

KEYWORD: Foreign Influence

DIGEST: Applicant's foreign contacts include his spouse, his mother and nine siblings who are citizens of Viet Nam. His mother and siblings reside in Viet Nam. These foreign contacts do not pose a security risk. Clearance is granted.

CASENO: 04-08738.h1

DATE: 01/17/2006

DATE: January 17, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-08738

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Department Counsel

FOR APPLICANT

Hoa Van Tran, Attorney At Law

Phu Do Nguyen, Attorney At Law and Interpreter

SYNOPSIS

Applicant's foreign contacts include his spouse, his mother and nine siblings who are citizens of Viet Nam. His mother and siblings reside in Viet Nam. These foreign contacts do not pose a security risk. Clearance is granted.

STATEMENT OF THE CASE

On May 24, 2005, 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 June 6, 2005, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned Administrative Judge on September 15, 2005. A notice of hearing was issued on October 15, 2005, scheduling the hearing for November 29, 2005. At the hearing, the Government presented six exhibits. The Applicant presented sixteen exhibits. The Applicant called one witness and testified on his own behalf. The official transcript was received on December 12, 2005.

FINDINGS OF FACT

The Applicant is 55 years old and married. He has a Bachelor's Degree in Agriculture and is employed by a defense contractor as an Electronic Technician, and is seeking to retain his security clearance in connection with his employment.

The Government opposes the Applicant's request for a continued security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

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 Viet Nam in 1950. He grew up, and worked as a farmer. From 1974 to 1975, he was employed with the Forest Department for the South Vietnamese government. In search of freedom and a better life, in 1978, he escaped Viet Nam as a boat refugee and went to Hong Kong. In 1981, he came to the United States. Seven years later, in November 1988, he became a United States citizen. Since coming to the United States, he has returned to Viet Nam, only once in 1997, to see his ailing father before he died. The Applicant states that he has no intention of ever returning to Viet Nam.

The Applicant's wife is a citizen of Viet Nam, but resides with the Applicant in the United States. She has been a United States resident since 1998. She applied for her United States citizenship in 2005, and is currently studying for the history test. (See Applicant's Exhibit A). The Applicant and his wife have two children who were born in the United States.

The Applicant's mother and nine siblings, three brothers and six sisters, are citizens of and reside in Viet Nam. His father passed away in 1998. (See Applicant's Exhibit B). His mother is an elderly, retired housewife who lives in the countryside with one of the Applicant's brothers. The Applicant contacts her by telephone about four times a year. His brothers are all farmers. His sisters are all married and their spouses are farmers. The Applicant's parents-in-law live in the same general area as his mother. He contacts them by telephone about twice a year. The Applicant sends a total of about \$1,500 a year to his mother and in-laws for the Vietnamese holidays.

His father-in-law was at one time a Staff Sergeant in the South Vietnamese Army. He is now retired. His in-laws own a house in Viet Nam and are financially self-sufficient. In 2002, the Applicant sponsored his in-laws to come to the United States to visit.

None of the Applicant's family in Viet Nam work for or are associated in any way with the Vietnamese government or the communist party. They are all farmers who are self-sufficient and do not receive any financial support from the Applicant. They do not know what the Applicant does for a living other than the fact that he works for a factory, or private company. The Applicant testified that under any situation he would never divulge classified, government

protected information. If the Applicant's family were placed in a vulnerable position requiring that the Applicant divulge classified information or his family in Viet Nam would be harmed, he would refuse.

The Applicant's wife testified and corroborated all of her husband's testimony. (Tr. p. 56-57).

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 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 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 the loyalty of the person(s) involved and the United States.

3. Contacts 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 has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. Foreign influence can raise questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. 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 contacts have a direct and negative impact on his suitability for access to classified information.

With respect to Guideline B, the evidence establishes that the Applicant's foreign ties do not subject him to foreign influence. The Applicant left Viet Nam in 1978, and came to the United States in search of freedom and to escape the Communist regime. Since then, he has had very little contact with his family in Viet Nam. Mitigating condition (3) *contact and correspondence with foreign citizens are casual and infrequent* clearly applies in this case. The Applicant's mother, nine siblings and in-laws who are citizens of, and reside in Viet Nam, are not associated with the Vietnamese Communist government in any way, nor are they in a position to be exploited in any way that could force the Applicant to choose between loyalty to them and loyalty to the United States. Mitigating condition (1) *a determination that 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 person and the United States*, also applies in this case. Based on the foregoing, Guideline B is found for the Applicant.

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.

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 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