



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



In the matter of: )  
)  
) ISCR Case No. 19-02492  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Raashid Williams, Esq., Department Counsel  
For Applicant: Daniel P. Meyer, Esq.

11/30/2022

**Decision**

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the foreign influence, use of information technology, and personal conduct security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On January 24, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B (foreign influence), M (use of information technology), and E (personal conduct). The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on March 18, 2020 and requested a hearing before an administrative judge. The case was assigned to an administrative judge on March 18, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of video teleconference (VTC) hearing on April 11, 2022, scheduling the hearing for May 16, 2022. The case was reassigned to me on May 10, 2022. I canceled that hearing on May 16, 2022, due to illness. DOHA issued another notice of VTC hearing on June 6, 2022, rescheduling the hearing for July 1, 2022.

I convened the hearing as rescheduled. The Government's administrative notice request was appended to the record as Hearing Exhibit (HE) I. Government Exhibits (GE) 1 and 2 and Applicant's Exhibit (AE) A were admitted in evidence without objection. Applicant testified. DOHA received the hearing transcript (Tr.) on July 12, 2022.

### **Request for Administrative Notice**

Department Counsel's request that I take administrative notice of certain facts about Kyrgyzstan was included in the record as HE I, as noted above. Applicant did not object. I have taken administrative notice of facts contained in HE I, which are summarized below.

#### **Kyrgyzstan**

Kyrgyzstan became a Soviet republic in 1936 and achieved independence in 1991 when the Union of Soviet Socialist Republics (USSR) dissolved. A landlocked country that borders China and maintains close ties with Russia, Kyrgyzstan is generally seen as the most Russia-friendly government in central Asia and it hosts four Russian military installations. Continuing concerns for Kyrgyzstan include the trajectory of democratization, endemic corruption, a history of tense and at times violent interethnic relations, border security vulnerabilities, and potential terrorist threats.

After Kyrgyzstan experienced revolutions that ousted authoritarian-leaning presidents in 2005 and 2010, a new constitution adopted in 2010 imposed a one-term limit on the presidency and converted the country to a semi-parliamentary system in which the prime minister shares executive power. Kyrgyzstan plunged into political upheaval in the wake of disputed October 4, 2020, parliamentary elections that heavily favored pro-establishment parties. Opposition parties alleged widespread irregularities, including vote-buying and voter intimidation; international election observers deemed these assertions credible. After mass protests broke out, Kyrgyzstan's central election commission annulled the results on October 6, 2020, resulting in a power vacuum as the prime minister and other officials announced their resignations.

A snap presidential vote and a controversial constitutional referendum on the country's form of government took place in January 2021, raising concerns about the future of democracy and rule of law in Kyrgyzstan. Sadr Japarov, a former member of parliament known for his nationalist views, was elected president with 79% of the vote amid 40% turnout, which was a lower turnout than in previous elections, and 84% of voters supported reverting to a presidential system. The specifics of the planned constitutional reform remain unclear.

Since the crisis in Ukraine began in 2014, Russia has redoubled its efforts to reinforce its influence in central Asia. The U.S. Director of National Intelligence has assessed that events in Ukraine raised Russia's perceived stakes for increasing its presence in the region to prevent future regime change in the former Soviet republics and for accelerating a shift to a multi-polar world in which Russia is the uncontested

regional hegemon. At the same time, it is likely that China will continue to expand its outreach to central Asia. Kyrgyzstan has increasingly aligned its interests with Russia and China.

Since March 2020, the U.S. Department of State has assessed the city of Bishkek, the capital of Kyrgyzstan, as being a MEDIUM-threat location for terrorism directed at or affecting official U.S. Government interests. Organized crime has existed and thrived in Kyrgyzstan since Soviet times. Significant human rights issues in Kyrgyzstan in 2019 included: law enforcement and security services' use of torture and arbitrary arrest; harsh and life-threatening prison conditions; political prisoners; significant problems with the independence of the judiciary; severe restrictions on free expression, the press, and the internet; significant acts of corruption; trafficking in persons; crimes involving violence or threats of violence targeting lesbian, gay, bisexual, transgender, and intersex persons; and use of forced child labor. Official impunity remained a problem.

