

KEYWORD: Foreign Influence

DIGEST: Applicant's wife is a citizen of Thailand. They have been married for 20 years, and she is a permanent resident of the United States. His wife has regular contact with her family members living in Thailand. Applicant does not. His wife owns a house in Thailand, from which she receives no income. This house has minimal impact on their overall financial situation. He has mitigated the government's concerns under Guideline B. Clearance is granted.

CASE NO: 05-01195.h1

DATE: 01/31/2006

DATE: January 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-01195

DECISION OF ADMINISTRATIVE JUDGE

MARY E. HENRY

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

William F. Savarino, Esq.

SYNOPSIS

Applicant's wife is a citizen of Thailand. They have been married for 20 years, and she is a permanent resident of the United States. His wife has regular contact with her family members living in Thailand. Applicant does not. His wife owns a house in Thailand, from which she receives no income. This house has minimal impact on their overall financial situation. He has mitigated the government's concerns under Guideline B. Clearance is granted.

STATEMENT OF THE CASE

On August 19, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR 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 Applicant. Specifically, the SOR set forth security concerns arising under Guideline B, Foreign Influence, of the Directive. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. On September 12, 2005, Applicant submitted a notarized response to the allegations, and requested a hearing.

This matter was assigned to me on November 21, 2005. A notice of hearing was issued on November 22, 2005, and a hearing was held on December 15, 2005. Three government exhibits were admitted into evidence. In addition, the government offered one document and Applicant offered eleven documents for me to take notice of their contents. Applicant and one witness testified. The hearing transcript (Tr.) was received on January 9, 2006.

FINDINGS OF FACT

Applicant admitted the allegations in subparagraphs 1.a. through 1.d. of the SOR.⁽¹⁾ Those admissions are incorporated here as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 61-year-old mechanical engineer for a defense contractor.⁽²⁾ He has worked for this contractor for two and one-half years.⁽³⁾ He completed a security clearance application (SF 86) in August 2003.⁽⁴⁾

Applicant received a bachelor of science degree and a masters degree from major United States (U.S.) universities.⁽⁵⁾ He has worked as an engineer and analyst for over 30 years.⁽⁶⁾ For almost 18 years of this time, he held Department of Defense clearances, the last clearance held from 1989 through 1995.⁽⁷⁾ When he held these clearances, he was never subject to foreign pressure or influence.⁽⁸⁾ He has been married to his second wife for nearly 20 years.⁽⁹⁾ They have one son, age 19, who was born in the U.S. and is a citizen of the U.S.⁽¹⁰⁾

Applicant's wife was born in the Kingdom of Thailand (Thailand or Thai) and is a citizen of Thailand.⁽¹¹⁾ She is a permanent resident of the U.S. and has been for many years.⁽¹²⁾ In 1989, he and his wife began the application process for her to become a U.S. citizen.⁽¹³⁾ Because of the confusing, complicated process and his work demands, they stopped processing her application.⁽¹⁴⁾ Although they have never restarted her citizenship application, his wife recently expressed a desire to move forward with her efforts to become a U.S. citizen.⁽¹⁵⁾ His wife travels to Thailand once a year to visit family members.⁽¹⁶⁾ His only trip to Thailand occurred in 1994 when he joined his wife and her family to celebrate his father-in-law's 60th birthday.⁽¹⁷⁾ His wife recently completed her Ph.D. in business administration.⁽¹⁸⁾ She is not working at this time, although she is looking for a job.⁽¹⁹⁾ Before their recent relocation, as a representative of the U.S. university she attended, his wife actively worked with a Thailand consulate in the U.S. to recruit Thai students to attend this school.⁽²⁰⁾

Applicant's mother-in-law is a resident and citizen of Thailand.⁽²¹⁾ She does not work, and is separated from her husband who provides no financial support.⁽²²⁾ She lives in a house in Thailand, which his wife purchased for \$40,000 in the 1990s.⁽²³⁾ His wife financed this purchase through a bank in Thailand.⁽²⁴⁾ She paid the mortgage from her earnings until she returned to school.⁽²⁵⁾ She receives no income from this property.⁽²⁶⁾ The house is titled in his wife's name only.⁽²⁷⁾ His mother-in-law came to the U.S. in 1986 when their son was born, and remained in the U.S. until 1990 when she went back to Thailand.⁽²⁸⁾ She has not returned to the U.S.⁽²⁹⁾ Applicant

and his wife provide some financial support for his mother-in-law. (30) His wife talks with her weekly. (31) He does not talk on the telephone with his mother-in-law as he does not speak Thai. (32)

Applicant's father-in-law, who is in his early 70s, is a resident and citizen of Thailand. (33) His father-in-law owns and operates a business, which has made him wealthy under Thailand's standard of living. (34) His father-in-law lives apart from his mother-in-law. (35) His wife talks with her father every couple of weeks, but he does not, as he does not speak Thai. (36) His father-in-law periodically travels to the U.S. for a few weeks. (37) During these visits, his father-in-law spends a day or two with them. (38)

Applicant's wife lived with an uncle while attending high school in Thailand. (39) As a result, she is close to him. Her uncle retired two years ago from a security position related to Thailand's airports. (40) This civilian job is part of the police department. (41) Her uncle receives a pension from the Thai government and is financially secure. (42) His wife speaks with her uncle on the telephone a couple of times a year, but Applicant does not talk with him. (43)

Applicant's wife has 2 sisters and a brother, plus 11 step-brothers and step-sisters. (44) All live in Thailand, except one sister, who is a U.S. citizen and resident. (45) Her brother is a general contractor in Thailand and her sister is a successful business woman in Thailand. (46) They help support their mother. (47) His wife interacts with her three siblings by computer or telephone when they are at their mother's house. (48) She does not contact her step-siblings. He talks with his wife's younger sister as she speaks English. (49)

His wife's family in Thailand lacks the knowledge and expertise to understand what he does. (50) They know he works on rockets. (51) Thus, they think he works for the National Air and Space Administration. (52) His wife, her parents and her uncle are not agents of a foreign power, and do not work for the Thai government or military. (53)

Applicant and his wife own a house and a condominium in the U.S., with an estimated value of \$1,000,000. (54) He is also in a partnership that owns rental property valued at approximately \$2,500,000. (55) His partnership share is 50%. (56) All of his financial assets, including retirement, are in the U.S. (57) He estimates his current net value at approximately \$1,500,000. His wife's only asset outside of the U.S. is the house she purchased for her mother, which he values at between \$70,000 and \$80,000. (58) This property has little impact on their finances. (59) Although his wife will inherit from her father, she will share her inheritance with her brothers, 2 sisters, and 11 step-siblings. (60)

His supervisor testified on his behalf. He has known Applicant for ten years. He recommended him for his current position because of their past work relationships.⁽⁶³⁾ His supervisor describes him as honest and trustworthy.⁽⁶⁴⁾ He follows the rules on safeguarding sensitive information, provides high quality work, and is reliable.⁽⁶⁵⁾ His supervisor recently gave him a great evaluation and a promotion.⁽⁶⁶⁾

Thailand is a constitutional monarchy, with a king, a prime minister, a national assembly, and courts.⁽⁶⁷⁾ Since the 1992 elections, Thailand has been a functioning democracy with constitutional changes.⁽⁶⁸⁾ Thailand and the U.S. have a long history of friendship and working together.⁽⁶⁹⁾ Thailand is a long-standing ally.⁽⁷⁰⁾ Thailand and the U.S. also have a long history of collaborating on law enforcement, including fighting crime in drug trafficking and trafficking in persons, intelligence, and military operations.⁽⁷¹⁾ Thailand is working with the U.S. on terrorism.⁽⁷²⁾ In October 2003, President George W. Bush designated Thailand a "major non-NATO ally".⁽⁷³⁾ The U.S. and Thailand differ on Burma policy and human rights issues.⁽⁷⁴⁾ The major concerns on human rights violations focus on Thailand's treatment of criminal suspects, particularly drug traffickers.⁽⁷⁵⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudication guidelines which must be considered in the evaluation of security suitability. An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the adjudicative process provision in Paragraph E2.2., Enclosure 2 of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions and mitigating conditions applicable to each specific guideline. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other 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. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁷⁶⁾ The government has the burden of proving controverted facts.⁽⁷⁷⁾ The burden of proof is something less than a preponderance of the evidence.⁽⁷⁸⁾ Once the government has met

its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁷⁹⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁰⁾

No one has a right to a security clearance⁽⁸¹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁸²⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽⁸³⁾ Section 7 of Executive Order 10865 specifically provides industrial security clearance 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." The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.⁽⁸⁴⁾ 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.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Foreign Influence - Guideline B: A security risk may exist when an individual's immediate family, including cohabitants, 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.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

The government has established its case under Guideline B. Based on all the evidence, Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1. (*An immediate family member, 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*) applies in this case. Paragraph E2.A2.1.3.1. defines "immediate family members" to include a spouse, father, mother, sons, daughters, brothers, and sisters. Applicant's wife is a citizen of Thailand. This "could create the potential for foreign influence that could result in

