



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case: 18-02788  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew Henderson, Esquire, Department Counsel

For Applicant: *Pro se*

September 5, 2019

**Decision**

ROSS, Wilford H., Administrative Judge:

**Statement of Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on December 1, 2015. (Government Exhibit 1.) On January 4, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines F (Financial Considerations), G (Alcohol Consumption), and B (Foreign Influence). 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective within the Department of Defense on June 8, 2017.

Applicant answered the SOR on February 14, 2019, and requested a hearing before an administrative judge. (Answer.) Department Counsel was prepared to proceed on April 10, 2019. The case was assigned to another administrative judge on April 22, 2019. The case was reassigned to me on April 30, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 4, 2019, scheduling the hearing for June 10, 2019. The hearing was convened as scheduled. The Government offered Government Exhibits 1 and 2, which were admitted without objection. Applicant testified on his own behalf and called one additional witness. The record remained open at Applicant's request for the receipt of additional documentation. Applicant submitted Applicant Exhibit A in a timely manner, which was also admitted without objection. DOHA received the transcript of the hearing (Tr.) on June 25, 2019.

### **Procedural Rulings**

At the hearing, the Government requested I take administrative notice of certain facts relating to the Kingdom of Thailand (Thailand). Department Counsel provided a six-page summary of the facts, supported by seven Government documents pertaining to Thailand, identified as Hearing Exhibit I. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact. (Tr. 11-12.)

### **Findings of Fact**

Applicant is 42 years old and married for two years. His wife is Thai, and continues to live in Thailand. He has received an associate's degree. He has worked for his current employer since 2015 and wishes to retain national security eligibility for a security clearance in connection with that employment. Applicant has worked for various contractors at the same remote location outside the United States since 2005. (Government Exhibit 1 at Sections 13A and 17; Tr. 30-33.)

### **Paragraph 1 (Guideline F, Financial Considerations)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has failed to meet his financial obligations and is therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted the single SOR allegation under this paragraph, with explanations.

Applicant admitted that he did not file his Federal or state income tax returns in a timely fashion for the tax years 2010 through 2017. Since Applicant was living and working outside the United States during the entire time at issue here, his taxable income was low enough to exempt him from paying taxes. However, that did not mean Applicant was exempt from filing tax returns. He stated, "I guess I thought that if I owed nothing - - owed

no taxes - - that it wouldn't be much of a problem that I could just kind of file a few years together." He further stated that all of his tax returns have now been filed. His testimony was vague as to how and when all of the subject Federal and state tax returns were filed, stating that several years may have been filed together. Applicant further indicated that he was a procrastinator when it came to fulfilling his tax return responsibilities. Finally, Applicant admitted that he has knowns since December 2015 of the Government's concern with regard to his failure to file tax returns. (Tr. 14-22, 41-42; Government Exhibit 1 at Section 26, Exhibit 2 at 10.)

Subsequent to the hearing, Applicant submitted Applicant Exhibit A, consisting of a group of U.S. mail return receipts, e-filing information, extension of time to file tax return information, and contact information for his tax preparer. It appears from the exhibit that his 2014 and 2018 tax returns were filed electronically, albeit late. The return receipts from both the IRS and his state taxing authority are from 2015, 2017, and 2018. It is not possible to know, from the documents he submitted, what specific returns were included in each mailing.

## **Paragraph 2 (Guideline G, Alcohol Consumption)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he abuses intoxicants to excess. Applicant admitted all the allegations under this paragraph, with explanations.

Applicant has a long history of alcohol abuse. As stated, he has worked at a remote location for many years and drinking was his leisure-time activity. Until just recently he would drink five to six drinks each weekend day. Applicant's wife became pregnant in early 2019 and Applicant testified that, because of the pregnancy, he stopped drinking altogether in about April 2019. (Tr. 23, 27-28.)

Applicant has had several alcohol-related incidents. In 2016 Applicant passed out from excessive alcohol consumption at least three times. One of these occasions was in a public place. In addition, in 2017, Applicant again passed out in public from excessive alcohol consumption. A passerby found Applicant and called 911. Police and an ambulance responded and Applicant was transported to the base medical clinic. He received a citation for public intoxication from the local police and paid a fine. (Tr. 22, 27; Government Exhibit 2 at 8-9.)

There is evidence that Applicant was sent home from work at least once in 2016 for coming to work with alcohol on his breath. Applicant denied knowledge of such an event, but his second-level supervisor testified that it did happen and Applicant was cautioned not to have it happen again. (Tr. 25-26, 42, 49-51.)

### **Paragraph 3 (Guideline B. Foreign Influence)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has foreign connections that may subject him to foreign influence or coercion. Applicant admitted both allegations under this guideline.

As stated, Applicant has been married for two years to a Thai national. His wife, who is 34, continues to reside in Thailand, where she is pregnant with their first child. Applicant met his wife in Thailand in approximately 2008. They dated for nine years, primarily through the internet, until they were married in May 2017. Due to the nature of Applicant's job, he is only able to visit his wife in Thailand twice a year for a period of about 30 days each time. Spouses are not allowed to live at Applicant's work location. Applicant and his wife communicate daily over the internet. (Tr. 31-34.)

