

KEYWORD: Foreign Influence

DIGEST: Applicant is a naturalized United States citizen who fled his native Cambodia in 1974. He traveled to Cambodia in 1995, 2001, and 2003, the last trip to honor his deceased mother by placing her bones and ashes in a kiosk in accord with Cambodian custom. While his four sisters are resident citizens of Cambodia, he does not correspond with them and does not intend to travel to Cambodia to visit them in the future. The foreign influence concerns are mitigated by the absence of a close bond with his siblings, who are neither agents of a foreign power nor in positions where they are likely to be exploited. Clearance is granted.

CASE NO: 04-05638.h1

DATE: 05/23/2006

DATE: May 23, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-05638

**DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

**APPEARANCES**

**FOR GOVERNMENT**

Daniel F. Crowley, Esq., Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant is a naturalized United States citizen who fled his native Cambodia in 1974. He traveled to Cambodia in 1995, 2001, and 2003, the last trip to honor his deceased mother by placing her bones and ashes in a kiosk in accord with Cambodian custom. While his four sisters are resident citizens of Cambodia, he does not correspond with them and does not intend to travel to Cambodia to visit them in the future. The foreign influence concerns are mitigated by the absence of a close bond with his siblings, who are neither agents of a foreign power nor in positions where they are likely to be exploited. Clearance is granted.

### STATEMENT OF CASE

On May 2, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed 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.

(1) DOHA recommended referral to an administrative judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on foreign influence (Guideline B).

On May 12, 2005, Applicant responded to the SOR and requested a hearing. The case was assigned to me on November 7, 2005. On November 10, 2005, I scheduled a hearing for December 6, 2005. At the hearing, three government exhibits (Exhibit 3 over Applicant's objection), and one Applicant exhibit were admitted, and testimony was taken from Applicant and a coworker. (2) At the government's request and over Applicant's objections, I agreed to take administrative notice of three publications of the U.S. Department of State: *Country Reports on Human Rights Practices-2004 Cambodia*, dated February 28, 2005, *Background Note: Cambodia*, dated October 2005, and *Consular Information Sheet Cambodia*, dated June 15, 2005 (information current as of October 26, 2005). A transcript of the proceedings was received on December 19, 2005.

## FINDINGS OF FACT

DOHA alleged foreign influence concerns because Applicant's four sisters are resident citizens of Cambodia, and he traveled to Cambodia in 1995, 2001, and 2003. Applicant admitted the allegations but denied any contact with his sisters since his trip in 2003, which was to honor his deceased mother by placing her bones and ashes in a kiosk in accord with his religious obligation and Cambodian custom. His admissions are accepted and incorporated as findings of fact. After a thorough review of the evidence of record, I make the following additional findings:

Applicant is a 54-year-old electrical designer employed by a defense contractor since about August 2003. He holds a confidential clearance and seeks a secret clearance for his duties.

Applicant was born in Cambodia in February 1952, the seventh of eight children born to rice farmers. A very good student, he attended a university in Cambodia and was about to graduate with a bachelor's degree in engineering when the Cambodian monarch was deposed by General Lon Nol. Applicant was forced to join the army of Lon Nol. He served as a captain in an engineering brigade from late 1972 until early summer 1974. With the Khmer Rouge forces gaining strength and Lon Nol's control reduced to small enclaves around the cities and major transportation routes, Applicant deserted Lon Nol's army and fled, at significant peril to his life, for a refugee camp in Thailand.<sup>(3)</sup> His parents and siblings remained in Cambodia.

Applicant arrived in the refugee camp in Thailand with no paperwork, but he was aided by a U.S. military captain, who recognized Applicant from his service in the Lon Nol army. After about 14 months in the refugee camp, Applicant immigrated to the U.S. in 1975 under the sponsorship of the International Rescue Committee. He learned to read and write English at a community college while working as a cleaner at a retail store, and began his career in electrical drafting and design in the early 1980s. He met his spouse, a recent emigree from Cambodia, and they married in the U.S. in August 1982. They have two children who are both U.S. citizens from birth, a son born in 1985 and a daughter born in 1988.

Every six months after his arrival in the U.S., Applicant attempted to locate his family members in Cambodia, initially through the United Nations and then the Red Cross. Sometime in the early 1980s, with the brutal Khmer Rouge regime no longer in power and the country occupied by the Vietnamese, he received a letter showing that his mother was still alive, but with little for clothing or food. Applicant was unable to assist her.

In July 1990, Applicant and his spouse became naturalized U.S. citizens, taking an oath to renounce all foreign allegiances, to support and defend the U.S. Constitution and its laws, and to bear arms or perform noncombatant service

or civilian service on behalf of the U.S. if required. Applicant obtained his U.S. passport shortly thereafter.

With the aid of the international community, a multiparty liberal democracy in the framework of a constitutional monarchy was established in Cambodia in September 1993.<sup>(4)</sup> In 1995, Applicant received a letter from Cambodia indicating that his mother was ill. Since his relatives are illiterate, Applicant surmised that they must have hired someone to write the letter for them. He traveled to Cambodia on his U.S. passport, primarily to visit his mother. He was introduced to his sisters, whom he did not recognize as he had not seen them in 20 years. Applicant's mother informed him that his father and brothers had been killed after he escaped, his brothers in front of their mother, and that his father had been tortured by the previous regime in an effort to find Applicant.

Applicant's mother came to the U.S. in 1996 under Applicant's sponsorship. She stayed with Applicant and his spouse for no more than a year. With Applicant and his spouse both employed, his mother went to live with an extended relative in the U.S. She returned to Cambodia after about a four-year stay in the U.S.

