

Applicant responded to the SOR on May 2, 2018, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On September 7, 2018, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On October 5, 2018, I scheduled a hearing for November 15, 2018.

At the hearing, three Government exhibits (GEs 1-3) were admitted. A May 30, 2018 letter forwarding the proposed GEs to Applicant and a list of the GEs were marked as hearing exhibits (HEs I-II) for the record but not admitted in evidence. At the Government's request and without objection from Applicant, I agreed to take administrative notice of several facts pertinent to the Kyrgyz Republic, as set forth in a May 30, 2018 Request for Administrative Notice-Kyrgyzstan (Kyrgyz Republic),¹ which was entered in evidence as GE 3. Ten Applicant exhibits (AEs A-J) were admitted in evidence without objection. Applicant testified, as reflected in a transcript (Tr.) received on November 29, 2018.

I held the record open for three weeks after the hearing for Applicant to respond to GE 3 and to submit facts for administrative notice. On November 28, 2018, Applicant submitted four U.S. State Department reports on human rights in the Kyrgyz Republic and a Commission on Security and Cooperation in Europe (CSCE) article. The documents were admitted without objection as AE K.

Findings of Fact

The SOR alleges under Guideline B that Applicant's brother-in-law is a resident citizen of Kyrgyzstan employed by the Kyrgyz government (SOR ¶ 1.a); that Applicant's spouse (SOR ¶ 1.b) and daughter-in-law (SOR ¶ 1.c) are Kyrgyz citizens; that Applicant's father-in-law is a resident citizen of Kyrgyzstan (SOR ¶ 1.d); and that Applicant's spouse owns an apartment in Kyrgyzstan valued at approximately \$45,000 (SOR ¶ 1.e.). In a detailed response to the SOR, Applicant indicated that with a change in leadership in the Kyrgyz Republic following October 2017 elections, his brother-in-law has been removed from his government position, and his employment status was unclear. Applicant explained that his immediate family had no direct contact with him and so learned about his status from extended family members. Applicant admitted that his spouse and stepdaughter had Kyrgyz citizenship, but his spouse's U.S. citizenship test was scheduled for May 30, 2018. His stepdaughter was employed in the United States and planned to apply for her U.S. citizenship at her earliest opportunity next year. Applicant admitted his father-in-law's residency and citizenship in Kyrgyzstan. Regarding the apartment in the Kyrgyz Republic, Applicant explained that his spouse sold the apartment in June 2017 after his stepdaughter graduated from college in Kyrgyzstan.

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

¹ The country is formally known as the Kyrgyz Republic, although the country is often referred to as Kyrgyzstan. The U.S. government uses the terms interchangeably when referring to the country.

Applicant is a 56-year-old global security specialist, who has worked for his current employer, a defense contractor, since December 2016. (GE 1; Tr. 48.) He attended college on a Reserve Officer Training Corps (ROTC) scholarship, and earned a bachelor's degree in aerospace engineering. He entered on active duty in the U.S. military in April 1984. (GE 1.) He held a DOD security clearance throughout his active duty service and worked on several classified programs. (Tr. 26-27, 44.) Applicant married in December 1986, but he and his first wife divorced in August 1988. (GE 1; Tr. 49.)

In April 1990, Applicant was granted an honorable discharge from active duty, and his clearance eligibility lapsed for about a year. (Tr. 47.) In February 1991, Applicant and his second wife married, and they had a son in March 1993. (GE 1.) From April 1993 to August 2004, Applicant worked as a civilian contractor with a clearance at a U.S. military research laboratory. After being in the inactive reserve for six years, he returned to the military as an active reservist in 1996. (GEs 1-2; Tr. 27, 47.)

From August 2004 to December 2005, Applicant was employed as a program director for a federal contractor at a space center. In January 2006, he began teaching at a public university as a state employee. (GE 1.) He continued to maintain security clearance eligibility for his duties in his military reserve unit, and he was called to active duty during the summers. From June 2006 to September 2006, he was stationed in the Kyrgyz Republic as an active-duty reservist. Applicant became friends with his current wife, a native Kyrgyz resident citizen who worked as a contractor at the base's exchange. (Tr. 51.) Applicant was stationed in the United States during the summer of 2007, and was deployed to Tajikistan in the summer of 2008. (GE 2; Tr. 45-46.)

In June 2009, Applicant left his job as a university lecturer. He was recalled to active duty that summer and served in Europe. He and his current spouse began dating in July 2009. (Tr. 43, 51.) From November 2009 to May 2012, he was stationed in the Kyrgyz Republic as an active duty reservist for the U.S. military at the rank of lieutenant colonel. Applicant and his current spouse continued dating. In December 2010, Applicant's divorce from his second wife was finalized. (GEs 1-2.)

