

KEYWORD: Financial; Foreign Influence

DIGEST: Applicant has sixteen delinquent debts totaling \$113,863, and he produced no evidence refuting or mitigating any of them. His spouse is a citizen of Thailand and owns real estate in Thailand. Security concerns based on financial considerations and foreign influence are not mitigated. Clearance is denied.

CASENO: 04-12453.h1

DATE: 01/31/2006

DATE: January 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-12453

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant has sixteen delinquent debts totaling \$113,863, and he produced no evidence refuting or mitigating any of them. His spouse is a citizen of Thailand and owns real estate in Thailand. Security concerns based on financial considerations and foreign influence are not mitigated. Clearance is denied.

STATEMENT OF THE CASE

On August 17, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive). The SOR alleges security concerns under Guidelines F (Financial Considerations) and B (Foreign Influence). Under Guideline F, it alleges 16 delinquent debts totaling \$113,863. Under Guideline B, it alleges Applicant is married to a citizen of Thailand and has family and financial ties to Thailand. Applicant answered the SOR in writing on September 2, 2005, admitted all the allegations, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on October 31, 2005. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on November 9, 2005, and did not respond. The case was assigned to me on December 28, 2005.

FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in his answer to the SOR, I make the following findings of fact:

Applicant is a 58-year-old employee of a defense contractor. He married a citizen of Thailand in January 1980. They met, married, and have lived their entire married life in the U.S. They have a 21-year-old adopted child who was born in Taiwan and lives in the U.S.⁽¹⁾ His spouse is a permanent alien resident of the U.S., but she has not sought U.S. citizenship because she owns real estate in Thailand, and she believes she would lose her rights to the property if she became a U.S. citizen.⁽²⁾

Applicant's father-in-law is dead. His mother-in-law is a citizen and resident of Thailand. He visits her every four years but has no other contact with her. His spouse has telephonic contact with her mother every one or two weeks. His spouse has four brothers and two sisters who are citizens and residents of Thailand. He sees them once every four years but has no other contact with them. When interviewed by a security investigator, he could not remember all their names. He last traveled to Thailand in 2001.⁽³⁾

The daughter of a friend of Applicant's spouse came from Thailand to live with them in 1991 and attend high school. She lived with them until January 2002, when she returned to Thailand. Applicant has had no contact with her since she returned to Thailand.⁽⁴⁾

Applicant has 16 delinquent debts totaling \$113,863. He admitted all the debts in his answer to the SOR, offered no explanations, and presented no evidence any of them were being resolved.⁽⁵⁾

Thailand is a democratically governed constitutional monarchy with a generally good human rights record.⁽⁶⁾ The U.S. and Thailand have had close relations since World War II. They are active trading partners, and the U.S. has provided substantial security assistance to Thailand.⁽⁷⁾

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "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 and modified. Eligibility for a security clearance is predicated upon the applicant meeting the security

guidelines contained in the Directive. 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.

The Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1 through 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (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 applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

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 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 which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

Guideline F: (Financial Considerations)

Under this guideline, "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive ¶ E2.A6.1.1. A person who fails or refuses to pay long-standing debts or is financially irresponsible may also be irresponsible or careless in his or her duty to protect classified information.

Two disqualifying conditions (DC) under this guideline could raise a security concern and may be disqualifying in this case. DC 1 applies where an applicant has a history of not meeting his or her financial obligations. Directive ¶ E2.A6.1.2.1. DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3. Applicant's admissions, corroborated by a credit bureau report, establish DC 1. He offered no evidence to refute, explain, or mitigate his indebtedness. His failure to take any action to resolve his debts establishes DC 3. After considering the disqualifying conditions and the lack of any mitigating evidence, and evaluating all the evidence in the context of the whole person, I conclude he has not mitigated the security concern based on financial considerations.

Guideline B (Foreign Influence)

A security risk may exist when an applicant's immediate family, or other persons to whom he or she may be bound by affection, influence, or obligation, are not citizens of the U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Directive ¶ E2.A2.1.1. A disqualifying condition (DC 1) may arise when "[a]n immediate family member [spouse, father, mother, sons, daughters, brothers, sisters], or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country." Directive ¶ E2.A2.1.2.1. Because Applicant's spouse is a citizen of Thailand, DC 1 is established.

"[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at * 8 (App. Bd. Feb. 20, 2002). The presumption is rebutted in this case. Applicant has virtually no contact with any of his spouse's family. He visits them once every four years along with his spouse, but his relationship with them is so tenuous he cannot remember all their names.

Since the government produced substantial evidence to establish DC 1, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. In cases where an applicant has immediate family members who are citizens or residents of a foreign country or who are connected with a foreign government, a mitigating condition (MC 1) may apply if "the immediate family members, cohabitant, or associate(s) 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 person(s) involved and the United States." Directive ¶ E2A2.1.3.1.

Notwithstanding the facially disjunctive language of MC 1 ("agents of a foreign power **or** in a position to be exploited"), it requires proof "that an applicant's family members, cohabitant, or associates in question are (a) not agents of a foreign power, **and** (b) not in a position to be exploited by a foreign power in a way that could force the applicant to choose between the person(s) involved and the United States." ISCR Case No. 02-14995 at 5 (App. Bd. Jul. 26, 2004); *see* 50 U.S.C. § 1801(b) (defining "agent of a foreign power").

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). Although Thailand historically has been regarded as friendly to the U.S., 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. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. 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, or the country is known to conduct intelligence operations against the U.S.

Thailand is an ally, friend, and trading partner of the U.S. The nature of Thailand's government, its human rights record, and its relationship with the U.S. are clearly not determinative. Nevertheless, they are all relevant factors in determining whether Thailand would risk damaging its relationship with the U.S. by exploiting or threatening its private citizens in order to force a U.S. citizen to betray the U.S.

Applicant's spouse is not an agent of a foreign power or connected with a foreign government. Whether she is in a position to be exploited because of her family and financial ties cannot be determined from this record, because Applicant has provided no information about her immediate family or the nature, extent, and value of her real estate holdings. An applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). I conclude Applicant has not carried his burden of establishing MC 1.

A mitigating condition (MC 3) may apply if "[c]ontact and correspondence with foreign citizens are casual and

infrequent." Directive ¶ E2.A2.1.3.3. MC 3 is established for Applicant's mother-in-law, brothers-in-law, and sisters-in-law, because the evidence shows his contact with them is minimal. His travel to Thailand is relevant to evaluating the extent of his contact with his in-laws, but it has no independent security significance.

A "substantial financial interest" in a foreign country is a potential disqualifying condition (DC 8) under this guideline. Directive ¶ E2.A2.11.2.8. Applicant's spouse's ownership of real estate in Thailand establishes DC 8. Security concerns based on foreign financial interests can be mitigated (MC 5) by showing they "are minimal and not sufficient to affect the individual's security responsibilities." Directive ¶ E2.A2.1.3.5. MC 5 is not established because Applicant has provided no information about his spouse's real estate holdings in Thailand or his legal or financial interest, if any, in those holdings. I conclude he has not mitigated the security concern based on his spouse's ownership of real estate in Thailand.

None of the individual family circumstances discussed above are determinative. The totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). After considering the totality of Applicant's family ties to Thailand, weighing the disqualifying and mitigating conditions, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concern based on foreign influence.

FORMAL FINDINGS

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

Paragraph 1. Guideline F (Financial Considerations): 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

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: Against Applicant

Subparagraph 1.n.: Against Applicant

Subparagraph 1.o.: Against Applicant

Subparagraph 1.p.: Against Applicant

Paragraph 2. Guideline B (Foreign Influence): AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: For Applicant

Subparagraph 2.f.: For Applicant

DECISION

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

LeRoy F. Foreman
Administrative Judge

1. FORM Item 4 at 1, 2.
2. FORM Item 5 at 2.
3. *Id.* at 2-3.
4. *Id.* at 4.
5. FORM Item 3.
6. FORM Item 8 at 1.
7. U.S. Dept. of State, *Background Note: Thailand 6-7* (October 2005), available on the internet at www.state.gov.