



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



In the matter of:)	
)	
)	ISCR Case No. 07-09094
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: Pro Se

June 9, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), on December 7, 2005. On December 31, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B, Foreign Influence, and Guideline C, Foreign Preference, for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On January 11, 2008, Applicant answered the SOR and requested a hearing on the administrative record. Department Counsel prepared a File of Relevant Material (FORM) on February 12, 2008. The FORM was forwarded to Applicant on February 19, 2008. Applicant signed a receipt for the FORM on March 14, 2008. Applicant had 30 days from the receipt of the FORM to file a response. She did not submit a response. The case was assigned to me on May 9, 2008. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Administrative Notice

Administrative Notice is taken of four documents submitted by the Government in the FORM. Several of the documents have been updated with the most recent version of the report as referenced below.

The Kingdom of Thailand is a constitutional monarchy. From 1996 until the 2006 peaceful coup, the country was a functioning democracy with constitutional changes of government. Generally free and fair multi-party elections held in December 2007 subsequently restored Democratic governance. The King has been given little direct power under Thailand's constitution but is a symbol of national identity and unity. (U.S. Department of State, Bureau of East Asian and Pacific Affairs, Background Note: Thailand, March 2008, at 5.)

The U.S. and Thailand have a close relationship, as reflected by several bilateral treaties. Thailand has cooperated with the U.S. on a wide variety of diplomatic and foreign policy issues. However, as a result of the 2006 military coup, the U.S. suspended foreign military financing, international military education training funds, and peace-keeping operation program with Thailand. Funding for these programs resumed after a democratically elected government took office in February 2008. As part of their mutual defense cooperation over the last decade, Thailand and the U.S. have developed a vigorous joint military exercise program, which engages the services of each nation and averages 40 joint exercises per year. (U.S. Department of State, Bureau of East Asian and Pacific Affairs, Background Note: Thailand, March 2008, at 8; CRS Report for Congress, Thailand: Background and U.S. Relations, October 2, 2006.)

The Thai government's overall human rights record raise some issues dealing with excessive use of force by security forces, including extrajudicial, arbitrary, and unlawful killings. The interim government maintained some limits on freedom of speech, freedom of press and freedom of assembly. Thailand remains a source, and destination for trafficking in persons for a variety of purposes, including indentured servitude, forced labor, and prostitution. (U.S. Department of State, Thailand, country Reports on Human Rights Practices – 2007, March 11, 2008, at 1.)

There is a concern of an increased risk of terrorism in Southeast Asia. American citizens traveling to Thailand are urged to exercise caution and remain vigilant regarding their personal security. They should avoid crowds and demonstrations. (U.S. Department of State, Consular Information Sheet, Thailand, February 23, 2007, at 2.)

Thailand's southern region is fraught with violence attributed to armed local separatist/extremist groups between Muslim insurgents and Thailand's security forces. While extremist groups primarily focus on Thai government interests in south Thailand, recent violence has also targeted public places, including tourist areas. On-going conflicts and criminal incidents have occurred in the remote areas along the border with

Burma and in Thailand's northern and eastern borders with Laos. (U.S. Department of State, Consular Information Sheet, Thailand, February 23, 2007, at 2-3.)

Findings of Fact

In her Answer to the SOR, dated January 11, 2008, Applicant admitted to all the SOR allegations.

Applicant is a 42-year-old export administrator employed with a Department of Defense contractor who is applying for a security clearance. She has worked for her current employer since September 2005. The highest level of education she achieved is a master's degree. She is married and has one son, age 14. This is her first application for a security clearance. (Gov 4.)

Applicant was born and raised in Thailand. She moved to the United States in September 1987 to attend graduate school. Her husband was born and raised in Thailand. Applicant and her husband became U.S. citizens on August 26, 2002. (Answer to SOR, Gov 5; Gov 4.) She possesses a U.S. passport which was issued on September 18, 2002, and expires on September 17, 2012. (Gov 6 at 6-19.)

Applicant's mother and sister are citizens of and reside in Thailand. Her parents-in-law are also citizens of and reside in Thailand. Her mother is retired. Her sister manages an apartment complex. Both of her parents-in-law are retired. Her father-in-law worked part-time recruiting teachers for an international school located in Thailand but now is retired full-time. (Gov 4, section 14/15; Gov 6 at 39, 45) Applicant traveled to Thailand in October 1998 for three weeks with her son and husband to visit relatives. From July 1999 to August 1999, she traveled to Thailand with her son to visit her ill father. She and her family traveled to Thailand from December 2000 to January 2001 for three weeks to visit family members. In May 2001, she and her family traveled to Thailand for two weeks to attend her father's funeral. From December 2005 to January 2006, she and her family traveled to Thailand to visit family members. (Answer to SOR; Gov 6 at 40, 45.)

Applicant possesses a valid Thai passport which was issued to her on July 20, 1999. It initially had an expiration date of July 19, 2004. Applicant extended the passport until July 19, 2009. (Gov 6 at 20-36, 39-40; Answer to SOR.) She and her husband purchased two rental properties in Thailand prior to becoming U.S. citizens. The properties were purchased for investment purposes. One property is worth \$24,200. The property is rented out for \$175 a month. The other property is worth \$28,500. The property is rented out for \$225 a month. Her mother manages one property. Her sister manages the other property. The rent money is deposited into a bank account to be used by Applicant's mother for her expenses and for maintaining the properties. (Gov 6 at 3-4.)

Applicant indicated that foreigners are not allowed to own property in Thailand. She maintains her Thai passport in order to deal with Thai officials pertaining to the two

properties and in order to assist with claiming any inheritance after her mother passes away. (Answer to SOR; Gov 6 at 39-40.) She indicated that she was willing to surrender her Thai passport and renounce her Thai citizenship but was reluctant to do so because she thought she would lose the two rental properties as well as any potential inheritance located in Thailand from her mother. (Gov 6 at 40.)

Applicant says that the United States is her home. She is patriotic and a responsible citizen. (Answer to SOR; see also Gov 6 at 40.) Most of her family's assets are located within the United States. (Gov 6 at 47-51.)

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or

safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline C, Foreign Preference

The security concern relating to the guideline for Foreign Preference is set out in AG ¶9:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

The guideline notes several disqualifying conditions that could raise security concerns. Foreign Preference Disqualifying Condition (FP DC) ¶10(a) (*exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport, (5) using foreign citizenship to protect financial or business interests in another country*); and FP DC ¶ 10(b) (*action to acquire or obtain recognition of a foreign citizenship by an American citizen*) apply. Applicant has a valid Thai passport. She obtained the Thai passport on July 20, 1999, prior to her U.S. citizenship. However, she applied for an extension of her Thai passport on July 6, 2004, after becoming a U.S. citizen. Her Thai passport does not expire until July 19, 2009. She maintains a valid Thai passport in order to protect two rental properties that she and her husband own in Thailand. It is her understanding that foreigners are not allowed to own property in Thailand. She is also concerned about not being able to claim a potential inheritance when her mother passes away. Applicant’s possession and use of a Thai passport is an exercise of her rights as a Thai citizen.

The guideline also includes examples of conditions that could mitigate security concerns arising from Foreign Influence. The following Foreign Influence Mitigating Conditions (FI MC) are relevant to the facts of Applicant’s case.

FP MC ¶ 11(a) (*dual citizenship is based solely on parents’ citizenship or birth in a foreign country*) does not apply. While Applicant was born and raised in Thailand, she exercised dual citizenship by applying for an extension of her Thai passport after becoming a U.S. citizen in August 2002. She maintains her Thai passport in order to

protect property interests in Thailand. She understands that only Thai citizens can own property in Thailand.

FP MC ¶ 11(b) (*the individual has expressed a willingness to renounce dual citizenship*) applies. During her background investigation, Applicant indicated that she was willing to renounce her Thai citizenship. However, she expressed reservations about doing so pertaining to protecting her property interests located in Thailand. As such, this mitigating condition is given less weight.

FP MC ¶ 11(c) (*exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor*) does not apply. Applicant continued to exercise her rights as a Thai citizen by maintaining a valid Thai passport after becoming a U.S. citizen. She did so in order to maintain her status as a Thai citizen so that she is able to own and inherit property in Thailand.

FP MC ¶ 11(d) (*use of a foreign passport is approved by the cognizant security authority*) is not applicable. There is nothing to indicate this mitigating condition applies to this case.

FP MC ¶ 11(e) (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*) does not apply. The record evidence indicates that Applicant was willing to surrender her Thai passport with reservations. However, there is nothing in the record evidence indicating that Applicant took steps to surrender, destroy, or invalidate her Thai passport.

At the close of the record, the Applicant still possesses a valid Thai passport. Her refusal to surrender to her foreign passport indicates a preference for her home country. She has not mitigated the Foreign Preference security concerns. Guideline C is found against Applicant.

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

The guideline notes several disqualifying conditions that could raise security concerns. Of the Foreign Influence Disqualifying Conditions (FI DC), the following apply to Applicant's case.

Foreign Influence Disqualifying Condition (FI DC) ¶ 7(c) (*contact with a 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*) applies as a result of Applicant's mother, sister, and parents-in-law, who are citizens of and reside in Thailand. She is close to her family members who reside in Thailand. FI DC ¶ 7(b) (*connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group or country by providing that information*) applies for the same reason.

FI DC ¶ 7(e) (*a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence of exploitation*) was raised due to Applicant's ownership interest in two rental properties located in Thailand. While most of Applicant's assets are in the U.S., she maintains a valid Thai passport in order to protect her ownership interest in these properties. These properties are of some importance to her as indicated by her refusal to surrender or invalidate her Thai passport.

The guideline also includes examples of conditions that could mitigate security concerns arising from Foreign Influence.

Foreign Influence Mitigating Condition (FI MC) ¶ 8(a) (*the nature of the relationship with foreign persons, the country in which these persons are located, or the position 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 U.S.*) applies. Although Thailand has its issues, it has a strong relationship with the U.S. Applicant's relatives are not connected with the government. It is unlikely that Applicant will be placed in a position to choose between the interests of her relatives and the interests of the U.S.

FI MC ¶ 8(b) (*there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, or government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest*) applies. While Applicant is close to her relatives who reside in Thailand, she has lived in the U.S. for over 20 years. Her immediate family resides in the U.S. Most of her assets are in the U.S. Her son was born in the U.S. It is likely that

she will resolve any conflict of interest in favor of the U.S. based on her long history of residing in the U.S.

FI MC ¶ 8(c) (*contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation*) is not applicable. Applicant's relationship with her family members who live and reside in Thailand cannot be considered casual and infrequent. She and her family have traveled numerous times to Thailand to visit family members. She is close to her family members.

FI MC ¶ 8(f) (*the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate or pressure the individual*) is not applicable because Applicant is not willing to surrender her Thai passport. She intends to maintain her Thai passport in order to protect her property interests in Thailand. Her actions indicate that she has a strong interest in maintaining these properties.

While security concerns raised regarding Applicant's relatives who are citizens of and reside in Thailand are mitigate, concerns remain pertaining to Applicant's interest in maintaining her foreign property interests.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(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) 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." Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant provided no information pertaining to her work performance. While Applicant's relatives in Thailand do not pose a security concern, an issue remains pertaining to her possession of a valid Thai passport. She maintains the Thai passport in order to prove her Thai citizenship which allows her to own property in her home country. Foreign preference and foreign influence concerns are not mitigated. Applicant is not willing to surrender her foreign passport out of concerns for protecting her property interests located in Thailand.

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 C:	AGAINST APPLICANT
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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

Paragraph 2, Guideline B:	AGAINST APPLICANT
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Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge