



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-18260
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ray T. Blank, Jr., Esq., Department Counsel  
For Applicant: Ronald C. Sykstus, Esq.

January 23, 2009

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**Decision**

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HOGAN, Erin C., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), on January 6, 2006. On June 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B, Foreign Influence, 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 August 11, 2008, Applicant answered the SOR and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on September 18, 2008. The case was assigned to another administrative judge on that same date. Applicant's counsel entered his appearance on September 23, 2008. The case was transferred to me on November 17, 2008. On December 3, 2008, a Notice of Hearing was issued scheduling the hearing for December 18, 2008. The hearing was held as scheduled. The Government offered Government Exhibits (Gov) 1 - 3, which

were admitted without objection. The Government requested that administrative notice be taken of one document with four attachments. The document was marked as Administrative Notice Document I (Admin Not I) without objection. The Government requested SOR ¶ 1.d be amended. It was amended without objection. (Tr at 111.) Applicant's counsel called seven witnesses, including Applicant, and submitted four exhibits which were admitted as Applicant Exhibits (AE) A - D without objection. Applicant's counsel requested that administrative notice be taken of one document which was marked as Admin Not II without objection. DOHA received the transcript of hearing on December 23, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Administrative Notice**

The Kingdom of Thailand is a constitutional monarchy. Thailand has an open market/free enterprise economy with a great deal of foreign investment. Approximately 40% of Thailand's labor force is agricultural, with rice being its most important crop. It also has an increasingly diversified manufacturing sector. The United States is Thailand's largest export market and third largest supplier after Japan and China. (Admin Not I, atch 1, atch 2.)

Thailand has good relations and military alliances with the United States for over 175 years. Thailand and the United States have cooperated on a wide variety of diplomatic and foreign policy issues. Thailand is a strong ally in the war against terror. (Admin Not I, atch 4; Admin Not II.)

The U.S. State Department has criticized the Thai government's overall human rights record. Although there are no recent reports of politically motivated disappearances, torture, arbitrary arrests, and detentions, have been reported in previous years under past and present Thai regimes. Despite constitutional protections afforded to freedom of speech and freedom of the press, the government still maintains broad powers to restrict freedom of speech and freedom of the press. (Admin Not I, atch 3, atch 4.)

The U.S. State Department is concerned there is an increased risk of terrorism in Southeast Asia, including Thailand. Thailand's southern region has experienced criminally and politically motivated violence, including incidents attributed to local separatist/extremist groups. Recent violence has targeted public places, including tourist areas. (Admin Not I, atch 2.)

### **Findings of Fact**

In his Answer to the SOR, notarized on August 11, 2008, Applicant denied the overall concern about having divided loyalties and denied SOR ¶ 1.d. He admits SOR ¶¶ 1.a, 1.b, 1.c, 1.e and 1.f.

Applicant is the president of a defense contractor. He is 47-years-old and has held a SECRET security clearance since 1985 and a TOP SECRET security clearance since 1990. He has over 23 years experience in the defense industry. He was hired by his current company in 1996 as a communications engineer. His company installs infrastructure and telecommunications systems at U.S. embassies, consulates, and tenants of the U.S. embassies worldwide. From 1996 to 2002, he traveled around the world as a team leader. In 2002, he took over as the operations manager in the corporate office which is located in the U.S. In 2003 or 2004, he was appointed President and became a 10% shareholder in the company. (Tr at 23, 27-31; AE A; AE C.)

Applicant has been married for ten years. His wife is a permanent resident of the U.S. and a citizen of Thailand. They have a three-year-old daughter, who was born in the U.S. He met his wife while overseas on business in 1996. When the relationship became serious, he immediately reported to his facility security officer (FSO) that he was dating a non-U.S. citizen. They dated for awhile and eventually married in December 1998. They moved to the U.S. in 2002. Applicant's wife became a permanent resident in May 2006, and intends to apply for U.S citizenship as soon as she is eligible. (Tr at 23-26, 76-77.)

Applicant's wife's parents, sister, and nephew are citizens of and reside in Thailand. They are farmers. Prior to their marriage, Applicant's father-in-law deeded two pieces of property to Applicant's wife. He was concerned that she would not be able to own the land after marrying a foreigner under Thai law. His in-laws continue to farm one plot of land. Applicant and his wife built a 90 square foot house on the other property which is about two acres. His in-laws reside in the house. Applicant's wife also purchased some land adjacent to the house which her parents also farm. Applicant estimates that his wife owns a total of five acres of farm land. The total value of the property is approximately \$40,000. (Tr at 33-36, 51-53.)

