



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No.15-01447

**Appearances**

For Government: Robert Blazewick, Esq. Department Counsel  
For Applicant: Jacob T. Ranish, Esq.

10/05/2017

**Decision**

LYNCH, Noreen, A., Administrative Judge:

On September 6, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns arising under Guidelines B (Foreign Influence) and C (Foreign Preference).<sup>1</sup> The action was taken under Executive Order (EO) 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 (AG) implemented in September 2006. Revised Adjudicative Guidelines were issued on December 10, 2016, and became effective on June 8, 2017.

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on May 9, 2017. A notice of hearing was issued on July 31, 2017, scheduling the hearing for September 14, 2017. Government Exhibits (GX) 1-2 were admitted into evidence without objection. Applicant testified and submitted Applicant

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<sup>1</sup>At the start of the hearing, Department Counsel withdrew Guideline C (Foreign Preference).

Exhibits (AX) A-U, which were admitted without objection. The transcript was received on September 22, 2017. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

### **Procedural Issues**

Department Counsel requested that I take administrative notice of relevant facts about Thailand. The request and supporting documentation are in the record as Hearing Exhibit I. Applicant did not object to the request, and also requested administrative notice of certain facts, which was marked as Hearing Exhibit II. I took administrative notice as requested by Department Counsel and Applicant. The facts administratively noticed are set out below.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the allegations under Guideline B. He also provided explanations about the allegations. (Answer to SOR)

Applicant is a 40-year-old professor at a community college. (AX A) He also owns a software development company, which he opened in 2011 that does work for a defense contractor for the United States government. (AX C) He was born in Thailand and came to the United States in 2001. He became a permanent resident in 2008, and a U.S. citizen in 2014. (AX J) He has been married for 11 years and has two children. (GX 1, AX K) Applicant obtained his undergraduate degree in 2000 when he was in Thailand. He received an MBA in 2008, and an MS in 2004 from American universities. He has worked for his current employer since August 2011. Applicant completed his security clearance application on October 14, 2014. (GX 1)

Applicant has received numerous awards from the local government for his public safety mobile applications. He has received an outstanding service award and a certificate of appreciation from NASA. His performance evaluations are superior. (AX B, E, H)

He owns a home in the United States, which is valued at \$600,000. (Tr. 19) He has a successful IT business. (AX O) He is a registered voter and exercises his voting right in U.S. elections. He has deep roots in the community and is a member of several civic associations. (AX M)

Applicant submitted at least eight reference letters from friends and colleagues who describe him a strong family man with ties to the community. He is respectful, honest, reliable, and has an allegiance solely to the United States. He is very proud of his U.S. citizenship. He is recommended for a security clearance. (AX S)

## **Foreign Influence**

The SOR alleges that Applicant's mother, father, brother, uncle, and his mother and father-in law are citizens and residents of Thailand. The SOR also alleges that Applicant maintains a savings account and a bank account in Thailand. (SOR ¶¶1.a-1.f)

Applicant acknowledges his relatives in Thailand, but denies that they create a risk of foreign influence because none of his relatives are affiliated with the government. (GX 2) His relatives live in Bangkok. (GX 2) None of them are aware of Applicant's work with the U.S. Government or that he is seeking a security clearance.

Applicant's mother in Thailand is elderly and is self-employed selling scooters in Bangkok. Applicant calls her monthly. His father is elderly and very ill. He is paralyzed and unable to speak after a heart attack in 2014. Before his illness, he was a car salesman. Applicant does not have a close relationship with him. Applicant's brother is 42 years old and is a car salesman. He also takes care of his father. Applicant contacts his brother monthly by phone. (Tr. 22, 23)

Applicant's father-in-law is 74 and retired. Before his retirement. He was a high school teacher. Applicant contacts him quarterly by phone. His mother-in-law is 69. Before retiring, she was a primary school teacher. They have a visa for the United States and spend six months of the year in the United States. (Tr. 9) Applicant is sponsoring them for citizenship. (Tr.27)

Applicant's uncle is 73 and retired. He was a manager for an American company. Applicant contacts him monthly by phone. His uncle sponsored Applicant to come to the United States. At one time, he lived in the United States, but he returned to Thailand to care for his elderly parents. (Tr. 29)

Applicant opened a savings account in Thailand when he was in college. He used the account to pay for life insurance. This account was opened before he came to the United States. He also used it when he visited his parents. The approximate account value is \$8,500. This is a fraction of his U.S. assets. He will close the account on his next visit to Thailand. He has transferred money to the United States recently. (AX U)

Applicant has substantial financial interests in the United States. He also owns a restaurant which is valued at \$200,000. (AX T) He has a bank and savings account in the United States. He believes his net worth is about \$900,000 or more.

## **Administrative Notice**

DOHA administrative judges may accept for administrative notice uncontroverted, easily verifiable facts regarding a foreign country derived from official U.S. Government reports, the official position of appropriate federal agencies, or the pertinent statement(s) of key U.S. Government officials. The source document(s) or, at a minimum, the relevant portion(s) of the source document should be included in the

record for potential appellate review regarding the accuracy and relevancy of the fact(s) administratively noticed. See *generally*, ISCR case No. 08-09480 (App. Bd. Mar. 17, 2010); ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007).

The United States and Thailand have a longstanding relationship. A treaty was signed in 1832 followed by a Treaty in 1833, formalizing diplomatic relations. Since WW II, the United States and Thailand have significantly expanded diplomatic, security, and commercial relations. In 2003, the United States designated Thailand a major non-Nato ally.

Historically, Thailand has been viewed as a model democracy in Southeast Asia, although this image, has been complicated in the wake of two military coups in the past nine years. Despite the recent coups in Thailand, “the strategic value of the alliance remains high.” The United States considers Thailand a key U.S. security ally in Asia, and the country’s stability and growth are important to the maintenance of peace in the region.

The United States partnership with Thailand also spans “the areas of trade, science and technology, wildlife trafficking, public health, education, and cultural exchange.

President Obama visited Thailand on a trip to Asia in 2012. He noted that Thailand is our oldest friend and has diplomatic ties stretching back nearly 180 years.

While the U.S.-Thai alliance remains in place and Washington and Bangkok are mending relations after a period of tension, China’s security relations with Thailand are strengthening.

## **Policies**

When evaluating an applicant’s suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” An 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(d) national security eligibility requires that “[a]ny doubt concerning personnel being considered will be resolved in favor of the 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.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”<sup>2</sup> The burden of proof is something less than a preponderance of evidence.<sup>3</sup> The ultimate burden of persuasion is on the applicant.<sup>4</sup>

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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.”<sup>5</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>6</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>7</sup> The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

## **Analysis**

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

The security concern under this guideline is set out in AG ¶ 6:

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<sup>2</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>3</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>4</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>5</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>6</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>7</sup> *Id.*

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests, or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

Two disqualifying conditions under this guideline are relevant. A disqualifying condition may be raised by “contact, regardless of method, 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.” AG ¶ 7(a). In addition, AG ¶ 7(b) is relevant as it provides that “connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect classified or sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information or technology.”

Applicant’s immediate family (his wife and two children) live with him in the United States. The presence of Applicant’s parents, brother, in-laws, and uncle in Thailand establishes AG ¶ 7(a).

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.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

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.” ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002). Finally, 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 vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006)

(reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

The Government submitted country summaries of Thailand in its request for Administrative Notice. Record evidence places a burden of persuasion on Applicant to demonstrate that his relationship with his family members living in Thailand does not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his family living in Thailand.

I conclude that Applicant's ties are sufficient to raise an issue of a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion. This relationship with his relatives in Thailand creates a concern about Applicant's "obligation to protect sensitive information or technology" and his desire to help his relatives in Thailand.

Security concerns under this guideline can be mitigated by showing that "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." AG ¶ 8 (a)

The mere possession of close ties with a family member in Thailand is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could possibly result in the compromise of classified information. See *generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case NO. 99-0424 (App. Bd. Feb. 8, 2001).

Security concerns under this guideline can also be mitigated by showing "there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest." AG ¶ 8(b).

AG ¶¶ 8(a), and 8(b) are applicable. Applicant's family lives in Bangkok, but have no relation to the government. They do not know that Applicant is applying for a security clearance. The circumstances of Applicant's family are such that they are not likely to be targeted as a means of coercing Applicant. They are not aware that he might work in a classified environment. He has contact with his mother and father out of respect as a son. He has some contact with his brother and uncle. Despite the heightened risk, the common defense of their home further lessens the vulnerability of Applicant's family to coercion by any terrorist entities. This supports mitigation under A G ¶ 8 (a).

The mitigating condition at AG ¶ 8(b) applies based on Applicant's work as a professor and an IT consultant. He is highly recommended for his knowledge and skills

in technology. He left Thailand to pursue his professional career. He does not want to leave the United States. Applicant is a naturalized citizen. He worked hard and obtained an academic degrees in the United States before obtaining his present position. His wife and children live with him in the United States. He is committed to his personal and professional life as a U.S. citizen. His assets in the United States are substantial. He wants his children to benefit from the U.S. education system.

Applicant expressed his loyalty to the United States. He is a naturalized citizen who has lived and worked in the U.S. since 2001. I considered the rising relationship of Thailand with China, but counsel conceded that it is “somewhat uncertain.”

Applicant has strong ties to the United States. He left Thailand to pursue his academic career in the United States. He is a naturalized U.S. citizen and has been in the United States since 2000. He has no significant financial interests in Thailand. He has firm ties to the United States and considers it his home. He can be expected to resolve any potential conflict of interest in favor of the United States. He has established application of AG 8 (b). Applicant has mitigated the concerns under the foreign influence guideline.

### **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 an applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d)

(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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors.

Applicant is 40 years old. He is an educated man who is a naturalized U.S. citizen. He left his country to pursue his academic career and professional life. Applicant lives in the United States with his wife and two children. Applicant can be relied on to act at all times in the best interests of the United States.

Applicant's relatives do not know that Applicant is applying for a security clearance. Applicant does maintain contact with his mother and father and other family members. However, his primary duty is to his own life in the United States. For all these reasons, Applicant has mitigated the security concerns under foreign influence.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the record evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns under Guideline B (foreign influence). Accordingly, I conclude that he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **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	WITHDRAWN
Subparagraph 1.a:	Withdrawn
Paragraph 2, Guideline B	FOR APPLICANT
Subparagraphs 2.a-2.f:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

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NOREEN A. LYNCH  
Administrative Judge