



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-04933
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: David F. Hayes, Esquire, Department Counsel  
For Applicant: *Pro se*

March 14, 2011

**Decision**

LAZZARO, Henry, Administrative Judge

Applicant failed to overcome the foreign influence and foreign preference security concerns that arise from his parent’s residency in Thailand, his frequent travels to that country, and his use and retention of a Thai passport. He also failed to disclose his possession of a Thai passport and travel to Thailand in a questionnaire for sensitive positions he submitted in February 2009. Clearance is denied.

On August 13, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.<sup>1</sup> The SOR alleges security concerns under Guideline B (foreign influence), Guideline C (foreign preference), and Guideline E (personal conduct). Applicant’s response to the SOR was received by DOHA on August 23, 2010. He admitted all

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<sup>1</sup> This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended (Directive), and revised adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

Guideline B and C allegations, denied both Guideline E allegations, and requested a decision based on the written record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on December 23, 2010, that was mailed to Applicant on December 29, 2010. Applicant was notified he had 30 days from receipt of the FORM to submit objections thereto or any additional information he wanted considered. Applicant acknowledged receipt of the FORM on January 6, 2011. His response to the FORM was received by DOHA on January 28, 2011. The case was assigned to me on February 16, 2011.

### **Findings of Fact**

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is a 26-year-old man. He has never been married, and he has no dependents. The only relatives listed in the questionnaire for sensitive positions he submitted in February 2009, are his 52-year-old mother and 68-year-old father. Applicant's mother is a citizen and resident of Thailand. Applicant's father is a citizen of the United States and a resident of Thailand. Applicant was born in Thailand and has dual citizenship with the United States and Thailand.

The record does not disclose when Applicant first came to reside in the U.S.<sup>2</sup> He attended high school in the U.S., and he graduated from a U.S. college in December 2007. He was unemployed following his college graduation until he obtained employment in the computing sciences field in June 2008. The record evidence is unclear, however, that is presumably the employment for which Applicant submitted the questionnaire for sensitive positions.

Applicant's mother and father are both retired professors who reside in Thailand. In the questionnaire for sensitive positions he submitted in February 2009, Applicant listed his parent's residence address as the same residence where he had resided in the United States since August 2002. However, he also indicated that all his travels to Thailand between 1999 and 2007 were to visit his parents. The record does not indicate with clarity if Applicant's parents were professors in the United States or Thailand.

Applicant has daily e-mail contact with his parents. He visits them in Thailand once or twice a year. In a statement he provided in April 2009, Applicant estimated that he visited his parents in Thailand about 15 times between 1999 and December 2007. His Thai passport discloses that he visited Thailand again in December 2009. Applicant's parents pay for his transportation to and from Thailand.

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<sup>2</sup> Applicant provided a statement in which he discusses travel to Thailand beginning in 1999, which is possibly the approximate year he began to reside in the United States.

Applicant uses a Thai issued passport for all his travel to Thailand as a matter of convenience because he does not need to obtain a visa. The Thai passport he submitted in response to an interrogatory was issued on December 26, 2005, and expired on December 25, 2010. Applicant stated during his April 2009 interview that he was unwilling to renounce his Thai citizenship to obtain a security clearance because his job is not that important to him. He professes to feel equal loyalty and obligation to the United States and Thailand.

In response to applicable questions in the questionnaire for sensitive positions he submitted in February 2009, Applicant failed to disclose that he possessed a valid Thai passport or his frequent travel to Thailand. His explanation is that they were careless and inadvertent omissions because he had to submit the application online three separate times, which took a full day and infringed on his duties at work.

A Congressional Research Service report prepared for Congress, dated June 21, 2010, provides the following information about U.S. relations with Thailand:

. . . Designated as a major non-NATO ally in 2003, Thailand contributed troops and support for U.S. military operations in both Afghanistan and Iraq. Prime Minister Thaksin Shinawatra had consolidated control of politics and was seen as likely to assume a major role in ASEAN. Thaksin embraced the U.S.-led war on terrorism in the region. . . .

Bilateral ties began to fray, however, as concerns rose about Thaksin's governance. Critics charged that his administration stifled Thailand's democratic institutions, prioritized the wealth of his family and affiliates, and proved incompetent in dealing with a nascent insurgency in the Muslim-majority southern provinces of Thailand. Deep divisions within Thai society and power struggles between the old guard and Thaksin's team surfaced and then exploded with the military coup that deposed Thaksin in September 2006. In the political turmoil that followed, the United States strived to maintain the relationship while simultaneously imposing penalties for the interruption of democratic rule. Military aid, suspended after the coup, was reinstated after elections in December 2007, but as successive administrations struggled to hold on to power, new uncertainty about the durability of the alliance and Thailand's commitment to democratic rule have emerged.

Unprecedented street violence and ongoing political turmoil in Bangkok have raised fears in the region and in Washington about long-term instability in Thailand. The challenges to U.S. policymakers are manifold. A stable Thailand is strategically important to the United States, both because of its status as a U.S. treaty ally and as an anchor for mainland Southeast Asia. The bloody battles in the streets of the capital, played out on international television, severely damaged Thailand's image as a model of democratic governance in the region. U.S. policymakers are now faced

with how to deal with an unraveling democracy and how to respond to profound concerns about the civilian-military balance in Thai society.

## Policies

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying and mitigating conditions for each applicable guideline. Clearance decisions must be fair and impartial decisions based upon relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. 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. Considering the evidence as a whole, Guideline B (foreign influence), Guideline C (foreign preference), and Guideline E (personal conduct), with their disqualifying and mitigating conditions, are most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>3</sup> The government has the burden of proving controverted facts.<sup>4</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence,<sup>5</sup> although the government is required to present substantial evidence to meet its burden of proof.<sup>6</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>7</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>8</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>9</sup>

No one has a right to a security clearance<sup>10</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of

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<sup>3</sup> ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

<sup>4</sup> ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

<sup>5</sup> *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

<sup>6</sup> ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

<sup>7</sup> ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

<sup>8</sup> ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

<sup>9</sup> ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

<sup>10</sup> *Egan*, 484 U.S. at 528, 531.

denials.”<sup>11</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>12</sup>

## Analysis

### Guideline C, Foreign Preference

Foreign preference is a concern because 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.

Applicant, a dual citizen of the U.S. and Thailand, was born in Thailand but immigrated to the U.S. in or about 1999. He has continuously attended school and worked in the U.S. since he immigrated here. However, he has maintained a Thai passport while resident in the U.S., and he has used that passport exclusively for the 15 or more trips he has made to Thailand since 1999. Disqualifying Condition (DC) 10(a): *exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport applies.*

When he was interviewed in April 2009, Applicant specifically declared he feels equal loyalty to the U.S. and Thailand, and that he would be unwilling to renounce his Thai citizenship because he would need it in the event he ever decides to move back to Thailand. DC 10(d): *any statement or action that shows allegiance to a country other than the United States. . . applies.*

Applicant’s parents are both retired and reside in Thailand. Applicant has stated that he would be unwilling to renounce his Thai citizenship if such an act was necessary for him to obtain a security clearance because the job he has in the United States is not that important to him. His statement during the April 2009 interview indicates he has not committed himself to remaining resident in the U.S. as opposed to someday returning to Thailand. I have considered all applicable mitigating conditions and conclude that none apply.

### Guideline B, Foreign Influence

Foreign contacts and interests may be a security concern if the individual has divided loyalties or 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

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<sup>11</sup> *Id* at 531.

<sup>12</sup> *Egan*, Executive Order 10865, and the Directive.

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.

Applicant's mother is a citizen and resident of Thailand. His father, a U.S. citizen, resides in Thailand. Thailand has long been a strong ally of the U.S., and it has most recently provided assistance to the U.S. in the wars in Iraq and Afghanistan. However, recent tumultuous events in Thailand have created uncertainty about the durability of the alliance and Thailand's commitment to democratic rule. Disqualifying Conditions (DC) 7(a): *contact with a foreign family member . . . or other person who is a citizen of or resident in a foreign country it that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion* applies.

I have considered all mitigating conditions and find that none apply. Specifically, Mitigating Condition (MC) 8(a): *the nature of the relationships with foreign persons, the country in which these persons are located . . . 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 . . . and the interests of the U.S.* does not apply because of the obvious close relationship between Applicant and his parents.

Applicant has no known relatives in the U.S. He has stated his job in the U.S. is not that important to him. Further, he has indicated that there is at least a possibility that he might someday decide to move to Thailand. Accordingly, MC 8(b): *there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person . . . 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.* does not apply.

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* obviously does not apply because Applicant has daily e-mail contact with his parents and he has visited them in Thailand at least 15 times since 1999. The remaining mitigating conditions have no applicability to the facts of this case.

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." In this case, there is no reason to doubt that Applicant is a loyal American citizen or suspect he would ever consider doing harm to the interests of the United States. Still, his continuing contacts with Thailand and with his parents who reside in Thailand create a security concern that has not been overcome.

## **Guideline E, Personal Conduct**

Personal conduct is always a concern because conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and

ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any failure to cooperate with the security clearance process.

Applicant failed to list his possession of a Thai passport and his extensive travel to Thailand in the questionnaire for sensitive positions he submitted in February 2009. He is an educated young man who provided detailed information in the questionnaire for sensitive positions he submitted in response to many other questions. His explanation that his omissions were due to the fact that he had to submit the application online three separate times which took a full day and infringed on his duties at work is unacceptable. DC 16(a): *deliberate omission, concealment, or falsification of relevant facts from any personal security questionnaire, personal history statement, of similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities* applies. I have considered all potential mitigating conditions and conclude that none apply.

Considering all relevant and material facts and circumstances present in this case, the whole-person concept, the factors listed in ¶ 6.3.1 through ¶6.3.6 of the Directive, and the applicable disqualifying conditions, Applicant has failed to mitigate the foreign preference, foreign influence, and personal conduct security concerns that exist in this case. He has failed to overcome the case against him or satisfy his ultimate burden of persuasion. Guidelines C, B, and E are decided against Applicant. It is not clearly consistent with the national interest to grant Applicant a security clearance.

### **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
Subparagraphs 1.a-1.c:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a and 3.b:	Against Applicant

## **Conclusion**

In 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.

Henry Lazzaro  
Administrative Judge