Applicant's sister-in-law and nephew reside in Thailand with her parents. She helps out with the farm. Her husband works and lives in South Korea in order to support the family. His wife's grandparents and extended family members, such as aunts, uncles, and cousins live and farm in the same area where his parents-in-law reside. None of his in-laws work for the Thai government or have served in the Thai military. His wife is close to her family members in Thailand. Applicant does not speak Thai so he does not communicate much with his wife's family members because they don't speak English. None of his in-laws have visited Applicant and his family in the U.S. (Tr at 34, 40, 54, 61-68.)

Prior to moving to the U.S. in 2002, Applicant's wife would travel with him to various work sites throughout the world. If the work site was located near Thailand, Applicant would drop her off in Thailand. She would visit with her family while he worked. Applicant and his wife have three bank accounts in Thailand. The total value of the accounts is \$9,000. He sees this as an insignificant amount of money. The accounts were opened in order to allow his wife to have access to funds when she was visiting

her family in Thailand and he was away on business. They no longer have a need for the accounts since they have lived in the U.S. since 2002 and do not travel as extensively. They intended to close the bank accounts during a trip to Thailand this summer but cancelled their travel plans after receiving the SOR. They intend to close the bank accounts the next time they travel to Thailand. (Tr at 35-36; 53-54.)

Aside from the bank accounts, Applicant has no other foreign property or investments. Most of his assets are located in the U.S. Including the value of his interest in the company, his net worth is approximately \$1,000,000. (Tr at 56-58; AE D.) He has a grown son and daughter from a previous marriage. His mother lives in Florida. (Tr at 44-45.)

Applicant's wife testified. She indicated that they moved to the U.S. in 2002. She received her permanent resident status in May 2006. She intends to become a U.S. citizen. She has no plans to move back to Thailand. She is happy living in the U.S. Her daughter was born here and they intend to raise her in the U.S. She is close to her family members in Thailand. (Tr at 58-70.)

The Chief Executive Officer (CEO) of the company testified on Applicant's behalf. He started the company in June 1977. The company currently has 25 employees but that varies based on the work load. His company installs and works on classified communications for the State Department, U.S Embassies and the tenants located at the U.S. Embassies. His company originally started out in construction. They started classified work in 1994. He has held a SECRET security clearance since 1994 and TOP SECRET since 1996. He hired the Applicant in 1996. He and Applicant have worked closely together for years. They traveled all around the world to various work sites together. They got to know and trust each other. He asked Applicant to become company president about four years ago because of his trust in him. He is very pleased with his job performance. (Tr at 95-100.)

The CEO admits to being initially concerned when Applicant began dating his wife but those concerns dissipated once he got to know her. He has no concerns about Applicant's ability to safely handle classified information. He has observed Applicant identify, isolate, and report major security breaches. He has no concerns about Applicant's wife being a citizen of Thailand. She has never interfered with Applicant's work. She does not ask questions. She has never gone to a work site when they were working in the field. She has never asked to go to a work site. Applicant and his wife are one of the few people that he trusts. (Tr at 100-102.)

The former FSO of Applicant's company testified. She worked for the company from 1987 to 2007 until she retired. She started out as a dispatcher. She became the FSO in 1995/1996. She served as the FSO until she retired. She held a TOP SECRET security clearance. She first met Applicant in 1996 when he applied for a job with the company. She recalls he immediately disclosed to her that he was dating a non-U.S. citizen when he began dating his wife. They forwarded a report to the Defense Security Service. She worked with Applicant on daily basis when he accepted a job in the

headquarters office. She met his wife in 2000. She would go out to lunch and dinner with his wife. She used to take her shopping when she did not have a driver's license. She still occasionally visits with Applicant's wife. The FSO states that Applicant is "a stickler for security." It has to be done right. He likes his job. He takes security matters seriously. She does not think he would ever jeopardize his situation. (Tr at 72-81.)

The current FSO testified. She has been with the company for close to three years. She received her TOP SECRET security clearance in March 2007. Applicant hired and trained her. Applicant is her mentor. He is very sensitive about security matters. She knows Applicant's wife. She taught her how to cook Thai cuisine. She has also gone out to lunch and dinner with his wife. No one has expressed concerns about Applicant and how he handles classified information. The current FSO is proud of the fact that the company received a "superior" rating from the Defense Security Service in October 2008 after the company went through a security inspection in September 2008. (Tr at 82-86; AE B.)

The company's comptroller testified. She has been the company's comptroller for 18 years. She handles finances for the company. She has held a TOP SECRET security clearance since December 1995/January 1996. She first met Applicant when he applied for a position with the company. She began to work closely with him when he became the operations manager in 2002. He is now the president of the company. Applicant is very aware of everything that goes on in the office. She knows his wife. She comes by for lunch occasionally at the office. She sometime socializes with them outside of the office. She describes the office as a regular office. She has no concern about Applicant's ability to handle classified information. She does not believe that he would jeopardize national security. (Tr at 89-92.)

The company's certified public account (CPA) testified. He is also on the board of directors and is a 10% minority shareholder of the company. He started his own accounting firm in 1982. He travels to Applicant's company once a month to review contracts and financial records. He has had a TOP SECRET security clearance for about 12 years. He has worked with Applicant on a regular basis since 2002. Applicant does an excellent job. He knows Applicant's wife but does not see her frequently. Applicant is very rule conscious and would never jeopardize national security. He has a 100% comfort level with Applicant being president of the company. (Tr at 105-110.)

## **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**

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. Foreign Influence Disqualifying Conditions (FI DC) apply to Applicant's case because his wife is a Thai citizen and her parents and sister are Thai citizens residing in Thailand. Specifically, FI DC ¶ 7(a) (*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*); 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*); and FI DC ¶ 7(c) (*sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion*) apply. Applicant's wife's ties to Thailand and the possible effect they may have on Applicant's conduct are relevant considerations under this guideline. ISCR Case No. 01-02452 at 8 (App. Bd. Nov, 21, 2002). There 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 at 8 (App. Bd. Feb. 20, 2002).

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 or exploitation*) applies with respect to the land Applicant's wife owns in Thailand. Although the deeds are in her name, Applicant funded the building on one of the properties, and provided the funds for his wife to purchase the plot of land adjacent to the house. The three joint bank accounts with Thai banks also raises a concern under FI DC ¶ 7(e).

The guideline also includes conditions that could mitigate security concerns arising from Foreign Influence. I find the following Foreign Influence Mitigating Conditions (FI MC) apply to Applicant's case.

FI MC ¶ 8(a) (*the nature of the relationships with foreign persons, the country in which these persons are located, or the positions 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.*). Applicant's wife is close to her family members in Thailand. However, none of her family members who are citizens of and reside in Thailand work for the Thai government. They are not politically active. They are farmers. The Thai government has had a close relationship with the U.S. for over 175 years. Considering the Thai government's good relationship with the U.S.; and the status and occupations of Applicant's in-laws who reside in Thailand, it is unlikely that Applicant will

be placed in a position of having to choose between the interests of his in-laws 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*). While Applicant's in-laws are citizens of and reside in Thailand, his deep and longstanding relationships and loyalties in the U.S. support the premise that Applicant will resolve any conflict of interest in favor of the U.S. interests. Applicant was born and raised in the U.S. He has worked in the defense industry for over 23 years. He has possessed a security clearance over that same period and with no security violations. His superiors, co-workers, and friends all attest to his trustworthiness. The people he is closest to, his wife and daughter, reside in the U.S. His deep and longstanding relationships and loyalties in the U.S. indicate Applicant can be expected to resolve any conflict of interest in favor of U.S. interests.

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*). Applicant's financial interests located in the U.S. are far more significant than the interests located in Thailand. His wife owns the property that is valued at \$40,000. However, her family has exclusive use of the home and the land. Applicant does not consider these properties as his and is unlikely to be influenced by them. Applicant and his wife had a good reason to establish the three bank accounts located in Thailand. The total value of the accounts is approximately \$9,000. Applicant does not consider this to be a lot of money and intends to close the accounts the next time he travels to Thailand. Applicant's net worth in the U.S. is over \$1,000,000. It is unlikely any of the interests in Thailand will result in a conflict for Applicant.

Applicant mitigated the security concerns raised under foreign influence.

### **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. I considered the totality of Applicant's family ties to his in-laws in Thailand, a country that has good relations with the U.S. I also considered that Applicant is a highly regarded employee with a defense contractor, having worked his way up to become President and part-owner of the company. I considered the favorable recommendations of Applicant's co-workers, their attestation that Applicant is extremely security conscious, and his 23 years of working with classified information with no security violations. Aside from his in-laws, Applicant's family members are residing in the U.S. His wife intends to become a U.S. citizen when she is eligible. The majority of Applicant's assets are located in the U.S. While Applicant's in-laws living in Thailand raise a potential security threat, Applicant's significant ties to the U.S. mitigate the security threat.

### **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
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant

### **Conclusion**

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

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ERIN C. HOGAN  
Administrative Judge