

KEYWORD: Foreign Influence

DIGEST: Applicant is 49 and was born in the U.S. His sister moved to Israel five years ago. Their contacts are infrequent. His Vietnam-born wife is a U.S. citizen. They have two small children. His wife's parents, brother and an acquaintance are citizens/residents of Vietnam. Applicant's relationships with them are not close. Applicant's lifelong personal, emotional, financial, and other ties are almost exclusively with this country. He has had extensive security training over the past 27 years. His dedication to this country is attested to by his Facility Security Officer and two other colleagues. He avers, and the overall evidence establishes, that he is a man of integrity who can be counted upon to report any improper contacts. Mitigation has been shown. Clearance is granted.

CASENO: 06-25059.h1

DATE: 05/31/2007

DATE: May 31, 2007

In Re:)	
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-----)	ISCR Case No. 06-25059
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF BARRY M. SAX
ADMINISTRATIVE JUDGE**

APPEARANCES

FOR GOVERNMENT

Jeff Nagel, Esquire, Department Counsel

FOR APPLICANT

Per Se

SYNOPSIS

Applicant is 49 and was born in the U.S. His sister moved to Israel five years ago. Their contacts are infrequent. His Vietnam-born wife is a U.S. citizen. They have two small children. His wife's parents, brother and an acquaintance are citizens/residents of Vietnam. Applicant's relationships with them are not close. Applicant's lifelong personal, emotional, financial, and other ties are almost exclusively with this country. He has had extensive security training over the past 27 years. His dedication to this country is attested to by his Facility Security Officer and two other colleagues. He avers, and the overall evidence establishes that he is a man of integrity who can be counted upon to report any improper contacts. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On January 24, 2007, 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, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked. On February 26, 2007, Applicant responded to the SOR and requested a hearing before a DOHA Administrative Judge. The matter was originally assigned to another Administrative Judge who issued a Notice of Hearing on April 13, 2007. The matter was transferred to me on April 19, 2007. The hearing was conducted on May 11, 2007. The Government introduced one (1) exhibit (Government's Exhibit (GX) 1) and several Official Notice documents. Applicant testified, and called three other witnesses. The transcript was received on May 24, 2007.

FINDINGS OF FACT

Applicant is a 49-year-old software engineer for a defense contractor. The SOR contains five (5) allegations under Guideline B (Foreign Influence). Applicant admits all five allegations, which are accepted and incorporated herein as Findings of Fact.

After considering the totality of the evidence, I make the following additional FINDINGS OF FACT as to the status of each SOR allegation.

Guideline B (Foreign Influence)

- 1.a. - Applicant's parents-in-law are citizens and residents of Vietnam.
- 1.b. - Applicant's brother-in-law is a citizen and resident of Vietnam.
- 1.c. - Applicant's sister is a native born U.S. citizen who has lived in Israel for the past five years. She holds dual U.S. and Israeli citizenship.
- 1.d. - Applicant's acquaintance is a citizen and resident of Vietnam. He works for the

Vietnamese government as an air traffic controller. They are not close and their contacts are infrequent and casual.

I.e. - Applicant traveled to Vietnam in at least March 2000 (on business for his company) and in February 2002, May 2003, and September 2004 to visit his wife's parents.

Applicant is a native-born U.S. citizen, born in 1957. He graduated from an American university in 1980, and has worked for the past 27 years for the same defense contractor, where is now a Senior Software Engineer. He has held a DoD security clearance for the past 27 years, with no suggestion in the record that he has ever violated any company or DoD security protocols. Three work colleagues are aware of his foreign ties and attest to his integrity and dedication to the U.S.

His parents are United States citizens born in Israel (then British-ruled Palestine) in the 1930s. He met his current wife in Vietnam in 2000, while he was there on company business (Tr at 21). She was born in Vietnam in 1974. They were married in 2002. She became a U.S. citizen in 2006 and lives with Applicant in the United States. She is proud to be an American and would not do anything to jeopardize her citizenship or her family's well being (Tr at 22). They have two children, born in the U.S. in 2003 and 2005 (Tr at 22). She sends about \$200.00 per month to her parents in Vietnam. Applicant's net worth is about \$600,000.00, all of which is in the United States. He has no financial or other interests in either Israel or Vietnam (Tr at 23).

POLICIES

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security." Viewed in an overall context, under E2.2.3. of the Directive, the ultimate determination of whether the granting or continuing of eligibility for a security clearance is clearly consistent with the interests of national security must be an *overall common sense determination* based upon careful consideration of the

following, each of which is to be evaluated in the *context of the whole person*. Explained further below (emphasis added):

The Whole Person Concept: Under Enclosure 2 of the Directive at page 18, Section 2: the DoD adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated 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.

