DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 19-01879
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

05/20/2022

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Decision

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant used marijuana and the stimulant khat weekly for over five years. There is no evidence of any illegal drug use since July 2018, but it does not completely allay the concerns about his judgment raised by his drug use and purchases and by an assault conviction. Clearance eligibility is denied.

Statement of the Case

On December 13, 2019, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline H, drug involvement and substance misuse, and Guideline E, personal conduct. The DCSA CAF explained in the SOR why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DCSA CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the National Security Adjudicative Guidelines (AG) effective June 8, 2017, applicable to all adjudications for national security eligibility or eligibility to hold a sensitive position.

On January 16, 2020, Applicant answered the SOR allegations and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. On February 17, 2021, the Government indicated it was ready to proceed to a hearing. On February 24, 2022, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. Processing of the case was delayed because of the COVID-19 pandemic. I received the case assignment and file on March 1, 2022, with a request that his hearing be expedited.

On March 4, 2022, I informed Applicant that I was scheduling a video conference hearing via Microsoft Teams. After some coordination of schedules with the parties, on March 11, 2022, I scheduled a hearing for April 19, 2022. At the Government's request, and with no objection from Applicant, on April 8, 2022, I rescheduled Applicant's hearing for April 28, 2022.

At the hearing, five Government exhibits (GE 1-5) were admitted into evidence without any objections. Documents submitted by Applicant when he responded to the SOR were accepted into evidence without any objection as an Applicant exhibit (AE A). Applicant testified, as reflected in a hearing transcript (Tr.) received electronically on May 5, 2022.

Findings of Fact

The SOR alleges under Guideline H that Applicant purchased and used khat (cathinone) from about January 2013 through at least May 2018 (SOR ¶ 1.a) and that he purchased and used marijuana from January 2013 through at least July 2018 (SOR ¶ 1.b). Under Guideline E, the SOR alleges that Applicant was found guilty of a January 2017 assault and incarcerated for a time (SOR ¶ 2.a); that he was terminated from jobs in 2017 (SOR ¶ 2.b) and February 2018 (SOR ¶ 2.d); and that he resigned from a job in July 2017 after he had been told he would be fired (SOR ¶ 2.c). Applicant admitted the allegations when he answered the SOR. His admissions are accepted and incorporated as factual findings. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 43-year-old naturalized U.S. citizen. He left his native country in October 1999 to attend a high school in France. After he graduated from high school, he came to the United States as a tourist in late August 2001, but left for Canada in April 2002 to seek asylum, citing his fear of being arrested and tortured for protesting against the government in his native country. His application for asylum was denied by Canada. In November 2005, he returned to the United States and applied for asylum here. (GEs 1, 5.)

No information was presented in evidence about Applicant's activities in the United States over the next four years. The United States granted him asylum in 2008 and permanent residency status in June 2009. (GE 5.)

Applicant supported himself on savings and per diem work as an interpreter from February 2008 to June 2015. He remained eligible for assignments until February 2017, although he had no interpreter work after June 2015. (GE 2.) He attended a technical institute for one semester in the fall of 2009. He earned an associate's degree in June 2012 and a bachelor's degree in January 2015. (GE 1.)

In June 2015, Applicant moved to his current locale, where there was a concentration of immigrants from his native area. He worked as a customer service representative for a marketing company for about six months. He became a naturalized U.S. citizen in March 2016. (GE 1.)

Shortly after he relocated, Applicant began volunteering his time, language skills, and knowledge of immigration and social services to immigrants from his native country through their community organization. He helped many new immigrants in their transitions to life in the United States, and spoke positively of the values of the United States. As of April 2017, he was spending about 25 hours a week in community service while studying to take the examination for law school toward possibly becoming an immigration attorney. (AE A.)

Criminal Charges

Around July 2016, Applicant began dating an asylum seeker from his native country. On January 10, 2017, he and this now ex-girlfriend had an argument. He asserts that she became emotional after the 2016 presidential election, as she feared her asylum application would be disapproved by the then-U.S. administration because of its stance on immigration, and so she attempted to convince him to marry her, thinking it would aid her case for U.S. refugee status. (GEs 2-3, 5; Tr. 25-26.) Over the course of the day, Applicant consumed six to eight 12-ounce beers. He maintains that after telling her that he wanted to end their relationship, she struck him in the chest, and he pushed her backwards. He left the apartment to purchase more alcohol, and she called the police. (GE 2.)

Applicant's ex-girlfriend was no longer at the apartment when the police arrived, as she had gone to the police station. Applicant was outside the apartment when the police arrived. He told the police that he had argued with his ex-girlfriend, but that it "was no big deal," and explained that he had gone out to purchase more beer. He consented to a search of the apartment, and the police seized a large kitchen knife from a drying rack. (GE 3.)

At the police station, Applicant's ex-girlfriend, a French speaker with limited facility in English, complained that "her cousin" (Applicant) had pushed her to the couch, put a kitchen knife to her throat, and told her he would kill her. When she screamed, he put down the knife but returned with a cigarette and told her he would hurt her face. She further complained that he put his hands to her breasts at the door, but then returned to the room, where he threatened to rape her and exposed himself before putting the knife back and leaving the premises. She was adamant that there was no sexual relationship between her and Applicant, and claimed that she was staying in his apartment temporarily because

there was a problem with her apartment. At the station, Applicant admitted to the police that he had argued with his ex-girlfriend and had thrown some things around the apartment, but he denied that he threatened her. He told the police that he had consumed as many as eight to ten beers earlier in the day. (GE 3.)

The police reported seeing no signs that Applicant's ex-girlfriend was injured. (GE 3.) Yet Applicant was arrested and charged with aggravated assault, criminal threatening with a dangerous weapon, assault, and indecent conduct on his ex-girlfriend (SOR ¶ 2.a). He could not post bail and was jailed from January 11, 2017, until February 22, 2017, when a reduced bail was posted. (GE 4.)

One of Applicant's neighbors and the neighbor's mother were interviewed by a private investigator in June 2017 at the request of Applicant's defense attorney. The neighbor expressed her belief that Applicant and the ex-girlfriend had a personal relationship as she had observed public displays of affection between them, and she had not seen or heard any signs of acrimony between them. The neighbor's mother believed Applicant and the ex-girlfriend were married, and she described Applicant as a good man. (AE A.)

In July 2017, Applicant pled guilty to the criminal threatening and assault charges, and prosecution was deferred with conditions. Applicant was required to refrain from any criminal conduct, any contact with his ex-girlfriend, and any possession of a dangerous weapon; abstain from the use of alcohol and illegal drugs with random testing; and undergo substance abuse and psychological evaluations with updates to be provided every three months. (GE 4.)

Applicant began monthly counseling with a licensed alcohol and drug counselor in early March 2017 to work on substance abuse issues, relationship issues, and communication skills. As of mid-April 2017, he reported to the counselor that he was abstaining from drinking and was not socializing with anyone who might promote an activity harmful to his future. (AE A.) As of January 12, 2018, Applicant was regularly attending his counseling appointments with no report of any relapses. (AE A.) He attended counseling sessions for about one year. (Tr. 33-34.)

On July 6, 2018, the state moved to withdraw Applicant's guilty plea to the felony criminal threatening charge pursuant to the plea agreement and successful completion of the deferment period. Applicant was found guilty of assault and sentenced to a jail term of 42 days with credit for time served. He was ordered to pay fines and surcharges totaling $430 payable at $25 a month. A late fee of $50 was assessed on August 13, 2018. He made a cash payment of $100 on September 13, 2018, to avoid a warrant. (GE 4.)

On October 9, 2018, Applicant underwent a counterintelligence-focused security screening (CSS) as part of his application for a linguist position with the company currently sponsoring him for security clearance eligibility. About the January 2017 incident involving his ex-girlfriend, Applicant stated that her asylum application was pending at the time, and that she threw dishes at him because he would not marry her. He admitted that he pushed

her, but explained that his lawyer recommended that he take the plea deal resulting in all but the assault charge being dropped. (GE 5.)

Applicant listed his January 2017 arrest and his sentence for misdemeanor assault on an October 11, 2018, security clearance application (SF 86). (GE 1.) During an October 29, 2018 subject interview (SI) with an authorized investigator for the Office of Personnel Management (OPM), Applicant stated that he began dating an asylum seeker from his native country in July 2016, and that they briefly cohabited until she obtained her own apartment in the same building. He explained that they argued after he told her he did not want to engage in a fraudulent marriage, and she became increasingly emotional and punched him in the chest with a closed fist. After he informed her that he wanted to end their relationship, she became "extremely outraged," and struck him again. He retaliated by pushing her backwards, although he claimed it was not enough for her to fall or cause her injury. Applicant vehemently denied her accusations of attempted rape or of putting a knife to her neck. He pled guilty to misdemeanor assault under a plea agreement, but he maintained that his ex-girlfriend had fabricated the entire event, thinking that she would receive more favorable consideration for U.S. "citizenship." Applicant denied that he was required to participate in any program for alcohol use or anger management as a condition of his release. (GE 2.) He currently asserts he pled guilty only to put the incident behind him. The criminal proceedings occurred before he applied for a clearance, and he did not realize that a conviction could negatively impact his future. (Tr. 26, 31.) He has not had any contact with his ex-girlfriend since the incident. (Tr. 31.)

