

KEYWORD: Foreign Influence

DIGEST: Applicant's foreign family ties have been mitigated and do not raise a security concern. Clearance is granted.

CASENO: 04-04355.h1

DATE: 06/23/2005

DATE: June 23, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04355

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's foreign family ties have been mitigated and do not raise a security concern. Clearance is granted.

STATEMENT OF THE CASE

On September 23, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on October 1, 2004, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on November 19, 2004. A notice of hearing was issued on December 16, 2004, scheduling the hearing for January 18, 2005. At the hearing the Government presented three exhibits. The Applicant presented no exhibits but testified on his own behalf. The official transcript (Tr.) was received on January 31, 2005.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 52 years of age. He holds a Bachelor's Degree in Engineering. He is employed as a Senior Manufacturing Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Vietnam in 1952. In the early 1970's, he served in the South Vietnamese Air Force. He escaped from Vietnam by plane in 1975 seeking freedom and democracy. He became a United States citizen in 1984. He married and had one child who was born in the United States. In 2000, he divorced his wife. He remarried a United States citizen. In 1985, the Applicant was granted his first security clearance. He was granted another security clearance in 2004. He has never committed a security violation.

The Applicant's mother, his six brothers and sisters and six half-brothers and half-sisters, are all citizens of Vietnam and reside there. The Applicant explained that prior to 1954 it was Vietnamese tradition for a man to have two wives. The Applicant's father had two wives. The Applicant's mother is 72 years old and lives in South Vietnam. She is a diabetic. She has no source of income and is in need of financial assistance. The Applicant sends his mother in Vietnam \$500.00 twice a year to help pay for her medication and support. He has been doing this for the past ten years. The Applicant's father escaped from Vietnam in 1979, and went to Switzerland. Three of the Applicant's brothers recently moved to Switzerland with the Applicant's father.

In 1993, the Applicant visited Vietnam for the first time, eighteen years since he separated from his family and left in 1975. The Applicant contacts his family members in Vietnam by e-mail on occasion. His most recent trip to Vietnam was sometime between December 2004 and January 2005. During that visit, his second wife met his mother in Vietnam. The Applicant had no contact with any Government officials during his visits to Vietnam.

None of the Applicant's family members in Vietnam have ever been affiliated with, employed for, or agents of, the Vietnamese Government, Swiss Government or members of the Communist Party.

The Applicant and his wife own a house worth approximately one million dollars. (Tr. p. 25). They have no assets in Vietnam.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

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: (1) not citizens of the United States or (2) 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.

Condition that could raise a security concern:

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;

Conditions that could mitigate security concerns:

1. A determination that immediate family member(s), spouse, father, mother, sons daughters, brothers, sisters), cohabitant, or associates(s) in questions 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) and the United States;
3. Contact and correspondence with foreign citizens are casual and infrequent.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances

- b. The circumstances surrounding the conduct, to include knowledgeable participation

- c. The frequency and recency of the conduct

- d. The individual's age and maturity at the time of the conduct

- e. The voluntariness of participation

- f. The presence or absence of rehabilitation and other pertinent behavior changes

- g. The motivation for the conduct

- h. The potential for pressure, coercion, exploitation or duress

- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination

under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline B (Foreign Influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign influence has a direct and negative impact on his suitability for access to classified information.

The Applicant was born in Vietnam. In 1975, he escaped from Vietnam to come to the United States seeking freedom and democracy. He has lived the American dream. He obtained a college education, a good job, a family and a home in the United States. He considers himself only an American citizen. Although his immediate family, including his mother, siblings and half-siblings are citizens of and reside in Vietnam, except for his mother, the Applicant has limited contact with them. The Applicant's father now resides in Switzerland. None of the Applicant's family members in Vietnam or his father in Switzerland, have ever been affiliated with, employed for, or agents of, the Chinese Government, Swiss Government or members of the Communist Party. Therefore, mitigating condition 1 applies, *A determination that immediate family member(s), spouse, father, mother, sons daughters, brothers, sisters), cohabitant, or associates(s) in questions 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) and the United States.*

In addition, the Applicant's contact with his family in Vietnam is limited and very infrequent. Mitigating condition 3 also applies, *Contact and correspondence with foreign citizens are casual and infrequent*. The Applicant has significant assets in the United States and none in Vietnam. Other than his mother, to whom he voluntarily sends \$1,000.00 a year to help pay for her medicine and support, the Applicant has no ties to Vietnam. The Applicant credibly testified that there is no situation that could ever occur that would force him to reveal classified information to any unauthorized individual no matter what their relationship to the Applicant. He has no foreign ties or contacts that could potentially influence him. Therefore, I find that there is no situation that could create the potential for foreign influence that could result in his compromise of classified information. Accordingly, the Applicant's request for a security clearance must be granted under Guideline B.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subparas. 1.a.: For the Applicant

1.b.: For the Applicant

1.c.: For the Applicant

1.d.: For the Applicant

1.e.: For the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge