

DATE: February 3, 2005

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In Re:  
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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-11096

## **APPEAL BOARD DECISION**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Eric Borgstrom, Esq., Department Counsel

#### **FOR APPLICANT**

Barry D. Grant, Esq.; Gerald J. Kirkpatrick, Esq.

The Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR), dated May 19, 2003, which stated the reasons why DOHA proposed to deny or revoke access to classified information for Applicant. The SOR was based on Guideline B (Foreign Influence), Guideline C (Foreign Preference), and Guideline L (Outside Activities). Administrative Judge Henry Lazzaro issued a favorable security clearance decision, dated May 14, 2004.

Department Counsel appealed the Administrative Judge's favorable decision. The Board has jurisdiction under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.

The following issues have been raised on appeal: (1) whether the Administrative Judge erred by finding in Applicant's favor with respect to Guideline B (Foreign Influence); (2) whether the Administrative Judge erred by finding in Applicant's favor with respect to Guideline C (Foreign Preference); (3) whether the Administrative Judge erred by finding in Applicant's favor with respect to Guideline L (Outside Activities); and (4) whether the Administrative Judge erred by evaluating Applicant's conduct and circumstances in a piecemeal manner that is not consistent with the whole person concept. For the reasons that follow, the Board affirms the Administrative Judge's decision.

### **Scope of Review**

On appeal, the Board does not review a case *de novo*. Rather, the Board addresses the material issues raised by the parties to determine whether there is factual or legal error. There is no presumption of error below, and the appealing party must raise claims of error with specificity and identify how the Administrative Judge committed factual or legal error. Directive, Additional Procedural Guidance, Item E3.1.32. *See also* ISCR Case No. 00-0050 (July 23, 2001) at pp. 2-3 (discussing reasons why party must raise claims of error with specificity).

When the rulings or conclusions of an Administrative Judge are challenged, the Board must consider whether they are: (1) arbitrary or capricious; or (2) contrary to law. Directive, Additional Procedural Guidance, Item E3.1.32.3. In deciding whether the Judge's rulings or conclusions are arbitrary or capricious, the Board will review the Judge's decision to determine whether: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider

relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. *See, e.g.*, ISCR Case No. 97-0435 (July 14, 1998) at p. 3 (citing Supreme Court decision). In deciding whether the Judge's rulings or conclusions are contrary to law, the Board will consider whether they are contrary to provisions of Executive Order 10865, the Directive, or other applicable federal law. Compliance with state or local law is not required because security clearance adjudications are conducted by the Department of Defense pursuant to federal law. *See* U.S. Constitution, Article VI, clause 2 (Supremacy Clause). *See, e.g.*, ISCR Case No. 00-0423 (June 8, 2001) at p. 3 (citing Supreme Court decisions).

When an Administrative Judge's factual findings are challenged, the Board must determine whether "[t]he Administrative Judge's findings of fact are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record. In making this review, the Appeal Board shall give deference to the credibility determinations of the Administrative Judge." Directive, Additional Procedural Guidance, Item E3.1.32.1. The Board must consider not only whether there is record evidence supporting a Judge's findings, but also whether there is evidence that fairly detracts from the weight of the evidence supporting those findings, and whether the Judge's findings reflect a reasonable interpretation of the record evidence as a whole. Although a Judge's credibility determination is not immune from review, the party challenging a Judge's credibility determination has a heavy burden on appeal.

When an appeal issue raises a question of law, the Board's scope of review is plenary. *See* DISCR Case No. 87-2107 (September 29, 1992) at pp. 4-5 (citing federal cases).

If an appealing party demonstrates factual or legal error, then the Board must consider the following questions:

Is the error harmful or harmless? *See, e.g.*, ISCR Case No. 00-0250 (July 11, 2001) at p. 6 (discussing harmless error doctrine);

Has the nonappealing party made a persuasive argument for how the Administrative Judge's decision can be affirmed on alternate grounds? *See, e.g.*, ISCR Case No. 99-0454 (October 17, 2000) at p. 6 (citing federal cases); and

If the Administrative Judge's decision cannot be affirmed, should the case be reversed or remanded? (Directive, Additional Procedural Guidance, Items E3.1.33.2 and E3.1.33.3).

### Appeal Issues

Before addressing the main appeal issues, the Board will address a threshold procedural issue raised by some arguments made in the appeal briefs submitted by the parties. Department Counsel's appeal brief adopts the Administrative Judge's findings of fact, but then proposes "additions" to those findings of fact. Applicant contends that Department Counsel is engaging in unprofessional conduct by relying on two exhibits that were not admitted into evidence at the hearing even though Department Counsel has not challenged the Judge's rulings excluding those two documents from the record evidence.

The Board is not sure what to make of Department Counsel's proffer of "additions" to the Administrative Judge's findings of fact. Although the parties are free -- within the bounds of zealous advocacy -- to argue about what the record evidence shows, it is the Administrative Judge, not either party, that makes the findings of fact in a case. Moreover, the Directive authorizes the Board to review a Judge's findings of fact, not engage in *de novo* appellate fact-finding. Accordingly, the Board will consider Department Counsel's proffer only to the extent it constitutes argument in support of any of the specific appeal issues raised by Department Counsel.

Applicant correctly notes that Department Counsel's appeal brief relies, in part, on two exhibits (Government Exhibits 18 and 21) that were excluded by the Administrative Judge based on Applicant's objections -- even though Department Counsel does not challenge the Judge's rulings excluding those two exhibits. The Board does not have supervisory jurisdiction over Department Counsel's conduct.<sup>(1)</sup> However, the Board can consider -- and reject -- appeal arguments by either party that are not well founded in the record evidence or applicable law. Because Department Counsel has not challenged the Judge's rulings excluding Government Exhibits 18 and 21, the Board will not consider any argument by

Department Counsel that relies on those two exhibits in support of its appeal issues.

1. Whether the Administrative Judge erred by finding in Applicant's favor with respect to Guideline B (Foreign Influence). The Administrative Judge reached favorable conclusions with respect to Guideline B as follows: While in the U.S. military, Applicant performed his duties associated with military sales to Israel in a proper manner. Applicant's contacts with Israeli government officials and Israeli citizens while he was in the U.S. military were associated with his official duties and were expected of U.S. military personnel performing such duties. After retiring from the U.S. military, Applicant sought and received permission from appropriate U.S. officials to perform work on behalf of the Israeli government. Applicant's post-retirement actions were typical of the post-retirement actions of many retired U.S. military officers and were reasonable. While employed with a U.S. defense contractor company, Applicant was granted permission to provide consulting services to another U.S. defense contractor company in furthering that other company's business with Israel. Since 1998, Applicant has received no income from a foreign government and has no financial interests or assets located in a foreign country. The Judge went on to conclude that to the extent Applicant's activities raised any concerns under Guideline B -- including Foreign Influence Disqualifying Conditions 6<sup>(2)</sup> and 8<sup>(3)</sup> -- those concerns were extenuated or mitigated under Foreign Influence Mitigating Conditions 2,<sup>(4)</sup> 4,<sup>(5)</sup> and 5,<sup>(6)</sup> and evaluation of Applicant's conduct and circumstances under the whole person concept.

Department Counsel makes several arguments in support of its challenge to the Administrative Judge's favorable conclusions under Guideline B. Specifically, Department Counsel argues: (a) the Judge erred by concluding Foreign Influence Mitigating Condition 2 applies; (b) the Judge erred by concluding Foreign Influence Mitigating Condition 4 applies; (c) the Judge erred by concluding Foreign Influence Mitigating Condition 5 applies; (d) the Judge erred by concluding Applicant mitigated or extenuated the security concerns under Guideline B; and (e) the Judge erred by concluding Applicant's work in the private sector and for the Israeli Ministry of Defense was in furtherance of U.S. interests.

1(a). Department Counsel concedes that Foreign Influence Mitigating Condition 2<sup>(7)</sup> applies to SOR paragraph 1.a, but contends the Administrative Judge applied it "improperly." Department Counsel also argues the applicability of Mitigating Condition 2 does not end the Judge's obligation to analyze Applicant's conduct and foreign contacts.