In March 2011, Applicant and his current spouse married in the Kyrgyz Republic. (GE 1; Tr. 52.) She had been previously married against her will, and had two children, including a daughter born in June 1995 who took Applicant's surname on her mother's marriage to Applicant.² (GE 1; AE G.) Applicant met his spouse's family members while he was stationed in Kyrgyzstan, and he asserts that he reported his foreign marriage and contacts as required to his command. (Tr. 27.)

² Applicant's spouse provided a statement in which she indicated that she was kidnapped and forced to marry. (AE G.) Applicant testified that his spouse was kidnapped when she was 19 or 20 (Tr. 81), although according to his SF 86 (GE 1), she retained the same name from her birth in January 1975 until January 2006, when she was 30 years old. She indicated that after she left her first husband, she was forced out of her brother's apartment when she had no income and two children to support. (AE G.) Applicant listed only his stepdaughter on his SF 86 (GE 1) and little to nothing is known about his spouse's other child, including whether he or she is even alive.

Applicant maintained a legal permanent residence in the United States, and he and his spouse had a son born in the United States in October 2011 and baptized in the United States in early June 2012. (GEs 1-2; AE I.) After his active duty deployment ended in May 2012, Applicant resumed his weekend reservist status until he retired from the military as a colonel in May 2014. (Tr. 46.)

In April 2012, Applicant's spouse purchased an apartment in Kyrgyzstan for approximately \$45,000 so that her daughter (then age 16) would have a place to live while in college in the country. (GEs 1-2; Tr. 34, 58.) In early June 2012, Applicant began working under a personal services contract as a member of the administrative and technical staff at a U.S. Embassy in Eastern Europe. Available records show that his DOD secret clearance was transferred to his new position through reciprocity and that his spouse, his son from his second marriage, his young son from his current marriage, and his stepdaughter were authorized to accompany him to his post in foreign country X. (AE J.) Applicant testified that his family accompanied him to live on the embassy compound.³ (Tr. 27.) In August 2013, Applicant and his spouse had another son, who was born in the United States. (GE 1.)

Applicant's stepdaughter finished high school in foreign country X and enrolled in engineering studies at a technical school. In the summer of 2013, she transferred to a university in the Kyrgyz Republic that then closed. She then attended a private university in Kyrgyzstan that was started with the financial assistance of a U.S. philanthropist. Classes were in English and Russian. (AE A; Tr. 52, 55-56, 79.)

While working at the U.S. Embassy in foreign country X, Applicant started the process for his spouse and stepdaughter to legally immigrate to the United States. His spouse and stepdaughter became legal permanent residents in October 2014. (Tr. 28.)

In September 2015, Applicant's contract with the U.S. government ended. Applicant and his immediate family returned to the United States, and in November 2015, they moved into a condominium in the United States owned by his parents. (GE 1; Tr. 28.) As of March 2016, Applicant had a job offer with a defense contractor (not his current employer) contingent on renewal of his security clearance eligibility. (Tr. 28.) He completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) on March 28, 2016. He disclosed the Kyrgyz citizenship of his spouse and his stepdaughter; his stepdaughter's attendance at a university in Kyrgyzstan; and his father-in-law's Kyrgyz residency and citizenship. His mother-in-law was deceased. He indicated that he had weekly contact with his stepdaughter and annual in-person contact with his father-in-law, who is a retired. In response to any inquiry concerning foreign contacts, Applicant listed a brother-in-law, who works for a Kyrgyz police unit, with whom he had quarterly contact. In response to foreign government contacts, Applicant listed another brother-in-law (brother-in-law X) who has intelligence duties for the Kyrgyz government. They met occasionally at family events until as recently as October 2015. Applicant added

³ Applicant discrepantly told an Office of Personnel Management (OPM) investigator in August 2016 that his family resided at his U.S. home of record while he was working abroad and that he visited them when on leave between October 2011 and September 2015. (GE 2.)

that he had reported the contacts to security personnel, but was advised “to report only if discussions stray from family activities,” which had not occurred. Applicant also disclosed that his spouse owned an apartment in the Kyrgyz Republic that she purchased for \$45,000 in April 2012 after selling her previous home acquired in April 2006. Applicant listed travel to Kyrgyzstan in August 2008 for tourism, in March 2014 to visit family and friends, and in July 2015 and again from September 2015 to October 2015 for family reunions. He indicated that brother-in-law X attended the family reunions. (GE 1.)