In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors: (a)(1) the nature, extent, and seriousness of the conduct; (a)(2) the circumstances surrounding the conduct, to include knowledgeable participation; (a)(3) the frequency and recency of the conduct; (a)(4) the individual's age and maturity at the time of the conduct; (a)(5) the extent to which the conduct is voluntary; (a)(6) the presence or absence of rehabilitation and other permanent behavioral changes; (a)(7) the motivation for the conduct; (a)(8) the potential for pressure, coercion, exploitation, or duress; and (a)(9) the likelihood of continuation or recurrence. I have carefully considered all none factors and find them all to be favorable to Applicant's position.

An Administrative Judge must also consider the Disqualifying and Mitigating Conditions for the specific Guideline(s) cited in the SOR. In the present case, only Guideline B (Foreign Influence) is alleged.

CONCLUSIONS

A careful analysis of the SOR and record shows that only Guideline B is alleged, and that the Government's concern is primarily focused not on any questionable conduct by Applicant but, rather, on the fact and circumstances of his relationships with relatives in Israel and Vietnam.

Foreign Influence - The Concern: Foreign contacts and interests may be a security concern if the individual has divided loyalties or financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

I have carefully considered all of the official notice documents submitted by Department Counsel and have considered the allegations against Applicant in the context of how the U.S. Government views Israel and Vietnam.

Israel

Israel is a traditional ally of the United States and has been active for many years in joint programs involving weaponry and the sharing of intelligence. At the same time, Israel is recognized by the U.S. Government as being an active information gatherer outside of official channels in the U.S., although none of the reported incidents appear to have involved threats, coercion, or pressure.

Applicant's only family, personal, or emotional connection to Israel is the presence there of his sister, who is about 47 and moved to Israel about five or six years ago, after her divorce (Tr at 41). Applicant has no significant financial or other ties to Israel (Tr at 16). His parents left Israel more than half a century ago, and became U.S. citizens in 1958. They are U.S. citizens only (GX 1). Applicant does not consider himself to be, or ever to have been, a dual citizen the U.S. and Israel. He is a product of American society, having grown up here and been educated in American schools. He has not visited Israel in the past seven years. He and his sister have "drifted apart" and they are "not close" (Tr at 16, 41-44). Most contact with his sister is by e-mail once or twice a year (Tr at 16). She comes periodically to visit their parents who live in the U.S. She is also a citizen of the U.S. and can return here anytime (Id.). He does not believe she is in a "position to be exploited by the Israeli government" (Tr at 17).

VIETNAM

Applicant's wife was born in Vietnam in 1974 (GX 1). They met during Applicant's first business trip to Vietnam in 2000. They married in 2002. She moved to the U.S. with Applicant, and became a naturalized U.S. citizen in 2006. They have two children who were born in the U.S. in 2003 and 2005 (Tr at 16). When they last traveled to Vietnam to see her family, she used her new U.S. passport. They have never been questioned by Vietnamese authorities (Tr at 39). She is happy to live in the U.S. and happy that her children are growing up here rather than in Vietnam. Applicant does not believe she would jeopardize their future here by pressuring him to supply information to any foreign government (Tr at 16).

His acquaintance in Vietnam is an air traffic controller (Tr at 32-38). He is actually a friend of his wife. Applicant and the acquaintance have not had mail or phone contact for about four years (Tr at 17). They have met when Applicant and his wife have visited Vietnam, but they "do little beyond greeting each other" (Id.). When anyone in Vietnam asks what he does, he describes himself simply as "an engineer" (Tr at 18). Applicant is aware that Vietnam remains under Communist government but nothing in the Official Notice documents cites Vietnam as "associated with the risk of terrorism" (Id.). In addition, the Official Notice documents do not describe Vietnam as active in espionage or information gathering in the U.S.

Applicant graduated from an American university in 1980 and has worked for the same contractor in the defense industry ever since, at all time holding a DoD security clearance. He has attended "enumerable security and counterintelligence briefings and has had no security problems" (Tr at 19). He has been successfully reinvestigated for his security clearance twice (Id.). He credibly avers that if asked by any relative in Israel or Vietnam, he would report the contact to his Facility Security Officer (Tr at 21, 45-47).

Applicant's Facility Security Officer (FSO) has known him for 26 years and is not aware of any security-related problems (Tr at 43). The company is highly rated by DoD as to the security education of employees (Tr at 49). On recross-examination, the FSO testified there was no doubt

in her mind that Applicant would do the right thing if he was ever contacted (Tr at 50). A second work colleague knows Applicant well and states that Applicant would not be influenced by family contacts and is “very determined about what he thinks is right and wrong and would not do anything he thinks is wrong” (Tr at 53). He agrees with the FSO that Applicant is no threat to national security (Tr at 52). Another colleague has known Applicant for about 20 years has worked with Applicant on classified programs. He concurs that Applicant is “not a threat to national security” (Tr at 54, 55).