Adverse Employment Issues

Between 2016 and 2018, Applicant had three jobs that ended under unfavorable circumstances. He was terminated from his job as a production worker at a bakery in "2016 or 2017" (SOR ¶ 2.b). Applicant did not list this job on his SF 86. (GE 1.) When asked about this developed information during his SI, Applicant recalled that he had worked for a bakery as a production worker in "2016 or 2017 for six months," when he was fired on-the-spot after his supervisor heard him say that he was going to quit because it was too hot on the job. (GE 2.) At his security clearance hearing, he initially asserted that he quit the bakery job because he thought he could spend his time on more important work, such as preparing and taking the admission examination for law school, and that the company "tricked" him about the nature of the job. He subsequently admitted that he was fired after missing work twice. (Tr. 41-42.)

In February 2017, Applicant began working full time as a behavioral-health professional for children. He provided support for a student with special needs, helping him with behavior and focus issues. (Tr. 43.) During the summer of 2017, Applicant did not take online classes required to meet state-certification requirements, as he believed he should not have to take them on his own time without compensation. He resigned in July 2017 in lieu of being terminated (SOR ¶ 2.c). (GEs 1-3.) On his SF 86, he indicated that he quit the job after being told he would be fired, and explained he lost the job over money issues, stating: "My employer and I came to an agreement because I was not able to make enough money during the summer of 2017 so I quit" (SOR ¶ 2.c). During his subsequent SI (GE 2)

and at his hearing (Tr. 44), Applicant acknowledged that he did not take the classes required to keep his job in the summer of 2017, but maintained that he left the job amicably because the job was not a good fit. He asserts that, to end his employment, the company was required by policy to issue him a letter stating that he was fired or terminated. (Tr. 44-45.)

Applicant next worked as a full-time linguist at a hospital from November 2017 until February 2018. He indicated on his SF 86 that he had been fired from the job "for missing 3 or 4 days due to [a] personal matter" (SOR ¶ 2.d). During his SI, Applicant was asked about the nature of the "personal matter." He declined to provide any further information, even after he was advised that the failure to provide the requested information could preclude a determination of his clearance eligibility. (GE 2.) At his hearing, he explained that he had car issues and was fired by the hospital for being late twice and absent once during his probationary period. (Tr. 47-48.) When asked why he would not tell the OPM investigator about the "personal matter" that led to his job termination, Applicant claimed that he was not asked about it during his SI. (Tr. 48.)

Drug Involvement

In June 2018, Applicant applied to work as a linguist with a federal contractor. He was unemployed at the time. (GE 1.) During his October 9, 2018 CSS, Applicant related that he smoked marijuana once or twice a week from **2009 to July 2018** when he stopped using marijuana because he would be drug tested as a linguist with the defense contractor. (GE 5.) When he completed his SF 86 on October 1, 2018, he indicated that he used and purchased marijuana for recreational purchases from **January 2013 to May 2018** at a frequency of once a month (SOR ¶ 1.b). He denied any intention to use or purchase the drug in the future, and stated, "I am grown up and this job that I am applying for is serious about drug usage." (GE 1.) During his October 29, 2018 SI, Applicant related that he used marijuana in his home every weekend between January 2013 and May 2018, and that he purchased marijuana from friends at a cost of $40 a week. He explained that he used marijuana initially out of curiosity and continued using marijuana because it relaxed him. Applicant would not provide the names of the persons from whom he bought marijuana because he did not want to get them in trouble. He admitted knowing that it was a violation under federal law to possess marijuana, but given that it was legal in his state, coupled with the fact that "everyone does it," he did not feel it was a big deal. Applicant denied any intention to resume using marijuana.

