

DATE: March 1, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-22599

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant has expressed a willingness to renounce his Thai citizenship, but has not done so. He retains a Thai passport, which he uses to enter Thailand. He also owns property in Thailand worth about \$70,000. His parents, in-laws, and two siblings are citizens of and reside in Thailand. There is no evidence that any of them are agents of any foreign government, or that their presence in Thailand can be exploited by any government. His Thai wife lives in the U.S. and is employed by a U.S. company. As the Applicant has not complied with the *Money Memo* ("Guide to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudication Guidelines," dated September 1, 2000) by surrendering his foreign passport, his request for a security clearance must be denied. Clearance is denied.

**STATEMENT OF THE CASE**

On August 27, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on or about September 24, 2003.

Applicant elected to have this case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on November 17, 2003. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received his copy on November 21, 2003, and submitted nothing in reply. The case was received by the undersigned for resolution on January 29, 2004. The issues raised here are whether the Applicant's foreign preference, alleged foreign influence, and alleged wilful falsification militate against the granting of a security clearance. [The Applicant admits the

underlying factual basis of all the allegations except for the wilful falsification, subparagraph 3.a.]

## FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, and the File of Relevant Material. The Applicant is 33 years of age, and is employed by a defense contractor, who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

### Guideline C - Foreign Preference

The Applicant was born in the United States to Thai nationals in 1970 (Government Exhibit (GX) 3 at page 1). His parents "went back to live in Thailand when . . . [the Applicant] was very young" (*id*).

1.a.~1.g., and 2.e. When the Applicant "was in High School in Thailand . . . [he] went to mandatory Friday evening military classes for four hours during the school year" (GX 5 at page 2). From May 1992~December 1994, the Applicant worked as an engineer for private Thai companies in Thailand, in order to earn enough money to return to the U.S. (GX 3 at page 2). He returned to the United States late in 1994 (GX 3 at page 1).

The Applicant is a dual national of the United States and of Thailand, and possesses passports from both countries (GX 4 at page 1, and GX 5 at page 1). He is willing to renounce his Thai citizenship and surrender his Thai passport, but he has not done so (GX 5 at pages 1 and 3). Since 1997, the Applicant has traveled to Thailand at least eight times, using his Thai passport to enter Thailand "with [the] only intention for convenience in the customs process and for a longer stay with . . . [his] family" (GX 3 at page 2, and GX 4 at page 6). He also owns land in Thailand, worth about \$70,000 (GX 3 at page 1). It was given to the Applicant by his parents in February or March of 2003 (*id*).

### Guideline B - Foreign Influence

2.a.~2.d. The Applicant's parents are citizens of and reside in Thailand (GX 4 at page 4). They are medical doctors (GX 3 at page 2). The Applicant in-laws are citizens of and reside in Thailand, and are also medical doctors (*id*). The Applicant has two siblings (GX 4 at page 4). They are citizens of and reside in Thailand (*id*). One is a medical doctor and the other is a banker (GX 3 at page 2). The Applicant's spouse is a citizen of Thailand, but resides in the U.S. (GX 4 at page 4). She has a Ph.D., and works for an American company (GX 3 at page 2). The Applicant avers, credibly:

. . . there is no potential for me to be exploited for espionage or compromised, with regards to loyalty to the US. If a potentially compromising situation would ever . . . occur, I would immediately proceed through appropriate industrial and government security channels to resolve the situation (GX 5 at page 3).

He further avers that none of his Thai relatives have any connection with the Thai government (GX 5 at page 4).

### Guideline E - Personal Conduct

3.a. When the Applicant answered question 12 on his May 2002 SCA, he told the truth as to his foreign property when he answered "No" to the posited question (GX 4 at page 5). He owned no property in Thailand in May of 2002, but acquired the \$70,000 worth of land, noted above under Foreign Preference, in February or March of 2003, nine months later (GX 3 at pages 1 and 3).

## POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. The conditions should be followed in every case according to the pertinent criterion, however, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case. Conditions

most pertinent to evaluation of this case are:

### Foreign Preference

#### Conditions that could raise a security concern:

1. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport.

#### Condition that could mitigate security concerns:

4. Individual has expressed a willingness to renounce dual citizenship.

### Foreign Influence

#### Condition that could raise a security concern:

1. An immediate family member . . . is a citizen of . . . a foreign country.

#### Condition that could mitigate security concerns:

1. A determination that the immediate family members . . . in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the persons involved and the United States.

### Personal Conduct

#### Conditions that could raise a security concern:

None

As set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must make out a case under Guideline C (foreign preference), Guideline B (foreign influence) and Guideline E (personal Conduct), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and her ability to

effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct or situation, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference, or who is subject to a foreign influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

## CONCLUSIONS

The Applicant is a dual citizen of Thailand and of the United States. Despite being appraised of the *Money Memo*(GX 6), he has yet to surrender his Thai passport. The *Money Memo* "requires that any clearance be denied or revoked unless the applicant surrenders his foreign passport . . . ." Guideline C is therefore found against the Applicant.

As to his parents, in-laws and siblings, who are citizens of and reside in Thailand, the Applicant has demonstrated that his immediate family members "are not agents of a foreign power," and not "in a position to be exploited by a foreign power." Thus the first mitigating condition under Foreign Influence is applicable here; and as such, Guideline B is found for the Applicant.

As to his alleged Personal Conduct, I can find no disqualifying conditions. He was truthful when he executed the May 2002 SCA as he owned no foreign property at that time.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his foreign preference. The Applicant has thus not met the mitigating conditions of Guideline C, and of Section E.2.2. of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guideline C.

## FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

### Paragraph 1: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. For the Applicant.
- c. For the Applicant.
- d. Against the Applicant.

### Paragraph 2: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.

c. For the Applicant.

d. For the Applicant.

e. For the Applicant.

Paragraph 3: FOR THE APPLICANT

a. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

### **DECISION**

In light of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge