



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-01972
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Kent, Esq., Department Counsel
For Applicant: John Berry, Esq.

03/17/2021

Decision

MURPHY, Braden M., Administrative Judge:

Applicant was born in Thailand. Her parents and siblings remain there. She studied in the United States and then worked for a time at a Thai diplomatic facility in the United States. After returning to Thailand, she worked as a local employee at a U.S. diplomatic facility in Thailand. She now lives in the United States with her husband and stepchildren. Once she acquired a work visa, Applicant worked as a local employee at a Thai diplomatic facility in the United States. She is now a U.S. citizen seeking a security clearance for employment with a State Department contractor. The foreign influence security concerns about Applicant’s family and diplomatic connections to Thailand are mitigated. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) in November 2017. On August 13, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued her a Statement of Reasons (SOR) detailing foreign influence security concerns. The DOD CAF issued the SOR under Executive Order (Exec. Or.)

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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on September 10, 2019, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). She filed a supplemental answer on October 10, 2019. The enclosures with Applicant's answers (Answer Encl. 1-3) are included in the record. The case was assigned to me on November 16, 2020. On December 23, 2020 and January 7, 2021, DOHA issued notices scheduling the hearing for January 15, 2021. (The second notice corrected a typographical error).

On December 31, 2020, I issued a Case Management Order to the parties by e-mail. It largely concerned procedural matters relating to the health and safety of the hearing participants due to the COVID-19 pandemic. The parties were ordered to submit and exchange their proposed exhibits in advance of the hearing, and they did so.

The hearing convened as scheduled. Government Exhibits (GE) 1 and 2 were identified and admitted in evidence without objection. Applicant's Exhibits (AE) A through F were also identified and admitted without objection. Applicant and her husband testified in person. Three character witnesses testified by phone. DOHA received the hearing transcript (Tr.) on January 27, 2021.

Request for Administrative Notice

The Government submitted a written request that I take administrative notice of certain facts about Thailand. (Administrative Notice (AN) I) Without objection, I have taken administrative notice of certain facts contained in the requests that are supported by source documents from official U.S. Government publications. Where appropriate, I have taken notice of updated and current information from the State Department website, consistent with my obligation to make assessments based on timely information in cases involving foreign influence. ISCR Case No. 05-11292 at 4 (App. Bd. Apr. 12, 2007) ("Decisions in Guideline B cases should be made to the greatest extent possible in the context of current political conditions in the country at issue.") The administratively noticed facts are summarized in the Findings of Fact, below.

Findings of Fact

Note: In describing Applicant's employment history, I use the phrases "diplomatic post" and "diplomatic facility" (DF) so as not to specifically identify them more than necessary, as this decision is to be posted publically on the DOHA website. (Tr. 122-123) The facilities are identified in the record.

Applicant admitted all of the allegations (SOR ¶¶ 1.a-1.e) and included a narrative statement with her Answer. (Answer Encl. 3) Her admissions and other comments are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 42 years old. She was born and raised in Thailand. She earned her bachelor's degree in 2000 from a Thai university. She then came to the United States to further her education. She studied for two years at a state university in the United States, earning a master's degree in May 2003. (GE 1; AE A; Tr. 22, 70, 74-75).

From November 2003 to January 2009, Applicant worked at a Thai diplomatic facility (Thai DF 1) in the United States. She worked in consular affairs and then as an assistant to a senior Thai diplomat. (GE 1; Tr. 22, 32, 83-84)(SOR ¶ 1.e) She is no longer in touch with anyone she worked with there. (Tr. 84, 96-97)

Applicant then returned to Thailand. After a brief period of unemployment, she began working in August 2009 as a local employee at a U.S. diplomatic post in Thailand as an immigrant visa assistant. (GE 1; Tr. 22-23, 33, 71) She testified that the work involved "very sensitive" personal information and she knew not to discuss it. (Tr. 72)

Applicant remained in that job until February 2012, when she moved to the United States to marry her husband. They met in 2010 when he was a U.S. Foreign Service officer serving in Thailand. They married in February 2012. They have lived in the United States ever since, with her husband's three children from a prior marriage. (GE 1; Tr. 74; AE E-F)

After immigrating to the United States, Applicant was unemployed while awaiting a green card (November 2012) and work visa (November 2013, est.). She then worked as an assistant at another Thai diplomatic facility in the United States. (Thai DF 2). Applicant testified that she was considered a "local employee," and was not an employee of the Thai Foreign Service. (Tr. 34-36) She was involved in visa applications and protocol. (GE 1; Tr. 83-85, 102-103) She said she applied for the job because she thought she might get hired due to her prior work at Thai DF 1. (Tr. 100-101) She worked there from November 2013 to January 2018. (SOR ¶ 1.e)

Applicant became a U.S. citizen in July 2016. (GE 1; Tr. 73) She holds a valid U.S. passport, issued a month later. Since then, she has only used a U.S. passport to travel. (Tr. 76) Her Thai passport expired in 2019. (GE 1) She accepts no benefits from being a Thai citizen and has no plans to return to Thailand permanently. (Tr. 76)

Applicant submitted her SCA in November 2017, in connection with a job offer for a cleared position with a State Department contractor. She worked in a passport issuance office at the State Department for about 18 months until her interim clearance was withdrawn (likely due to the SOR). Applicant described herself as a hard worker. She never discusses the sensitive or classified information she handled. She remains sponsored for the position. (GE 1; Tr. 37-38, 70-71, 89-90, 107)

Applicant also testified that her earlier job as a local employee at the U.S. diplomatic post in Thailand required a background check. She was also briefed on what to do if she was approached by someone outside the facility, and she was to report any such contacts to the diplomatic security office. (Tr. 118-121)

Applicant's parents are citizens and residents of Thailand. (SOR ¶ 1.a) Her father is 89 and has been retired for many years. Applicant's mother is 75. She worked for many years as a secretary for a car dealer. Her longtime boss is elderly and retired, and Applicant's mother is his caregiver and financial manager. (Tr. 77-78) Applicant has regular phone calls with her parents and frequent text messages with her mother. (Tr. 23-24, 78) Her conversations with her father are brief because he is in mental decline. Her parents do not really know or understand what Applicant does for a living. (Tr. 78-80) Applicant and her husband do not provide her parents financial support. (Tr. 78, 92)

Applicant's two brothers also remain in Thailand. (SOR ¶ 1.b) One brother is a former professor. He owns a small resort. They are in contact several times a year. The other brother is unemployed. Applicant has little contact with him. They are not aware of what she does for a living. (Tr. 80-82, 101) Applicant has returned to Thailand for family visits five times since 2012, most recently in 2019. (Tr. 76, 92-96)

SOR ¶ 1.d alleges that Applicant maintains contact with "friends and former coworkers who are citizens and residents of Thailand." This includes former co-workers at the U.S. diplomatic facility in Thailand, whom she sees on return visits there. (Tr. 27, 38-42) She is friends with one local person in the United States. that she worked with at Thai DF 2. They share an interest in food and do not discuss work or politics. (Tr. 38, 82-83, 85, 98, 105-106) She remains friends with one Thai diplomat she knew from that job, a person who is now posted overseas. They are in regular, frequent contact. (Tr. 104-105) Applicant maintains no other regular, ongoing contact with any Thai diplomats she has worked with in the past. (Tr. 96-100, 105-106)

Applicant testified, "The U.S. is my home. I love this country. And my family is here. In total, I have lived here for 17 years of my life. And the day I became a U.S. citizen was one of the proudest days of my life." (Tr. 85, 91) Her dream job is to work for the U.S. Government. (Tr. 85-86) She has not voted in Thailand since becoming a U.S. citizen. (Tr. 86) Applicant testified that she would report to authorities if she were ever approached for information. (Tr. 87)

Applicant's husband testified as a character witness. They met in early 2010 when he was posted to Thailand as a cleared U.S. Foreign Service officer, while on sabbatical from law practice. They did not work together but he was aware of her duties. (Tr. 17-18) He returned to the United States later that year. They kept in touch and their romance blossomed. Applicant came to the United States on a fiancée visa (K-1) in February 2012, and they married soon after. (Tr. 19-21, 31; AE D)

Applicant's husband is now counsel at a large law firm. (Tr. 27-28) Applicant is a loving and caring stepmother to his three teenage children. (Tr. 21, 30, 74; AE E) He

and Applicant have significant financial assets in the United States, including their home and his private practice income. (Tr. 24-25, 86-88, 108; AE F) Applicant has many friends in the United States and in her local community. (Tr. 24, 88)

Applicant's husband testified that the day Applicant became a U.S. citizen was one of the proudest days of her life, as well as his own. He also noted her pride and joy in voting in the United States for the first time. He said she is a proud and loyal U.S. citizen. (Tr. 25-26)

Three other character witnesses (W1, W2, W3) testified by phone. W1 is a retired U.S. Foreign Service officer who retired to Thailand. He met and hired Applicant at the U.S. diplomatic post there and was one of her supervisors. He noted that consular and visa work involves sensitive and personal information, including medical information. Applicant was very reliable in handling that information. He trusted her judgment and discretion, and said she was very dedicated to her job. He is aware of her prior and subsequent work at the Thai DFs in the U.S. He also noted that many Thai citizens have married U.S. diplomats and become U.S. citizens as well as cleared State Department employees to do consular and visa work. (Tr. 45-51; AE D)

An example of such a person is W2. She was born in Thailand. She came to the United States in 2000 and has been a U.S. citizen since 2003. She has been a State Department employee since 2004. She works in human resources and has a clearance. She met Applicant's husband when they were both posted to Thailand, and met Applicant in 2018. She and Applicant are close friends and socialized often (before the pandemic). W2 described Applicant as a "rule follower," (Tr. 55-56) and a loyal U.S. citizen who is worthy of holding a clearance. (Tr. 53-60; AE D)

W3 is a cleared State Department contractor. He met Applicant when they worked in the same office, in about 2018. They bonded because W3 had travelled to Thailand. They would socialize in the same group of friends at work. He described Applicant as dedicated, honest, hardworking, punctual, and "above average" in terms of clearance suitability. (Tr. 62-68)

I also considered the reference letters of the character witnesses who testified at the hearing, as well as the letters from those who did not. They all offered similar, and strong, endorsements of Applicant's character, value to the United States, judgment, trustworthiness, reliability, and overall suitability to hold a clearance. (AE D)

Kingdom of Thailand (Thailand)(AN I)

Thailand is a constitutional monarchy, with the king as head of state. King Rama X was crowned in 2019, three years after the death of his father, who ruled for 70 years, from 1946 until 2016. Thailand is also a parliamentary democracy, with a prime minister as head of government.

From May 2014 to July 2019, Thailand was governed by a military junta, the National Council for Peace and Order. Following the coup, the United States suspended military aid to Thailand. This period saw increased cooperation between Thailand and the People's Republic of China (PRC), and complicated U.S.-Thai relations.

Thailand has extensive trade and investment relations across the Pacific region. Historically, Thailand has close ties with the PRC, and trade has burgeoned under the 2010 China-ASEAN Free Trade Agreement. Unlike several of its neighbors, Thailand has no territorial disputes with the PRC in the South China Sea and has been loath to take an assertive stance against China's actions there. As a member of the China-led Belt and Road Initiative (BRI), Thailand is involved in a high-speed railway project that would connect southern China with several Southeast Asian nations.

Following democratic elections in Thailand in 2019, U.S. military assistance has resumed, and military cooperation has increased. The 2020 Cobra Gold military exercise was the largest ever of that annual event.

Thailand has indicated it wants to reset its relationship with the United States. As one of Southeast Asia's most developed nations and a long-time U.S. partner on a range of issues, Thailand has the potential to support U.S. initiatives such as broadening regional defense cooperation. However, U.S. policymakers face challenges in rekindling the relationship while encouraging Thailand to fully return to democratic norms. Among U.S. concerns are the Thai government's continued efforts to suppress criticism, including muzzling journalists and banning one of the largest opposition parties, as well as other human rights issues.

While AN I details instances of domestic terrorism, Thailand experienced no attacks attributed to transnational terrorist groups in 2019, and violence was restricted to attacks attributed to ethno-nationalist insurgents in the country's restive southern region.

According to a March 1, 2021 travel advisory, the State Department urges U.S. citizens to reconsider travel to Thailand (Level 3) due to the COVID-19 pandemic. The same advisory notes that Thai borders currently remain closed for all foreign nationals, with few exceptions.

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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 overarching

adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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.

Under 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 applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to 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 Exec. Or. 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.”

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern 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 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following 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; 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.

AG ¶ 7(a) requires evidence of a “heightened risk.” The “heightened risk” required to raise this disqualifying condition is a relatively low standard. It denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant’s family ties to a foreign country as well as each individual family tie must be considered.

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” (ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Applicant’s parents and two brothers are citizens and residents of Thailand. The political and governmental turmoil in Thailand in recent years, as well as Thailand’s regional proximity to the PRC are sufficient to establish a “heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.” In addition, Applicant’s past employment at Thai diplomatic facilities establishes a *prima facie* case for heightened risk as well. Applicant’s family and professional connections to Thailand also create a potential conflict of interest. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

SOR ¶ 1.d alleges that Applicant maintains contact with “friends and former coworkers who are citizens or residents of Thailand.” No specific person is identified, and without more detail, such friendships and contacts are not disqualifying. The only people in Thailand outside of Applicant’s family with whom she maintains even casual contact are former local employees she worked with at the U.S. diplomatic post. Their employment status precludes a finding that Applicant’s contact with them would be disqualifying. She also maintains contact with one current Thai diplomat she used to work with in the United States (now stationed elsewhere), and one other employee of Thai DF 2, in the United States. They might be covered in SOR ¶ 1.e, but are not covered in SOR ¶ 1.d. SOR ¶ 1.d is found for Applicant, as no disqualifying conditions apply.

I have analyzed the facts and considered all of the mitigating conditions under AG ¶ 8 and conclude the following are potentially applicable:

(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; and

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

Understandably, Applicant has frequent contact with her parents, and fairly regular, though less frequent, contact with one brother. She has limited contact with her second brother. It cannot be said that her relationships with her immediate family members are casual. AG ¶ 8(c) does not apply to them. AG ¶ 8(c) has some applicability to the two people Applicant used to work with at Thai DF 2, in the United States. One remains in the area, and they have remained personal friends. Another, a Thai diplomat, has left the area and now serves overseas, though they remain in frequent, though casual, contact. Particularly given Applicant's own prior experience as a local employee at a U.S. diplomatic facility, however, I do not regard either contact as being of a particularly significant, ongoing security concern.

Applicant has immediate family members who are citizens and residents of Thailand. She first came to the United States to further her education, and has lived here for 17 out of the next 20 years. After earning her master's degree, she worked for several years at Thai DF 1, in the U.S., before returning to Thailand. She is no longer in touch with anyone she worked with in that job. As a "local employee" at a U.S. diplomatic post in Thailand, she underwent a background check, and was trained to report suspicious contacts. Even before becoming a U.S. citizen, Applicant had established a familiarity with the concept of acting in the best interests of the United States.

While there, Applicant met her future husband, and they have been married since she came to the United States in 2012. Their life is here, with his three children, for whom Applicant is a loving and supportive stepmother. Once she got a work visa, Applicant's professional experience led to her work as a local employee at Thai DF 2.

After becoming a U.S. citizen, Applicant worked as a State Department contractor until her interim clearance was withdrawn. She would like to continue this work, which is really a natural progression of both her personal life in the United States and her extensive professional and diplomatic life experience.

Applicant also presented strong whole-person character evidence through her witnesses, all of whom have significant experience in the State Department culture and environment in which Applicant clearly thrives. Those witnesses conveyed and communicated their strong trust in Applicant to act in the best interest of the United States. Their testimony and evidence serves to bolster Applicant's track record of acting in that fashion. AG ¶ 8(a) and AG ¶ 8(b) apply, as Applicant's ties to the United States are significant to overcome any conflict of interest with Thailand and any heightened risk established by her contacts there.

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. 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.

Under AG ¶ 2(a), 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. I observed Applicant's demeanor while she testified. Applicant was an impressive and candid witness. Applicant presented a strong case in mitigation and in support of her request for access to classified information. I also found her witnesses highly credible, and give significant weight to their testimony and their State Department backgrounds. After carefully weighing the evidence, both favorable and unfavorable, and considering the whole-person factors set forth in AG ¶ 2(d), the foreign influence security concerns about Applicant's family connections to Thailand are mitigated through the strong evidence of Applicant's prior service to the U.S. Government, her long and well-established family ties to the United States, and her strong whole-person character witness evidence.