⁽⁸⁵⁾

the compromise of classified information." The mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B.⁽⁸⁶⁾ However, such ties do raise a *prima facie* security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him.⁽⁸⁷⁾

Although the definition of family member in Paragraph E2.A2.1.3.1 does not include in-laws, the Appeal Board has opined that it includes a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse.⁽⁸⁸⁾ *Applicant's father-in-law and mother-in-law are citizens and residents of Thailand. In addition, his wife has close ties with her uncle and siblings, who are citizens and residents of Thailand.*

I considered the Foreign Influence Mitigating Conditions (FI MC) and conclude that FI MC E2.A2.1.3.1. (A determination that the immediate family member(s), (spouse, father mother, sons, daughters, brothers, sisters), 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) applies. Applicant's wife is a long-time U.S. resident and has expressed an intent to complete the naturalization process. She is not an agent or employee of the Thai government or military. In an effort to share her U.S. educational experience with other Thai students, as a representative of a U.S. university, she developed a working relationship with a Thai consulate in the U.S. to recruit students for the school. Rather than making her an agent of a foreign power, her recruiting efforts reflect her loyalty and commitment to the U.S. She has not recruited students recently. This past work has not put her in a position to be exploited in a way that could force Applicant to choose between loyalty to his family and the United States.

Applicant has no immediate family members living outside the United States. His closest family members are his wife and son, who live with him. Because these family members are in the United States, they are not vulnerable to coercion or exploitation. Although his wife travels to Thailand once a year to visit family, Thailand's close ties to the U.S. make it highly unlikely that she will be vulnerable to coercion or exploitation. Thailand and the U.S. share intelligence and work together on military operations.

Applicant's father-in-law is a wealthy business owner who is not financially dependent on him. His father-in-law continues to operate his private business. He is not an agent of a foreign power. He is free to travel to the U.S. and does so without recrimination from the Thai government. His mother-in-law does receive some financial support from Applicant and his wife, as she does not work and lives separately from his father-in-law. Her other children also contribute to her support. She is not an agent of a foreign power.

Applicant's wife has significant contact with her immediate family in Thailand. He, on the other hand, has very limited contact. He does not travel regularly to Thailand to visit his in-laws nor does he have regular contact with them. With the exception of one sister-in-law, he does not talk or write to his in-laws, as he does not speak or write Thai and his in-laws do not speak or write English. He, however, has ties of affection and a sense of obligation to his mother-in-law as

shown by his willingness to provided her with financial support. Given the long-term friendship between the U.S. and Thailand, as well as their ongoing cooperative efforts in law enforcement, intelligence, terrorism, and military operations, it is highly unlikely that Thailand would pressure his wife or in-laws to obtain classified information from him or force him to choose between his family and the U.S.

Applicant's wife owns a house in Thailand, which is titled in her name. Her mother lives in this house, which has an estimated value of between \$70,000 and \$80,000. Thus, DC FI E2.A2.1.2.8. (A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence) applies. Applicant has mitigated this concern under MC FI E2.A2.1.3.5. (Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities). He and his wife own real estate in the U.S. valued at \$1,000,000 gross. He holds a 50% interest in a real estate partnership, which he estimates to be worth between \$2,000,000 and \$2,500,000 gross. He estimates his net worth on these investments to be \$1,500,000. In addition, he has retirement funds and other financial assets plus his monthly income. His U.S. assets far exceed the value of the house in Thailand. This house has no impact on his overall financial condition, and would have no affect on his security responsibility.

Finally, I have considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I am persuaded by the evidence that Applicant would not be vulnerable to pressure or duress from a foreign power or the government of Thailand. Applicant's in-laws lack the knowledge and expertise to understand the work he performs. They are not in a position to provide any useful information about his work to a foreign power. Thailand's relationship with the U.S. on matters of law enforcement, intelligence, terrorism, and military operations, in particular, significantly decreases the likelihood of governmental pressure on his wife or her family in Thailand. His supervisor credibly testified to Applicant's careful and proper handling sensitive information at all times. There is little chance that he would be subject to influence, coercion or duress from the government of Thailand. Applicant has mitigated the government's case under Guideline B. Accordingly, for the reasons stated, I find that it is clearly consistent with the national interest to grant a security clearance to Applicant.