In 2001, Applicant received a letter notifying him that his mother was very ill and wanted to see him. Applicant and his spouse entered Cambodia on their U.S. passports in late August, only for Applicant to learn that his mother had died before they could see her. He met with his sisters on that trip, and he and his spouse attempted without success to obtain documentation of his engineering degree from the Cambodian university before they left the country.

In early May 2003, Applicant returned to Cambodia without his spouse to honor his duty and Cambodian tradition by placing his mother's ashes in a kiosk. Applicant stayed in Cambodia about 13 days and saw his sisters only on the day of the ceremony.<sup>(5)</sup> He spent the remainder of his time sightseeing.

Applicant considers it to be a privilege to be a U.S. citizen and he does not intend any further travel to Cambodia. He does not have any ongoing contact with his sisters in Cambodia, who are 58, 65, 70 and 72 years old. They work in the rice fields and do not have telephones, and he does not know their current addresses. Applicant does not write letters to his siblings and he has not notified them of his current address. They neither read nor write.

Applicant is regarded as a conscientious and hardworking employee by his supervisor and by the coworker who has worked alongside him for at least 14 months as of December 2005. Applicant has complied with all company guidelines, including those pertaining to security.

In contrast to the Cambodia Applicant left in 1974, the country's political situation is relatively stable. It has an elected government headed by a monarch with a constitution that provides for a wide range of internationally recognized human

rights. While there has been some restriction on mass media, the U.S. State Department also reports a marked improvement since 1993. Cambodia has established diplomatic relations with most countries, including the U.S., and is a member of the World Bank, the International Monetary Fund, the Asian Development Bank, and the World Trade Organization. The U.S. normalized diplomatic relations with Cambodia in 1993. The Cambodian government was reported to have a poor human rights record with some killing of political activists as of February 2005, but there is no indication of any espionage activities by Cambodia directed against the U.S. [\(6\)](#)

## POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authorities to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

After considering all the evidence in this case, the following adjudicative guideline is pertinent:

**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 obligations 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. (¶ E2.A2.1.1.)

## CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of Applicant, I conclude the following with respect to Guideline B:

As of May 2003, Applicant's four sisters were resident citizens of Cambodia. Applicant had not heard of any change in his sister's situations by December 2005. Disqualifying condition ¶ 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*, applies. Under the Directive, the foreign influence concerns raised by the foreign citizenship and foreign residency of these family members may be mitigated where it can be determined they 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 Applicant to choose between loyalty to them and the United States (*see* MC E2.A2.1.3.1.). Applicant's sisters are subsistence rice farmers who lack basic literacy skills. Nothing about their situations suggests they have ever been agents of a foreign power or are in positions where they are likely to be exploited.

In assessing whether the foreign residency and citizenship of these siblings present an unacceptable security risk, the Administrative Judge must consider the evidence as a whole. Despite Cambodia's violent past and some ongoing human rights abuses, Cambodia and the U.S. have full diplomatic relations. Applicant reasonably may benefit by the absence of evidence that the government pressures its citizens to gain U.S. economic or military intelligence. Accordingly, Cambodia is not likely to jeopardize its standing in the international community and the foreign assistance it continues to require. Should any undue pressure or influence be brought to bear on his foreign relatives, Applicant is not likely to choose his sisters over his obligation to the U.S. Despite their years of forced separation, Applicant felt a bond of obligation, if not affection, toward his mother sufficient to travel to Cambodia when she was ill and to return there after her death to place her ashes in a kiosk. However, he does not share the same level of affection or obligation for his sisters. He visited with his siblings when he was in Cambodia, but has not seen his eldest sister since 2001 or the others since 2003. Applicant has not corresponded with them by telephone or letter since his last trip, which was solely to honor his mother's memory. Contact with foreign citizens is mitigated where it is casual and infrequent (*see* E2.A2.1.3.3.). There is a rebuttable presumption that contacts with immediate family members are not casual. <sup>(7)</sup> Applicant's contacts with his siblings do not even rise to the level of casual and infrequent.

Applicant's ties to the U.S. are relevant in assessing whether he is in a position to be forced to choose between his family members and his obligations to the United States. Applicant made a life-altering choice to flee Cambodia, at significant peril, more than 30 years ago. With the assistance of a U.S. military officer, he immigrated to the U.S. where he married, raised children, and became a productive member of the workforce. Applicant is not likely to jeopardize the security of his immediate family members by succumbing to any undue foreign influence on siblings with whom he has no direct contact. Any concerns about Applicant increasing his personal vulnerability by traveling to Cambodia are mitigated by the fact that he does not intend to travel to Cambodia in the future. SOR ¶¶ 1.a. and 1.b. are resolved in Applicant's favor.

## **FORMAL FINDINGS**

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

Paragraph 1. Guideline B: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: 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.

**Elizabeth M. Matchinski**

**Administrative Judge**

1. The SOR was issued under the authority of Executive Order 10865 (as amended by Executive Orders 10909, 11328, and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4).
2. With the assent of Department Counsel, this coworker assisted Applicant in the presentation of his case as well as testified as a character reference.
3. Applicant testified he had been captured but managed to escape the "killing machine" by crawling among the dead bodies in the field and then laying among the lily pads and dead bodies in the river until he passed out in fear at the border only to wake up in a small countryside hospital. (Tr. 50-53)
4. *See* the U.S. State Department's Background Note: Cambodia, dated October 2005.

5. Applicant testified that he did not see his oldest sister during his last visit to Cambodia ("But the third time , missed the old one; I don't know where she go."). *See* Tr. 72.
6. Neither the U.S. State Department's *Background Note: Cambodia* nor its *Country Report on Human Rights Practices-2004*, indicate any efforts by Cambodia to obtain U.S. military or intelligence information.
7. *See* DOHA Appeal Board's decision in ISCR Case No. 02-15339, dated April 29, 2004.