



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



In the matter of: )  
)  
) ISCR Case No. 22-01062  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicole Smith, Esquire, Department Counsel  
For Applicant: *Pro se*

04/10/2024

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant successfully mitigated the security concerns regarding foreign influence. Eligibility for a security clearance is granted.

**Statement of the Case**

On August 26, 2021, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On July 8, 2022, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) to him under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016) (AG), effective June 8, 2017.

The SOR alleged security concerns under Guideline B (foreign influence) and detailed reasons why the DCSA CAS adjudicators were unable to find that it is clearly

consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a statement, dated September 15, 2022, Applicant responded to the SOR, and he requested a hearing before an administrative judge. The Government was prepared to proceed on December 19, 2022. The case was assigned to me on August 29, 2023. A Notice of Microsoft TEAMS Video Teleconference Hearing was issued on February 21, 2024, scheduling the hearing for March 7, 2024. I convened the hearing as scheduled.

During the hearing, Applicant testified. Government Exhibits (GE) 1 and GE 2, and Applicant Exhibits (AE) A through AE F were admitted into evidence without objection. The transcript (Tr.) was received on March 18, 2024. I kept the record open to enable the parties to supplement it with additional evidence. Applicant took advantage of that opportunity and timely submitted six documents, including an updated Response to the SOR, which were admitted as AE G through AE L without objection. The record closed on March 26, 2024.

### **Rulings on Procedure**

Department Counsel requested that I take Administrative Notice of certain enumerated facts pertaining to the Kyrgyz Republic (Kyrgyzstan), appearing in extracts of 15 written submissions issued by various U.S. Government sources. Facts are proper for Administrative Notice when they are easily verifiable by an authorized source and relevant and material to the case. In this instance, the Government relied on source information regarding Kyrgyzstan in publications of the Department of State, the Department of the Treasury, the Central Intelligence Agency, the Office of the Director of National Intelligence, and the Commander, U.S. Central Command.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 16-02522 at 2-3 (App. Bd. July 12, 2017); ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings is to notice facts that are either well known or from government reports. See Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Requests for administrative notice may utilize authoritative information or sources from the internet. See, e.g., *Hamdan v. Rumsfeld*, 126 S.Ct. 2749 (2006) (citing internet sources for numerous documents).

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts, as set forth below under the Foreign Influence Section, found in the Kyrgyzstan subsection.

## **Findings of Fact**

In his response to the SOR, Applicant admitted, with substantial comments, all the SOR allegations pertaining to foreign influence (SOR ¶¶ 1.a. through 1.c.). The information in his Answer to the SOR is incorporated herein. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact.

### **Background**

Applicant is a 47-year-old Jamaican-born naturalized U.S. citizen. He came to the United States as a child with his parents in 1980 and became a U.S. citizen in June 2001, relinquishing his Jamaican citizenship. He is an employee of a defense contractor and has been serving as a subject matter technical expert in Ecuador since November 2022. He previously worked for other employers as a senior commercial solution for classified architect (September 2015 – October 2022); a senior wireless engineer (January 2009 – September 2015); senior wireless engineer (January 2009 – September 2015); a senior mobile communications specialist (January 2008 – January 2009); and a senior configuration management specialist (July 2003 – December 2007). (AE K) His employment locations were in Kuwait, Afghanistan, Iraq, Oman, Jordan, Germany, and Ecuador. (Tr. at 29-30) A 1996 high school graduate, he received an associate degree in electrical communications. (Tr. at 6) He enlisted in the U.S. Air Force in July 1996 and served on active duty until July 2003, when he was honorably discharged. He was granted a U.S. security clearance and has held either top secret - with access to Sensitive Compartmented Information (SCI) - or secret clearances since 1998. He was married in 2000 and divorced in 2020. He married again in 2021. He has six daughters.

### **Military Awards and Decorations**

During his military service Applicant was awarded the following military awards and decorations: the Air Force Achievement Medal (with one cluster), the Joint Service Achievement Medal, the Military Outstanding Volunteer Service Medal, the Air Force Longevity Service Award, the National Defense Service Medal, the NCO Professional Military Education Ribbon, the Combat Readiness Medal (with one cluster), the Air Force Outstanding Unit Award, and the Joint Meritorious Unit Award. (AE I)

### **Foreign Influence**

Both of Applicant's parents, and his brother, are Jamaican-born naturalized U.S. citizens residing in the United States. His sister is a Jamaican-born citizen residing with their parents in the United States as a Permanent Resident.

Applicant's ex-wife – a dual citizen of Ecuador and the United States – resides with their three children -- also dual citizens -- in Ecuador. Their citizenship and residency are of no security significance to the Government.

SOR ¶ 1.a.: Applicant's wife was born, raised, and educated in Kyrgyzstan. She received a Bachelor of Economics and Finance specializing in credit banking at a Kyrgyz university. She was considered a third-country national (TCN) employee of the Army & Air Force Exchange Service (AAFES) at a U.S. facility in Afghanistan when he met her in 2012 during her one-year contract assignment. Before getting that job, she underwent an extensive background investigation, and upon being hired she was subject to weekly random searches and inspections for one year. Although she owned a residence in Kyrgyzstan that her mother previously purchased, and it was worth about \$32,000 (AE F), in about May 2018, she semi-relocated to Kuwait where she worked at a beauty salon and was travelling back and forth between the two countries. Applicant and his wife were married in 2021, and she resided in Kuwait with him since that time. When he relocated to Ecuador in October 2022, she joined him, and they both currently reside there, as legal permanent Ecuadorian residents, with their two children, including one that was born in 2023. Applicant indicated that his wife's property in Kyrgyzstan was sold, and she no longer has any financial ties or bank accounts in Kyrgyzstan. (Tr. at 20-24, 51)

Shortly after they were married, Applicant applied for a Petition for Alien Relative (Form I-130) with the U.S. Citizenship and Immigration Services (USCIS), as well as an Application for Action on an Approved Application or Petition (Form I-824). The petitions were received by the U.S. Department of State National Visa Center, and he was notified that the case is being processed. (AE B; AE D; AE G) When approval is received, she intends to apply for U.S. citizenship. (AE L) She has never been affiliated with the Kyrgyzstan government, military, security, defense industry, foreign movement, or intelligence service. (Response to SOR at 2)

Applicant's wife has a minor child, born in Kyrgyzstan, from a previous marriage, and who was previously residing with her grandmother there even though Applicant's wife was working in Kuwait part of the time. Since Applicant's marriage to the child's mother, and their relocation to Ecuador, the child has resided with them, and Applicant has legally adopted her. Applicant submitted separate petitions for the child. (AE C; AE E; AE G) The child's citizenship and residency are of no security significance to the Government.

SOR ¶ 1.b.: Applicant's wife's mother – Applicant's mother-in-law – is a citizen and resident of Kyrgyzstan. She is a seamstress for a small clothing factory most of each week but spends increasingly more time tending to her garden in her home in a small village near Bishkek. While Applicant's wife communicates with her mother frequently via WhatsApp, because his mother-in-law does not speak English, Applicant and his mother-in-law do not communicate with each other. (Tr. at 52) She has never been affiliated with the Kyrgyzstan government, military, security, defense industry, foreign movement, or intelligence service. (Response to SOR at 2)

SOR ¶ 1.c.: Applicant previously had an intimate relationship with a woman who was a citizen and resident of Kyrgyzstan working in Afghanistan at a U.S. military facility, and in 2015 they had a child. When Applicant's work took him to Kuwait in 2018, she and the child moved back to Bishkek, Kyrgyzstan where they currently reside. The woman is employed as a social media content specialist. Applicant furnishes them \$600 per month as financial support through a separate debit card that he gave the mother several years

ago. (Tr. at 38-39) He occasionally communicates with them through WhatsApp messages (three times in 2024; eight or nine times in 2023), specifically on the child's birthday, New Year's Day, or in a dire emergency. (Tr. at 36-37) She has never been affiliated with the Kyrgyzstan government, military, security, defense industry, foreign movement, or intelligence service. (Response to SOR at 3)

## **Kyrgyzstan**

The Kyrgyz Republic (or Kyrgyzstan) is a landlocked, mountainous Central Asian country that was formally annexed by the Russian Empire in 1876. A major revolt against the Tsarist Empire in 1916 resulted in almost one-sixth of the Kyrgyz population being killed. It became a Soviet republic in 1926. 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 over 7 million, of which over 77% are native Kyrgyz. Initially a parliamentary republic, it was 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 (Askar Akaev) in March 2005. Under a new president (Kurmanbek Bakiev) elected in July 2005, Kyrgyzstan 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, Kyrgyzstan had a violent change of government and approved a new constitution and a temporary president (Roza Otunbaeva) 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 Sooronbay 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. In October 2020, protests against legislative election results spread across the country, leading to President Jeenbekov's resignation and catapulting the previously imprisoned Sadyr

Japarov to acting president. In January 2021, Japarov was formally elected president, and a referendum to move the country from a parliamentary to a presidential system was approved.