Applicant's wife works as a loan officer at a credit union in Thailand. Her mother is a farmer. Applicant's wife has two sisters, both of whom she is helping support. Applicant has little contact with his wife's mother or sisters. (Tr. 35-38.)

### **Mitigation**

Applicant served honorably in the Marine Corps for four years, from 1995 to 1999. He held a Secret clearance during that time. (Tr. 40.)

Applicant's second-level supervisor testified on Applicant's behalf. He has known Applicant for several years and recommended him for a security clearance. However, the witness also indicated a lack of direct knowledge about the alcohol-related incidents in Applicant's past described earlier in this decision. (Tr. 44-56.)

### **Thailand**

I take administrative notice of the following facts: Thailand is a constitutional monarchy, ruled by an interim military government since 2014. The United States has urged the restoration of elected civilian government and return to democracy through elections. Human rights issues in Thailand include unlawful or arbitrary killings by the government or its agents; torture; arbitrary arrest and detention; censorship; restrictions on political participation; and corruption. Thailand is a key U.S. security ally in Asia, and the country's stability and growth are important to the maintenance of peace in the region. Since World War II, the United States and Thailand have significantly expanded diplomatic, security, and commercial relations.

### **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations

for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## Analysis

### Paragraph 1 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personal security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

AG ¶ 19 describes one condition that could raise security concerns and may be disqualifying in this case:

(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay Federal, state, or local income tax as required.

Applicant failed to timely file Federal and state income tax returns, as required, for at least eight years. These facts establish prima facie support for the foregoing disqualifying condition, and shift the burden to Applicant to mitigate those concerns.

The guideline includes one condition in AG ¶ 20 that could mitigate the security concerns arising from Applicant's failure to timely file tax returns:

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

With regard to his taxes, Applicant submitted some evidence that he has filed, albeit late, at least some of his past-due tax returns. However, based on the record evidence, it is not possible to know if Applicant has filed all of his delinquent tax returns. Even assuming that he has done so, Applicant has been extremely dilatory and showed a pronounced lack of judgment in connection with this responsibility. There is obviously no recent track record of his fulfilling his tax return responsibilities in a timely manner. As of now, Applicant did not mitigate his financial issues. Guideline F is found against Applicant.

## **Paragraph 2 (Guideline G, Alcohol Consumption)**

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

The guideline at AG ¶ 22 contains seven disqualifying conditions that could raise a security concern and may be disqualifying. Three conditions possibly apply to the facts in this case:

- (a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder;
- (b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder; and
- (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

Applicant has a long history of drinking to excess, as shown by the alcohol-related incidents set forth in the SOR and discussed above. The last incident was in 2017, approximately two years before the record closed in this case. Applicant stated that he has not had anything to drink since approximately April 2019, less than two months before the record closed. He has reported to work with alcohol on his breath at least once in the last three years. All three of the cited conditions apply.

The guideline at AG ¶ 23 contains four conditions that could mitigate alcohol consumption security concerns:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness or judgment;
- (b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has

demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

(c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

None of the mitigating conditions were established in this case. Applicant's problems with alcohol are of long duration, resulting in several incidents of his passing out after drinking. He has showed up for work with alcohol on his breath. His decision to stop drinking occurred earlier this year and, while it is apparently sincere, is of very short duration. Considering all the available evidence, I find that not enough time has passed without an incident to establish confidence that he will not resume drinking and acting irresponsibly while under the influence. The Alcohol Consumption guideline concerns are found against Applicant.

### **Paragraph 3 (Guideline B, Foreign Influence)**

¶ 6: The security concern relating to the guideline for Foreign Influence is set out in AG

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable in this case:

(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; 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 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.

Applicant's wife, her mother, and her sisters are citizens and residents of Thailand. The evidence is sufficient to raise these disqualifying conditions.

Thailand has an authoritarian government, and the country suffers from human-rights abuses. Accordingly, Applicant's family connections in that country have the potential to generate a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a). The DOHA Appeal Board has said that 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).

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(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 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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; 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.

Due to the nature of his job, Applicant has minimal physical contact with his wife and her family in Thailand. However, she is his wife, and is now pregnant with their child. AG ¶¶ 8(a), and (c) do not apply.

AG ¶ 8(b) does apply. Applicant is a native-born American citizen, a former Marine, and a long-time Federal contractor. He has deep and long-standing loyalties to the United States. Thailand is a long-time American ally. Under the particular circumstances of this case, I find that Applicant has shown he can resolve any potential conflict of interest in favor of the U.S. interest. The Guideline B allegations are found in favor of Applicant.

### **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 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 applicable 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. Applicant did not provide sufficient evidence to show that he has successfully resolved his alcohol problem, or that he will responsibly file his income tax returns in a timely manner in the future. The potential for pressure, exploitation, or duress remains undiminished. Overall, the evidence creates substantial doubt as to Applicant's judgment and suitability for national security eligibility

and a security clearance. He failed to meet his burden to mitigate the security concerns arising under the guidelines for financial considerations and alcohol consumption.

### **Formal Findings**

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraphs 2.a through 2.d:	Against Applicant
Paragraph 3, Guideline B:	FOR APPLICANT
Subparagraphs 3.a and 3.b:	For Applicant

### **Conclusion**

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

Wilford H. Ross  
Administrative Judge