It is a reality that family ties and personal contacts in any foreign country may raise some questions and that the issue becomes of even higher significance if the foreign country is one viewed by the U.S. Government as either hostile to the United States or one in which persons or organizations exist that act against U.S. interests or that target U.S. citizens to obtain protected information and/or is associated with terrorism. After a thorough reading of the Official Notices documents and other information and arguments provided by Department, I find no reasonable basis for concluding that Applicant’s specific ties to either Israel or Vietnam are a disqualifying factor under the specific facts and circumstances of this case.

In addition, the language of the current Directive, which applies to all SOR issued after September 1, 2006, is significantly different from the previous version in several important aspects. I have considered Disqualifying Condition (DC), which state: 7.(a) applies if the foreign contact “creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion.” DC 7.(b) applies if a foreign contact creates a potential conflict between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help the foreign contact by providing that information.

Mitigating Conditions authorize consideration of whether 8.(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely that the person will be placed in a position of “having to choose between the interests of a foreign the interests of the U.S.,” and 8(b) there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, group, government, or country is so minimal or the individual has such deep and longstanding relationships and loyalties to the U.S., that the individual can be expected to resolve any conflict of interests in favor of the U.S.

Disqualifying Conditions: 7.(a) contacts with a foreign family member, business or professional associate, friend or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion 7.(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or inducement.

Mitigating Conditions: 8.(b) - there is no conflict of interests, either because the individual’s sense of loyalty or obligation to the foreign person, group, government, or country is minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interests.

Applicant was born in the United States almost 50 years ago, grew up and was educated here, and has worked on contracts requiring a security clearance for the past 27 years. I view the evidence

supporting the SOR allegations under both the Foreign Influence guideline and the Directive's "whole person" concept.

It is a fact that Applicant's sister is a dual citizen of the United States by birth and Israel because her parents were born there, in the 1930s (GX 1), when it was still part of what was then British-controlled Palestine. Applicant's travel information (*Id.*, at Item 16), does not show any travel to Israel. This and his testimony about his contacts with his sister do not suggest close ties to Israel or the existence of any plausible risk of the concerns cited in the Guideline C Concerns.

It is also a fact that Applicant met his wife while on company business in Vietnam in 2000 and that his travel there in 2002, 2003, and 2004, was related to their growing relationship, marriage in 2002 and visits to her family in 2003 and 2004. They do not speak English and he speaks only a few words of Vietnamese. The \$200.00 per month his wife sends to her parents is the only financial connection between the United States to Vietnam. In any case, the \$200.00 is minimal in relationship to his \$600,000.00 net worth in the United States and is not considered to have any security significance.

It is basic to the adjudication process that the ultimate burden of proof is on the Applicant and that any doubts must be resolved against the granting of a clearance. In this case, there is nothing in the evidence establishing whether or not Applicant's relatives in Israel and Vietnam might be agents of the foreign governments or are in a position to be used, voluntarily or not, and knowingly or not, to seek to persuade Applicant to act against U.S. security interests. To the degree that there is a risk, it is a hypothetical one, based primarily on the undisputed presence of the relatives in Israel and Vietnam, but the relationships are not close and are minimal compared to his relationships with those in the U.S. What is absent from the record is any evidence supporting an inference that Applicant would feel "forced" to choose between his loyalty to them and to the United States. In fact, the contrary has been shown to be the case.

Based on the entire record, including but not limited to the evidence cited above, I conclude that the risks of Applicant being asked to act improperly by his sister in Israel or his in-laws in Vietnam, are minimal. At the same time, the evidence clearly establishes Applicant to be a man of integrity who is dedicated to his country's interests and understands his obligation to protect his country and to report any improper contacts to company authorities. His commitment to the U.S. is such as he would not feel that he had to choose between opposing interests.

In summary, and looking at the concerns as stated above, I further conclude that nothing in the record suggests (1) that Applicant has "divided loyalties;" (2) that he may be manipulated or induced to help a foreign person, group, organization, of government in a way that is not in U.S. interests; or (3) that he is vulnerable to pressure or coercion by any foreign interest,.

Applicant has a solid record of maturity, integrity, and service to his adopted country. Despite whatever risk may exist solely because he has family members in Israel (sister) and Vietnam (in-laws), nothing in the record suggests that he would hesitate before acting instinctively to protect U.S. interests. Under the "whole person concept," he has not done or said anything that raises any questions about where his loyalties and dedication lie; nor does the record suggest any reason to deprive the United States of his valuable services. In summary, the record as a whole leads to the

conclusion that Applicant has the integrity, good judgment, reliability, and trustworthiness required of anyone seeking a DoD security clearance.

FORMAL FINDINGS

_____ Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

<i>Guideline B (Foreign Influence)</i>	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
Subparagraph 1.e.	For the Applicant

DECISION

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

**BARRY M. SAX
ADMINISTRATIVE JUDGE**