replied to the SOR on April 15, 2005, and requested a hearing. Department Counsel indicated he was ready to proceed on May 18, 2005, and the case was assigned to me July 7, 2005. On July 20, 2005, DOHA issued a notice of hearing scheduling the hearing for September 28, 2005. The hearing 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 six exhibits, which were marked as Government Exhibits (GE) 1 through 6, without objection. Applicant presented nine exhibits, which were marked as Applicant Exhibits (AE) A through I, without objection. DOHA received the transcript (Tr.) of the proceedings on October 11, 2005.

FINDINGS OF FACT

In his Answer, Applicant admitted the SOR allegations. His admissions are incorporated into my findings, and 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. In making this finding, I note that English is not Applicant's native language and some allowances have been made for potential communication problems.

Applicant is one of many boat people who left Vietnam after the collapse of South Vietnam in 1975. He is 39 years old, married, and the father of two young native-born U.S. citizen children. Like Applicant, his wife is a native of Vietnam and she is now a U.S. citizen. He is seeking to obtain a security clearance, for the first time, in conjunction with his employment as a structural analyst for a defense contractor. Applicant's assignments and upward mobility will be limited without the ability to work in a classified environment. AE C.

Before the collapse of South Vietnam, Applicant's father was employed as a policeman, whose salary was paid by the U.S. Army. Because Applicant's father had received a salary from the U.S. Army, he was sent to a reeducation camp. When the war ended in 1975, thousands of South Vietnamese - including former members of the military and former U.S. government employees - were sent to "reeducation camps" where most were detained for many years under harsh conditions.

Applicant's father was sent to a reeducation camp for seven days, a relatively short period when compared to others. Upon his release from reeducation camp, Applicant's father was issued a Reeducation Certificate in August 1975. Included among the conditions of his release were: "Must follow the rules of the government. Always accept being educated from the government and the people of the community. Must become a good person." Response to SOR. Even though Applicant's father was "reeducated," his options and those of his family under communist Vietnam were limited.

In 1984, the then 18-year-old Applicant elected to leave Vietnam when the opportunity presented itself. At the time he left, he spent his mornings going to school and his afternoons selling rice bags at a local market. Applicant befriended his "big boss" at the local market and the "big boss" offered to pay Applicant's passage by boat out of Vietnam if Applicant agreed to accompany the "big boss"' children. The journey by boat out of Vietnam was harrowing and fraught with danger. One night under cover of darkness, the "skipper," Applicant and 17 fellow passengers left Vietnam in a "big boat" bound for Malaysia.

On the first day of their journey and still within sight of land, their boat began taking on water and the motor failed. When the boat encountered these difficulties, the "skipper" decided to abandon ship and swam ashore leaving his 18 passengers to their fate. Applicant and his fellow passengers decided to press on. They rigged up a makeshift sail made

from their clothing and continuously bailed out water. At sea for seven days without food or water, exhausted and near death, they encountered a fishing boat. The captain of the fishing boat informed the 18 passengers they had two choices -- either pay him to take them to Malaysia or he would turn them over to the authorities. Applicant and his fellow passengers were able to meet the financial demands of the captain and were taken to Malaysia. Applicant and his fellow passengers ultimately landed in a refugee camp in Malaysia and went their separate ways.

After Applicant arrived in Malaysia, Applicant was interviewed by U.S. authorities and found eligible to apply for a visa to the U.S. under the Orderly Departure Program. He spent six weeks studying English in the Philippines after leaving Malaysia. In September 1986, Applicant immigrated to the U.S. He attended a university from September 1990 to March 1993, and in June 1993 was awarded a bachelor of science degree with a major in mechanical engineering. In April 1992, he became a naturalized U.S. citizen.

From June 1996 to April 2001, he was married to his first wife and that marriage ended by divorce. Applicant married his second wife in November 2001 and, as indicated above, they have two small children. His current wife became a naturalized U.S. citizen in July 1999. Applicant's wife also works for the same employer as he does. Jointly, they make a comfortable middle class salary. They own a home and maintain all of their investments and banking in the U.S. Neither Applicant nor his wife have any financial interests in Vietnam.

In April 2003, Applicant completed a security-clearance application. AE 1. In it, he revealed, among other things, his birth in Vietnam, that he obtained U.S. citizenship, and that he had immediate family members who are Vietnamese citizens residing in Vietnam. He also indicated he had registered, as required by federal law, with the U.S. Selective Service System.

In January 2004, Applicant was interviewed by a special agent of the Defense Security Service (DSS), and the interview produced a sworn statement. AE 2. The statement is quoted in full:

I do not have any ties to the government or affiliation to any businesses in Viet Nam. The only contact I have is with my family in Viet Nam by phone and mail and I talk to them twice yearly. I have no allegiance to any country besides the US. I cannot be coerced or blackmailed into divulging classified or sensitive information. I consider myself to be a loyal US citizen.

Applicant understands that he must report any threat incident to his security officer immediately.

