

KEYWORD: Foreign Influence

DIGEST: Applicant is one of many Vietnamese who immigrated to the U.S. after the collapse of South Vietnam in 1975. Arriving in the U.S. in 1990 at age 20 with her parents and three of her siblings, Applicant and her family quickly assimilated in their adopted country. Today, Applicant is a 35-year-old college educated woman working as a utility developer for a defense contractor as a U.S. citizen. Her husband, like herself, immigrated to the U.S. in 1994, and also became a U.S. citizen. Both families left behind several family members in Vietnam creating foreign influence concerns. Based on the record evidence as a whole, Applicant has successfully mitigated the security concern of foreign influence based on her family ties to Vietnam. Clearance is granted.

CASENO: 04-04417.h1

DATE: 03/30/2006

DATE: March 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04417

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is one of many Vietnamese who immigrated to the U.S. after the collapse of South Vietnam in 1975. Arriving in the U.S. in 1990 at age 20 with her parents and three of her siblings, Applicant and her family quickly assimilated in their adopted country. Today, Applicant is a 35-year-old college educated woman working as a utility developer for a defense contractor as a U.S. citizen. Her husband, like herself, immigrated to the U.S. in 1994, and also became a U.S. citizen. Both families left behind several family members in Vietnam creating foreign influence concerns. Based on the record evidence as a whole, Applicant has successfully mitigated the security concern of foreign influence based on her family ties to Vietnam. Clearance is granted.

STATEMENT OF THE CASE

On April 7, 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 her 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 18, 2005, and requested a hearing. Department Counsel indicated he was ready to proceed on June 2, 2005, and the case was assigned to me on June 8, 2005.

On July 8, 2005, DOHA issued a notice of hearing scheduling the case to be heard on August 3, 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 three exhibits, which were marked as Government Exhibits (GE) 1 through 3, without objection. Applicant presented six exhibits, which were marked as Applicant Exhibits (AE) A through F,

without objection. I left the record open to allow Applicant the opportunity to submit additional matters. Applicant timely submitted one additional exhibit, which was marked AE G, without objection. DOHA received the transcript on August 17, 2005.

FINDINGS OF FACT

In her Answer, Applicant admitted the SOR allegations. Her 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 her 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 a 35-year-old married woman seeking to obtain a security clearance, for the first time, in conjunction with her employment as a utility developer for a defense contractor. She has been employed by this company since September 2001. Applicant has held an interim secret clearance since March 2002. Tr. 15.

In December 1990, the then 20-year-old Applicant, along with her parents, three brothers, and a sister left Vietnam under the Orderly Departure Program. Because Applicant's father had served in the South Vietnamese Air Force, he was sent to a "reeducation camp" for six years. 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. When Applicant's father was released from reeducation camp, he was sick and frail. He returned home where he helped raise the family and spent his time working in the garden. While Applicant's father was in a reeducation camp, her mother was responsible for supporting five children. She worked full-time as an English teacher and earned extra income by teaching English to people desiring to escape to the U.S. Tr. 46.

Because of her father's service in the South Vietnamese Air Force, the family was subjected to harsh treatment by the Communist government. None of Applicant's siblings were allowed to attend college and the children of people similarly situated had limited opportunities. After graduating from high school, Applicant found her only option was to stay home and cook for the family.

Applicant's family recognized their limited future in Vietnam and decided to move to the U.S. They left behind Applicant's older married sister, age 43 ⁽²⁾. This sister was settled in her life at the time and working as an accountant for

the same construction company as her then-husband. This sister divorced her husband two years ago and has a pending application to immigrate to the U.S. Also, left behind was Applicant's 96-year-old retired grandmother, two single retired school teacher aunts, ages 63 and 58, a 56-year-old married uncle employed by the local water company, a 53-year-old married uncle employed as a farmer, a 42-year-old married sister-in-law employed as a nurse, and a 37-year-old married brother-in-law employed as a teacher. Like Applicant's sister, her brother-in-law and sister-in-law have pending applications to immigrate to the U.S. AE G.

On March 25, 1996, all family members who immigrated to the U.S. from South Vietnam to include Applicant, her parents, three brothers, and sister were administered their oath of citizenship and became naturalized U.S. citizens. Two years later, Applicant graduated from college and was awarded a bachelor of arts degree in June 1998.

