

DATE: December 27, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09406

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

After graduating from high school, the Applicant fled Vietnam as a "boat person" in 1981. His 73 year old father worked for the South Vietnamese government; and as such, the Applicant's entire family are treated as second class citizens. His father was sent to a re-education camp. He and the Applicant's brother make a living by repairing mopeds. The Applicant mother is a housewife. The Applicant's two sisters have been approved to immigrate to the U.S. One sister makes a living by selling decals. The other lives at home with the Applicant's parents. The Applicant sends his family \$200 each year, and has visited them in 1999 and in 2001. None of the Applicant's foreign relatives are connected to any foreign government, nor are they the subject of coercion vis-a-vis the Applicant. Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On August 2, 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 August 16, 2005.

The case was received by the undersigned on September 22, 2005. A notice of hearing was issued on October 11, 2005, and the case was heard on October 31, 2005. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on November 8, 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 43, 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

After graduating from high school, the Applicant fled Vietnam as a "boat person" in 1981 (TR at page 13 line 17 to page 14 line 21, and at page 24 lines 5~14). He was naturalized as a U.S. citizen in 1987 (Government Exhibit (GX) 1 at page 1). He attended and graduated from an American university in 1991 (*Id.*, and TR at page 15 lines 9~13). He married a naturalized U.S. citizen that same year (GX 1 at page 3). They have two native born American children (TR at page 15 lines 9~13).

1.a.~1.c. The Applicant's 73 year old father worked for the South Vietnamese government; and as such, the Applicant's entire family are treated as second class citizens in Vietnam (TR at page 14 line 22 to page 15 line 9, at page 16 line 12 to page 20 line 2, and at page 21 lines 13~2). Because of his former employment, his father was sent to a re-education camp (*Id.*). The Applicant's father and the Applicant's brother make a living by repairing mopeds (*Ibid.*). The Applicant's 60 year old mother is a housewife (TR at page 18 lines 10~16). The Applicant's two sisters have been approved to immigrate to the U.S. (TR at page 21 lines 13~2). One sister makes a living by selling decals (TR at page 18 line 20 to page 19 line 21). The other lives at home with the Applicant's parents (*Id.*).

The Applicant sends his family \$200 each year, and has visited them in 1999 and in 2001 (TR at page 20 line 21 to page 21 line 11, at page 15 lines 14~25, and at page 21 line 23 to page 22 line 24).

Mitigation

The Applicant's Section Manager thinks most highly of the Applicant (Applicant's Exhibit (AppX) A).

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 1981 as a "boat person." However, the Applicant's parents, two sisters, and a brother 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." Because of the Applicant's father's former employment with the South Vietnamese government, they live as second class citizens in Vietnam. 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 (TR at page 22 line 25 to page 23 line 22, and at page 24 line 15 to page 25 line 1). 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.

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