



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



In the matter of:)
)
) ISCR Case No. 19-03812
)
Applicant for Security Clearance)

Appearances

For Government: Brian Olmos, Esq., Department Counsel
For Applicant: Leon J. Schachter, Esq.
02/05/2021

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s wife is a Thai citizen living in the United States and his parents-in-law live in Thailand. He has shared custody of his U.S.-born daughter from a prior relationship. His wife is applying for U.S. citizenship, and they have a son born in the United States. On balance, because of his deep and longstanding relationships and loyalties in and to the United States, he can be expected to resolve any conflict of interest in favor of the U.S. interest. Foreign influence security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 8, 2017, seeking clearance eligibility required for a position with a federal contractor. After reviewing the information gathered during the background investigation, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) on March 6, 2020, alleging security concerns under Guideline B (foreign influence). Applicant answered the SOR on March 23, 2020, and requested a hearing before an administrative judge.

The case was assigned to me on November 2, 2020. On November 6, 2020, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for December 1, 2020. I convened the hearing as scheduled.

Government exhibit (GE) 1 and Applicant exhibits (AE) A through K, were admitted in evidence without objections. GE 2 for identification (Government's Request for Administrative Notice concerning The Kingdom of Thailand (Thailand)) and AE L for identification (Applicant's Motion for Administrative Notice concerning Thailand) were marked and made part of the record, but not admitted as evidence. DOHA received the transcript (Tr.) on December 14, 2020.

Procedural Issue

Both Department Counsel and Applicant requested that I take administrative notice of facts concerning Thailand, its internal and external affairs, and its relations with the United States, to determine whether foreign influence security concerns are raised by Applicant's connections to Thailand. (GE 2 and AE L) Applicant's counsel objected to the probative value of GE 2. His objection was overruled. Department Counsel did not object to AE L.

In Guideline B cases, I am required to consider, among other things, the nature of a nation's government, its relationship with the United States, and its human rights record to assess the likelihood that an applicant or his family members are vulnerable to pressure or coercion. The facts administratively noticed are set out in the source documents and summarized in both parties' written requests and will not be repeated verbatim in this decision. (GE 2 and AE L)

Of particular note are that Thailand is a long-time military allied and economic partner of the United States. Two recent military coups have complicated Thai-U.S. relations and Thailand's perception as a model democracy. Thailand's increasing economic, military, and diplomatic ties to China are a concern to the United States. Significant human rights abuses continue without punishment for those involved. Terrorist incidents attributed to ethno-nationalistic insurgents have occurred in Thailand's southern region.

Findings of Fact

Applicant admitted the three SOR allegations: ¶ 1.a (that his wife is a citizen of Thailand); and ¶¶ 1.b and 1.c (that her parents are citizen-residents of Thailand). He denied; however, that this case presents a credible Guideline B concern. Applicant's SOR admissions and those at his hearing are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant, 41, was born and raised in Albania. He immigrated to the United States in November 1999, at age 20, and became a naturalized U.S. citizen in November 2006. His parents also immigrated to the United States and became naturalized U.S. citizens.

His father passed away, but his mother resides in the United States. He has a brother who is a citizen-resident of Albania.

Applicant graduated from high school and completed some college courses in Albania. He received an associate's degree in 2013, and a bachelor's degree in 2015, both from U.S. academic institutions. He worked while attending college to pay for his education, and at some point, opened his own business. After receiving his bachelor's degree in 2015, he started working for his current employer and clearance sponsor, a federal contractor. (GE 1, Tr. 43-44, 85)

Applicant has done well in his position, and has been promoted several times. He is the team lead developer for an important project, and has received commendations from his employer and clients for his excellent performance. He is currently a senior data analyst and supervises two other employees. He is scheduled to become a manager in the near future.

Applicant married his first wife in 2003, and divorced in 2008. She was a naturalized U.S. citizen born in Vietnam. He married his second wife, a Thai citizen, in 2008 and divorced in 2012. He sponsored his second wife to become a naturalized U.S. citizen. (Tr. 115) He has a 13-year-old daughter, born in the United States, of this relationship. He shares custody of his daughter with his ex-wife.

Applicant's wife was born in Thailand and has been in the United States since 2007, under a student visa. They met in 2013 and married in 2015. She has applied for naturalization as a U.S. citizen and is pending an interview that is scheduled for March 2021. She completed two master's degrees in the United States and is in the process of completing her doctorate degree.

At the time Applicant submitted his 2017 SCA, his spouse was working as an independent contractor at the Thai embassy. After becoming aware of the security concerns raised by her employment, his wife resigned her position at the Thai embassy and is currently unemployed. She is dedicating her time to raising their son and finishing her doctorate degree. (Tr. 36)

Applicant visited the Thai embassy several times during public functions. He also met with his wife's colleagues at the embassy for social functions and at restaurants. They have had no contact with any Thai embassy personnel after she resigned her position.

Applicant's parents-in-law are citizens and residents of Thailand. He is 77 years old and she is 68 years old. His father-in-law worked for the Thai Ministry of Commerce. He retired from his job about 14 years ago and receives a government pension. In his 2017 SCA, Applicant claimed to have contact with his father-in-law quarterly and monthly with his mother-in-law. He does not speak Thai, and his communication with his in-laws is exclusively through his wife. Applicant's brother-in-law is in the United States under a student visa. He completed a master's degree in a U.S. university and his current employer is sponsoring his permanent resident application. Applicant provides no

financial support for his in-laws. (Tr. 103-104) His in-laws own a home in Thailand. They have travelled frequently (yearly or every other year) to the United States for family events such as his wedding, his brother-in-law's college graduation, his son's birth, and for regular family visits.

Applicant repeatedly testified that he cannot be successfully blackmailed because he would never agree to it. He noted that if he were to give away anything, no matter how small, that would be a source of blackmail in the future, and it would jeopardize everything that he has worked for so hard in the United States. He promised to immediately report any blackmail attempt or request for information, including from his wife, to his facility's security officer and the FBI.

Applicant described his immigration to the United States as a dream come true. His parents were some of the first Albanians to receive a visa to travel to the United States. They told Applicant about the freedom and opportunities that the United States offers, and it became part of his dream to come to the United States. He wanted to come to the United States to have a better life and to obtain the opportunities that he was not able to have in Albania.

Since the first time that he arrived in the United States, Applicant's dream was to be an American and to be a U.S. citizen. He believes that the United States is a country of opportunities, where all your dreams can be accomplished if you work hard, follow the law, and obey all the rules. He believes that he has been able to make his dreams come true. He is proud of the success he has achieved in the United States.

Applicant strongly believes that there are no opportunities for him or his wife in Thailand. Once she gets her Ph.D., her career and opportunities will be so much better in the United States. They have never thought about or even considered the possibility of her going back to Thailand. Her dream job is to someday work for NASA. She shares his dream of becoming a U.S. citizen.

Applicant and his wife visited Thailand twice before 2017. After Applicant submitted his 2017 SCA, he and his wife visited Thailand twice. (Tr. 101-102) He does not intend to travel to Thailand ever again. He noted that his in-laws have 10-year U.S. travel visas. He anticipates that they will travel to the United States to see his wife and their grandchild.

All of Applicant's and his wife's property and financial assets are in the United States, including his salary, savings, retirement accounts, and a home. He has no financial or property interests in any foreign country. At the time he completed his 2017 SCA, Applicant had an investment property. When his wife quit her job at the Thai embassy, Applicant sold the investment property to avoid any possible financial issues resulting from their reduced income. (Tr. 99)

Applicant presented the testimony of two witnesses. His supervisor of about three and one-half years described Applicant as one of his superstars - trustworthy, reliable,

proficient, and well-liked by his clients. The second witness has known Applicant for less than three years. They have worked in several projects together. She considers Applicant to be a reliable, trustworthy, and ethical. She testified that Applicant has been involved in his community mentoring high school students, helping them to prepare their college applications, and supporting nonprofit organizations and patriotic events. Both of them endorsed Applicant for a clearance.

Policies

The SOR was issued under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; and DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended. The case will be adjudicated under the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), applicable to all adjudicative decisions issued on or after June 8, 2017.

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in SEAD 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly

consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline B, Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

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.

Applicant’s wife is a citizen of Thailand and her parents are citizen-residents of Thailand. Directly or through his wife, Applicant maintains a close relationship with his spouse and her relatives in Thailand as demonstrated by his and her family’s frequent contacts and communications with them.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following 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.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to coercion from foreign governments or other entities. 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, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

There is evidence of a threat of domestic terror, sectarian violence, criminal activity, and ongoing human rights problems in Thailand. Additionally, Thailand's increasing economic, military, and diplomatic ties to China are a concern to the United States. Applicant's foreign contacts may create a potential conflict of interest, and there is evidence of a risk of foreign exploitation, inducement, manipulation, pressure, and coercion. The evidence of Applicant's connections to his wife and in-laws, and their connections to Thailand are sufficient to establish disqualifying conditions AG ¶¶ 7(a) and 7(b).

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. 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; and

(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.

I considered the totality of Applicant and his wife's family ties to Thailand. Thailand is generally regarded in the United States as a friendly country. However, 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).

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we

know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The two recent military coups have complicated Thai-U.S. relations and the United States' perception of Thailand as a democracy. I also considered that Thailand's increasing economic, military, and diplomatic ties to China are a concern to the United States; that Thailand has significant human rights abuses that continue without punishment for those involved; and that terrorist incidents attributed to ethno-nationalistic insurgents have occurred in Thailand's southern region.

There is no evidence to show that the government of Thailand supports terrorism, that it conducts intelligence operations against the United States, or that it has a policy or a practice of putting pressure on its citizens to, in turn, pressure relatives in the United States. The Government has no obligation to present such evidence, and this observation is made to complete the record and not to shift the evidentiary burden to the Government. Notwithstanding, because of his relatives and their property and financial interests in Thailand, Applicant could be placed in a position of having to choose between the interests of a family member and the interests of the United States.

Applicant immigrated in 1999 and became a naturalized U.S. citizen in 2006. His parents followed him into the United States and also became naturalized U.S. citizens. He attended college in the United States and has established himself firmly as a solid American citizen. He is respected at work for his performance, trustworthiness, and reliability. He has been promoted several times, and is pending a promotion to a manager position. All of Applicant's financial and property interests (his home, bank accounts, savings, and retirement accounts) are in the United States. He shares custody of his 13-year-old daughter, born in the United States, with his ex-wife. Additionally, Applicant is involved in his community. He mentors high school students and volunteers for nonprofit organizations and other honorable causes.

Applicant's wife immigrated to the United States in 2007. She completed two master's degrees and is pending completion of a doctorate degree, all in U.S. institutions. They married in 2015 and they have a two-year-old son born in the United States. She submitted an application for naturalization that is pending adjudication. (AE J) Applicant's wife resigned her clerical position at the Thai embassy when she became aware of the concerns it caused for Applicant's clearance eligibility.

I considered that Applicant's in-laws have a property in Thailand. Applicant's wife and her brother's interests in that property would not accrue until her parent's passing. Thus, at this point, her interest in the property is speculative and likely she would be entitled to only a percentage of the value of the property. According to his testimony, the property would likely be inherited by his wife's brother, who is currently a resident in the United States. If she inherits any property in Thailand, his wife intends to sell it and bring

the profits to the United States. I believe that Applicant's wife's interest in the Thai property is unlikely to result in a conflict of interest that could be used effectively to influence, manipulate, or pressure him or his wife.

Most of the Applicant's immediate family members are currently living in the United States (except for a sibling in Albania and his in-laws in Thailand). He credibly testified that his loyalty is only to the United States, he is not interested in visiting Thailand ever again, and he would promptly report any efforts by anyone to obtain any classified information from him, even if it was his wife.

On balance, I find that Applicant submitted sufficient evidence of his ties to the United States. There is no conflict of interest because Applicant has established longstanding relationships and loyalties in the United States. He can be expected to resolve any possible conflict of interest in favor of the U.S. interest. His most important family interests all reside in the United States. AG ¶¶ 8(a) and 8(b) are established.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under the guideline at issue in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under these guidelines, and evaluating all the evidence in the context of the whole person, Applicant has mitigated the security concerns.

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 through 1.c:

For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national security interest of the United States to grant Applicant's eligibility for a security clearance. Clearance is granted.

JUAN J. RIVERA
Administrative Judge