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

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

DECISION

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

Mary E. Henry

Administrative Judge

- 1. Applicant's Response to SOR, dated September 12, 2005 at 1-2.*
- 2. Government Exhibit 1 (Applicant's security application, dated August 11, 2003) at 1-2.*
- 3. Id. at 2.*
- 4. Id. at 1.*
- 5. Id. at 2; Tr. at 22.*
- 6. Tr. at 40-45.*
- 7. Id.*
- 8. Id. at 46.*
- 9. Id. at 29-30; Government Exhibit 1, supra note 2, at 3. Applicant and his first wife divorced in 1976. Id.*
- 10. Government Exhibit 1, supra note 2, at 4; Tr. at 31.*

11. *Government Exhibit 1, supra note 2, at 3; Tr. at 29-30.*
12. *Tr. at 29-30.*
13. *Id. at 67-68.*
14. *Id.*
15. *Id. at 30-31.*
16. *Id. at 60.*
17. *Id. at 57.*
18. *Id. at 33-34.*
19. *Id.*
20. *Id. at 54-55.*
21. *Id. at 32; Government Exhibit 1, supra note 2, at 5.*
22. *Tr. at 33.*
23. *Tr. at 33-35; Government Exhibit 2 (Applicant's signed statement, dated June 10, 2004) at 2.*
24. *Tr. at 35; Government Exhibit 2, supra note 23, at 2.*
25. *Tr. at 33-34.*
26. *Id. at 35.*
27. *Id.*
28. *Id. at 62-64.*
29. *Id.*
30. *Id. at 33.*
31. *Id. at 37-38.*
32. *Id.*
33. *Id. at 32; Government Exhibit 1, supra note 2, at 4.*
34. *Tr. at 33.*
35. *Id. at 32-33; Government Exhibit 1, supra note 2, at 4.*
36. *Tr. at 37-38.*
37. *Id. at 63.*
38. *Id.*

39. *Id.* at 36.

40. *Id.*

41. *Id.* at 64-65.

42. *Id.*

43. *Id.* at 56-57.

44. *Id.* at 36-37, 59, 65-66.

45. *Id.* at 31, 59, 65-66.

46. *Id.* at 36-37, 59.

47. *Id.* at 33.

48. *Id.* at 59.

49. *Id.* at 37-38.

50. *Id.* at 61.

51. *Id.* at 63-64.

52. *Id.*

53. *Id.* at 37-38.

54. *Id.* at 48-49.

55. *Id.*

56. *Id.* at 49.

57. *Id.* at 50.

58. *Id.*

59. *Id.* at 51.

60. *Id.* at 65-66.

61. *Id.* at 73.

62. *Id.*

63. *Id.* at 72.

64. *Id.* at 75.

65. *Id.* at 74-75, 77.

66. *Id.* at 74.

67. *Administrative Notice I (U.S. Department of State, Bureau of East Asian and Pacific Affairs, Background Note:*

Thailand, dated October 2005) at 1.

68. *Id.* at 3.

69. *Administrative Notice II (U.S. Embassy in Thailand release of December 14, 2001 remarks by President George W. Bush) at 1.*

70. *Administrative Notice XI (Congressional Research Service Report to Congress, Thailand: Background and U.S. Relations, dated January 13, 2005) at 10.*

71. *Administrative Notice IX (Joint Statement Between the United States of America and the Kingdom of Thailand, dated June 11, 2003) at 1; Administrative Notice XI, supra note 70, at 1, 11, 12.*

72. *Administrative Notice VIII (Remarks to the Press by Secretary of State Colin Powell, dated July 22, 2002) at 1; Administrative Notice XI, supra note 70, at 1, 12-13; Administrative Notice IX, supra note 71, at 1.*

73. *Administrative Notice XI, supra note 70, at 11.*

74. *Id.* at 1.

75. *Id.* at 13.

76. *ISCR Case No. 96-0277 (July 11, 1997) at 2.*

77. *ISCR Case No. 97-0016 (App. Bd., December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.*

78. *Department of the Navy v. Egan, 484 U.S. 518, 528 (1988).*

79. *ISCR Case No. 94-1075 (App. Bd., August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.*

80. *ISCR Case No. 93-1390 (App. Bd. Decision and Reversal Order, January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.*

81. *Egan, 484 U.S. at 531.*

82. *Id.*

83. *Id.*; *Directive, Enclosure 2, ¶ E2.2.2.*

84. *Executive Order No. 10865 § 7.*

85. *Directive, ¶ E2.A2.1.1.*

86. *ISCR Case No. 99-0424, 2001 DOHA LEXIS at 33-34 (App. Bd. Feb. 8, 2001)*

87. *Id.*

88. *See ISCR Case No. 02-31154, at 4, fn 4 (citing ISCR Case No. 01-03120 (Feb. 20, 2002))(Sept. 25, 2005).*