On August 2, 2016, Applicant was interviewed by an authorized investigator for the OPM. Applicant related that his stepdaughter returns each year to Kyrgyzstan for college and that they have monthly contact when she is in Kyrgyzstan. Applicant denied any legal involvement in the purchase of his spouse’s apartment in Kyrgyzstan, which had declined in value to approximately \$35,000. He explained that the property would be sold when his stepdaughter graduates from college, Applicant was unable to provide information about his father-in-law’s residence or previous employments. As for his relationship to brother-in-law X, Applicant indicated that he had only incidental social contact with him in July 2015 and October 2015 while visiting his spouse’s family, and that their conversations were limited to family matters. Applicant denied any vulnerability to foreign influence because of this family relationship and stated that he would immediately notify proper authorities of any contacts, requests, or threats by foreign persons or organizations. Applicant denied any improper contact or pressure by anyone seeking classified or sensitive information during any of his foreign travels, including to the Kyrgyz Republic. (GE 2.)

In March 2016, Applicant’s spouse changed her first name to an English name so that her two young sons would not have to explain why their mother had a foreign name. (GE 1; AE G; Tr. 28, 82.) In December 2016, with his background investigation still pending to renew his clearance to work for another defense contractor, Applicant accepted a position with his current employer that did not require a security clearance. He withdrew his application to renew his security clearance on receipt of an SOR alleging foreign influence security concerns. (Tr. 28-29, 48.)

In early June 2017, Applicant’s stepdaughter earned her bachelor’s degree in business from the university in the Kyrgyz Republic and returned to the United States. (AE B; Tr. 56.) Two weeks later, Applicant’s spouse sold her apartment in Kyrgyzstan, and sales proceeds of \$35,435 were wired into Applicant’s checking account in the United States. (AE D; Tr. 35, 59.) In July 2017, they used \$30,632 of the funds as the down-payment for Applicant and his spouse’s current residence. (AE E; Tr. 37, 58-59.) They bought their home for \$515,000 in part with a mortgage loan of \$496,588. (AE C; Tr. 59.)

About a year into his current employment, Applicant’s employer requested that he obtain a security clearance for some military programs. On April 4, 2018, the DOD CAF issued a SOR alleging foreign influence security concerns because of Applicant’s familial connections to the Kyrgyz Republic and his spouse’s apartment, which she no longer owned. (Tr. 29.)

Applicant's spouse was interviewed for her U.S. naturalization in late May 2018. (AE A.) She took the oath of naturalization in June 2018, and within days she obtained her U.S. passport. (AEs G; H; Tr. 53.) Applicant's spouse asserts that her loyalty is "first and foremost to America and [her] American family." Although she and all of her siblings graduated from college or took some advance coursework in the Kyrgyz Republic (Tr. 84), Applicant's spouse asserts that she came from a traditional family that did not treat daughters well. She was not allowed to return home after she was forced to marry, and after she left her ex-husband, her brother (brother-in-law X) forced her from his apartment when she had no income and two children to support. Her family would not take her in, and she asserts that it "hardened [her] to the reality of Kyrgyz tradition." (AE G.)

Applicant's stepdaughter also maintains that her full loyalty is to her American family. She considers Applicant to be her father. She has no desire to return to the Kyrgyz Republic and intends to become a U.S. citizen when she is first eligible in October 2019. She lives with Applicant and her mother, has a full-time job as a health service coordinator, and pays taxes to the United States. Although she wishes her mother's family in Kyrgyzstan no harm, they did not treat her or her mother well. (AE F.)

Since May 2012, when he closed a bank account that he had previously held while serving in the Kyrgyz Republic, Applicant's ties to Kyrgyzstan have been solely familial through his spouse. In addition to his father-in-law, six of his spouse's siblings (four brothers and two sisters) live in the Kyrgyz Republic and speak Russian, which is still the business language in the region. At least five if not all six of the siblings has Kyrgyz citizenship.⁴ (Tr. 72-73, 80.) Applicant's spouse and perhaps all but one of her siblings attended college, although all of them had some type of advanced schooling.⁵ (Tr. 84-85.)

Applicant's father-in-law in Kyrgyzstan is now 80 years old and retired. Applicant denies knowing about his father-in-law's previous occupation. He never asked his father-

⁴ Four of the seven foreign contacts on Applicant's SF 86 are native Kyrgyz citizens. Applicant did not clearly describe his relationship with them apart from the brother-in-law, who had worked as a fraud investigator. The foreign contacts include a 39-year-old working in Dubai who has the same surname as Applicant's father-in-law; a 36-year-old married homemaker living in Australia; and a 32-year-old housekeeper (formerly an economics teacher) living in Kyrgyzstan. They may be siblings of Applicant's spouse, given they were all born in the same city as his spouse. (GE 1.) Whether due to lack of contact with them or limited knowledge, Applicant has not fully disclosed the extent of his spouse's family ties to Kyrgyzstan.

