



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



In the matter of: )  
)  
) ISCR Case No. 17-03090  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Adrienne M. Driskill, Esq., Department Counsel  
For Applicant: *Pro se*

03/14/2019

**Remand Decision**

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the security concerns arising from his continuing family and financial connections to Thailand. Based upon a review of the record as a whole, including the October 26, 2018 Appeal Board’s Remand Order, national security eligibility for access to classified information is denied.

**History of Case**

On April 8, 2015, Applicant submitted an electronic questionnaire for investigations processing (e-QIP). On September 29, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to*

*Classified Information or Eligibility to Hold a Sensitive Position (AG)*, effective within the DOD on June 8, 2017.

Applicant answered the SOR on October 19, 2017, and requested that his case be decided by an administrative judge on the written record without a hearing. On January 18, 2018, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing five Items, was mailed to Applicant and received by him February 23, 2018. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not submit any additional information or objections to any of the Government's exhibits. Items 1 through 5 are admitted into evidence. I take administrative notice of the facts concerning Thailand that are set forth in the Government's Request for Administrative Notice, which is marked as Item 5 and included in the record.

On August 21, 2018, I issued a Decision denying Applicant's request for national security eligibility for access to classified information, on the basis that he failed to mitigate the foreign influence allegations related to his ongoing connections to Thailand. Applicant appealed that Decision, but he neither challenged my findings of fact nor raised any other allegation of error in his appeal brief. However, his comment that he had resigned in January 2018 from his position with the employer that sponsored his security clearance application raised a jurisdictional issue.

On October 26, 2018, the Appeal Board remanded the case to me to reopen the record for submission of information pertinent to jurisdiction, specifically whether Applicant "possessed a need for access to classified information" at the time the Decision was issued. I marked this Remand Order as Appeal Board (AB) Order.

On February 22, 2019, I entered an order reopening the record and requesting submission of relevant information from both parties on the jurisdictional issue. On February 27, 2019, Applicant responded by email. I marked Applicant's submission as Applicant Remand Exhibit (AR Ex.). On March 4, 2019, Department Counsel submitted a Response to Request for Information, along with two documents. I marked the Department Counsel's submission as Department Remand Exhibits (DR Ex.) 1 through 3. All exhibits are admitted without objection.

### **Jurisdictional Ruling**

In his appeal brief, Applicant stated that in January 2018, he had resigned his position with his employer. In response to my February 22, 2019 Order, he stated that he submitted a resignation letter in January 2018, based on his wife's health problems and his need to return to Thailand to care for her. At the time, he was working for his employer in Iraq. (AB Order; AR Ex. A)

In addition to citing pertinent cases in her Response to Request for Information, Department Counsel submitted a letter from Applicant's employer addressing Applicant's

employment status in January and August 2018. The employer stated that Applicant left active employment in January 2018, due to family issues. The employer maintained sponsorship of Applicant's security clearance in the Joint Personnel Adjudication System (JPAS) because Applicant intended to resume employment when his family problems were resolved. On August 28, 2018, Applicant's employer received notice that his national security eligibility was denied, and removed sponsorship of his security clearance. JPAS recorded that Applicant was separated by the employer on August 29, 2018. (DR Exs.2, 3)

Based on the information submitted from both parties, subsequent to the Appeal Board's Remand Order, I find that Applicant "still possessed a need for access to classified information" on August 21, 2018, the date I issued the initial Decision in this case, and therefore DOHA had legal jurisdiction over the matter. My initial Decision, denying Applicant's national security eligibility for a security clearance is confirmed and fully incorporated below.

### **Findings of Fact**

Applicant admitted the allegations in the SOR. Those admissions are incorporated into the following findings of fact:

Applicant is 56 years old. He was born in the United States. He served on active duty in the U.S. Marines from 1981 to 2001, when he retired with an honorable discharge. He has been married four times and has an adult child from one of those marriages. After leaving military service, he worked for a period of time for a defense contractor and maintained a security clearance. (Item 2)

Applicant has resided in Thailand since 2004. He opened a bank account in 2005 that has about \$30,000 in it. He married his fourth wife there in 2007. She is a citizen and resident of Thailand. He has two teenage stepchildren, who are citizens and residents of Thailand. In 2009, he purchased a home in Thailand that has a current value of about \$50,000. The home is recorded in his wife's name because he is unable to legally own a residence there. From 2010 to 2015, Applicant and his wife owned and operated a business in Thailand. (Item 2)

In 2015, Applicant began working in the Middle East for a defense contractor supporting U.S. military troops. He maintains his residency in Thailand with his wife and stepchildren. He returns to Thailand on leave and lives there when not working out of the country. (Items 1, 2)

Applicant's mother-in-law, sister-in-law, and two brothers-in-law are citizens and residents of Thailand. Applicant said none of those family members work for the Thai government. He needs to maintain a bank account there for living expenses and purposes. (Items 1, 2)

I have taken administrative notice of facts contained in U.S. Government publications concerning Thailand as outlined in Item 5, including the following: Thailand is a constitutional monarchy, but since a military coup in 2014, it is being ruled by an interim military government. As a consequence of that coup, the United States has reduced its security assistance and military engagements with Thailand, although it continues to maintain economic and diplomatic ties. Thailand's increasing economic, military, and diplomatic ties to China are a concern to the United States. The U.S. State Department assessed Thailand as having a moderate risk of terrorism based on recent incidents in the country's southern region. Thailand's human rights abuses include arbitrary arrests and detention; violence and discrimination against women; sex tourism; and limitations of worker rights and civil liberties.

### **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's national security 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(b) and 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 national security eligibility will be resolved in favor of the 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for national security eligibility seeks to enter 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 eligibility

for access to classified information or assignment in sensitive duties. 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 EO 10865 provides, “Any determination under this order adverse to an applicant shall be a determination 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**

AG ¶ 6 expresses the security concerns regarding foreign influence:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

AG ¶ 7 sets out conditions that could raise a security concern and may be disqualifying in this case. Four are potentially applicable:

- (a) contact, regardless of method, 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;<sup>1</sup> and
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to

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<sup>1</sup>The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology;

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; and

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

Although the United States and Thailand are allies in several areas, Thailand has experienced recent terrorist incidents, and the U.S. State Department considers it to pose a moderate risk. Additionally, its human rights' record causes concern. These facts place a burden of persuasion on Applicant to demonstrate that his residency, significant financial interests, and ongoing close relationships with immediate family members and in-laws, who are resident citizens of Thailand, do not create a heightened risk of foreign influence or pose a security risk. The evidence is sufficient to raise security concerns under AG ¶¶ 7(a), 7(b), 7(e), and 7(f) shifting the burden to Applicant to prove mitigation.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns. Those with potential application in mitigating the security concerns in this case are:

(a) the nature of the relationship 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 United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant did not clearly demonstrate that it is unlikely that he could be placed in a position of having to choose between the interests of a foreign individual or government and those of the United States, as a consequence of his ongoing residency in Thailand and long-term relationships with immediate family members who reside there. There is insufficient evidence demonstrating that Applicant has deep and longstanding relationships and loyalties in the United States, such that if any conflict of interest arose, Applicant could be expected to resolve it in favor of U.S. interests. The record indicates that Applicant has approximately \$80,000 of assets in Thailand. There is no evidence that he has financial interests in the United States. Accordingly, Applicant failed to establish persuasive mitigation under AG ¶¶ 8(a), (b), (c), or (f).

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is a mature individual who honorably retired from the Navy after serving 20 years. He held a security clearance during that time and subsequently while working for a defense contractor for a couple years. He has been working for another defense contractor since 2015. In 2004, he moved to Thailand. Since 2007, he has been living in Thailand with his wife and two stepchildren. He has both property and financial interests there. His in-laws are citizens and residents of Thailand. He and his wife owned a business there for five years. Other than his 20 years of U.S. military service, the record contains minimal evidence of Applicant's current ties to the United States. The absence of mitigating evidence for the Guideline B allegations compels a finding that he failed to meet his burden to mitigate the security concerns arising under the guideline for foreign