Apart from his wife and two children, Applicant's immediate family consists of his parents, four sisters and two

brothers. Since becoming a U.S. citizen, Applicant has successfully sponsored his parents, two of his four sisters, and one of his two brothers to the U.S. His other brother also left Vietnam separately by boat, immigrated to the U.S., became a U.S. citizen, earned a college degree, and is a successful civil engineer. Applicant's father became a naturalized U.S. citizen in March 2001. His mother, and two of his sisters are registered aliens and plan to take the U.S. citizenship exam when able. His remaining brother is a naturalized U.S. citizen serving in the U.S. Navy and is currently forward deployed in a combatant ship. Applicant's parents and two sisters reside with him and his wife.

Applicant provided an explanation in his Response to SOR explaining why his resident alien family members reside with him.⁽²⁾ Again, noting English is Applicant's second language, it is quoted verbatim below:

I am trying to explain to you the reasons why my mom and sister currently are residing with me. I am doing my job to keep my responsibility when I signed the Affidavit of Supports to support my parent and my sister. But I am very happy if my sister can take care of herself, and the same for my old-sick parent so they can move out and to be independent. Have you ever thought about three women working on the same kitchen and I am the one having big headache. I am talking about my wife, my sister, and my mom. Once a while, I have a big headache to be a middle man when my mom, my wife, and my sister have a fight. What should I do? My sister wants to move out long time ago and wants to take care of my parent but she is not being able to do that. If she can find a good job or get marry to a rich guy, she will move out immediately, trust me.

Applicant has two remaining sisters in Vietnam.⁽³⁾ Applicant's father has completed all the necessary paperwork for them to immigrate to the U.S. It is only a matter of time before Applicant's two sisters in Vietnam join the family in the U.S. Response to SOR, Tr. 31. For employment, both sisters in Vietnam sell rice bags at the local market. They have no connection with the Vietnamese government or military or with any organization or company that would have an interest in U.S. classified information. Applicant speaks to his sisters on the telephone approximately two times per year and maintains contact vicariously with his sisters in Vietnam through his parents, who telephone them at least once a month. Tr. 40.

Since fleeing Vietnam in 1984, Applicant has returned twice in 1993 and in 1996, as a U.S. citizen using a U.S. passport. The purpose of the first trip was to visit his family and it was during that visit he met his first wife. The purpose of the second trip was to marry his first and now ex-wife. She joined him in the U.S. the following year, and as previously indicated that marriage ended in divorce. Applicant had no problems or difficulties with Vietnamese officials during these two trips.

On July 11, 1995, President Clinton announced the formal normalization of diplomatic relations with Vietnam. That process continues.

Applicant enjoys an excellent reputation at work with his superiors and co-workers. His supervisor noted that Applicant

has worked for him since October 2003 and stated Applicant "has been a positive influence to my organization. His integrity and ethical behavior has been a model to his fellow team members and has proven to be a highly dependable employee." AE C. His personnel file going back to November 1996 is replete with similar comments. It is clear that Applicant has made a contribution to the defense industry and his supervisor opines that contribution will increase if granted a clearance. AE B through I.

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.⁽⁴⁾ There is no presumption in favor of granting or continuing access to classified information.⁽⁵⁾ The government has the burden of proving controverted facts.⁽⁶⁾ The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than a preponderance of the evidence.⁽⁷⁾ The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.⁽⁸⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁹⁾ 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.⁽¹⁰⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹¹⁾

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."⁽¹²⁾ 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 two sisters who are citizens of and residents in Vietnam. He maintains contact with them by semi-annual telephone calls and vicariously through his parents who telephone them monthly. (No doubt the relationships with his siblings have grown distant since he left Vietnam in 1984). His two trips to Vietnam are also evidence of his family ties. Taken together, these circumstances raise a security concern under DC 1. [\(13\)](#)

I have reviewed the MC under Guideline B and conclude that MC 1 [\(14\)](#) applies for Applicant. The record evidence shows that Applicant's family members are not Vietnamese agents or agents of any other foreign power, [\(15\)](#) 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 family members 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.

In addition to MC 1, MC 5 [\(16\)](#) applies for Applicant, as neither he nor his wife has any financial interests in Vietnam. They earn their incomes by working hard for the same U.S. employer, and they own a home and maintain 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 high. It is difficult to fully appreciate the gravity of his decision, at the age of 18, to leave his immediate family and flee Vietnam for a possibility of becoming a U.S. citizen. Indeed, it was a potential life-and-death decision. The journey Applicant took leaving Vietnam by boat was fraught with danger and uncertainties. He, like many of his countrymen, risked everything seeking a better life in the U.S.

Second, Applicant's ties or connections to the U.S. are strong. He has lived in the U.S. for essentially his entire adult life. Since his arrival here, Applicant can fairly be described as a model immigrant. He registered with the selective service, obtained a college education, and is employed as a structural analyst. Moreover, his 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 a : For the Applicant

Subparagraph b: For the Applicant

Subparagraph 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. 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 he wrote this in April 2005, his second sister had not joined his household.
3. One of his sisters has immigrated to the U.S. since Applicant's SOR was issued in March 2005.
4. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
5. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
6. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
7. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).
8. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
9. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
10. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
11. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
12. *Egan*, 484 U.S. at 528, 531.
13. 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."
14. 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."
15. *See* 50 U.S.C. § 1801(b), which defines the term of art "agent of a foreign power."
16. E2.A2.1.3.5. "Foreign financial interests are minimal and not sufficient to affect the individual's security

responsibilities."