



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



In the matter of: )  
)  
) ISCR Case No. 14-05020  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel  
For Applicant: *Pro se*

10/26/2016

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline B, foreign influence. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On March 7 2015, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on March 17, 2015, and elected to have his case decided on the written record. Department Counsel submitted the Government’s file of relevant material (FORM) and it was mailed to Applicant. It was received on March 4, 2016. Applicant was afforded an opportunity to file objections and submit material in

refutation, extenuation, or mitigation within 30 days from receipt of the FORM. Applicant did not object to the Government's evidence, which are identified as Items 2 through 5. Applicant did not provide material within the timeframe. The Government's documents are admitted into evidence without objection. The case was assigned to me on September 27, 2016.

### **Request for Administrative Notice**

Department Counsel submitted a written request, as part of the FORM, asking that I take administrative notice of certain facts about the Kingdom of Thailand.<sup>1</sup> Applicant did not object, and I have taken administrative notice of the facts contained in the request, which is supported by source documents from official U.S. Government publications. The facts are summarized in the Findings of Fact, below.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR, and provided a clarification regarding SOR ¶ 1.g. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 39 years old. He was born in Thailand. He was required to complete three years of reserve training with the Thailand Military Reserve Force, which he did from 1992 to 1995. He earned a college degree in Thailand in 1998. He moved to the United States in 1999 and attended college earning a master's degree in 2000. In 2004, he completed a doctorate degree. Applicant is not married and has no children. He became a naturalized citizen of the United States in July 2013.<sup>2</sup>

Applicant worked in the United States in various positions. From June 2006 to February 2008, he returned to Thailand to work. He then returned to the United States and worked for different employers. He has worked for his current employer since 2012.<sup>3</sup>

Applicant's father, mother, brother, and sister are all citizens and residents of Thailand. Both of his parents are retired, but had worked for the Thailand government. It is unknown if they receive government pensions or their current contact with the government. His sister is the owner of a private clinic. His brother's occupation is unknown. Applicant maintains daily contact with his parents through the telephone or emails. He maintains weekly contact with his siblings through the same mediums.<sup>4</sup>

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<sup>1</sup> Item 5.

<sup>2</sup> Item 3.

<sup>3</sup> Item 3.

<sup>4</sup> Items 3, 4.

Applicant also has a close friend who is a citizen of Thailand and resides in the United States. No other information is known about this person.<sup>5</sup>

Applicant has a bank account and investments in Thailand. The bank account has a balance of approximately \$1,100. At the time he completed his security clearance application in July 2013, he listed that he owned stocks that were worth about \$4,000. He did not provide other information about his finances. It is unknown if he provides financial support to his family. He disclosed he last visited Thailand in 2010. It is unknown if his family has visited him in the United States.<sup>6</sup>

### **Kingdom of Thailand<sup>7</sup>**

The Kingdom of Thailand is a constitutional monarchy composed of a King, a Prime Minister, and a bicameral legislature. An interim military government has ruled Thailand since a May 2014 military coup which deposed the then elected civilian government. The United States suspended foreign assistance in response to the coup.

The United States Department of State is concerned about the continued risk of terrorism in Thailand. There have been several terrorist incidents that have killed people and there have been arrests of people associated with terrorist groups.

Parts of Thailand experience politically motivated violence, some of which are attributed to armed local separatists' groups. There is a persistent separatist insurgency in Thailand's majority-Muslim southern provinces. It is believed that the overall long-term goal of the movement is the creation of an independent state with Islamic governance. The 11-year insurgency has become the deadliest conflict in the Asia-Pacific region. Government security forces sometimes engage in extra-judicial killings. Since the military coup in 2014, the region remains under martial law. The Thai government has long expressed concern that transnational terrorist groups could establish links with the southern Thailand-based separatist groups.