Applicant was then asked during his SI whether he had experimented with or used any other illegal substance. He responded "No" initially, but after being provided examples of drugs, Applicant volunteered that he consumed two or three leaves of khat (a shrub with two active ingredients, cathine and cathinone, used for its stimulant effect, *see* GE 6), on the weekends once or twice a month from January 2013 to May 2018. He related that he purchased the stimulant on the black market in his area. He was aware that it was against state and federal laws to use khat, but explained that it was "heritage related;" that the use of khat was common and "not taboo" (was culturally accepted) in his native land. He asserted that he stopped using khat because he was planning to work as a linguist in a

position that required clearance eligibility, and he knew that its use would not be allowed. He attributed his omission of his khat use from his SF 86 to "oversight." (GE 2.)

In October 2019, Applicant was asked to respond to drug interrogatories. He listed marijuana and khat use "Few Times (once a week)" from **January 2013 to May 2018**. He denied any current association with known drug users or any frequenting of places where he had reason to believe drugs were being used. He commented about his drug use, as follows:

> For the khat and marijuana, I used them just for pleasure and I was not aware that the security clearance process would ask me about the use of those drugs. I never had any addictions or issues with them. It never impaired me physically or psychologically. I also want to express that khat is not considered illegal in the East African countries where I grew up. Marijuana is also not considered illegal in the state of [name omitted], where I live at this moment. Those are the reasons why I did purchase those substances. But I put everything behind me since the [security clearance] process started for me. (GE 2.)

At his hearing, Applicant was not asked about the discrepancy between his CSS, where he reported first using marijuana in 2009, and his SF 86, SI, and hearing, where he maintained that he started using marijuana in January 2013. He testified at his hearing that he began using marijuana in college (Tr. 55-56), and that he used marijuana recreationally once a week on the weekends. (Tr. 56.) When asked about the discrepancy in dates for his reported last use of marijuana (July 2018 during the CSS, and May 2018 on his SF 86 and during his SI), Applicant responded, "I can't really be specific. But it was within that range of time. Like those two days [sic]." (Tr. 57.)

Applicant explained that marijuana "was kind of legal," and it was easy to obtain in his state. (Tr. 62.) As to why he used marijuana when it could possibly hinder his chance of a legal career or his ability to aid other immigrants in his community, Applicant responded that "it was something that [he] was not consuming every day;" it was not hurting him; he did it only on the weekends; he did not think about any possible negative impacts his use could have on his future; it was just keeping him relaxed; and "[he] was just doing it for the sake of doing it. Or [his] friends [were] doing it." (Tr. 63.) Applicant denies any use of marijuana since 2018 (Tr. 58), and asserts that he cut ties in 2018 with those friends who used marijuana. (Tr. 64.) When asked about his marijuana use in 2018, which would appear to have been in violation of the condition of his deferred disposition that he abstain from illegal drug use, Applicant initially asserted that he was not told that he was not supposed to use illegal drugs. (Tr. 67.) He then claimed that he stopped using illegal drugs when the court ordered him to refrain from illegal drug use and that he "maybe made a mistake with the dates [of his drug use]." (Tr. 68.)

Applicant denies any use of khat since 2018. (Tr. 58.) In December 2019, he went to his native country for his marriage to a resident citizen of that country. He maintains that he did not use any khat at his wedding, despite the drug being commonly used at weddings.

He returned to his native country in January 2020 and stayed there until March 2021. (Tr. 58.) Some of his family members used khat in his presence. (Tr. 59-60.) Applicant asserts that he did his best to make them understand that his situation has changed in that he was trying to obtain a job that did not allow for the use of khat. (Tr. 60.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 national security eligibility 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. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . .." The applicant 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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." *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline H: Drug Involvement and Substance Misuse

The security concerns about drug involvement and substance misuse are set forth in AG ¶ 24:

> The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. Substance misuse is the generic term adopted in this guideline to describe any of the behaviors listed above.

In addition to the above matters, I note that effective May 2, 2018, the state in which Applicant has resided since June 2015 legalized the use of marijuana in a private residence, and the possession or transport by adults 21 years of age and older, of up to 2½ ounces of marijuana or 2½ ounces of a combination of marijuana and no more than five grams of marijuana concentrate. The law authorized purchases from a marijuana store of up to 2½ ounces of adult-use marijuana. Any violation became punishable by a civil fine of up to $100.

However, marijuana remains a Schedule I controlled substance under federal law pursuant to Title 21, Section 812 of the United States Code. Schedule I drugs are those which have a high potential for abuse; have no currently accepted medical use in treatment in the United States; and lack accepted safety for use of the drug under medical supervision. Section 844 under Title 21 of the United States Code makes it unlawful for any person to knowingly or intentionally possess a controlled substance not obtained pursuant to a valid prescription. On October 25, 2014, the then Director of National Intelligence (DNI) issued guidance that changes to laws by some states and the District of Columbia to legalize or decriminalize the recreational use of marijuana do not alter existing federal law or the National Security Adjudicative Guidelines, and that an individual's disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations.

On December 21, 2021, the current DNI issued clarifying guidance concerning marijuana, noting that prior recreational use of marijuana by an individual may be relevant to security adjudications, but is not determinative in the whole-person evaluation. Relevant factors in mitigation include the frequency of use and whether the individual can demonstrate that future use is unlikely to recur. The DNI also made clear that products that contain more than 0.3 percent of THC remain illegal to use under federal law and policy.

There is a significant unresolved evidentiary discrepancy as to when Applicant first used marijuana. Whether he began using marijuana in 2009 or not until January 2013, his possession of the drug was illegal under federal law. His use of marijuana prior to May 2018 was also illegal under state law. As for his possession of khat, khat's two active ingredients are two central nervous system stimulants: cathinone, which is a Schedule I drug under the Federal Controlled Substances Act, and cathine, which is a Schedule IV drug. While the United States Drug Enforcement Administration reports that the use of khat is an established cultural tradition for many social situations in East Africa and the Arabian Peninsula, khat produces a stimulant effect and can induce manic behavior with grandiose delusions, paranoia, nightmares, hallucinations, and hyperactivity. (GE 6.) The regularity of Applicant's marijuana and khat use, every week for at least five years, shows that use of those drugs was a significant part of his lifestyle. He purchased both drugs illegally. The evidence establishes disqualifying conditions AG ¶¶ 25(a), "any substance misuse (see above definition)," and 25 (c), "illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia."

Applicant bears the burden of establishing that matters in mitigation apply to his marijuana and khat possession and use. AG ¶ 26 provides for mitigation as follows:

> (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on an individual's current reliability, trustworthiness, or good judgment;
>
> (b) the individual acknowledges his or drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:
>
> > (1) disassociation from drug-using associates and contacts;
> >
> > (2) changing or avoiding the environment where drugs were used; and
> >
> > (3) providing a signed statement of intent to abstain from all illegal drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility;
>
> (c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and
>
> (d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Regarding AG ¶ 25(a), Applicant's drug involvement was recent as of his SF 86. However, there is no evidence that he used marijuana or khat since July 2018. In that aspect, he benefitted from the delay in processing his case to a hearing. AG ¶ 25(a) provides for some mitigation because his drug involvement "happened so long ago."

Applicant has repeatedly denied any intention to use marijuana or khat in the future. Yet, there are aggravating circumstances in this case, most notably the regularity of his drug involvement and his inconsistent accounts as to the dates and frequency of his drug use, which preclude me from finding at this time that he has demonstrated a "sufficient pattern of abstinence" under AG ¶ 25(b). During his October 2018 CSS, he indicated that he used marijuana one to two times a week from 2009 to "three months ago (7/2018)." Only two days later, he completed his SF 86. He indicated that he used marijuana from January 2013 to May 2018 once a month. Applicant now asserts that he may have been mistaken about the date of his last marijuana use, but that would not explain the discrepancy in the reported frequency of his marijuana use (once or twice a week versus once a month). During his October 2018 SI, he indicated that he used marijuana every weekend between January 2013 and May 2018, and, after denying any other use of a controlled substance, he stated that he used khat on the weekends, once or twice a month. In responding to interrogatories in October 2019, he reported that he used marijuana and khat between January 2013 and May 2018 once a week.

Moreover, when asked at his hearing why he continued to use marijuana in violation of the condition of his deferred disposition to abstain from all illegal drug use, he initially maintained that he was not told that he had to abstain. He then denied that he used any illegal drugs during the deferred disposition. Court records show that he was ordered to abstain from alcohol and illegal drug use starting in July 2017. His present claim that he complied with the court order, which is tantamount to a denial of any illegal drug use between July 2017 and July 2018, cannot be reconciled with his self-reported use of marijuana and khat on a weekly basis to May 2018, if not July 2018. It undermines his case for establishing the requirement under AG ¶ 26(b) that he fully acknowledge his drug involvement. He has not demonstrated the reform sufficient to mitigate the drug involvement security concerns.

Guideline E: Personal Conduct

The security concerns about personal conduct are set forth in AG ¶ 15, which provides:

> 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

Applicant pled guilty to assaulting an ex-girlfriend in January 2017, in return for the dismissal of some felony charges stemming from the incident. During his SI, he denied any misconduct, including any assault, claimed that she made false claims to possibly obtain a favorable review of her refugee application. A neighbor provided corroboration for Applicant's account that he had a personal relationship with the alleged victim. It does appear that the ex-girlfriend falsely claimed to the police that she and Applicant were "cousins," and that he had never kissed her before. She recounted that Applicant beat her to the door and then left the room before coming back and threatening her. If he left the room, it raises questions as to why she did not leave the apartment at that time. There is significant doubt as to several of her claims. It is noted that the police observed no injuries on the victim.

However, Applicant acknowledged to the police and during his CSS that he pushed his ex-girlfriend. He had consumed as many as eight to ten beers over the course of the day while arguing with his girlfriend. Court records show that he was adjudged guilty of misdemeanor assault as charged and sentenced to 42 days in jail, with credit for time served, and ordered to pay $430. The evidence is sufficient to find that he committed assault, although likely not as egregious as his ex-girlfriend claimed. His behavior in that regard raises concerns about his judgment.

The evidence also establishes the adverse employment information alleged in SOR ¶¶ 2.b through 2.d, which, while not serious on its own, when coupled with the assault, implicates AG ¶ 16(d):

> (d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

The following two mitigating conditions under AG ¶ 17 are relevant in this case:

> (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

> (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

There is significant evidence in mitigation. The assaultive behavior and employment issues occurred more than four years ago. While the loss of three jobs under adverse

circumstances within such a short period raises some concern, the evidence indicates that absenteeism was the cause of his terminations from the bakery and the hospital. Issues of time and attendance are personnel matters that do not raise current concerns about his judgment absent any recent, similar behavior. The issue of his unwillingness to take required online classes to keep his job as a behavioral-health professional engenders some concern about whether he would comply with security requirements when it is inconvenient or disadvantageous, but it appears to have been isolated. The adverse employment terminations between 2016 and 2017 are not serious enough to warrant denial of his security clearance eligibility on that basis.

Assault is not considered a minor offense. The lack of any contact by Applicant with his ex-girlfriend since the incident minimizes the risk, but it does not necessarily preclude a recurrence of the poor judgment exhibited by him on that occasion. He admits that he pushed her but asserts that it was not enough to cause her any injury. His failure to acknowledge the inappropriateness of his behavior, including the extent to which his alcohol may have influenced his actions, casts doubt on his reform. His assertion that his ex-girlfriend completely fabricated the incident shows that he has yet to accept any meaningful responsibility for his behavior on that occasion, even after one year of counseling. Applicant is credited with attending all of his required counseling sessions, and his ex-girlfriend may have falsely accused him in some aspects. However, Applicant's explanation that she lied in order to obtain a more favorable review of her asylum case is unsubstantiated. The personal conduct security concerns raised by the assault are not fully mitigated.

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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(d). They are as follows:

> (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.

Applicant's volunteer service to his immigrant community, which was substantial from 2015 to at least 2017, reflects positively on his character. However, it is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). While khat use was common in his native country and culturally accepted among his immigrant community, Applicant showed poor

judgment in buying the drug on the black market in the United States. He admitted that he did not consider the possible risk of his drug involvement to his future plans to attend law school or to his service to the local community. During his SI, he admitted that he knew it was illegal to possess marijuana under federal law. It is no justification that marijuana use was prevalent or that it was easily procured, or that he did not foresee when he used illegal drugs that he would be applying for a security clearance. Inconsistencies in Applicant's descriptions of the frequency and duration of his marijuana involvement cause credibility concerns. The failure to provide an honest and candid self-report of drug possession and use is an important indication that, if granted security clearance eligibility, the individual would similarly not disclose any threats to national security, if the disclosure involves an issue that might damage his or her own career or personal reputation. For the reasons previously discussed, doubts persist as to whether it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance at this time.

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 H:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant
Subparagraphs 2.b-2.d:	For Applicant

Conclusion

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

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Elizabeth M. Matchinski
Administrative Judge