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 Kyrgyzstan on December 25, 1991, following the country's independence from the Soviet Union. The United States supports Kyrgyzstan 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. Kyrgyzstan 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. Kyrgyzstan and the United States have a bilateral trade agreement. Kyrgyzstan 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.

Manas Air Base in Kyrgyzstan, 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 Kyrgyzstan's increasing alliance with Russia and China.

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.

Kyrgyzstan's counterterrorism efforts continue to concentrate on rooting out "terrorists" and preventing those from returning from conflicts abroad from engaging in terrorist activities, by bolstering reintegration and rehabilitation efforts. Terrorist attacks in

the country remain rare but reports of terrorism-related arrests underscore the potential threat. Ethnic, political, and socio-economic tensions continue to simmer in Kyrgyzstan. 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. According to government statistics, some 850 Kyrgyz citizens have left the country to join ISIS or other terrorist groups, but the true number is likely higher. The government faces limitations on its ability to investigate, prosecute, and rehabilitate returning foreign terrorist fighters because of a lack of expertise, resources, and potential shortcomings in the legal framework.

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 Kyrgyzstan. 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 June 2022, the U.S. State Department's Bureau of Diplomatic Security assessed Bishkek as a low-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 Kyrgyzstan was Level I: Exercise Normal Precautions.

Significant human rights issues persisted in Kyrgyzstan 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. 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. 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.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)) As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." (Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.)

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense



decision. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.” “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” (ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1)). “Substantial evidence” is “more than a scintilla but less than a preponderance.” (See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).)

The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).)

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.” (*Egan*, 484 U.S. at 531)

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” (See Exec. Or. 10865 § 7) Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

## Analysis

### Guideline B, Foreign Influence

¶ 6: The security concern relating to the guideline for Foreign Influence is set out in AG

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.

7: The guideline notes two conditions that could raise security concerns under AG ¶

(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) 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.

Applicant's mother-in-law, an ex-girlfriend, and one child (the child of Applicant and his ex-girlfriend) are residents of Kyrgyzstan. The child is a dual U.S. – Kyrgyzstan citizen and the others are Kyrgyzstan citizens. His wife is a Kyrgyzstan citizen residing in Ecuador with Applicant, and their two children, awaiting the naturalization process to proceed to enable her to eventually become a U.S. citizen. Applicant's contacts with his mother-in-law, ex-girlfriend, and his child are manifestations of his or his wife's care and concern for relatives residing in Kyrgyzstan.

When an allegation under a disqualifying condition is established, "the Directive presumes there is a nexus or rational connection between proven conduct or circumstances . . . and an applicant's security [or trustworthiness] eligibility. Direct or

objective evidence of nexus is not required.” ISCR Case No. 17-00507 at 2 (App. Bd. June 13, 2018) (citing ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018)).

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an Applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 08-02864 at 4-5 (App. Bd. December 29, 2009) (discussing problematic visits of applicant’s father to Iran). Applicant’s continuing relationship with his child and his child’s mother, as well as his wife’s continuing relationship with her mother are the current concerns for the Government. However, the security significance of these identified concerns requires further examination of those relationships and financial interests to determine the degree of “heightened risk” or potential conflict of interest.

In assessing whether there is a heightened risk because of an Applicant’s relatives or friends in a foreign country, it is necessary to consider all relevant factors, including the totality of an Applicant’s conduct and circumstances, including the realistic potential for exploitation. One such factor is the potential for pressure, coercion, exploitation, or duress. In that regard, it is important to consider the character of the foreign power in question, including the government and entities controlled by the government, within the relevant foreign country. Nothing in Guideline B suggests it is limited to countries that are hostile to the United States. In fact, we must avoid reliance on overly simplistic distinctions between “friendly” nations and “hostile” nations when adjudicating cases under Guideline B.

The nature of the foreign government involved, and the intelligence-gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the Judge’s ultimate conclusions in the case. The country’s human rights record is another important consideration. Another important consideration is the nature of a nation’s government’s relationship with the United States. These factors are relevant in assessing the likelihood that an Applicant’s family members living in that country are vulnerable to government coercion or inducement. Nevertheless, as noted above, the U.S. State Department’s Bureau of Diplomatic Security assessed Bishkek as a low-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.

The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, the government ignores the rule of law, including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorists cause a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The relationship of Kyrgyzstan with the United States, the situation in Kyrgyzstan, including crime and terrorism, place a burden of persuasion on Applicant to demonstrate that his relationships with any family member or friend living in Kyrgyzstan does not pose a security risk.

Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist relatives or a friend living in Kyrgyzstan.

There are criminal and terrorist groups active in Kyrgyzstan; increased levels of terrorism, violence, and insurgency; and human rights problems in Kyrgyzstan that demonstrate that a heightened risk of exploitation, coercion or duress are present due to Applicant's ties to his family and a friend. However, that risk is not generated by the Kyrgyzstan government, but by criminals and terrorists striking out against the central Kyrgyzstan authorities and foreigners. Applicant's family members and his friend residing in Kyrgyzstan are potential targets in this war on civilized society and humanity. The presence of criminal and terrorist groups and increased levels of terrorism, violence, and insurgency in Kyrgyzstan have also been described concerning events occurring on 9-11, and more recently in Fort Hood, Boston, Paris, Nice, Orlando, San Bernardino, and New York City. However, as noted above, based on their relationships, there is a potential, but greatly reduced, "heightened risk" of foreign exploitation, inducement, manipulation, pressure, or coercion to disqualify Applicant from holding a security clearance.

While there is no evidence that intelligence operatives, criminals, or terrorists from or in Kyrgyzstan seek or have sought classified or economic information from or through Applicant or his family members or his friend, nevertheless, it is not prudent to rule out such a possibility in the future, especially since the Russian's and Communist Chinese are becoming more active in the country. International criminal and terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Kyrgyzstan has a significant problem with terrorism and crime. Applicant's family members and his friend in Kyrgyzstan could be a means through which Applicant comes to the attention of those who seek U.S. information or technology and who would potentially attempt to exert coercion upon him.

I am persuaded that Applicant's loyalty to the United States is steadfast and undivided and he has such deep and longstanding relationships and loyalties in the U.S., that he can be expected to resolve any potential conflict of interest in favor of the U.S. interest. In this instance, because of his background, the degree of "heightened risk" or potential conflict of interest is dramatically reduced to nearly zero. Nevertheless, because of the evidence related to his family and a friend in Kyrgyzstan, AG ¶¶ 7(a), 7(b), and 7(e) have been established. Further inquiry is appropriate to determine potential application of any mitigating conditions.

AG ¶ 8 lists some conditions that could mitigate foreign influence security concerns including:

(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.

As indicated above, Applicant's mother-in-law, his ex-girlfriend, and his child (whose mother is the ex-girlfriend), are all citizen-residents of Kyrgyzstan, although his child is a dual U.S. – Kyrgyzstan citizen. While Applicant's wife communicates with her mother frequently via WhatsApp, because his mother-in-law does not speak English, Applicant and his mother-in-law do not communicate with each other. Applicant furnishes his ex-girlfriend \$600 per month as financial support through a separate debit card that he gave her several years ago. He occasionally communicates with her and their child through WhatsApp messages (three times in 2024; eight or nine times in 2023), specifically on the child's birthday, New Year's Day, or in a dire emergency. His wife resides with him in Ecuador, and she has no further financial interests in Kyrgyzstan.

The Appeal Board has concluded that contact every two months or more frequently constitutes "frequent contact" under AG ¶¶ 7 and 8. ISCR Case No. 14-05986 at 3-4 (App. Bd. Oct. 14, 2016). See also ISCR Case No. 04-09541 at 2-3 (App. Bd. Sep. 26, 2006) (finding contacts with applicant's siblings once every four or five months not casual and infrequent.) Frequency of contact is not the sole determinant of foreign interest security concerns based on connections to family. "[I]nfrequency of contact is not necessarily enough to rebut the presumption an applicant has ties of affection for, or obligation to, his or her own immediate family as well as his or her spouse's immediate family." ISCR Case No. 17-01979 at 4 (App. Bd. July 31, 2019). Applicant cares for his family.

A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." He has significant connections to the United States where his parents have resided for over four decades. He and his family followed the U.S. immigration rules and waited in Jamaica before coming to the United States legally, not by ignoring the laws and joining the masses of undocumented individuals who came across the border without proper authority. He has been a naturalized U.S. citizen for about 23 years. He served honorably in the U.S. Air Force, and since the end of his military service in 2003, he was worked on behalf of the U.S. Government in a variety of overseas locations, including some that were considered combat zones. His wife and youngest child reside with him in Ecuador as permanent residents awaiting naturalization as U.S. citizens.

There is no evidence that Applicant's wife, mother-in-law or ex-girlfriend are or have ever been political activists, challenging the policies of the Kyrgyzstan government; that criminals or terrorists have approached or threatened them for any reason; that the Kyrgyzstan government or any criminal or terrorist organization have approached them;

or that they currently engage in activities that would bring attention to themselves. As such, there is a reduced possibility that they would be targets for coercion or exploitation by the Kyrgyzstan government or the terrorists, which may seek to quiet those who speak out against them. Under these circumstances, the potential heightened risk created by their residence in Kyrgyzstan is greatly diminished. Under the developed evidence, it is unlikely Applicant 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.

It is important to be mindful of the United States' relationship with and historical investments in Kyrgyzstan. Kyrgyzstan was and is an important U.S. ally in combatting terrorism. The United States leased the Manas Air Base in Kyrgyzstan, which had served as a transit and logistics base for U.S. troops heading to Afghanistan. The sole destabilizing factor in the U.S. – Kyrgyzstan relationship is the Russian attempt to increase its powers over the former Soviet Republic and diminish U.S. influence in the area. Applicant has met his burden of showing there is little likelihood that relationships with his mother-in-law, ex-girlfriend, and child could create a risk for foreign influence or exploitation.

I am persuaded that Applicant's loyalty to the United States is steadfast and undivided, and that he has "such deep and longstanding relationships and loyalties in the U.S. that he can be expected to resolve any conflict of interest in favor of the U.S. interest." AG ¶¶ 8(a), 8(b), and 8(c) have been established and they fully mitigate foreign influence security concerns under Guideline B.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at SEAD 4, App. A, ¶ 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 SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis. (See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006))

I have incorporated my comments under Guideline B in my whole-person analysis, and I have considered the factors in SEAD 4, App. A, ¶¶ 2(c) and 2(d). After weighing the disqualifying and mitigating conditions under Guideline B and evaluating all the evidence in the context of the whole person, I conclude that Applicant proffered substantial mitigating evidence, which was more than sufficient to overcome the disqualifying conditions established under Guideline B.

Largely due to the balance between Russia’s imperialistic motivations and Kyrgyzstan reluctance to returning to be a Russian province, after many decades of a volatile relationship between Russia and Kyrgyzstan, changes have occurred in the relationships between Kyrgyzstan and the United States and Russia. Kyrgyzstan has increasingly aligned its interests with Russia and China, and the U.S.-Kyrgyzstan security relationship has declined since the closure of the Manas Air Base and the termination of the bilateral Defense Cooperation Agreement. Nevertheless, the Kyrgyzstan armed forces desire to improve military-to-military cooperation with CENTCOM, but Kyrgyzstan senior civilian leaders have shown little interest in improving military relations. However, on the local level, Bishkek – the home of Applicant’s mother-in-law, his ex-girlfriend, and his child – has been assessed as a low-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.

Applicant’s wife and youngest child are permanent Ecuadorian residents residing with him awaiting U.S. naturalization. Applicant has met his burden of showing there is little likelihood that relationships with his wife, mother-in-law, ex-girlfriend, and child could create a risk for foreign influence or exploitation.

Overall, the evidence leaves me without substantial questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has successfully mitigated the security concerns arising from his alleged foreign influence concerns.

### **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. through 1.c.:	For Applicant

## **Conclusion**

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

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ROBERT ROBINSON GALES  
Administrative Judge