



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 11-04413  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Raashid Williams, Esq., Department Counsel  
For Applicant: *Pro se*

January 31, 2012

**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for a security clearance to work in the defense industry. Applicant, a naturalized U.S. citizen, was granted asylum in 1982 after escaping his native Vietnam. His mother, sisters, extended family members, and friends are citizens and residents of that country. Having spent his adult life in the United States, Applicant has developed such significant relationships and financial interests that he can be expected to resolve any conflict of interest in favor of the United States. Clearance is granted.

**Statement of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on July 28, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons

<sup>1</sup> This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this

(SOR) explaining that it was not clearly consistent with the national interest to grant Applicant access to classified information. The SOR detailed the reasons for the action under Guideline B (foreign influence).

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on November 18, 2011. The hearing proceeded as scheduled on December 14, 2011. At the hearing, Government's Exhibits (GE) 1 through 2 were admitted without objection. Applicant testified and presented the testimony of four witnesses. I received the transcript (Tr.) on December 27, 2011.

At the end of the hearing, I left the record open for Applicant to submit additional documentation. He timely submitted documents, which were admitted as Applicant's Exhibits (AE) A through D without objection from Department Counsel.

### **Request for Administrative Notice**

Without objection from Applicant, I granted Department Counsel's written request that I take administrative notice of certain facts about Vietnam. The request has been included in the record as Hearing Exhibit (HE) 1. The pertinent facts are set out, below.

### **Findings of Fact**

Applicant was born in Vietnam in 1963. His father served in the South Vietnamese Army during the 1960s. When the Communist Party took control of South Vietnam, his father was sent to a reeducation camp, where he was imprisoned for two years. Concerned about Applicant's future, his parents sent him to live with an aunt in another city. In 1981, Applicant attempted to escape Vietnam by boat. However, a typhoon took the vessel off track and the boat became stranded on an island. Eventually, Applicant and his fellow escapees were rescued and taken to a refugee camp. He lived in the refugee camp until he was granted asylum in January 1982 and immigrated to the United States.<sup>2</sup>

Upon entering the United States, Applicant enrolled in high school and worked part time to support himself. After meeting Applicant, one of his teachers took him into her home, where Applicant lived as a member of her family. He lived with his "American family" while he finished high school and attended vocational school. Applicant considers his teacher and her husband his "American parents" and they consider Applicant their son. Applicant and his "American family" continue to have a strong relationship.<sup>3</sup>

---

case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replaces the guidelines in Enclosure 2 to the Directive.

<sup>2</sup> Tr. 19-20; GE 2.

<sup>3</sup> Tr. 46-50, 60-62; GE 2; AE B.

Applicant became a naturalized U.S. citizen in 1988. Applicant's wife, also a refugee from Vietnam, is a naturalized U.S. citizen. The couple has two children, ages 10 and 11, who are U.S. citizens by birth. Applicant owns his home and has a net worth of approximately \$500,000.<sup>4</sup>

Although his wife, children, and adopted family are in the United States, Applicant and his wife still maintain close contact to their relatives in Vietnam: Applicant's mother, five sisters, four brothers-in-law, several aunts and uncles, as well as his wife's two siblings. He also has several friends that are residents and citizens of Vietnam. Aside from Applicant's uncle, a retired agricultural researcher, and one brother-in-law, who works for the postal service, none of Applicant's other relatives or friends are connected to the Vietnamese government. Applicant travels to Vietnam at least once per year to visit his ailing, elderly mother. Because of her health, Applicant maintains frequent contact with her. Applicant reports his travels to Vietnam to his employer as required. He often gives money to his mother, other family members, and friends, as needed.<sup>5</sup>

Since October 2003, Applicant has worked as an engineering technician for a federal contractor. He is well regarded by his employer. Two of his coworkers testified at the hearing and an additional seven coworkers wrote character references on his behalf. All testify to Applicant's superior work ethic, professionalism, technical ability, and strong character. Since at least 2006, he has received at least 12 awards for his performance, including a leadership award from the company's president. Applicant was initially granted a security clearance in 2005 and has had access to classified information without incident.<sup>6</sup>

In January 2011, Applicant completed an interview with an investigator from the Office of Personnel Management (OPM). In a 50-page statement, Applicant described, in detail, his life in Vietnam, his escape from the country, his life since immigrating to the United States in 1982, his familial relationships and financial interests in the United States, and his Vietnamese relatives.<sup>7</sup>

## **Vietnam<sup>8</sup>**

Vietnam is an authoritarian state ruled by the Communist Party of Vietnam ("CPV"). Since the establishment of diplomatic relations in 1995, overlapping security and economic interests have led the United States and Vietnam to form a strategic partnership of sorts. Human rights, however, remain a lingering concern in the countries' diplomatic relationship. The CVP seemingly follows a strategy of permitting

---

<sup>4</sup> Tr. 20-21; GE 2.

<sup>5</sup> Tr. 21-22; GE 2.

<sup>6</sup> Tr. 51-59; AE C – D.

<sup>7</sup> GE 2.

<sup>8</sup> HE 1.

most forms of personal and religious expression while selectively repressing individuals and organizations that it deems a threat to the Party. The government increased its suppression of dissent in the last three years. Arbitrary detentions remain a problem, particularly for political activists. The government uses various measures to detain activists for the peaceful expression of opposing political views to include decrees and ordinances. The government does not tolerate attempts by organizations or individuals to comment publicly on its human rights practices, and it uses a wide variety of methods to suppress domestic criticism of its human rights policies, including surveillance, limits on freedom of the press and assembly, interference with personal communications, and detention.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B, Foreign Influence**

Under this guideline, “foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign 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.”<sup>9</sup>

AG ¶ 7 indicates the disqualifying conditions that are applicable in this case:

(a) contact 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; and

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information.

Applicant has several family members who are residents and citizens of Vietnam, including his mother, sisters, brothers-in-law, his wife’s two siblings, as well as aunts, uncles, and friends. The mere possession of close ties with family members living in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. In assessing the likelihood that an Applicant’s family members are vulnerable to coercion or inducement, it is important to evaluate the nature of a nation’s government, its relationship with the United States, and its human-rights record. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government or the country is known to conduct intelligence collection operations against the United States. Vietnam is controlled by an authoritarian government that is dominated by the CVP, which raises a heightened risk under AG ¶ 7(a).

---

<sup>9</sup> AG ¶ 6.

In addition, Applicant's close ties to his family are significant and merit consideration under Guideline B. He maintains regular contact with his Vietnamese family members, particularly his mother, through phone calls and visits. He also provides financial support to his family and friends as necessary. These close ties do give rise to a potential conflict of interest, which could put Applicant in the position of having to choose between protecting U.S. interests and his desire to help his foreign relatives.

The guideline also includes the following condition that could mitigate the security concerns:

(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 the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.; and

(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 in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

Despite its authoritarian government, Vietnam and the United States maintain a favorable relationship. The record does not contain any information to suggest the existence of profound disagreements between the United States and Vietnam that raise any issues of national security. While the human rights abuses of the Vietnamese government remain an issue in this diplomatic relationship, the Vietnamese government focuses its attention on political dissenters. There is no evidence to suggest that any of Applicant's family members fall into this category. Applicant's family has not experienced negative treatment from the Vietnamese government since his father's imprisonment in a reeducation camp or after Applicant escaped the country. Vietnam is not a known perpetrator of industrial espionage against the United States. Nor is there any evidence to indicate that terrorist groups targeting American interests are operating within the country. Therefore, I conclude that it is unlikely that Applicant will be placed in a position where he has to choose between the interest of his Vietnamese relatives and the interest of the United States. Accordingly, AG ¶ 8(a) applies.

Family contacts and ties with persons in a foreign country are not automatically disqualifying, but require an applicant to present evidence in mitigation and extenuation that he qualifies for access to classified information. Despite Applicant's strong familial ties to Vietnam, I find that AG ¶ 8(b) applies to this case. Applicant escaped from Vietnam in 1981, he survived life-threatening conditions before being granted asylum in the United States. Since entering the country, Applicant has developed longstanding relationships with his "American family" — a familial relationship that is just as strong, if not stronger than, his connections to his family in Vietnam. In addition to his

“American family”, Applicant has married, started his own family, and has accumulated significant financial interests in the United States. Viewed in totality, these factors lead me to the conclusion that Applicant can be expected to resolve any conflict of interest in favor of the United States.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In doing so, I have also considered the whole-person concept. Applicant has spent his adult life in the United States. He has cultivated deep and longstanding relationships. The evidence supports a finding that Applicant does not have divided loyalties between the United States and Vietnam. While Applicant has feelings of love and obligation towards his family in Vietnam, his life is firmly rooted here. Furthermore, Applicant has held a security clearance since 2005, without incident. He fully disclosed and provided details regarding his Vietnamese family members to the Government. His employer and coworkers laud his professionalism and integrity. He has shown himself to possess the strong character required of individuals granted access to classified information. Based on the evidence, I conclude that Applicant has mitigated the Guideline B concerns raised in this case.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraphs 1.a -1.e: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

---

Nichole L. Noel  
Administrative Judge