### **Findings of Fact**

Applicant admitted SOR ¶ 1.a and denied SOR ¶¶ 1.b, 2.a, and 3.a. He is 51 years old. He is married to a Kyrgyzstan-born, naturalized U.S. citizen. He has four children, one is an adult from a previous relationship who is a citizen and resident of Germany, and three are minors from his marriage who are solely U.S. citizens residing with Applicant and his spouse. (Answer; Tr. at 16; GE 1, 2)

Applicant was born and raised in the United States. His parents and two siblings were also born in and reside in the United States. He graduated from high school in 1989, he earned a bachelor's degree in 2001, and he took classes toward but had not yet earned a master's degree. He served honorably in the U.S. Army from September 1991 to August 1997; in the National Guard from August 2001 to September 2002; and in the Reserve from August 2001 to October 2003. He has since worked overseas for various DOD contractors, with the exception of two periods of unemployment from June 2012 to March 2013 and April 2014 to February 2015. As of the date of the hearing, he worked overseas in information technology for his employer, a DOD contractor, since December 2016. He was first granted a DOD security clearance in 1991. (Answer; Tr. at 5-6, 16-20, 63-67, 74-76; GE 1, 2)

Applicant's 43-year-old spouse was born in Kyrgyzstan. When she was in high school or college, she fulfilled her mandatory one-year service with the Kyrgyzstan military. She does not have any other affiliations with the Kyrgyzstan military or government. When Applicant worked in Kyrgyzstan between 2003 and 2011, he met his spouse there in 2004, through a mutual friend. They married in Kyrgyzstan in 2009. She became a naturalized U.S. citizen and was issued a U.S. passport in May 2010. They married in the United States in 2013, because the foreign country in which Applicant worked at the time did not accept his Kyrgyzstan marriage certificate. Their two eldest children were born in Kyrgyzstan, and their youngest child was born in another foreign country where Applicant worked at the time. As previously discussed, all three children are solely U.S. citizens, residing with Applicant and his spouse. Throughout the duration

of their marriage, and as of the date of the hearing, Applicant's spouse worked on a U.S. military base. She is aware that Applicant works in information technology and holds a security clearance. Applicant has discussed with her the importance of not sharing this information with anyone. (Answer; Tr. at 15-16, 20-25, 48-51, 63-74, 79-81; GE 1, 2)

### **Foreign Influence**

Applicant's elderly father-in-law and mother-in-law are citizens and residents of Kyrgyzstan. They are 78 and 73 years old, respectively. Applicant's father-in-law is a retired taxi driver and his mother-in-law is a retired factory worker. Now farmers in a rural area, they own the home in which they live. They receive a pension of approximately \$200 monthly, but they do not have any other affiliation with the Kyrgyzstan government. (Answer; Tr. at 20-29, 48-52, 60-74, 76-79, 81-89; GE 1, 2)

For a brief period in 2011, Applicant's spouse and their two eldest children lived with her parents in Kyrgyzstan, while Applicant worked in a country that was not conducive to his family joining him. He then moved with his family to the United States in 2011. He and his family traveled to Kyrgyzstan to visit his parents-in-law in 2011, twice in 2012, and in 2019. (Answer; Tr. at 20-29, 48-52, 60-74, 76-79, 81-89; GE 1, 2)

Applicant's spouse has weekly telephonic contact with her parents. Applicant occasionally talks with his parents-in-law, on birthdays and during holidays, when his spouse talks to her parents. His spouse usually translates for him since he speaks minimal Russian. Applicant manages the finances in his household, and he and his spouse gift her parents approximately \$100 to \$200 for their birthdays. Applicant stated that his parents-in-law do not know what he does for a living. He testified that he would report to the U.S. authorities any attempt by anyone in Kyrgyzstan to exploit his parents-in-law for information about him. He has complied with his employer's reporting requirements for foreign contacts. (Answer; Tr. at 20-29, 48-52, 60-74, 76-79, 81-89; GE 1, 2)

Applicant has never owned property in Kyrgyzstan. When he met his spouse, she lived in a studio apartment in Kyrgyzstan gifted to her by her parents. She and her parents sold this property for approximately \$25,000 USD. They used the proceeds from the sale, along with \$25,000 USD that Applicant gave to his spouse, to purchase a one-bedroom apartment in Kyrgyzstan in September 2010 for \$55,000 USD. This property is solely in Applicant's mother-in-law's name. His parents-in-laws rent out the apartment and use the rental income, of approximately \$200 monthly, for living expenses. (Answer; Tr. at 20, 25-26, 29, 51-60, 81-89; GE 1, 2)

Applicant's spouse does not have any intention to manage her parent's property in Kyrgyzstan once her parents are unable to do so. Neither Applicant nor his spouse have any financial interest in this property. Applicant anticipates that his brother-in-law, who is a citizen and resident of Kyrgyzstan, will assume those responsibilities. Applicant's spouse has minimal contact with her brother. Applicant is unsure what his brother-in-law does for a living, but stated that he is not affiliated with the Kyrgyzstan

government or military and he helps his parents on their farm. (Answer; Tr. at 20, 25-26, 29, 51-60, 81-89; GE 1, 2)

Applicant listed in his March 2017 security clearance application (SCA) that he purchased a home in the United States in April 2014. He resided in this home from April 2014 until March 2015. His brother occasionally lived in this home while Applicant worked overseas. It is unclear from the record if Applicant still owns this home. The record does not contain any evidence of any other U.S.-based assets. (GE 1)

### **Misuse of Information Technology and Personal Conduct**

In June 2016, Applicant downloaded and viewed pornographic material on his corporate laptop in violation of company policy. He had been working overseas for his then-employer, as a federal systems technologist, since approximately January 2015. At the time of the incident, he was away from his spouse; his personal laptop was broken; and he used his work laptop to download and view pornography at his spouse's suggestion while she was on the phone with him. Although he had previously used his work laptop for personal reasons, this was the only instance in which he did so for pornography. He did not engage in this activity over a U.S. Government network. His supervisor notified him in November 2016 that he violated company policy by downloading inappropriate material on his company computer, and he accepted his supervisor's offer to resign in lieu of termination. His employer kept him on board until they found his replacement in December 2016. (Answer; Tr. at 15-16, 19, 26-48, 66-67, 89-107; GE 1, 2)

Applicant disclosed this information to his spouse, on his SCA, and during his October 2017 background interview. Although he used his work laptop and personal laptop interchangeably, he acknowledged that he exercised bad judgment in using his work laptop to download and view pornography and he should have known better since he works in information technology. He did not have any previous incidents of unauthorized use of information technology, and as of the date of the hearing, he had not had any subsequent such incidents. He received bi-annual training from his employer on the rules governing the use of his work computer, and he was aware that his employer prohibited personal use of his work computer. (Answer; Tr. at 15-16, 19, 26-48, 66-67, 89-107; GE 1, 2)

Applicant earned various information technology certificates, to include his CISCO certified network associate routing and switching in 2019. He provided letters of support from three individuals who attested to his trustworthiness, reliability, and judgment. One individual, a retired Lieutenant Commander from the U.S. Navy, came to know Applicant in 2016, when Applicant served under his department in providing classified and unclassified network support to military warfighters. They subsequently became colleagues in 2017, and he associated with Applicant professionally and personally. The other two individuals were colleagues who have known Applicant since 2016 and 2019, respectively. (Answer)

## Policies

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 to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching 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 access to classified information will be resolved in favor of national security." 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 the 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Section 7 of Exec. Or. 10865 provides that adverse 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline B: Foreign Influence

The security concern for foreign influence is set out 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

(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;

(e) shared 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; and

(f) 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.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided). AG ¶ 7(a) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government.

Applicant has never owned property in Kyrgyzstan. His spouse sold the property in Kyrgyzstan that she previously owned and applied the proceeds to the purchase of another property in Kyrgyzstan, which is solely in her mother's name. While Applicant contributed \$25,000 towards the purchase of this property in 2010, neither he nor his spouse have any financial interest in it. Accordingly, this property does not raise a security concern and AG ¶ 7(f) is not established.

Applicant's parents-in-law are citizens and residents of Kyrgyzstan. Applicant's spouse maintains regular contact with her parents in Kyrgyzstan by telephone and they have traveled to Kyrgyzstan to visit them. Applicant's parents-in-law receive a monthly pension from the Kyrgyzstan government. Continuing concerns for Kyrgyzstan include the trajectory of democratization, endemic corruption, a history of tense and at times violent interethnic relations, and border security vulnerabilities. Kyrgyzstan has increasingly aligned its interests with Russia and China, and significant human rights issues remain in Kyrgyzstan. Applicant's relationship with his parents-in-law, through his spouse, creates a heightened risk and is disqualifying under AG ¶¶ 7(a), 7(b), and 7(e).

AG ¶ 8 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(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.

AG ¶ 8(a) is not established for the reasons set out in the above discussion of AG ¶¶ 7(a), 7(b), and 7(e). AG ¶ 8(c) is also not established, as Applicant's spouse maintains regular contact with her family in Kyrgyzstan, and Applicant and his family visited his parents-in-law in Kyrgyzstan, as previously discussed.

Applicant was born and raised in the United States. His parents and siblings were also born in and live in the United States. He graduated from high school, earned a bachelor's degree, and took post-graduate courses in the United States. He served



honorably in the U.S. military, the National Guard, and the Reserve, between 1991 (when he was first granted a security clearance) and 2003. Since 2003, with the exception of two periods of unemployment in 2012 and 2014, he has worked overseas for various DOD contractors, to include his current employer. I considered the totality of Applicant's ties to Kyrgyzstan against his ties to the United States. The concerns over Applicant's ties to Kyrgyzstan, through his parents-in-law there, do not create doubt about Applicant's current reliability, trustworthiness, good judgment, and ability to protect classified information. Applicant has met his burden of demonstrating that he would resolve any conflict of interest in favor of the U.S. interest. AG ¶ 8(b) is established.

### **Guideline M: Use of Information Technology**

The security concern for use of information technology is set out in AG ¶ 39:

Failure to comply with rules, procedures, guidelines, or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information. Information Technology includes any computer-based, mobile, or wireless device used to create, store, access, process, manipulate, protect, or move information. This includes any component, whether integrated into a larger system or not, such as hardware, software, or firmware, used to enable or facilitate these operations.

The guideline notes several conditions that could raise security concerns under AG ¶ 40. AG ¶ 40 (e), the "unauthorized use of any information technology system," is applicable in this case. Applicant downloaded and viewed pornographic material on his corporate laptop in June 2016, in violation of company policy.

AG ¶ 41 provides conditions that could mitigate security concerns. AG ¶ 41(a), "so much time has elapsed since the behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," is applicable in this case. Applicant's conduct occurred over six years ago, and it was an isolated incident. He did not have any previous incident of similar conduct and he has not had any subsequent incidents of unauthorized use of information technology. He acknowledged that he exercised bad judgment. He disclosed this information to his spouse, on his SCA, and during his October 2017 background interview. He was aware that his employer prohibited personal use of his work computer.

### **Guideline E: Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: . . . (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant downloaded and viewed pornographic material on his corporate laptop in June 2016, in violation of company policy. AG ¶ 16(e) applies.

AG ¶ 17 provides conditions that could mitigate security concerns. I considered the following relevant:

(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;

(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; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

For the reasons discussed above in my analysis under Guideline M, I find that AG ¶¶ 17(c), 17(d), and 17(e) are established.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the

individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I have incorporated my comments under Guidelines B, M, and E in my whole-person analysis. After weighing the disqualifying and mitigating conditions under these guidelines, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the foreign influence, use of information technology, and personal conduct security concerns. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant his eligibility for access to classified information.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	For Applicant
Subparagraphs 1.a - 1.b:	For Applicant
Paragraph 2, Guideline M:	For Applicant
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E:	For Applicant
Subparagraph 3.a:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Candace Le'i Garcia  
Administrative Judge