



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



In the matter of: )  
)  
) ISCR Case No. 10-09073  
)  
Applicant for Security Clearance )

**Appearances**

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

August 16, 2011

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline C, Foreign Preference and Guideline B, Foreign Influence. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On February 25, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines C and B. 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 Adjudicative Guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on March 18, 2011, and requested a hearing before an administrative judge. The case was assigned to me on May 20, 2011. DOHA issued

a Notice of Hearing on June 1, 2011. I convened the hearing as scheduled on June 20, 2011. The Government offered Exhibits (GE) 1 and 2. Applicant did not object and they were admitted. The Government requested administrative notice be taken of certain facts relating to Thailand as contained in Hearing Exhibit (HE) I. I took administrative notice of the source documents. Applicant testified on his own behalf and offered Exhibit (AE) A, which was admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on June 27, 2011.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR. His admissions are incorporated in the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 33 years old. He works for a federal contractor. He graduated from high school and earned an associate's degree and also attended a technical school. He married in 2011 and has no children.<sup>1</sup>

Applicant's mother moved to the United States in 1981 or 1982 from Thailand. Applicant immigrated with his father and two brothers to the United States from Thailand in 1991. His parents hold permanent resident status in the United States, but remain citizens of Thailand. His two older brothers are dual citizens of the United States and Thailand. Applicant became a naturalized U.S. citizen in 2006. He maintains dual citizenship status with the United States and Thailand. Applicant holds a current Thai passport and a current U.S. passport. He first obtained a Thai passport in 2005, before to being naturalized as a U. S. citizen. He obtained a U. S. passport in 2006. He renewed his Thai passport in 2009, and it expires in 2014. He does not intend to renounce his Thai citizenship or surrender his Thai passport. He applied for his U.S. citizenship because he was concerned that if he only had permanent resident status, he would only be permitted to remain outside of the United States for six months. If he departed for a longer period then he would have to reapply for permanent resident status. He also wanted a U. S. passport so if anything happens while he is traveling in Thailand he can use his U.S. passport. Applicant considers himself both a Thai citizen and a U.S. citizen. When he enters the United States he uses his U.S. passport. When he enters Thailand he uses his Thai passport. If he was drafted by the Thai Government to serve in the military, he would. If he was drafted by the U.S. Government to serve in the military, he would.<sup>2</sup>

After being laid off from his job in the United States, Applicant moved to Thailand for employment from March 2006 to June 2008, where he worked for a Thai business. He lived with his aunt for a period until he could afford another place of residence. He

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<sup>1</sup> Tr. 26, 31.

<sup>2</sup> Tr. 22, 37, 39-55, 58-68.

has another aunt in Thailand. Both of his aunts live in the same building where they work. One aunt has a small clothing factory and the other has a sundry store.<sup>3</sup>

Applicant has made six trips to Thailand since 2005, including the period he resided there. He used his Thai passport each time for convenience. His last trip was December 2010.<sup>4</sup>

Neither of Applicant's parents have any affiliation with the Thai government or military. They both possess Thai passports. Applicant's father lived in Thailand from 2004 to 2009. He had to reapply for a permanent resident status when he returned. Applicant has an uncle who is in the Thai army and one of his relatives is retired from the Navy. His mother has a niece who lives in Thailand and she maintains regular contact with her.<sup>5</sup>

Applicant's two brothers are not married. Both travel to Thailand to see family. His oldest brother is a frequent traveler to Thailand. On one visit he stayed for six months. He believes his brothers travel on their Thai passports.<sup>6</sup>

Applicant and his wife participated in a cultural wedding ceremony in Thailand in 2009, but were not legally married until she came to the United States in 2011, where they completed the formal paperwork. His wife is a citizen of Thailand and came to the United States on a fiancée visa. They were married in the United States in January 2011. She is not employed. She resides with Applicant in the United States. She is applying for a permanent resident card. Applicant and his wife, parents, and brothers all reside in the same residence in the United States.<sup>7</sup>

Applicant hopes to remain in the United States, but if his wife wants to return to Thailand he will acquiesce. His wife's mother, three sisters, and two brothers, are citizens and residents of Thailand.<sup>8</sup>

Applicant provided a letter of recommendation from a former employer where he worked in 2006. The employer commented that Applicant performed in a proficient and diligent manner and successfully resolved numerous challenges. He was considered professional and effective.<sup>9</sup>

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<sup>3</sup> Tr. 32-37, 74-76.

<sup>4</sup> Tr. 38-39.

<sup>5</sup> Tr.56-62.

<sup>6</sup> Tr. 64-68.

<sup>7</sup> Tr. 26-30, 57-64, 68-72.

<sup>8</sup> Tr. 68-70.

<sup>9</sup> AE A.

## Thailand<sup>10</sup>

The Kingdom of Thailand is a constitutional monarchy composed of a King, Prime Minister, and bicameral legislature. In 2006, a non-violent coup by top military officers overthrew the government, repealed the constitution, and abolished both houses of Parliament. In December 2007, free and fair multi-party elections restored democratic governance. However, since this election, two subsequent Prime Ministers were forced to resign because of decisions by Thailand's court system. After political protests from May through December 2008, a revised coalition came to power.

In addition to the political turmoil since the 2006 coup, Thailand has endured a persistent separatist insurgency in its majority-Muslim southern provinces. Sectarian violence between insurgents and security forces in Thailand's majority-Muslim provinces has left over 4,000 people dead since 2004. Since 2007, attacks have become more sophisticated and coordinated. This insurgency has resulted in numerous human-rights abuses, including killings, committed by ethnic Malay Muslims insurgents and government security forces. In the spring of 2010, political turmoil and protest wracked Thailand resulting in the deaths of over 90 people and injuries to over 260 people, including two U.S. citizens. For 2011, stability appears to have returned to the government.

The [U.S.] Department of State has criticized the Thai government's overall human rights record. Security forces continued at times to use excessive force against criminal suspects, and some elements also committed or were connected to extrajudicial, arbitrary, and unlawful killings. Reports also linked police to disappearances, torture, beatings, and abuse. The government also maintains some limits on freedom of speech, press, and assembly.

The State Department is concerned that there is an increased risk of terrorism in Southeast Asia, including Thailand. The State Department warns all Americans to exercise caution when in Thailand for several reasons. Thailand's southern region has been experiencing almost daily incidents of criminally and politically motivated violence, including incidents attributed to armed local separatist/extremist groups. While extremist groups primarily focus on Thai government interests in south Thailand, recent violence has also targeted public places, including tourist areas. The Thai/Burma border is the site of on-going conflicts between the Burmese Army and armed oppositions groups, as well as clashes

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<sup>10</sup> HE I. This exhibit details the official U.S. Government source documents that were used to provide the factual summary.

between Thai security forces and armed drug traffickers. Finally, there are border clashes on the Thai/Cambodian border as well.<sup>11</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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 overarching adjudicative goal is a fair, impartial, and commonsense 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by an applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

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<sup>11</sup> HE I.

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**

AG ¶ 9 expresses the security concern for foreign preference:

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.

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

(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; (2) military service or a willingness to bear arms for a foreign country; (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country; (4) residence in a foreign country to meet citizenship requirements; (5) using foreign citizenship to protect financial or business interests in another country.

Applicant renewed his Thai passport after becoming a U.S. citizen. He intends to maintain his Thai passport and citizenship. He considers himself a dual citizen of Thailand and the United States. He may return to live in Thailand if his wife wants to. He exercises his rights and privileges as both a U.S. citizen and a Thai citizen. He uses both his Thai passport and U.S. passport. If drafted by either country he would serve. I find the above disqualifying condition applies.

I have considered all the mitigating conditions under AG ¶ 11 and the following is potentially applicable:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship;

(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;

(d) the use of the foreign passport is approved by the cognizant security authority; and

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant renewed his Thai passport after becoming a U.S. citizen. He uses it when he travels to Thailand. He considers himself a dual citizen of both Thailand and the United States. He is unwilling to renounce his Thai citizenship. His dual citizenship is not based solely on his parents' citizenship or his birth in Thailand. Rather, he has actively maintained his Thai citizenship. He became a citizen of the U.S. so he would not have to reapply for permanent residency status if he were to move to Thailand for more than six months. He plans on retaining his Thai passport and does not intend to destroy or surrender it. None of the above mitigating conditions apply.

### **Guideline B, Foreign Influence**

AG ¶ 6 expresses the security concern for foreign influence:

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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

(a) contact with a foreign 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;

(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

(c) sharing living quarters with a person or person, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

AG ¶¶ 7(a), 7(b), and 7(c) require substantial evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant’s family ties to a foreign country as well as each individual family tie must be considered.

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.”<sup>12</sup>

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.”<sup>13</sup> Friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation’s government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerability to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, or the country is known to conduct intelligence operations against the United States.

Thailand’s political turmoil, violence, and human-rights violations are a cause of concern. The continued instability of the government, excessive force used by the security forces and the limitations of freedom of speech, press, and assembly raises issues. Thailand’s increase in terrorism and occurrences of violence in public places, including tourist areas also is a concern, along with their border concerns.

Applicant worked for a private Thai company in 2006 to 2008. He no longer has contact with the company, nor does he have a financial interest in it. I find his past employment with this company is not a security concern.

Applicant’s wife is a citizen of Thailand. His parents are permanent residents of the United States, but maintain their Thai citizenship. His father returned and lived in Thailand for five years. His brothers are dual citizens of Thailand. They travel frequently to Thailand and his older brother stays for extended periods. Applicant moved to Thailand for a two-year period. Applicant’s connections to his family members potentially create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, and also create a potential conflict of interest. Therefore, I find AG ¶¶ 7(a), 7(b), and 7(c) apply.

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<sup>12</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

<sup>13</sup> ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002).



I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8 and conclude the following are potentially applicable:

(a) the nature of the relationship 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 and interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, 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 interests in favor of the U.S. interests; and

(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.

Applicant's wife is a Thai citizen and he maintains close ties with his family members, some of whom travel and live in Thailand for extended periods of time. His brothers maintain dual citizenship and his parents have chosen to remain permanent residents of the United States and maintain their Thai citizenship. Applicant's relationships with his family, the issues regarding Thailand, and his allegiance to Thailand makes him vulnerable, such that he could be in a position of having to choose between his family and the interests of the United States. I find AG ¶ 8(a) does not apply. There is clearly a conflict of interest in that Applicant has strong ties to Thailand. Although he also considers himself a U.S. citizen, his sense of loyalty or obligation to Thailand cannot be described as minimal. He would return to live there and exercise his citizenship if his wife wants to return. I am not convinced that Applicant would resolve any conflict of interest in favor of the United States. I find AG ¶ 8(b) does not apply. Applicant's contact with his wife, parents, and brothers is not casual or infrequent. They all live together in the same house. I find AG ¶ 8(c) does not apply.

### **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 relevant 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) the 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 commonsense 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 became a naturalized U.S. citizen in 2006. He intends to retain his Thai citizenship and exercise it. In the past, he returned to Thailand to work and he may move there again in the future. He is recently married and his wife is a citizen of Thailand. His parents are also citizens of Thailand, and his brothers exercise dual citizenship. He and his family continue to travel to Thailand and stay for extended periods. Overall, the record evidence leaves me with questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the guideline for Foreign Preference and Foreign Influence.

### **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.b:    | Against Applicant |
| Paragraph 2, Guideline B: | AGAINST APPLICANT |
| Subparagraphs 2.a-2.d:    | Against Applicant |
| Subparagraph 2.e:         | For Applicant     |

### **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge