

KEYWORD: Foreign Influence

DIGEST: Based on the totality of circumstances, Applicant mitigated foreign influence security concerns raised by the Vietnamese citizenship and residency of his parents and siblings. Clearance is granted.

CASE NO: 05-04278.h1

DATE: 05/12/2006

DATE: May 12, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-04278

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Francisco J. Mendez, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Based on the totality of circumstances, Applicant mitigated foreign influence security concerns raised by the Vietnamese citizenship and residency of his parents and siblings. Clearance is granted.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. In accordance with Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan 2. 1992), as amended, DOHA issued a Statement of Reasons (SOR) on 30 September 2005 detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on 17 October 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on 17 February 2006. On 4 April 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 19 April 2006.

### **FINDINGS OF FACT**

Applicant is a 36-year-old senior design engineer for a defense contractor. He is married and has one child. His wife is a registered nurse.

Applicant was born in Vietnam in 1969 of Vietnamese parents. Before the fall of South Vietnam to the Communists in 1975, Applicant's father worked for the fire and police departments. In 1985, before he was 16 years old, Applicant escaped in a boat to an Indonesian refugee camp. He was eventually permitted to enter the U.S. Through a charity program, he went to live with foster parents. He completed high school and graduated from university in the U.S. He

became a U.S. citizen in June 1995 and was issued a U.S. passport.

Because Applicant escaped from his birthplace, Vietnamese authorities forced his mother to perform public work without pay. Applicant's parents are now 80 years old. They have no pension, but are supported financially by their four sons and three daughters who are Vietnamese citizens and residents. Applicant's oldest brother tried to escape in 1978, but was captured and detained by the Vietnamese government from 1978-80. Since 1975, none of Applicant's parents or siblings have worked for any governmental entity. His brothers and sisters are farmers and tailors.

Applicant is married to a naturalized U.S. citizen who was born in Vietnam. All of her family members are U.S. citizens. Applicant and his wife have one child, a daughter, who was born in the U.S. in 2003. Applicant owns a home in the U.S. All of the couple's assets are in the U.S., and they do not provide financial support for any persons outside the U.S. Since his arrival in the U.S., Applicant visited Vietnam once, from December 2001 to January 2002; he visited his parents without any adverse incidents with Vietnamese authorities. He has no plans to return to Vietnam. Although he has not had much contact with his parents in the last 20 years, he still feels close to them. Nevertheless, he believes his work and family in the U.S. are more important than his family in Vietnam.

Applicant has no contact with his siblings. He talks to his parents via telephone twice a year, on holidays. They do not know what he does for a living or that he is applying for a security clearance. He knows and understands his duties to protect classified information and "the circumstances and responsibilities incumbent on him as a result." ISCR Case No. 03-17620 (App. Bd. Apr. 17, 2006).

Vietnam is a "one-party state, ruled and controlled by the Communist Party of Vietnam." Ex. 4 at 1. The government's human rights record is poor. *Id.* Access to consular officers for those the Vietnamese government considers citizens is especially difficult regardless of proof of U.S. citizenship. Ex. 3 at 7. The government has opened and censored mail and monitored telephone conversations, electronic mail, and facsimile transmissions. Ex. 4 at 6. Over the past 15 years, relations between the U.S. and Vietnam have improved considerably.

## 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 authority 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 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

## CONCLUSIONS

In the SOR, DOHA alleged Applicant's parents (¶ 1.a), four brothers and three sisters (¶ 1.b), and three sisters<sup>(1)</sup> (¶ 1.c) are citizen residents of Vietnam; and Applicant traveled to Vietnam from December 2001 to January 2002 to visit his family (¶ 1.d). In his Answer, Applicant admitted each of the allegations. A security risk may exist when an applicant's immediate family, or other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the U.S. or may be subject to duress. Such situations could create the potential for foreign influence that could result in the compromise of classified information. Directive ¶ E2.A2.1.1.

The evidence established that Applicant has immediate family members-his parents, four brothers and three sisters-who are citizens and residents of Vietnam. DC E2.A2.1.2.1. None of the other disqualifying conditions under Guideline B apply. An Applicant may mitigate security concerns raised by immediate family members being citizens and residents of a foreign country by establishing that these family members are neither agents of a foreign power nor in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to his foreign associates and loyalty to the U.S. MC E2.A2.1.3.1. Applicant's family members are not agents of a foreign power. *See* 50 U.S.C. §§ 438, 1801(b)(1).

In determining whether Applicant's foreign contacts are in a position to be exploited by a foreign power, it is important to consider a broad range of factors, including the identity of the foreign power, and whether the foreign power is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism. An administrative judge must also consider the country's human rights record and its differences with the U.S. on important security issues such as terrorism. *See* ISCR Case No. 02-13595 (App. Bd. Jun. 3, 2005). The evidence established that Vietnam has a poor human rights record. However, U.S./Vietnamese relations have been improving since 1989. After carefully reviewing all of the evidence, I am unable to apply MC E2.A2.1.3.1 to Applicant's case. The presence in Vietnam of his entire family, especially his parents, to whom he still feels close, places them in a position to be exploited.

"Although the position of an applicant's foreign family members is significant and may preclude the favorable application of [MC E2.A2.1.3.1], the totality of an applicant's conduct and circumstances (including the realistic potential for exploitation) may still warrant a favorable application of the relevant general factors." ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006); *accord* ISCR Case No. 03-23259 at 3 (App. Bd. May 10, 2006). In this case, those circumstances include the length of time Applicant has been a U.S. citizen, the number of years he has held a security clearance, if any, without adverse incident, favorable character references, his financial status and the existence of any foreign assets, his understanding of the security concerns raised by his circumstances, and his knowledge of and willingness to undertake necessary security procedures should such action be warranted. *Id.* Applicant has been in the U.S. more than 20 years and has been a U.S. citizen for more than 10 years. All of his assets are in the U.S. and he does not provide financial assistance to his family in Vietnam. He has significant ties to the U.S.-his wife's family members, to whom he has ties of obligation-are all citizens and residents of the U.S. He has infrequent contact with his family members in Vietnam, and they are unaware of his employment status. Although he has not held a security clearance in the past, he understands the security concerns presented by his circumstances and his responsibilities concerning holding a clearance. Under all of these circumstances, I find for Applicant.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

### **DECISION**

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

JAMES A. YOUNG

Administrative Judge

1. Applicant has three sisters. The three sisters referenced in SOR ¶ 1.c are the same three sisters referenced in ¶ 1.b.