International groups and U.S. officials have criticized Thailand's overall human rights record. There are abuses by the government security forces, as well as arbitrary arrests and detention; unsatisfactory prison and detention facilities; violence and discrimination against women; sex tourism; and sexual exploitation of children, minorities, hill tribe members, and foreign migrant workers.

The State Department is concerned that China is gaining leverage in Thailand—particularly given the chill in its relations with the United States. Thailand and China have strong trade ties. In addition, China sells Thailand military advanced weapons and equipment and they engage in joint patrols.

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<sup>5</sup> Item 3, 4.

<sup>6</sup> Item 3, 4.

<sup>7</sup> Item 5.

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to 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 B, Foreign Influence

AG ¶ 6 expresses the security concern regarding 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. I have considered all of them and 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
- (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.

AG ¶¶ 7(a) and 7(e) require evidence of a "heightened risk." The "heightened risk" required to raise this disqualifying condition 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's family ties 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>8</sup>

Applicant’s parents, brother, and sister are citizens and residents of Thailand. He also has a close friend who is a citizen of Thailand, living in the United States. He has regular contact with all of his family members. Thailand’s elected government was overthrown by a military coup in 2014. The United States has concerns about the continued risk of terrorism there. International groups and U.S. officials have criticized Thailand’s overall human rights record. There are also concerns about the increased influence of China in Thailand and their joint military exercises. These facts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. They also create a potential conflict of interest. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

Applicant has some financial interests in Thailand, to include a bank account and stock investments. This raises a disqualifying condition under AG ¶ 7(e).

I have analyzed the facts and considered all of the mitigating conditions 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;
- (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; and
- (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 has daily contact with his parents and weekly contact with his brother and sister in Thailand. Insufficient information was provided about the contact he has with a friend, who is a citizen of Thailand residing in the United States. It is unknown whether Applicant’s parents receive pensions from the Thai government or if they

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<sup>8</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

maintain ongoing contact. It is unknown if Applicant provides his family in Thailand any financial support. Applicant's brother's profession is unknown. Applicant traveled to Thailand in 2010. It is unknown if he has taken subsequent trips. After moving to the United States in 1999, he went back to Thailand and worked from 2006 to 2008, before becoming a naturalized citizen of the United States in 2013. It is unknown if his family has visited him in the United States. Applicant's contact with his family is not infrequent or casual. Therefore, I cannot conclude that it is unlikely that his familial relationships could create a risk for foreign influence or exploitation. AG ¶ 8(c) does not apply.

The foreign influence concerns are increased because of Thailand's current government and its ties with China. There is insufficient evidence to conclude that the Applicant's familial connections in Thailand would make it unlikely that Applicant would be placed in a position of having to choose between their family interests and the interests of the United States.

Applicant became a citizen of the United States in 2013. There is insufficient evidence to conclude there is no conflict of interest, either because his sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or he has such deep and longstanding relationships and loyalties in the U.S., that he can be expected to resolve any conflict of interests in favor of the U.S. interests.

The nature of a nation's government and its relationship with the United States is relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if a family member is associated with or dependent upon the foreign government or the country is known to conduct intelligence operations against the United States. There is insufficient evidence to make a determination regarding Applicant's family's association with the Thai government or their vulnerability to government coercion. Although it is possible that Applicant's family in Thailand does not pose a security risk, I cannot make that determination without additional evidence. There is also insufficient evidence to conclude that Applicant's friend who is a citizen of Thailand, residing in the United States does not pose a security risk. The record is void of sufficient information about Applicant, his family, and his friend that would allow me to find that any of the mitigating conditions are applicable.

Although Applicant's financial interests in Thailand appear to be small, I am unable to make an informed decision in that regard without additional information, such as his total financial worth and financial ties to the United States.

### **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) 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. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 39 years old. He became a naturalized citizen of the United States in 2013. There is insufficient evidence in the record to mitigate the security concerns raised by Applicant's foreign contacts. Applicant has failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline B, 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 F:	AGAINST APPLICANT
Subparagraphs 1.a-1.i:	Against Applicant

### **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge