



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-04501
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jennifer I. Goldstein, Esquire, Department Counsel
For Applicant: *Pro se*

November 12, 2008

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on July 24, 2006 (Government Exhibit 1). On March 6, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant, which detailed security concerns under Guideline B stating why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked. 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 President Bush on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on March 14, 2008. She answered the SOR in writing on March 24, 2008, and requested a hearing before an

Administrative Judge. Department Counsel was prepared to proceed on May 9, 2008, and I received the case assignment on May 19, 2008. DOHA issued a notice of hearing on June 9, 2008, and I convened the hearing as scheduled on June 26, 2008. The Government offered Government Exhibits 1 through 3, which were received without objection. Applicant testified on her own behalf and submitted Applicant's Exhibit A, without objection. DOHA received the transcript of the hearing (Tr.) on July 8, 2008. I granted Applicant's request to keep the record open until July 11, 2008, to submit additional matters. On July 11, 2008, she submitted Applicant's Exhibit B, without objection. The record closed on July 11, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural Ruling

Request for Administrative Notice

Department Counsel submitted a formal request dated May 9, 2008, that I take administrative notice of certain facts relating to the Kingdom of Thailand. (Transcript at 13-14, 22-24.) The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

The Applicant is 55, married, and has a Bachelor's degree. She is employed by a defense related company and seeks a security clearance in connection with her employment in the defense industry. In her Answer to the SOR, dated March 24, 2008, Applicant admitted all but one of the factual allegations of the SOR, with explanations. She also provided additional information to support her request for eligibility for a security clearance. She denied subparagraph 1.d., in that this brother in law (the brother of her husband) has passed away. (Transcript at 26, 38-39, 52-54.) That subparagraph is found for the Applicant.

Paragraph 1 (Guideline B - Foreign Influence)

The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has foreign contacts and interests that could lead to the exercise of poor judgment, unreliability or untrustworthiness on the part of the Applicant.

The Applicant was born in Thailand in 1951. She emigrated to the United States in 1973. The Applicant became a naturalized American citizen in August 1996. Her current husband was also born in Thailand. He is a Permanent Resident Alien in the United States. They were married in 1979, and have two children. Both of the

Applicant's children were born in the United States. The Applicant and her husband have over \$200,000 in assets in the United States. (Transcript at 57-58, 60-61.)

The Applicant's mother, who is an American citizen, lives in the United States with her. Her father lives in Thailand, where he is looked after by the Applicant's sole sibling, a sister. The latter are both Thai citizens. This year the Applicant's sister loaned about \$20,000 to the Applicant, so that she could pay bills and give some money to one of her sons for his start up company. The total amount the Applicant used to pay her bills was approximately \$6,000. (Transcript at 62-63, 66-67.)

The Applicant has substantial property interests in Thailand. With her sister, she owns a substantial piece of property, worth about \$2,000,000 if it was sold. This property was given to the Applicant and her sister by their mother about six years ago. (Applicant's Exhibit B at 7.) It is on an island with the potential to be developed. (Applicant's Exhibit A.) The Applicant has plans to create a retirement community on the property. The Applicant's mother has requested that the property not be sold during her lifetime, and the Applicant intends to fulfill that promise. Once she retires, the Applicant plans on living in Thailand four months out of the year. (Transcript at 26-29, 32-34, 44.)

The Applicant discussed the corruption present in Thailand and how it affected her family. In particular, she testified about how her family has had to fight to retain their coconut plantation, when others wanted to take it. (Transcript at 57, 59-60.)

In addition, the Applicant owns a seven unit apartment building in Thailand. She uses the income from that building to take care of her father, who lives in one of the units. The Applicant travels to Thailand on an annual basis to visit her elderly father, as well as her sister. (Transcript at 28, 48-49.)

The Applicant's mother-in-law and father-in-law have passed away. As stated earlier, her husband's brother who was the subject of subparagraph 1.d. passed away about two years ago. Neither the Applicant or her husband have a relationship of any type with the remainder of his family, a brother and sister. (Transcript at 38-39, 45-46.)

During her testimony, the Applicant expressed considerable concern about the military coup that toppled the elected civilian government in Thailand in 2006. (Transcript at 34.) The coup, and other pertinent matters involving Thailand, will be discussed immediately below.

The Applicant has many contacts with Thailand. Accordingly, it is appropriate to discuss the situation in Thailand at this time.¹ The Kingdom of Thailand is a constitutional monarchy. The current ruler is treated with deep reverence and respect. On September 19, 2006, the current ruling regime came to power through a bloodless

¹All of the following statements are supported by the documents submitted by the Department Counsel in support of her request for administrative notice.

coup, whereby military leaders overthrew the democratically elected Prime Minister. The coup leaders, now called the Council for National Security, assert that the Prime Minister was corrupt and that the last election was fraudulent. In the following months they abolished Parliament, declared martial law, and issued decrees limiting civil liberties including limits on free speech, free press and freedom of assembly.

Thailand has a free-enterprise economy with a well-developed infrastructure, and pro-investment policies. Approximately 40% of Thailand's labor force is agricultural, with rice being the most important crop. It also has an increasingly diversified manufacturing sector. The United States is Thailand's largest export market and second largest supplier.

In the past, Thailand had excellent military relations with the United States, including joint training and maneuvers. In addition, Thailand cooperated with the United States on a wide variety of foreign policy issues, including the Global War on Terror. However, as a result of the military coup in September 2006, the United States suspended Foreign Military Financing, International Military Training funds, and peace-keeping operation funds with Thailand.

The United States Government, through the State Department, has criticized the Thai government's overall human rights record for several years. Prior to the coup, the Thai constitution prohibited such practices as torture and arbitrary arrest and detention. However, instances of disappearances, torture, arbitrary arrests and detentions have been reported under past and present Thai regimes. The Emergency Decree and martial law orders in effect since the coup permit authorities to conduct searches without a warrant. Further, despite constitutional protections afforded to freedom of speech and the press, the coup leaders have suspended these rights and have banned articles, messages, speeches and any other type of discourse that could undermine the coup.

Finally, Thailand's southern provinces continue to be the source of sectarian violence between Muslim insurgents and Thai security forces. While the extremist groups primarily focus on Thai government interests in the south, recent violence has also targeted public places, including tourist areas.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case

presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case will be set forth under CONCLUSIONS, below.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- (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 voluntariness of participation
- (6) The presence or absence of rehabilitation and other pertinent behavior changes
- (7) The motivation for the conduct
- (8) The potential for pressure, coercion, exploitation or duress
- (9) The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may have foreign contacts and interests that may lead to poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness,

recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has foreign connections which could cause a security concern (Guideline B).

The Applicant, on the other hand, has not successfully mitigated the Government's case, except in part. Subparagraph 1.d. is found for the Applicant as her husband's brother has passed away.

The Applicant has many and varied connections to Thailand. The Applicant's father and sister continue to live in Thailand, and the Applicant has a close and continuing association with them. In addition, the Applicant has substantial financial interests in Thailand. The Applicant emphasizes, and it is true, that the family plantation currently has *potential* value of approximately \$2,000,000. The fact remains that the potential value of her half is almost five times the value of her assets in the United States. In addition, just this year, her sister in Thailand had to lend the Applicant \$20,000 so that she could make credit card payments. Finally, the Applicant's family has already had to fight political corruption in Thailand to retain their rights to this obviously desirable piece of property.

All of these connections must also be viewed in the context of the current Thai government, and its strained relations with the United States after the coup. The Applicant is obviously not a supporter of the coup. The Applicant repeatedly stated that she is a loyal American citizen, and that she understands her responsibilities as a security clearance holder. However, given the depth and extent of her current

connections with Thailand, she has failed to meet her burden of showing an unequivocal connection to the United States. She is not eligible for a security clearance at the present time.

Based on the evidence the Government has presented, the following Disqualifying Conditions apply to this case: 7.(a) *Contact with a foreign family member . . . 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 . . . 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 . . . 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.* I have also considered the information concerning the current Thai government, which came to power through a military coup, provided by Department Counsel and attached to the record.

The Applicant has not provided compelling evidence to show that the following Mitigating Conditions also apply to this particular case, given her particular background: 7(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.;* (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 interest in favor of the U.S. interest* 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 .*

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 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. Two of the factors have the most impact on this case. First, I cannot find that there is the “presence or absence of rehabilitation and other permanent behavioral changes,” as set forth under AG ¶ 2(a)(6). The Applicant simply has not proved that she has sufficient connections in this country, which shows a preference for the United States instead of Thailand.

More importantly, as stated at length above, the Applicant’s primary financial interest is in family property in Thailand. Given the current situation in Thailand, along with the history of attempts by corrupt interests in the Thai government to wrongfully acquire the property, it is not possible for me to find that there is little or no “potential for pressure, coercion, exploitation, or duress” as set forth in AG ¶ 2(a)(8).

On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing her request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against the Applicant
Subparagraph 1.b:	Against the Applicant
Subparagraph 1.c:	Against the Applicant
Subparagraph 1.d:	For the Applicant
Subparagraph 1.e:	Against the Applicant

Conclusion

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

WILFORD H. ROSS
Administrative Judge