

KEYWORD: Foreign Influence; Personal Conduct

DIGEST: While Applicant mitigated his failure to list his siblings, half-siblings, and father-in-law on his security clearance application by persuasively demonstrating it was not a deliberate falsification under Guideline E, he was unable to mitigate Guideline B security concerns related to family members who were citizens and residents of Thailand. Clearance is denied.

CASENO: 03-19194.h1

DATE: 03/30/2005

DATE: March 30, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-19194

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

While Applicant mitigated his failure to list his siblings, half-siblings, and father-in-law on his security clearance application by persuasively demonstrating it was not a deliberate falsification under Guideline E, he was unable to mitigate Guideline B security concerns related to family members who were citizens and residents of Thailand. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On May 13, 2004, under the applicable Executive Order [\(1\)](#) and Department of Defense Directive, [\(2\)](#) DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) and Guideline E (Personal Conduct). Applicant answered the SOR in writing on June 17, 2004, and requested his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on September 13, 2004. The FORM contained documents identified as Items 1 through 7. By letter dated September 16, 2004, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant did not submit additional information or objections within that time period. On November 16, 2004, the case was assigned to an administrative judge in DOHA for a decision. For reasons related to that judge's caseload, the case was transferred to me for a decision on February 17, 2005.

FINDINGS OF FACT

The SOR contains nine allegations of disqualifying conduct. Eight allegations relate to conduct addressed under Guideline B, Foreign Influence, and one allegation relates to conduct addressed under Guideline E, Personal Conduct. In his answer to the SOR, Applicant admitted seven allegations under Guideline B. He denied allegation 1.b. under Guideline B that he maintained regular contact with his two brothers in Thailand. He denied the Guideline E allegation that he deliberately failed to list on his security clearance application his seven siblings, seven half-siblings, and father-in-law, all of whom are citizens of Thailand and reside in Thailand. His admissions are incorporated as findings of fact.

Applicant is a 47-year-old network analyst employed by a defense contractor. Applicant was born in Thailand and became a naturalized U.S. citizen in 1994. He was granted a security clearance in 1999.

Applicant was married in 1987. His wife's place of birth was Bangkok, Thailand, and she too is a naturalized U.S. citizen. He and his wife have one son, who is four years old. In 1991 he and his wife adopted the wife's nephew, who is a citizen of Thailand and living in the U.S. with permanent resident status. The adopted son is now 30 years old, and from 1995 to 1999, he lived in Thailand. (Item 3 and Item 5.)

Applicant's mother is a citizen of Thailand and has U.S. permanent resident status. Applicant's father-in-law is a citizen and resident of Thailand. Applicant's mother resides with Applicant and his family in the U.S. for approximately six months a year. She returns to Thailand for the second half of the year for medical consultations and treatments, which she cannot afford in the U.S. (Item 3.) Applicant does not get along with his father-in-law.

Applicant has seven siblings who are citizens and residents of Thailand. He also has seven half siblings who are citizens and residents of Thailand. One of his full brothers is a judge in Thailand and another full brother is employed there as an engineer. In 1996, Applicant and his wife borrowed \$100,000 from his mother and one of his full brothers in Thailand to pay off a loan and to purchase a building for their business. They paid back the money without interest and show their appreciation for the brother who lent them the money by taking him gifts when they go to Thailand. (Item 5.)

Applicant and his wife traveled to Thailand in about 1997, and in 1999, 2000, and 2002. Their purposes in traveling to Thailand were to vacation and visit family. Each time, they stayed for two or three weeks. Applicant purchased a townhouse in Thailand in 2002 to use for vacations and as an investment property. The townhouse is valued at \$50,000. Applicant stated he believes one of his brothers pays the annual taxes on the property. (Item 5.) Applicant denies he maintains regular contact with his brothers in Thailand and states he is in contact with his brothers once a year.

Applicant completed his security clearance application (SF-86) on June 19, 2002. Question 9 on the security clearance application required him to list all relatives and associates with whom he and his spouse were bound by affection, obligation or close and continuing contact. In response to question 9, Applicant listed his mother, his deceased father, and his wife's aunt. He did not list his siblings, half-siblings, or father-in-law. Applicant denied his omissions were deliberate falsifications of his SF-86. He said he received no guidance or review from his employer when he completed the SF-86 and answered question 9. He did not consider once a year contact with family members to be close and continuing contact, although he acknowledged no definitions of the terms were provided to him. He said he completed the form to the best of his ability. (Item 3.)

I take administrative notice of two documents, identified as Items 6 and 7, on the FORM. Item 6 is a United States Department of State, Consular Information Sheet - Thailand, dated September 13, 2004.

(<http://www.travel.state.gov/travel/thailand.html>.) Item 7 is a United States Department of State Country Report on Human Rights Practices in Thailand. The report is for the year 2003.

([Http://www.state.gov/g/drl/rls/hrrpt/2003/27790pf.htm](http://www.state.gov/g/drl/rls/hrrpt/2003/27790pf.htm).) Item 6 states that there is an increased risk of terrorism in Southeast Asia, including Thailand, and warns U.S. citizens traveling to Thailand to exercise caution in public places and to "remain vigilant with regard to their personal security and avoid crowds and demonstrations." (Item 6, at 2.) U.S. citizens are further advised of criminal and politically motivated violence in the far south of Thailand, conflicts related to drug trafficking and civil war in remote areas along Thailand's border with Burma, and violence along Thailand's northern and eastern borders with Laos. (Item 6, at 2-3.) The country report on human rights practices in Thailand states Thailand's human rights record has worsened and cites increased extrajudicial killings and arbitrary arrests. (Item 7, at 1.) There is a culture of corruption in many parts of the civilian bureaucracy and in some units of the security forces. The report states: "Routine demands for bribes undermined the rule of law and permitted the continuation of various illegal activities..." (Item 7, at 1.)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

Guideline B - Foreign Influence

Adjudicative Guideline B, Foreign Influence, applies to this case. Under Guideline B, a security concern may exist when an individual's immediate family and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure. ¶ E2.A2.1.1.

Guideline B identifies several conditions that could raise security concerns:

An immediate family member of a person to whom the individual has close ties of affection or obligation is a citizen of or resident in a foreign country (¶ E2.A2.1.2.1.);

The individual seeking clearance shares living quarters with a person or persons, regardless of citizenship status, if the potential for adverse foreign influence or duress exists (¶ E2.A2.1.2.2.);

Relatives, cohabitants, or associates who are connected with any foreign government. (¶ E2.A2.1.2.3.);

The individual seeking clearance displays conduct which may make him vulnerable to coercion, exploitation, or pressure by a foreign government (¶ E2.A2.1.2.6.); and

The individual seeking clearance has a substantial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence. (¶ E2.A2.1.2.8.)

Guideline B mitigating conditions that might apply to this case include:

A determination that the immediate family members (mother, siblings (including two brothers), half-siblings, father-in-law, adopted son) or associates 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 (¶ E2.A2.1.3.1);

Contact and correspondence with foreign citizens are casual and infrequent (¶ E2.A2.1.3.3.).

Foreign financial interests are minimal and not sufficient to affect the individual's security interests. (¶ E2.A2.1.3.5.)

In the SOR DOHA alleged under Guideline B that Applicant's close familial and friendship ties with and obligations to citizens of Thailand created the potential for foreign influence that could result in the compromise of classified information. The SOR alleged that Applicant has seven siblings who are citizens and residents of Thailand (¶ 1.a.); that Applicant maintained regular contact with two of his brothers, one a judge and one an engineer, who reside in Thailand

(¶ 1.b.); that Applicant had seven half-siblings who are citizens and residents of Thailand (¶ 1.c.); that Applicant's father-in-law is a citizen and resident of Thailand (¶ 1.d.); that Applicant traveled to Thailand in 1999, 2000, and 2002 (¶ 1.e.); that Applicant owned a townhouse in Thailand, valued at \$50,000, which he had purchased in 2002 (¶ 1.f.); that Applicant's adopted son is a citizen of Thailand and resides in the United States (¶ 1.g.); and that Applicant's mother, a citizen of Thailand, resided with him in the United States for approximately six months of the year and in Thailand for the remainder of the year (¶ 1.g.).

Applicant admitted his mother, seven siblings, seven half-siblings, adopted son, and father-in-law are citizens of Thailand, as alleged in the SOR at ¶¶ 1.a., 1.c., 1.d., 1.g., and 1.h. The full siblings, half siblings, and the father-in-law also reside in Thailand. His mother resides part of the year in the U.S. and part of the year in Thailand. His adopted son resides in the U.S. Applicant denied close ties with his half-siblings, and stated his relationship with them was so remote he didn't remember some of their names. Even so, in a culture that values kinship, these relatives can claim familial influence and obligation. He also denied a close relationship with his two brothers in Thailand, although he admitted an obligation to one of the brothers who, along with his mother, had lent him \$100,000, interest free, to develop his business. One of the brothers also paid his property taxes on the townhouse he purchased in 2002, suggesting a relationship of obligation. Appellant is also bound by ties of obligation to his mother, his father-in-law, and adopted son. Thus Disqualifying Condition (DC) ¶ E2.A.2.1.2.1. is applicable.

Applicant's mother, a citizen of Thailand, lives in his household for six months of the year and lives in Thailand for the remainder of the year. She journeys to Thailand for her medical treatment, since she cannot afford treatment in the U.S. Her dependence upon medical services and treatment in Thailand raises the potential for adverse foreign influence or duress, and thus DC ¶ E2.A.2.1.2.2. applies. One of Applicant's brothers, a judge, is connected with the government of Thailand; thus DC ¶ E2.A.2.1.2.3. applies.

Applicant traveled to Thailand in about 1997 and in 1999, 2000, and 2002. He borrowed a large sum of money from his mother and one of his brothers, both of whom are citizens of Thailand. The brother did not charge him interest on the loan, and Applicant has since repaid the loan in full. He admits to an ongoing sense of appreciation and obligation to the brother for his generosity and support. Additionally, in 2002, Applicant purchased real property in Thailand for \$50,000. He intends to use the property for his future vacations in Thailand and as an investment. His brother pays taxes on the property for him. ⁽³⁾ Applicant's financial interests and obligations raise concerns under ¶ E2.A.2.1.2.8. His conduct as a borrower and investor, while apparently innocent on its face, could make him vulnerable to duress, coercion, exploitation, or pressure by a foreign government, thus raising a concern under ¶ E2.A.2.1.2.6. Family obligations or fidelity to relationships in another country may make one vulnerable to duress by the intelligence service of the foreign country or by agents from that country engaged in industrial espionage, terrorism, or other criminal activity.

An applicant may mitigate foreign influence security concerns if he demonstrates his foreign associates are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force an applicant to choose between loyalty to the foreign associate and loyalty to the U.S. Mitigating Condition (MC) E2.A.2.1.3.1. Applicant has seven siblings, seven half-siblings, and a father-in-law who are citizens and residents of Thailand. His adopted son is a citizen of Thailand and a resident of the U.S. His mother, a citizen of Thailand, spends six months of the year in Applicant's home and six months in Thailand. She depends on receiving medical services in Thailand; his brother, a judge, is an employee of the government. While nothing in the record suggests Applicant's relatives in Thailand are agents of a foreign power, his mother, siblings, step-siblings, adopted son, and his father-in-law are in positions that a foreign power could exploit to force Applicant to choose between loyalty to one of his family members and loyalty to

the U.S. Thus, MC E2.A2.1.3.1. does not apply to the facts of Applicant's case.

An applicant may also mitigate foreign influence security concerns if he shows his contact and correspondence with foreign citizens are casual and infrequent. C E2.A2.1.3.3. While Applicant stated his contact with his full brothers in Thailand occurs only once a year, that contact is more than casual and his indebtedness to family members in Thailand illustrates conduct which could make him vulnerable to coercion, exploitation, or pressure by a foreign government. By definition, Applicant's contacts with his mother and two full brothers, all of whom are citizens of Thailand, are not casual contacts. He traveled to Thailand to visit family members in approximately 1997, and in 1999, 2000, and 2002, making his contact with them more committed than casual and more frequent than infrequent. Thus MC E2.A2.1.3.3 does not apply.

Applicant's financial interests in Thailand are not inconsequential. The real property he purchased there in 2002, has an estimated value of \$50,000. Moreover, his financial relationship with the brother (or brothers) who lent him \$100,000 and who paid his yearly property taxes to the Thai government are of sufficient magnitude to affect his security responsibilities. Accordingly, MC E2.A2.1.3.5 does not apply.

Nothing in Applicant's answers to the SOR suggested he was not a loyal American citizen and a credit to his adopted country. However, he was unable to put forward evidence that could mitigate the security concerns discussed herein and demonstrate that he would not be vulnerable to foreign influence that would result in the compromise of classified information. Accordingly, the Guideline B allegations in subparagraphs 1.a. through 1.h. are concluded against the Applicant.

Guideline E - Personal Conduct

In the SOR, DOHA alleged Applicant deliberately falsified his answer on his SF 86 to Question 9 (¶ 2.a.) by failing to list his seven siblings, his seven half-siblings, and his father-in-law. Applicant denies deliberately omitting information about those relatives who are citizens and residents of Thailand. He states he was confused about the nature and degree of relationships requested and tried to complete the form to the best of his ability. He said his employer gave him no guidance in completing the SF-86. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

An applicant has a serious responsibility to provide truthful and complete responses to questions on his or her SF-86. A security concern is raised when an applicant deliberately omits, conceals, or falsifies relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities. ¶ E2.A5.1.2.2. A person's refusal to provide relevant and material

information to the Government provides a rational basis for denial or revocation of access to classified information for that person. ISCR Case No. 98-0445 at 3 (App. Bd. April 2, 1999), (quoting *Gayer v. Schlesinger*, 490 F. 2d 740, 754 (D.C. Cir. 1973); *Clifford v. Shoultz*, 413 F. 2d 868 (9th Cir. 1969), *cert. denied*, 396 U.S. 962 (1969)).

In ISCR Case No. 98-0761 at 3 (Dec. 27, 1999), DOHA's Appeal Board states that an administrative judge, in deciding an applicant's security worthiness, "must consider the record as a whole (Directive Section F.3.) and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*." I have considered the record as a whole and have evaluated Applicant's conduct under the whole person concept of the Directive. I conclude the Government has not established Applicant's answer to Question 9 was a deliberate falsification. His assertion that he did not intend to falsify his response to Question 9 on his SF-86 is credible in light of his concern and confusion over identifying relatives with whom he had close and continuing contact. Applicant's failure to provide complete and correct answers to the questions about his relatives in Thailand appears to have been an honest mistake and not deliberate, and thus none of the mitigating conditions is applicable. Accordingly, the allegations in subparagraph 2.a. of the SOR are concluded for the Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Paragraph 2. Guideline E FOR APPLICANT

Subparagraph 2.a.: For Applicant

DECISION

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

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. It is not clear from the record whether both brothers in Thailand helped Applicant financially, or whether one brother helped him twice.