⁵ Applicant testified, "I know the family emphasized everyone going to college." (Tr. 84.) When confronted about the inconsistency between his spouse's account that she came from such a traditional household that she was forced to marry (bride kidnapping) and the family's emphasis on college for even the daughters, Applicant responded:

The youngest [daughter] was the favorite, and so she went [to college]. The oldest one, I think it had to do with the Soviet system, the two older ones. I mean the Soviet system was—it was, they grew up—I don't remember when the Soviet Union fell, but they went during the Soviet system, and so it was part of the process. And then my wife, she actually had to fight to go [to college]. She went, but had to really convince a brother to help her pay for school. (Tr. 85.)

in-law whether he ever had any affiliation with the Kyrgyz military or government. Applicant's spouse calls her father once a month. To Applicant's knowledge, she has not told her father that he is applying for a security clearance. (Tr. 61-62.) Applicant indicated on his SF 86 that he had in-person contact with his father-in-law annually between June 2010 and October 2015 (GE 1), although he now asserts that he probably saw his father-in-law during his trips to Kyrgyzstan. His spouse usually traveled to Kyrgyzstan before him so she could stay longer to visit her relatives, including her father. (Tr. 63.) Applicant's father-in-law speaks both the Kyrgyz and Russian languages but not English. Their conversations were limited because of the language barrier. When they occurred they were in Russian because Applicant speaks a little Russian. (Tr. 37.)

Applicant testified that he has heard that his spouse's brother in Kyrgyzstan, who had worked in fraud investigations, is no longer so employed. He denies knowing about this brother-in-law's current occupation. His spouse has contact with this brother on a monthly basis. Applicant believes this brother-in-law does not know that he has applied for a security clearance. (Tr. 71-72.)

Regarding brother-in-law X, Applicant understands that he spent his entire career after college with the Kyrgyz government. Although Applicant indicated in response to the SOR that this brother-in-law had been removed from his position with the change in government in the country following the October 2017 elections, he testified there is no way of knowing for certain. Applicant had heard from his spouse through her sister that his brother-in-law moved to another city after the change in administration. (Tr. 64-65, 78.) Applicant had in-person contact with this brother-in-law at family functions, about two or three times total when Applicant lived in Kyrgyzstan, and during his trips to the country in 2014 and 2015. This brother-in-law does not speak English, so Applicant relied on his wife, his stepdaughter, or one of his wife's sisters to interpret. This brother-in-law knows that Applicant was in the U.S. military and also that he had worked in a U.S. embassy. Applicant does not believe that his stepdaughter had any contact with brother-in-law X while she was attending college in Kyrgyzstan because brother-in-law X is "estranged to our family." After his spouse left her previous husband, she lived in an apartment owned by brother-in-law X, and he threw her out when she had two young children to support and no income. As the senior member of Applicant's spouse's siblings, he wanted to direct her life. (Tr. 67-68, 75.) Applicant believes his spouse had no current correspondence with this brother. Applicant has told his spouse that her brother's occupation could impact his clearance. (Tr. 79.)

As for any other family members or friends in the Kyrgyz Republic with whom his spouse maintains contact more often than every few years, Applicant responded that his spouse "might contact her older sister." (Tr. 72.) As to whether Applicant had in-person contact with his spouse's siblings during the family gatherings in Kyrgyzstan, he responded that he saw some of them ("I mean, it's a hit or miss kind of thing. It depends on what the gathering is or where it is."). (Tr. 73.)

Applicant asserts that he would immediately report if he was approached for any classified or sensitive information. He has discussed with his spouse that he would have

to report if someone attempted to use her family in Kyrgyzstan because he does not want to risk jeopardizing their sons and daughter's future. (Tr. 69-70.) Applicant and his spouse intend to raise their sons in the United States. They plan to have their younger son baptized in the United States. (AE G.)

As of November 2018, Applicant's spouse did not work outside the home. She had worked in retail in the United States for one year. (Tr. 54.) Applicant's annual salary with a defense contractor was \$124,000 although it was soon to be increased to \$138,000. (Tr. 48.) In addition to the \$65,000 in equity in their home, Applicant had \$60,000 in 401(k) assets and \$15,000 in combined checking and savings deposits. (Tr. 59-60.)