Department Counsel fails to identify how or why the Administrative Judge's application of Foreign Influence Mitigating Condition 2 was "improper." Nothing in the decision below indicates or suggests the Judge was applying Foreign Influence Mitigating Condition 2 to matters outside the scope of SOR paragraph 1.a (which dealt with Applicant's conduct with respect to military sales to Israel while he was in the U.S. military). Moreover, Department Counsel fails to articulate a coherent argument about how the Judge failed to analyze Applicant's conduct and foreign contacts. Department Counsel's general assertion of error lacks specificity and fails to satisfy its burden, as the appealing party, of demonstrating the Judge erred.<sup>(8)</sup>

1(b). Department Counsel contends the Administrative Judge erred in applying Foreign Influence Mitigating Condition 4<sup>(9)</sup> because: (i) Applicant has the burden of demonstrating extenuation or mitigation; (ii) there is no evidence that Applicant reported to his supervisors at a defense contractor company about his repeated contacts with Israeli citizens and Israeli government officials.

Nothing in the decision below indicates or suggests the Administrative Judge was applying Foreign Influence Mitigating Condition 4 to matters outside the scope of SOR paragraph 1.a. Furthermore, since Department Counsel did not present evidence showing that Applicant failed to report to his company contacts with foreign nationals that were required to be reported, Department Counsel's argument about what Applicant did or did not tell a defense contractor company about his foreign contacts is beside the point. Absent some evidence that Applicant was under a duty to report to his company certain foreign contacts, Department Counsel's argument lacks force. Furthermore, as Applicant notes, he presented evidence at the hearing to support his claim that his supervisors were aware of his Israeli contacts. Department Counsel fails to articulate any cogent argument for how the Judge erred in connection with his application of Foreign Influence Mitigating Condition 4.

1(c). Department Counsel contends the Administrative Judge erred by applying Foreign Influence Mitigating Condition

5-(10) because: (i) although the Judge's conclusion is "factually accurate," it is erroneous because it is based on a "piecemeal" analysis of Applicant's financial interests; and (ii) Applicant stands to gain from U.S. military sales to Israel.

Department Counsel's argument fails to demonstrate the Administrative Judge erred in his application of Foreign Influence Mitigating Condition 5. Department Counsel's argument seeks to lump under the rubric "foreign financial interest" *any* income Applicant receives from *any* involvement with U.S. military sales to Israel *even when* Applicant is paid by American companies or entities. By this "logic," an applicant who works for an American-owned company selling products to Country X has a "foreign financial interest" in Country X even if the applicant gets paid by the American company and does not receive any money from a Country X individual or entity. The Board declines to accept reasoning that leads to such an untenable result. As Applicant correctly notes, the record evidence shows he had not received income from a foreign source since 1998, and his work with American defense contractor companies cannot reasonably be characterized as a "foreign financial interest." Moreover, the Judge's decision shows he engaged in a rational analysis of this aspect of the case.

1(d). In support of its contention that the Administrative Judge erred by concluding Applicant mitigated or extenuated the security concerns under Guideline B (Foreign Influence), Department Counsel makes an argument that does not raise any identifiable claim of error by the Judge, and which is little more than an argument that the Board should evaluate certain record evidence and reach its own conclusions, *de novo*, about Applicant's security eligibility under Guideline B. As noted earlier in this decision, the Board does not review a case *de novo*, and Department Counsel has the burden -- as the appealing party -- of raising claims of error with sufficient specificity. This contention fails for lack of specificity.

1(e). Department Counsel contends the Administrative Judge erred by concluding Applicant's work was in furtherance of U.S. interests because: (i) none of Applicant's activities after he retired from the military were sanctioned or authorized by the U.S. government; (ii) there is no indication that the Judge considered the "hostility of Israel towards the United States within his Guideline B analysis"; (iii) the record evidence shows Israel remains a security concern for the United States; and (iv) the Judge improperly concluded that Israel posed no security concern to the United States. The Board does not have to agree with the Judge's challenged conclusion to decide that Department Counsel has failed to meet its burden of demonstrating error below.

Department Counsel's first argument is contrary to its own concession (Appeal Brief at p. 16) that Applicant complied with federal laws requiring him to receive U.S. government permission before he worked for the Israeli Ministry of Defense. Furthermore, Applicant correctly notes that the record evidence shows he sought and obtained permission from the Secretary of the Air Force and the Secretary of State before he undertook a consultancy with the Israeli Ministry of Defense more than a decade ago.

Department Counsel's other arguments overlap and will be considered together. Taken together, those arguments fail to demonstrate the Administrative Judge erred. Applicant correctly notes that the decision below does not indicate or suggest that the Judge concluded Israel poses no security concern to the United States. Furthermore, Department Counsel's arguments do not overcome or rebut the presumption that the Judge considered all the record evidence. (11)

2. Whether the Administrative Judge erred by finding in Applicant's favor with respect to Guideline C (Foreign Preference). The Administrative Judge reached favorable conclusions with respect to Guideline C as follows: To the extent Applicant's activities while in the U.S. military and his post-retirement activities raised any concerns under Guideline C -- including Foreign Preference Disqualifying Condition 9-(12) -- those concerns were extenuated or mitigated under Foreign Preference Mitigating Condition 3, (13) and evaluation of Applicant's conduct and circumstances under the whole person concept.

Department Counsel makes two arguments in support of its challenge to the Administrative Judge's favorable conclusions under Guideline C. Specifically, Department Counsel argues: (a) the Judge erred by concluding Foreign Preference Mitigating Condition 3 applies; and (b) the Judge erred by concluding Applicant's actions were not the result of a preference for Israel.

2(a). Department Counsel contends the Administrative Judge erred by applying Foreign Preference Mitigating Condition 3 [\(14\)](#) because: (a) there is no record evidence that Applicant's conduct -- apart from his active duty military service -- was sanctioned by the United States; (b) the Judge's application of Foreign Preference Mitigating Condition 3 is contrary to the Board's decisions in ISCR Case No. 99-0511 (December 19, 2000) at p. 6 and ISCR Case No. 98-0252 (September 15, 1999) at p. 4; and (c) the record evidence shows that Applicant has sought contacts with Israelis for his personal financial gain, not the furtherance of any official U.S. government business.

The Administrative Judge applied Foreign Preference Mitigating Condition 3 to Applicant's requesting permission from U.S. government to engage in employment on behalf of the Israeli Ministry of Defense prior to retiring from the U.S. military (SOR 1.c) (Decision at p. 12). Beyond that, the Judge did not apply Foreign Preference Mitigating Condition 3. Given the Judge's limited application of Foreign Preference Mitigating Condition 3 and the record evidence supporting the Judge's limited application of that mitigating condition in this case, the Board does not find persuasive Department Counsel's argument that the Judge's reasoning is contrary to the Board decisions in ISCR Case No. 99-0511 (December 19, 2000) and ISCR Case No. 98-0252 (September 15, 1999).

2(b). Department Counsel's one-sentence assertion that the record evidence does not support the Administrative Judge's favorable conclusions under Guideline C is conclusory, lacks specificity, and adds nothing to Department Counsel's arguments about Foreign Preference Mitigating Condition 3. Since there is no presumption of error below, Department Counsel's one-sentence assertion fails to raise an identifiable claim of error under Guideline C that warrants further discussion by the Board.

3. Whether the Administrative Judge erred by finding in Applicant's favor with respect to Guideline L (Outside Activities). With respect to Guideline L, the Administrative Judge concluded that to the extent Applicant's post-retirement activities raised any concerns under Guideline L -- including Outside Activities Disqualifying Conditions 1, [\(15\)](#), 2, [\(16\)](#) and 4 [\(17\)](#) -- they were extenuated or mitigated under Outside Activities Mitigating Conditions 1 [\(18\)](#) and 2, [\(19\)](#) and evaluation of Applicant's conduct and circumstances under the whole person concept.

In support of its challenge to the Administrative Judge's favorable conclusions under Guideline L, Department Counsel argues: (a) the Judge erred by concluding Outside Activities Mitigating Condition 1 applied; and (b) the Judge erred by concluding Outside Activities Mitigating Condition 2 applied.

3(a). Department Counsel contends the Administrative Judge erred by applying Outside Activities Mitigating Condition 1 [\(20\)](#) because: (a) the Judge could only have applied this mitigating condition through "a piecemeal analysis of the facts of the present case"; (b) Applicant's conduct "cannot simply be pigeonholed within one of the Guideline L Disqualifying Conditions, but rather must rest squarely on the Concern, E2.A12.1.1., itself"; and (c) nothing in the Directive limits the applicability of Guideline L when a friendly foreign country is involved.

Department Counsel does not articulate any cogent argument on how the Administrative Judge's analysis of Applicant's conduct and circumstances under Guideline L is based on a piecemeal analysis of the record evidence. Department Counsel's arguments do not demonstrate that the Judge evaluated Applicant's case under Guideline L without regard to the Concern section of that Guideline. And Department Counsel's arguments do not persuade the Board that the Judge's decision is based on reasoning that holds or suggests, explicitly or implicitly, that the applicability of Guideline L is limited or restricted when a friendly foreign country is involved. Department Counsel's arguments challenging the Judge's favorable conclusions under Guideline L are little more than an effort to get the Board to conduct a *de novo* review of the record evidence and reach its own conclusion about Outside Activities Mitigating Condition 1.

