



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:	)	
	)	
	)	ISCR Case No. 12-03432
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Department Counsel  
For Applicant: Thomas D. Farrell, Esquire

April 23, 2014

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**Decision**  
\_\_\_\_\_

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on September 15, 2011. On December 9, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), effective within the Department of Defense after September 1, 2006.

Applicant acknowledged receipt of the SOR on December 19, 2013. He answered the SOR in writing on January 3, 2014, and requested a hearing before an Administrative Judge. DOHA received the request soon thereafter, and I received the case assignment on February 10, 2014. This case was originally set for hearing on March 10, 2014, but I granted Applicant's request for a delay until April 1, 2014, in order for his counsel to be available. DOHA issued an amended notice of hearing on March

7, 2014, and I convened the hearing as scheduled on April 1, 2014. The Government offered Exhibits (GXs) 1 and 2, and an Appellate Exhibit, which were received without objection. Applicant testified on his own behalf and submitted Exhibits (AppXs) 1 through 21, which were received without objection. DOHA received the transcript of the hearing (TR) on April 10, 2014. The record closed on April 1, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **Procedural and Evidentiary Rulings**

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Vietnam. The request was granted. The request, and the attached documents, were not admitted into evidence, but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below. (See Appellate Exhibit.)

## **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in all the Subparagraphs of the SOR, with explanations.

### **Guideline B - Foreign Influence**

Applicant retired from the U.S. Navy after nearly 22 years of active duty. (TR at page 27 line 3 to page 29 line 11, and at page 62 lines 15~24.) His current spouse, who was born in Vietnam, was already a naturalized American citizen when he married her. (TR at page 36 lines 15~22, and AppX 6.)

1.a. Applicant's 44-year-old stepson is a citizen and resident of Vietnam. (TR at page 37 line 13 to page 39 line 19, and at page 62 line 25 to page 63 line 15.) He is a laborer with no known connection to the Vietnamese government. (*Id.*) His stepson was already a grown man when Applicant married his mother. (TR at page 37 line 13 to page 39 line 19.) As they do not speak each other's language, there is little conversation between Applicant and his stepson. (*Id.*) He only knows that Applicant works with computers.

1.b. Applicant's mother-in-law and father-in-law were citizens and residents of Vietnam. (TR at page 37 lines 7~12, and at page 64 line 11 to page 65 line 7.) They both died in 2001. (*Id.*)

1.c. Applicant's two sisters-in-law and one brother-in-law are citizens and residents of Vietnam. (TR at page 39 line 20 to page 44 line 20, and at page 65 line 19 to page 66 line 3.) "None of them speak English very well," and Applicant does not speak Vietnamese. (TR at page 41 lines 11~13.) The oldest sister-in-law "owns a

coffee shop.” (TR at page 40 lines 12~13.) The youngest sister-in-law is a housewife. (TR at page 43 line 22 to page 44 line 2.) The brother-in-law owns land on which he grows rice, and then sells the rice. (TR at page 42 line 12 to page 43 line 1.) Applicant avers credibly that he would not be subject to coercion vis-a-vis these in-laws. (TR at page 44 lines 6~20.)

1.d. Applicant’s wife’s Vietnamese niece owns property worth about \$180,000 in Vietnam. (TR at page 50 line 10 to page 58 line 20, and at page 66 line 4~23.) Applicant’s wife has a ten year revocable power of attorney vis-a-vis this property, but no real property interest. (*Id.*, and AppXs 1~5.) Applicant owns no property in Vietnam. (*Id.*)

I also take administrative notice of the following facts. Vietnam is an authoritarian state ruled by the Communist Party of Vietnam. In 2012, the Vietnamese government increasingly limited freedoms of speech and press and suppressed dissent. While Vietnamese law prohibits arbitrary interference with privacy, family, home, or correspondence, the Vietnamese government did not respect these prohibitions. The Vietnamese government did not permit private, local human rights organizations to form or operate, nor tolerate attempts by organizations or individuals to comment publicly on its human rights practices. In 2013, the U.S. Department of State acknowledged positive steps that the Vietnamese government took to improve its human rights record, but reported that it was not enough to reverse a years-long trend of deterioration, nor have the isolated steps formed a consistent pattern.

### **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG Paragraph 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. Paragraph 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 contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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**

Paragraph 6 of the adjudicative guidelines sets out the security concern relating to Foreign Influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign 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 a foreign interest.

Here, Paragraph 7(a) is arguably applicable: “*contacts with a foreign family member . . . 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.*” Applicant’s 44-year-old stepson, his two sisters-in-law, his brother-in-law, and his wife’s niece are citizens and residents of Vietnam. This is countered, however, by the first mitigating condition, as “*the nature of the relationships with foreign persons, the country in which these persons are located . . . 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 . . . and the interests of the U.S.”* As Applicant does not speak Vietnamese, and his Vietnamese relatives do not speak English, he has little inter personal relationship with these relatives. None of them work for the Vietnamese government, and he would not permit himself to be subject to coercion vis-a-vis these relatives.

Furthermore, I find the disqualifying condition found in Paragraph 7(e) is not applicable under the facts of this case. I do not find that his wife’s revocable power of attorney regarding a property, in which he has no legal financial interest, to be a “*substantial . . . financial, or property interest*” in Vietnam.

### **Whole-Person Concept**

Under the whole-person concept, the Administrative Judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the circumstances. Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

The Administrative Judge should also consider the nine adjudicative process factors listed at AG ¶ 2(a): “(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.”

Applicant has the unqualified support of those who know him in the work place. (AppXs 8~12.) I have considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Overall, the record evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his alleged Foreign Influence.

### **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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

**Conclusion**

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

Richard A. Cefola  
Administrative Judge