Administrative Notice

The Kyrgyz Republic (or Kyrgyzstan) is a landlocked, mountainous Central Asian country that became a Soviet republic in 1936. It achieved independence on August 31, 1991, when the Union of Soviet Socialist Republics dissolved. Predominantly rural and Muslim, the country has a population of 5.8 million, of which 73.2% are native Kyrgyz. A parliamentary republic, it is governed by an elected president as head of state; by an appointed prime minister as head of the government; and by a Supreme Council of 120 seats. The president holds substantial powers even though the prime minister oversees the Kyrgyz government and selects most cabinet members. The president represents the country internationally and can sign or veto laws, call for new elections, and nominate Supreme Court judges, cabinet members for posts related to security or defense, and numerous other high-level positions.

Nationwide protests because of violations in parliamentary elections led to the overthrow of the country's first president in March 2005. Under a new president elected in July 2005, the Kyrgyz Republic made tangible progress towards meeting international standards. The country's human rights record improved considerably, although limitations on due process and other human rights problems persisted. Following a week of opposition-led street protests, the country adopted a new constitution on November 9, 2006, which provided for greater checks and balances among the branches of government. On December 30, 2006, the parliament adopted a revised version of the constitution that restored many powers to the president but also a greater role for political parties.

On April 7, 2010, the Kyrgyz Republic had a violent change of government and approved a new constitution and a temporary president in a June 27 national referendum. October 10, 2010 parliamentary elections were generally free and fair, and Almazbek Atambaev was sworn in as president in 2011. On October 15, 2017, former prime minister and ruling Social-Democratic Party of Kyrgyzstan member Sooronbai Jeenbekov was elected to succeed outgoing president Atambaev, who became the first Kyrgyz president to step down after serving one full six-year term as required in the country's constitution. Kyrgyzstan's 2017 presidential election marked the first peaceful transfer of presidential power from one democratically-elected president to another in post-Soviet Central Asia. It was the most competitive in the country's history, although international and local

election observers noted cases of vote buying and misuse of public resources. Prime minister Abyl-Gaziev took office on April 20, 2018

Following independence, Kyrgyzstan rapidly implemented market reforms, such as improving the regulatory system and instituting land reform. In 1998, Kyrgyzstan was the first Commonwealth of Independent States country to be accepted into the World Trade Organization. The government has privatized much of its ownership shares in public enterprises. Significant impediments to Kyrgyzstan's development include endemic corruption, aging infrastructure, high unemployment, and endemic poverty.

The United States established diplomatic relations with the Kyrgyz Republic on December 25, 1991, following the country's independence from the Soviet Union. The United States supports the Kyrgyz Republic in its development of an inclusive democracy based upon the rule of law and respect for human rights. U.S. Government assistance goals in Kyrgyzstan are to strengthen democratic institutions, support broad-based economic opportunity, enhance regional security, promote greater respect for human rights and the rule of law, and address development challenges in health and education. The Kyrgyz Republic and the United States belong to a number of the same international organizations, including the United Nations, Euro-Atlantic Partnership Council, Organization for Security and Cooperation in Europe, International Monetary Fund, World Bank, and World Trade Organization. Kyrgyzstan also is a participant in the North Atlantic Treaty Organization's (NATO) Partnership for Peace program. The Kyrgyz Republic and the United States have a bilateral trade agreement. The Kyrgyz Republic also signed a trade and investment framework agreement with the United States and other Central Asian countries establishing a regional forum for addressing trade issues and enhancing trade and investment between the United States and Central Asia.

At the same time, Manas Air Base in the Kyrgyz Republic, which had served as a transit and logistics base for U.S. troops heading to Afghanistan, was turned over to the Kyrgyz military in June 2014 after Kyrgyz's parliament passed legislation to end the U.S.' lease on the base. As of February 2018, the U.S. Defense Department was concerned about Russian influence in Central Asia and the Kyrgyz Republic's increasing alliance with Russia and China.⁶

⁶ Pursuant to my obligation to take administrative notice of the most current political conditions in evaluating Guideline B concerns (see ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007)), I note that at a hearing before the U.S. House Armed Services Committee held on February 27, 2018, the Commander of the U.S. Central Command stated, in part:

The Kyrgyz Republic has increasingly aligned its interests with Russia and China. The U.S.-Kyrgyz security relationship has declined since the closure of the Manas Transit Center and the termination of the bilateral Defense Cooperation Agreement in 2014. Despite the Kyrgyz armed forces' desire to improve military-to-military cooperation with CENTCOM, Kyrgyz senior civilian leaders have shown little interest in improving military relations.

See www.centcom.mil/ABOUT--US/POSTURE--STATEMENT/

The Kyrgyz Republic benefits from a robust civil society, and the government generally respects laws providing for the freedoms of peaceful assembly and association, internal movement, foreign travel, and emigration and repatriation. Continuing concerns for the country include the trajectory of democratization; endemic corruption; a history of tense, at times violent, inter-ethnic relations; border security vulnerabilities; and potential terrorist threats.

