

KEYWORD: Foreign Influence

DIGEST: The Applicant was an officer in the South Vietnamese Air Force, who had to flee Vietnam with the fall of Saigon in 1975. His 88 year old mother is a citizen of and resides in Vietnam. He sends her between \$100~\$200 every two to four months to help with her medical expenses. The Applicant returned to Vietnam from December of 1997 to January of 1998 to attend his father's funeral. He has three sisters and one brother, who are also citizens of and reside in Vietnam. He has seen them once in 30 years. The Applicant's brother is a truck driver. The Applicant also has a 16~17 year old niece who is a citizen of and resides in Vietnam. None of the Applicant's foreign relatives is connected with any foreign government, nor are they subject to coercion. Mitigation is shown. Clearance is granted.

CASENO: 04-05804.h1

DATE: 10/04/2005

DATE: October 4, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-05804

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Candice Le'I, Esquire , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant was an officer in the South Vietnamese Air Force, who had to flee Vietnam with the fall of Saigon in 1975. His 88 year old mother is a citizen of and resides in Vietnam. He sends her between \$100~\$200 every two to four months to help with her medical expenses. The Applicant returned to Vietnam from December of 1997 to January of 1998 to attend his father's funeral. He has three sisters and one brother, who are also citizens of and reside in Vietnam. He has seen them once in 30 years. The Applicant's brother is a truck driver. The Applicant also has a 16~17 year old niece who is a citizen of and resides in Vietnam. None of the Applicant's foreign relatives is connected with any foreign government, nor are they subject to coercion. Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On April 26, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 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.

Applicant filed an Answer to the SOR on May 13, 2005.

The case was received by the undersigned on July 19, 2005. A notice of hearing was issued on August 8, 2005, and the case was heard on August 25, 2005. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on September 14, 2005. The issue raised here is whether the Applicant's perceived Foreign Influence militates against the granting of a security

clearance. [The Applicant admits the underlying factual basis of all of the allegations.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 57 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

Guideline B - Foreign Influence

The Applicant was an officer in the South Vietnamese Air Force (TR at page 15 lines 5~8, and at page 26 line 14 to page 27 line 4). In 1975, he was forced to flee Vietnam with the fall of Saigon (*Id*).

1.a. and 1.e. The Applicant's 88 year old mother is a citizen of and resides in Vietnam (Government Exhibit (GX) 1 at page 4, TR at page 15 lines 4~11, and at page 24 lines 7~15). He sends her between \$100~\$200 every two to four months to help with her medical expenses (TR at page 18 lines 6~8).

1.b., 1.c. and 1.f. The Applicant has three sisters and one brother, who are citizens of and reside in Vietnam (GX 1 at page 4, TR at page 16 line 20 to page 17 line 23, at page 20 line 16 to page 21 line 3, and at page 24 line 16 to page 26 line 2). One sister takes care of the Applicant's mother, and the other two sisters live in Saigon (*Id*). The Applicant's brother is a truck driver (TR at page 20 lines 16~21). The Applicant has seen his siblings once in 30 years, when he returned to Vietnam from December of 1997 to January of 1998 to attend his father's funeral (GX 1 at page 5, and TR at page 18 line 9 to page 19 line 2). The Applicant has no intention of visiting Vietnam again (TR at page 19 lines 15~23). None of the Applicant's foreign relatives has any connection to the government of Vietnam or to any other foreign government (TR at page 21 lines 4~11, and at page 27 lines 5~8).

1.d. The Applicant has a 16~17 year old niece who is a citizen of and resides in Vietnam (TR at page 21 lines 12~18, and at page 26 lines 3~13).

Mitigation

Those who know and work with the Applicant think most highly of him (Applicant's Exhibit A at pages 3~9).

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a 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.

The Government must make out a case under Guideline B (foreign influence), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an 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 disqualifying conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who is subject to a foreign influence, 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

The Applicant came to the U.S. in 1975; as he was an officer in the South Vietnam Air Force, and was forced to flee Vietnam with the fall of Saigon. However, the Applicant's mother, three sisters, brother, and a niece are citizens of and reside in Vietnam. The first disqualifying condition under Foreign Influence is therefore applicable as "[a]n immediate family member . . . is a citizen of . . . a foreign country." Except for his 88 year old mother and the one sister who takes care of their mother, the Applicant has little contact with these foreign relatives. None of the Applicant's immediate family member is connected with any government, and there is no evidence that their presence in Vietnam can be exploited by any government. In addition, I conclude that it would be unlikely that the Applicant would even consider any such attempt at exploitation. The first mitigating condition is therefore applicable as "the immediate family members . . . 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 persons involved and the United States." Mitigation is shown. Guideline B is found in the Applicant's favor.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his alleged foreign influence. The Applicant has thus met the mitigating conditions of Guideline B, and of Section E.2.2. of the Directive.

Accordingly, he has met his ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.
- f. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

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

Richard A. Cefola
Administrative Judge