3(b). Department Counsel contends the Administrative Judge erred by applying Outside Activities Mitigating Condition 2. [\(21\)](#) In support of this contention, Department Counsel: (i) makes the same arguments that it makes in support of its claim of error concerning Outside Activities Mitigating Condition 1; and (ii) argues that Outside Activities Mitigating Condition 2 cannot apply because Applicant continues to work for a defense contractor in the area of military equipment sales to Israel.

To the extent Department Counsel relies on the same arguments it makes in support of its claim of error concerning Outside Activities Mitigating Condition 1, the Board need not repeat its conclusions about the merits of those arguments.



As to Department Counsel's other argument, the Board concludes Department Counsel has not articulated a cogent reason why the Administrative Judge could not decide to apply Outside Activities Mitigating Condition 2 in light of the particular record evidence in this case. Indeed, acceptance of Department Counsel's argument could lead to the following untenable result: Any employee of a U.S. defense contractor would be ineligible to hold a security clearance if that employee worked on a contract or project connected with a military sale to a foreign country even if that military sale were approved and sanctioned by the U.S. government, and even if there is no evidence that the employee was notified by appropriate federal officials (or authorized agents of such federal officials) that the employment in question is in conflict with the employee's security responsibilities. The Board declines to accept an argument that could lead to such an untenable result. Absent record evidence that Applicant engaged in conduct that went beyond what is reasonable and expected in such employment, or otherwise engaged in improper conduct, <sup>(22)</sup> or that Applicant chose to ignore a warning from appropriate federal officials (or authorized agents of such federal officials) that continued employment with a U.S. defense contractor was in conflict with his security responsibilities, Department Counsel has not articulated a persuasive argument for why the Judge erred by applying Outside Activities Mitigating Conditions 1 and 2 under the particular facts of this case.

4. Whether the Administrative Judge erred by evaluating Applicant's conduct and circumstances in a piecemeal manner that is not consistent with the whole person concept. Department Counsel also challenges the Administrative Judge's decision on the basis of three arguments that overlap somewhat: (a) the Judge erred by failing to evaluate the security concerns raised under Guideline L (Outside Activities) in light of the security concerns raised under Guidelines B (Foreign Influence) and C (Foreign Preference); (b) the Judge gave undue weight to the record evidence of Applicant's military service; and (c) the Administrative Judge erred by evaluating Applicant's conduct and circumstances in a piecemeal manner that is not consistent with the whole person concept.

4(a). Department Counsel contends that the security concerns under Guideline L overlap with the security concerns under Guideline B and C. The Board has noted it is possible that an applicant's conduct and circumstances could raise security concerns under more than one Guideline simultaneously and that the applicant's conduct and circumstances could have added or "synergistic" security significance because of the interrelated or overlapping nature of the applicant's conduct and circumstances. <sup>(23)</sup> However, in arguing in support of this contention, Department Counsel fails to identify any error by the Administrative Judge. Rather, Department Counsel is essentially asking the Board to review the record evidence *de novo* and reach its own conclusions on this claim. Since there is no presumption of error below, and since the Directive does not authorize the Board to decide cases *de novo*, the Board declines to follow Department Counsel's invitation to conduct a *de novo* review of the record evidence in this case.

4(b). Department Counsel argues the Administrative Judge gave undue weight to the record evidence of Applicant's military service because Applicant's loyalty is not an issue in these proceedings. Applicant responds that Department Counsel's claim of error "is nothing more than a subjective claim." Department Counsel's claim of error is not persuasive.

First, the Administrative Judge's decision does not purport to make a loyalty determination about Applicant. Second, the Judge's consideration of the record evidence about Applicant's military service is part of the whole person analysis which the Judge is obligated to make. <sup>(24)</sup> Third, Department Counsel asserts the Judge gave too much weight to the evidence about Applicant's military service, but fails to articulate any cogent argument or reason that shows or demonstrates the Judge acted in a manner that is arbitrary, capricious, or contrary to law when weighing that record evidence. Such an argument is not sufficient to demonstrate the Judge weighed the record evidence of Applicant's military service in a manner that is arbitrary, capricious, or contrary to law. <sup>(25)</sup> Fourth, Department Counsel's argument about the record evidence concerning Applicant's military service overlooks the simple fact that the Judge also explicitly relied on record evidence about matters other than Applicant's military service in conducting his whole person analysis of Applicant's security eligibility.

4(c). Department Counsel contends the Administrative Judge's decision reflects a piecemeal analysis of the record evidence that is not consistent with the whole person concept. Department Counsel fails to articulate how or why the Administrative Judge's decision is so flawed. This is a general claim of error without specificity, and it is not sufficient to rebut or overcome the presumption of no error below.

## Conclusion

The Board affirms the Administrative Judge's decision because Department Counsel has failed to demonstrate error below.

Signed: Emilio Jaksetic

Emilio Jaksetic

Administrative Judge

Chairman, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: Michael D. Hipple

Michael D. Hipple

Administrative Judge

Member, Appeal Board

1. *See, e.g.*, ISCR Case No. 02-04344 (September 15, 2003) at p. 3.
2. "Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government" (Directive, Adjudicative Guidelines, Item E2.A2.1.2.6).
3. "A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence" (Directive, Adjudicative Guidelines, Item E2.A2.1.2.8).
4. "Contacts with foreign citizens are the result of official United States Government business" (Directive, Adjudicative Guidelines, Item E2.A2.1.3.2).
5. "The individual has promptly reported to proper authorities all contacts, requests, or threats from persons or organizations from a foreign country, as required" (Directive, Adjudicative Guidelines, Item E2.A2.1.3.4).
6. "Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities" (Directive, Additional Procedural Guidance, Item E2.A2.1.3.5).
7. *See* footnote 4 for the text of Foreign Influence Mitigating Condition 2.
8. *See, e.g.*, ISCR Case No. 02-24254 (June 29, 2004) at pp. 3-4 (discussing different ways that appeal arguments can lack sufficient specificity).
9. *See* footnote 5 for the text of Foreign Influence Mitigating Condition 4.
10. *See* footnote 6 for the text of Foreign Influence Mitigating Condition 5.
11. *See, e.g.*, ISCR Case No. 99-9020 (June 4, 2001) at p. 2.

12. "Performing or attempting to perform duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States" (Directive, Adjudicative Guidelines, Item E2.A3.1.2.9).
13. "Activity is sanctioned by the United States" (Directive, Adjudicative Guidelines, Item E2.A3.1.3.3).
14. *See* footnote 13 for the text of Foreign Preference Mitigating Condition 3.
15. "[Any service, whether compensated, volunteer, or employment with] A foreign country" (Directive, Adjudicative Guidelines, Item E2.A12.1.2.1).
16. "[Any service, whether compensated, volunteer, or employment with] Any foreign national" (Directive, Adjudicative Guidelines, Item E2.A12.1.2.2).
17. "[Any service, whether compensated, volunteer, or employment with] Any foreign, domestic, or international organization or person engaged in analysis, discussion, or publication of material on intelligence, defense, foreign affairs, or protected technology" (Directive, Adjudicative Guidelines, Item E2.A12.1.2.4).
18. "Evaluation of the outside employment or activity indicates that it does not pose a conflict with an individual's security responsibilities" (Directive, Adjudicative Guidelines, Item E2.A12.1.3.1).
19. "The individual terminates the employment or discontinues the activity upon being notified that it is in conflict with his or her security responsibilities" (Directive, Adjudicative Guidelines, Item E2.A12.1.3.2).
20. *See* footnote 18 for the text of Outside Activities Mitigating Condition 1.
21. *See* footnote 19 for the text of Outside Activities Mitigating Condition 2.
22. *Compare* ISCR Case No. 01-10301 (December 30, 2002) at p. 5 (there was record evidence supporting the Administrative Judge's findings that the applicant carried out his foreign military sales duties in a manner that was not reasonable, and outside the scope of his duties).
23. *See, e.g.*, ISCR Case No. 00-0628 (February 24, 2003) at p. 6.
24. Indeed, since Applicant's conduct while in the U.S. military was pertinent to SOR paragraph 1.a, record evidence of his military service had relevance beyond the Administrative Judge's evaluation of his security eligibility under the whole person concept.
25. *See, e.g.*, ISCR Case No. 02-09892 (July 15, 2004) at p. 5.