In June 2001, Applicant married her spouse, who like herself had immigrated to the U.S. from Vietnam. His situation was similar to Applicant's in that his father was employed by the South Vietnamese government before 1975. After the Communists took over, he was sent to a reeducation camp "a couple months more than my dad." Tr. 20. In May 1994, under the Orderly Departure Program, eight of Applicant's in-laws arrived in the U.S. to include her father-in-law (now deceased), her mother-in-law, four brothers-in-law, her spouse, and one sister-in-law. In September 2001, three more of Applicant's in-laws arrived in the U.S. to include her brother-in-law, and two sisters-in-law. As indicated above, one sister-in-law remained in Vietnam, who is a married 42-year-old nurse, and a married 37-year-old teacher.

Applicant's husband became a naturalized U.S. citizen in December 2003. Applicant's mother-in-law and father-in-law became naturalized U.S. citizens in February 2003, and April 2000, respectively. Also, one of Applicant's brothers-in-law became a naturalized U.S. citizen in February 2003.

Applicant testified in response to how she felt being in the U.S. and being a U.S. citizen: "I feel like this whole thing is a new life for me. When I was young, I could never imagine one day I would, you know, live in a different area or a different country. It's a change, a big change for me, and it's a better change, I believe, better than the life that I had there in Vietnam." Tr. 36-37.

Applicant testified she would not provide classified information to anyone trying to exert influence through her remaining family members in Vietnam and added that she would report such an attempt to her company security officer. Tr. 37.

Applicant has telephone contact with her sister in Vietnam approximately every two weeks. Applicant's grandmother lives with her two aunts and she estimates she calls their house every four to six weeks.

None of Applicant's relatives living in Vietnam have connections with the Vietnamese government or military or with any organization or company that would have an interest in U.S. classified information. Applicant has no assets of any sort in Vietnam.

As a sign of respect and to help, Applicant sends money to her sister. The amount varies, but ranges from \$200.00 to \$500.00 annually. Applicant provides no financial assistance to other remaining family members.

Since becoming a U.S. citizen, Applicant has registered to vote and has voted two times. She has also served on jury duty once. Applicant supports her husband, who is college. She hopes some day to purchase a home when she can afford one. She conducts all of her banking in the U.S.

Since leaving Vietnam in 1990, Applicant has returned to Vietnam once accompanied by her husband to visit family in 2004, as U.S. citizens using their U.S. passports. The primary purpose of the trip was to visit her elderly grandmother. Neither Applicant nor her husband had any problems or difficulties with Vietnamese officials during this trip.

On July 11, 1995, President Clinton announced the formal normalization of diplomatic relations with Vietnam. That process continues. GE 2, GE 3.

Applicant enjoys an excellent reputation with her employer. Adjectives used by her superiors and colleagues include, "conscientious and intelligent," "thorough and comprehensive," "incredibly reliable and valuable member," "technical knowledge is superb," "strong ethics and high moral character," and "always attentive and vigilant in her duties." AE C, AE D, AE E, AE F.

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 her sister, grandmother, uncle, two aunts, brother-in-law, and sister-in-law who are resident citizens of Vietnam. She has contact with her sister through periodic telephone calls and to a lesser

extent with her grandmother and two aunts. Her one trip to Vietnam is also evidence of 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 family members 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, her 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, her family members are not in a position where they could be subject to exploitation.

In addition to MC 1, MC 5 [\(15\)](#) applies for Applicant, as neither she nor her husband has any financial interests in Vietnam. Applicant earns her her income by working hard for a U.S. employer. Their limited financial interests are all vested 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 her family's situation having seen their father sent to a reeducation camp for six years. While her father was in a reeducation camp, her mother struggled to make a living teaching English full and part-time. When released from reeducation camp, her father was a sick and frail man. Seeing limited opportunities in Vietnam, the family immigrated to the U.S. in 1990.

Second, Applicant's ties or connections to the U.S. are strong. She has lived in the U.S. since she was 20 years old, which essentially accounts for her adult life. The vast majority of her relatives and in-laws live in the U.S. Three of her remaining relatives remaining in Vietnam have pending applications to immigrate to the U.S. Since her arrival here, Applicant can fairly be described as a model immigrant. She obtained a college education, and is employed as a utility developer. She has exercised her civic responsibility by voting and serving on jury duty. Moreover, her 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 successfully mitigated the foreign influence security concern raised by her family ties to Vietnam. Accordingly, Guideline B is decided for Applicant.

To conclude, Applicant has met her 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

Subparagraph 1.c: For the Applicant

Subparagraph 1.d: 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. Ages listed are real time ages as of Decision date.

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.A2.1.3.5. "Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities."