

KEYWORD: Foreign Influence

DIGEST: Applicant is 40 years old and works as a software engineer for a defense contractor. Born and raised in South Vietnam, he emigrated to this country with his mother and siblings. Today, he is a naturalized United States citizen. Remaining in the Socialist Republic of Vietnam are his grandmother, step-mother, and father, who in earlier years bribed government officials to keep his sons from obligatory military service. Applicant introduced no evidence and presented little argument to mitigate security concerns raised by foreign influence. Clearance is denied.

CASE NO: 05-13945.h1

DATE: 05/30/2006

DATE: May 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-13945

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

D. Michael Lyles, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 40 years old and works as a software engineer for a defense contractor. Born and raised in South Vietnam, he emigrated to this country with his mother and siblings. Today, he is a naturalized United States citizen. Remaining in the Socialist Republic of Vietnam are his grandmother, step-mother, and father, who in earlier years bribed government officials to keep his sons from obligatory military service. Applicant introduced no evidence and presented little argument to mitigate security concerns raised by foreign influence. Clearance is denied.

STATEMENT OF THE CASE

On February 6, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR). That SOR detailed reasons why, pursuant to Guideline B (Foreign Influence), it 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 Applicant. In his response, dated February 23, 2006, Applicant admitted to five of the six allegations contained in the SOR, and denied the remaining allegation. Additionally, he requested an administrative determination based on the written record.

The Government's case was submitted on April 3, 2006, and a complete copy of the file of relevant material (FORM)⁽¹⁾ was provided to Applicant. He received a copy of the FORM on April 4, 2006, and was afforded the opportunity to file objections and submit evidence in refutation, extenuation, or mitigation. He declined to submit any responsive information within 30 days after receipt of the FORM. I was assigned this case on May 22, 2006.

FINDINGS OF FACT

Applicant's admissions to five of the six allegations set forth in the SOR are incorporated herein. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 40 years old and works as a software engineer for a defense contractor. He has been employed by his current employer since March 2000. He was born and raised in Saigon before South Vietnam's absorption into the Socialist Republic of Vietnam. Although service in the Vietnamese Army is mandatory for males 18 to 25 years of age, neither Applicant nor his three brothers served. Because his parents did not want their sons fighting in Cambodia, and because his parents were planning on moving the family to the United States (U.S.), they bribed government officials so their sons could avoid military service. The bribery continued until the men reached the age of 25 or emigrated. (2) His parents succumbed to bribery because they had been told by a relative living in the U.S. that Applicant would only be eligible to come to the U.S. if he was single and had not served in the Vietnamese military. No repercussions have thus far occurred due to the bribery.

By 1991, Applicant's parents had divorced. Applicant emigrated to the U.S. with his mother, three brothers, and a sister. After arriving, he worked at various jobs. From 1993 to 1997, he worked in the food industry while attending community college. There, he met his future wife, also from Vietnam. He continued his education and earned a bachelor of science degree in 1999 while working in his present field. In 1998, he became a naturalized U.S. citizen. He married in December 1999.

Having embraced the U.S. and renounced his former citizenship, Applicant has stated that he has no intention of returning to Vietnam. He has not traveled abroad since arriving in the U.S. in 1991. He does not have any financial ties or interests abroad. Applicant's loyalty and allegiance lies with the U.S. His only connection with Vietnam is through family ties.

Applicant's wife and mother reside in the U.S. as Vietnamese citizens. His wife, however, is currently a U.S. resident alien and is in the process of seeking U.S. citizenship. Her parents live in the U.S., but she has two brothers remaining in Vietnam. She speaks to them once or twice a year by telephone. His mother is a U.S. permanent resident. She has not proceeded further toward U.S. citizenship because she has not been able to pass the English language requirements.

When Applicant emigrated to the U.S. with his mother, they were accompanied by his three brothers and a sister. In a 2001 interview, Applicant implied that his siblings are naturalized U.S. citizens. (3) In his answer to the SOR allegation

that an unspecified sibling is a citizen of Vietnam, he replied that his sibling is a citizen of the U.S. There is no indication which sibling is the subject of either the SOR allegation or Applicant's answer. ⁽⁴⁾

Remaining in Vietnam are Applicant's father, grandmother, and step-mother. The three live together. His father is a college professor. Applicant sends his father \$25 a month to help with living expenses. When friends of Applicant's mother visit Vietnam once or twice each year, Applicant and his siblings give them money to give to their father. This amounts to approximately \$200 per visit. His father has visited the U.S. on three occasions, in 1995, 1998, and 2001. Twice he came to conduct academic research under the sponsorship of an American professor. On the third occasion, he and his second wife came for the marriage of one of his sons. Despite his parents' divorce, the family remains close. Applicant's mother has visited her ex-husband on three occasions. Aside from his father's visits to the U.S., Applicant's only contact with his father is an annual phone call.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. ⁽⁵⁾ The government has the burden of proving controverted facts. ⁽⁶⁾ The burden of proof is something less than a preponderance of evidence. ⁽⁷⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him. ⁽⁸⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. ⁽⁹⁾

No one has a right to a security clearance ⁽¹⁰⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." ⁽¹¹⁾ Any reasonable doubt about whether an applicant

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should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. [\(13\)](#)

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.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline B - 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 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.

Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions below.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all legal precepts, factors, and conditions, I find the following with respect to the allegations set forth in the SOR:

With respect to Guideline B (Foreign Influence), the Government has established its case. Applicant admits that his father, grandmother, and step-mother are residents and citizens of Vietnam. The citizenship and residency of these family members raises a security concern under Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1 (*[a]n 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*). [\(14\)](#)

When, as here, the Government's initial burden has been met and a disqualifying condition raised, the burden shifts to

the Applicant to go forward with evidence in rebuttal, explanation, or mitigation which is sufficient to overcome or outweigh the Government's case. With regard to his father, Applicant has stated only that he is a college professor. Whether he works for a private or government controlled university is not explained.⁽¹⁵⁾ The only other fact mentioned regarding his father is that he bribed Vietnamese officials to let his sons avoid military service. In so doing, he made himself potentially vulnerable to further exploitation by that government. As for his grandmother and step-mother, no facts about them have been given. Therefore, it is unknown whether either of the women has a relationship with the government of Vietnam, is dependent on that government, or is otherwise in a position to be exploited by that government. Because Applicant has failed to provide any substantial facts regarding these individuals upon which security risk assessment can be made, Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1 (*[a] determination that the family member(s), (spouse, father, mother, sons, daughters, brothers, sons), 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 loyalty to the person(s) involved and the United States*) cannot be applied.

Applicant has failed to describe his relationship with his father, mother-in-law, or grandmother. He has stated that he has an annual telephone call with his father, sends him a nominal sum of money every month, and contributes with his siblings once or twice a year to send a monetary gift. The father has visited his family in the U.S. twice during business and once for the marriage of one of Applicant's brothers. The family is sufficiently close that Applicant's mother has visited her ex-husband in Vietnam. Little else is known. Again, Applicant has failed to provide sufficient facts or testimony to examine the relationship between himself and his father, step-mother, and grandmother. Based on the scant evidence proffered by Applicant, mitigation under FI MC E2.A2.1.3.3 (*[c]ontact and correspondence with foreign citizens are casual and infrequent*) cannot be applied. No other mitigating circumstance applies.

I have considered both the record evidence and Applicant in light of the "whole person" concept. I have also considered the country at issue, the Socialist Republic of Vietnam, an authoritarian state where political control rests in the Communist Party. Applicant is an educated professional whose statement to the Defense Investigative Service demonstrated devotion to the U.S. and general candor. That does not preclude the Government from considering whether his facts and circumstances pose a security risk.⁽¹⁶⁾ Because foreign influence raises a security concern with regard to the potential compromise of classified information, it is incumbent upon the Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to demonstrate that his family ties and his parents' past acts of bribery do not place him in a position of vulnerability. It is also his burden to demonstrate that it is clearly consistent with the national interest to grant him a security clearance.⁽¹⁷⁾ Applicant, in response to the SOR, provided no evidence and little argument to diminish or remove security concerns. Because any doubts must be resolved in favor of the national security, I find all the allegations, except 1.d of the SOR, in the Government's favor. Clearance is denied.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.2.5 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: For the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is denied.

Arthur E. Marshall, Jr.

Administrative Judge

1. ⁰ The Government submitted 7 items in support of its case.
2. The FORM materials, specifically the Applicant's Security Clearance Application, only indicate the age of one sibling, born in 1963. The age of the other two brother is unknown. Inasmuch as Applicant notes that none of his three brothers served in the Vietnamese military, it is assumed they either reached 25 or emigrated before that age.
3. After noting that an aunt who recently arrived in the U.S. was still a Vietnamese citizen, he stated that all his "other relatives living in the US are naturalized US citizens. Defense Investigative Service interview statement, dated November 9, 2001.

4. The FORM, itself, fails to identify the sibling at issue.
5. ISCR Case No. 96-0277 at 2 (App Bd Jul 11, 1997).
6. ISCR Case No. 97-0016 at 3 (App Bd Dec 31, 1997), Directive, Enclosure 3, ¶ E3.1.14.
7. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
8. ISCR Case No. 94-1075 at 3-4 (App Bd Aug 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
9. ISCR Case No. 93-1390 at 7-8 (App Bd Jan 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
10. *Egan*, 484 U.S. at 531.
11. *Id.*
12. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
13. Executive Order 10865 § 7.
14. Applicant provides no documentation to substantiate his claim that his spouse is now a U.S. citizen and his mother is a permanent resident in the U.S. Moreover, as noted, *supra*, the SOR lacks specificity as to which sibling is alleged to not be a U.S. citizen. Given the ultimate disposition of the case and for the sake of brevity, however, this decision will proceed on the assumption that Applicant is correct with regard to his wife and sibling, and that his mother poses no significant threat as a permanent U.S. resident.
15. The Government argues that in Vietnam, the government and military control the educational system. At page 5 of the FORM, its points to Item 8 for substantiation. The Government's assertion may well be true and, assuming Applicant's father does not work for a private institution, its point may be valid. The FORM, however, only includes seven attached items.
16. ISCR Case No. 01-26893a at 8 (Oct 16, 2002).
17. *See, e.g.*, ISCR Case No. 99-0424, 2001 (App. Bd. Feb. 8, 2001), at 9, (*mere possession of family ties with persons in a foreign country is not, as a matter of law, automatically disqualifying under Guideline B. However, the possession of such ties does raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.*)(emphasis added)

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