Ethnic, political, and socio-economic tensions continue to simmer in the Kyrgyz Republic. During 2016, Kyrgyzstan remained vulnerable to transnational threats, especially in the remote south. The U.S. Embassy reviews travel of Embassy employees to Batken Oblast because ill-defined and porous borders allow for the relatively free movement of people and illicit goods, rendering the region vulnerable to transnational threats and could facilitate the establishment of terrorist safe havens. Rugged terrain and a lack of resources prevent authorities from adequately controlling the borders. Lack of economic opportunity was identified as a significant driver of violent extremism in the country, which forces a large portion of the population to seek employment opportunities in Russia, where they are particularly susceptible to recruitment.

On August 30, 2016 a vehicle-borne explosive device was detonated at the Chinese Embassy located less than 300 meters from the U.S. Embassy in Bishkek, Kyrgyzstan's capital city. Kyrgyz police located and detonated several explosive devices near downtown Bishkek in September 2016 and have since made several terrorism-related arrests throughout the Kyrgyz Republic. Areas along the Kyrgyz-Uzbek and Kyrgyz-Tajik borders continue to have small, but sometimes violent and deadly, skirmishes between border guards on both sides, which have affected civilians. These skirmishes often result from land use disputes. Organized crime related to smuggling and narcotics trafficking are widespread in the southern corridors of the Kyrgyz Republic. Due to the exit of Coalition Forces from Afghanistan in 2014, the Kyrgyz government is concerned that terrorist and extremist groups may move north into Tajikistan and Kyrgyzstan.

As of March 2018, the U.S. State Department's Bureau of Diplomatic Security assessed Bishkek as a high-threat location for crime and political violence and as a medium-threat location for terrorist activity directed at or affecting official U.S. government interests. U.S. citizens visiting the country have been robbed by groups of young men who followed them back to their residences from hotels and bars. In addition, U.S. citizens have been victims of rape, assault, sexual harassment and kidnapping. Attackers do not always avoid violent confrontation with their victims. Harassment and extortion by people who purport to be Kyrgyz police officers has happened in local markets and in areas frequented by Westerners. Even so, the State Department's travel advisory to the Kyrgyz Republic as of April 24, 2018, was Level I: Exercise Normal Precautions.

Significant human rights issues persisted in the Kyrgyz Republic in 2017 involving law enforcement and security services officers' use of torture and arbitrary arrest; increasing pressure on independent media; harassment of journalists; selective and politically motivated prosecutions; pervasive corruption; forced labor; and attacks, threats,

and systematic police-driven extortion of sexual and ethnic minority groups. Official impunity was a significant problem. While authorities investigated reports of official abuse in the security services and elsewhere, they rarely prosecuted and punished officials accused of human rights violations, or complicity in trafficking. While the law provides for an independent judiciary, judges were subject to influence or corruption. Throughout the year there were multiple instances where the conduct and outcomes of trials appeared predetermined. Numerous sources, including non-governmental organizations (NGOs), attorneys, government officials, and private citizens, asserted judges paid bribes to attain their positions. Many attorneys asserted that bribe taking was ubiquitous among judges. Authorities generally respected court orders. Numerous NGOs described pervasive violations of the right to a fair trial, including coerced confessions, use of torture, denial of access to counsel, and convictions in the absence of sufficiently conclusive evidence or despite exculpatory evidence. International observers reported threats and acts of violence against defendants and defense attorneys within and outside the courtroom, as well as intimidation of trial judges by victims' relatives and friends. Law enforcement officers, particularly in the southern part of the country, frequently employed arbitrary arrest, torture, and the threat of criminal prosecution as a means of extorting cash payments from citizens.

Kyrgyz law provides for freedom of expression, including for members of the press, and citizens generally were free to exercise these rights. NGO leaders and media rights advocates, however, asserted the situation worsened during the year, highlighting the increase in libel lawsuits against independent media outlets and journalists and forced closure of news agencies. Self-censorship was prevalent, and some journalists reported pressure from editors and political figures to bias their reporting on sensitive topics. Some journalists reported intimidation related to coverage of sensitive topics, such as inter-ethnic relations, "religious extremism," or the rise of nationalism. In recent years there were attempts to proscribe independent media from operating freely in the country. Tight government controls over news content on state television was widely acknowledged. Media rights advocates noted increasing pressure on media outlets in advance of the 2017 October presidential election. The Kyrgyz government failed to enforce laws against rape effectively, and rape cases were underreported. Police generally regarded spousal rape as an administrative, rather than a criminal, offense. While the law specifically prohibits domestic violence and spousal abuse, violence against women and girls remained a significant yet underreported problem.

The CSCE estimated in August 2017 that 12,000 young women in the Kyrgyz Republic are kidnapped and forced to marry their abductors. Although illegal since 1994, "bride kidnapping" is socially accepted as a Kyrgyz tradition and is often justified by the perpetrator on that basis. According to the CSCE, in Kyrgyz society, particularly in the rural areas, an unmarried woman's reputation can be irrevocably damaged if she spends even a single night outside her family home so she may feel she has no recourse other than to consent to the marriage. The CSCE attributes the practice to Kyrgyz assertion of ethnicity and tradition as a way to distance themselves from their Soviet past and affirm the country's independent identity (ethnic nationalism). As a participating state of the Office of Security and Cooperation in Europe (OSCE), the Kyrgyz Republic is a party to several

OSCE commitments to gender equality and is making efforts to end the practice of bride kidnapping. In 2013, the penalty for bride kidnapping was increased from three to seven years in prison. In 2016, a new law was enacted against underage marriages and forced marriages that holds accountable those who perform them and the relatives who participate in organizing them.

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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B: Foreign Influence

The security concern relating to the guideline for foreign influence is articulated in AG ¶ 6:

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

Applicant has familial ties through marriage to the Kyrgyz Republic that raise foreign influence security concerns. Applicant's spouse is a native of the Kyrgyz Republic who became a U.S. permanent resident in October 2014, moved to the United States in September 2015, and became a naturalized U.S. citizen in June 2018. Her daughter, now age 23, has been a citizen of Kyrgyzstan since birth. She acquired her U.S. green card in October 2014, but attended college in Kyrgyzstan and so has lived continuously in the United States only since June 2017. Applicant's spouse's father and six of her siblings are currently residents of Kyrgyzstan. Five if not all six of those siblings are citizens of Kyrgyzstan. One of her brothers with Kyrgyz residency and citizenship began working for the Kyrgyz government on his graduation from college. As of Applicant's OPM interview in August 2016, this brother-in-law was an intelligence official. Applicant has heard that his brother-in-law was removed from his position with the change in government in October 2017, but he does not know for certain.

Review of Applicant's contacts and connections to these foreign citizens through marriage is warranted to determine whether they present a heightened risk under AG ¶ 7(a) or AG ¶ 7(e) or create a potential conflict of interest under AG ¶ 7(b). Those disqualifying conditions provide:

- (a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to

protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and

(e) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Not every foreign contact or tie presents the heightened risk under AG ¶ 7(a). The "heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government; a family member is associated with, or dependent on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

Applicant has bonds of affection and obligation to his spouse, who now enjoys the protections of U.S. citizenship and residency, and to his stepdaughter, who is a U.S. legal permanent resident with Kyrgyz citizenship. There is also a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of his or her spouse. *See e.g.*, ISCR Case No. 11-12659 (App. Bd. May 30, 2013). Applicant indicated on his SF 86 that his only contact with his father-in-law was in person, once annually. However, Applicant's spouse is in monthly contact with her father. Applicant indicated on his SF 86 that he has quarterly contact with her brother who was then a fraud investigator in Kyrgyzstan. He testified that his spouse has monthly contact with her brother and that she also has some contact with an older sister in Kyrgyzstan. Little information was provided about that sister, who was not listed by Applicant on his SF 86 or discussed during his interview. Applicant and his spouse suggested that they are somewhat estranged from some of her family members in Kyrgyzstan, particularly from her brother (brother-in-law X) employed by the Kyrgyz government for most, if not all, of his career. However, the evidence shows that Applicant and his spouse got together with her family, including brother-in-law X, during family events when they lived in Kyrgyzstan until May 2012, and during trips to Kyrgyz for family visits and reunions in March 2014, July 2015, and October 2015. She traveled to Kyrgyz early to have more time with her family.

The Kyrgyz Republic and the United States have good relations, although the DOD is concerned about growing Russian influence in the region and the decline in the security relationship between the Kyrgyz Republic and the United States. With its mixed human rights record and brother-in-law X's longtime career in intelligence for Kyrgyzstan, there is a heightened risk of undue foreign influence. AG ¶¶ 7(a) and 7(b) are established.

Applicant's spouse had owned an apartment in Kyrgyzstan that she purchased for \$45,000 in April 2012. Although not significant to Applicant in terms of his overall financial situation, it was important to his stepdaughter because it was her residence while attending college. Given that the property was sold in June 2017 and the sales proceeds were wired to the United States well before the SOR was issued, AG ¶ 7(f) is not established.⁷

The burden shifts to Applicant to mitigate the risk of undue foreign influence that exists because of his familial ties through marriage to Kyrgyzstan, a former member state of the USSR that continues to align its interests to some extent with Russia, a country known to target the United States and its citizens for sensitive and classified information. AG ¶ 8(a) provides for mitigation as follows:

(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 United States.

There is no evidence that Applicant's spouse's family members in the Kyrgyz Republic have attempted to obtain classified or sensitive information from Applicant. Even so, AG ¶ 8(a) is difficult to apply based on what is known about his spouse's siblings in Kyrgyzstan. Applicant's spouse and the older of her siblings, if not all of them, were raised in Kyrgyzstan when it was part of the USSR. They were taught Russian under a Soviet system which emphasized education, and they all had advanced schooling. They speak Kyrgyz and Russian, and it is unclear whether they have fully embraced democratic institutions and proclivities. Apparently only one of her sisters knows English. Her oldest brother, who was described by Applicant as the head of the family, spent his career in intelligence for the Kyrgyz government. Even if her brother was removed from his position on the change of administrations in October 2017, his past employment presents a risk that Applicant will be placed in the untenable position of having to choose between the interests of his spouse or those of her family members with Kyrgyz citizenship or residency with whom she has ongoing relations.

There is no evidence that Applicant has any loyalty or affiliation to the Kyrgyz Republic or its institutions, but it is difficult to conclude that the bonds of affection or obligation to his spouse and her immediate family members, including her daughter and father, are so minimal to satisfy the first part of AG ¶ 8(b), which provides:

(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

⁷ AG ¶ 7(f) applies when there is a "substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence, or exploitation, or personal conflict of interest."

and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

Applicant's relationships and loyalties in the United States may still be so deep and longstanding that he can be counted on to resolve any conflict in favor of the U.S. interest. In that regard, he is a native U.S. citizen who served honorably on active duty and in the reserves for the U.S. military. His three sons are U.S. citizens and reside in the United States. Applicant owns property in the United States, and his employment is in the United States. He held clearances over the years with no evidence of any security infractions or violations. He has no foreign assets. His spouse intends to reside permanently in the United States, and as evidence of her intention in that regard, she became a U.S. citizen. Her daughter now lives and works in the United States and intends to apply for U.S. citizenship at her first opportunity. While AG ¶ 8(b) has some applicability, I am concerned about the fact that Applicant's brother-in-law X knows that Applicant served in the U.S. military and worked for the United States government at an embassy. Applicant admitted that there is no way to know whether his brother-in-law's employment with the Kyrgyz government has ended.

Applicant testified that he will immediately report any efforts to approach or influence him by or through foreign sources, including his spouse's relatives. Some concern arises that he may not recognize or report an improper contact. If Applicant's testimony is credible, he has made little effort to inform himself of even basic information about his spouse's relatives and their activities. It could be said that he minimizes his risk by knowing little. At the same time, he has the burden of mitigation to address the foreign influence security concerns, and he did not show himself to be fully forthcoming about the extent of his spouse's foreign ties to Kyrgyzstan. The Government was not aware before Applicant's hearing that his spouse has two sisters and four brothers in the Kyrgyz Republic. Conceivably, Kyrgyz authorities could bring some pressure on his spouse's family members to gain influence or information from Applicant. People act in unpredictable ways when faced with choices that could be important to a family member.⁸

There is nothing untoward in the record about Applicant's relationships and contacts with his spouse's family members in Kyrgyzstan. AG ¶ 8(c), "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation," has limited applicability nonetheless, given the evidence of ongoing contact his spouse has with her father and some of her siblings. The foreign influence security concerns are not fully mitigated.

⁸ As stated by the DOHA Appeal Board in ISCR Case No. 08-10025 (App. Bd. Nov. 3, 2009), "Application of the guidelines is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved-one, such as a family member."

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).⁹ Furthermore, in weighing these whole-person factors in a foreign influence case, the Appeal Board has held that:

Evidence of good character and personal integrity is relevant and material under the whole person concept. However, a finding that an applicant possesses good character and integrity does not preclude the government from considering whether the applicant's facts and circumstances still pose a security risk. Stated otherwise, the government need not prove that an applicant is a bad person before it can deny or revoke access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control. See ISCR Case No. 01-26893 (App. Bd. Oct. 16, 2002).

Although Applicant's spouse is now a U.S. citizen, she has lived in the United States only since September 2015. She and Applicant traveled to the Kyrgyz Republic for a family reunion in October 2015, and she is not estranged from some close family members. Perhaps at some future date, Applicant's family situation may present less of a risk. At this time, I am unable to conclude that it is clearly consistent with the national interest to grant security clearance eligibility for Applicant.

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 Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.d:	Against Applicant
Subparagraph 1.e:	For Applicant

⁹ The factors under AG ¶ 2(a) 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.

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge