



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



In the matter of: )  
)  
) ISCR Case No. 22-01204  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Erin P. Thompson, Esq., Department Counsel  
For Applicant: Todd A. Hull, Esq.

12/05/2024

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the security concerns under Guidelines B (foreign influence), but he did not mitigate the security concerns under Guideline D (sexual behavior). Eligibility for access to classified information is denied.

**Statement of the Case**

On January 17, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B and D. Applicant responded to the SOR on April 7, 2023, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on April 2, 2024, and reassigned to me on July 22, 2024.

The hearing was convened as scheduled on July 24, 2024. Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified, called two witnesses, and submitted Applicant Exhibits (AE) A through J, which were admitted without objection.

## Findings of Fact

Applicant is a 63-year-old employee of a defense contractor. He has worked for his current employer since 2019. He has worked overseas, primarily in support of the U.S. military, since about 2007, including work in Iraq and Afghanistan. He seeks to retain a security clearance, which he has held since about 2010. He earned an associate degree in 1982, and he has additional certifications. He married in 1989 and divorced in 1997. He has an adult daughter from his first marriage. He married his current wife in 2016. He has an adult stepchild. (Transcript (Tr.) at 39-42, 47-49, 53, 56-58; Applicant's response to SOR; GE 1, 2; AE A)

Applicant was arrested in December 1997 and charged with the felony offenses of child molestation and deviate sexual assault of a minor. The offenses were allegedly committed against his daughter, who was about four years old at the time. The charges were *nolle pros* (dismissed) in August 1998. (Tr. at 80; Applicant's response to SOR; GE 1, 2; AE A, H)

Applicant adamantly denied committing any kind of sexual assault or indecent act upon his daughter. He stated that his ex-wife made the complaint in order to gain a custody advantage. He gave up custody and visitation of his daughter and did not see her again until she was in her 20s. There is no police report in evidence. (Tr. at 79-91; Applicant's response to SOR; GE 1, 2)

Applicant is a native-born U.S. citizen. His wife is a citizen and resident of Thailand. He met her in about 2010 on an online dating site devoted to relationships with Thai women. They met in person in Thailand later that year. They dated until their marriage in 2016. He lived with his wife in Thailand from 2014 to 2017. Thailand is a close ally of the United States. There was no evidence presented that it commits espionage against the United States. (Tr. at 48, 56-57, 69, 91, 98-99; Applicant's response to SOR; GE 1, 2)

Applicant's wife lives in Thailand while he works overseas. He has supported her since about 2014. He visits her when he has leave. She has a tourist visa and has visited the United States. She plans to immigrate to the United States when he is no longer working overseas. He and his wife have a joint bank account in Thailand with a balance of about \$150. Her child, parents, and siblings are citizens and residents of Thailand. He credibly testified that his wife, stepchild, in-laws, and bank account in Thailand could not be used to coerce or pressure him into revealing classified information. (Tr. at 50-51, 58-69; Applicant's response to SOR; GE 1, 2; AE F, G)

Applicant was interviewed for his background investigation in November 2021. A sworn statement was not taken, but the interview was summarized in a detailed report of investigation (ROI). He described his connections with his wife and with Ms. B, a woman from the Philippines he met online. He also detailed contacts with online sex workers from Thailand and the Philippine's, as follows:

. . . subject did admit to having had a long-standing (see below) pattern of online contact with various THAI and other sex workers. Subject said that during the marriage to [Wife] subject admitted to having had sexual liaisons online with various young THAI and other girls and women, from approx. 2014 until 2017, which also involved subject's financial support of dozens of THAI and other girls via financial transactions . . . .

\* \* \*

Subject has had dozens of other unlisted (developed) foreign contacts with various young women and girls, all in the approx early 20s, whom subject has met online in various online sex chatrooms, during approx 2014 to 2017. Subject said that during this period, he liked to have daily sex chats with various young women, all in their early 20s, while subject was in his late 50s. Subject said that all of the unlisted foreign contacts from online sex chatrooms are from THAI or the Philippines (PI).

Subject's foreign contact (discrepant), [Ms. B], was born sometime in the mid-1990s, in the PI, and has remained there as a resident and citizen since, no dual status, no intent for [U.S. citizenship]. Subject met this contact online, in an online sex chatroom, sometime in approx 2014, and had online contact with this individual online a least weekly until 2017. . . . Subject said that this contact is a sex worker, and now remains in the PI, but subject has not had any contact with this individual since 2017.

\* \* \*

Subject has also had dozens of other foreign contacts (discrepant), all names of foreign contacts unknown, all young women and sex workers, all from either THAI or the PI, online, from 2014 to 2017. Subject said that all of these unnamed foreign contacts have remained in either THAI or the PI as residents and citizens of those countries. Subject could not name or provide any date of birth information regarding the dozens of foreign contacts, as all are sex workers online, and as he has not met any of the individuals in person. Subject said that he engaged in at least bi-weekly, sometimes daily, online sex chats with various THAI and PI young women, from 2014 to 2017. Subject said that he also provided monetary/financial support to these various young foreign women, on a monthly basis, all amounts of financial support unrecalled, but he said that he provided approx \$1,000.00 or more per month, from 2014 to 2017, to various online women. As stated, all of the young women are/were sex workers, but he said that he has not had any online contact with any of them since 2017, when his wife told him to stop having online sex chatroom interaction. (GE 2)

Applicant responded to DoD interrogatories in January 2023. He was asked to authenticate the ROI of his background interview. He corrected six parts of the ROI,

including some information about Ms. B that is not included in this decision, and he submitted additional information. He did not make any corrections or submit additional information about the above four paragraphs. He then certified that “[s]ubject to any corrections, additions, or deletions indicated above or on the attached report,” the investigator’s summary accurately reflected his interview. (GE 2)

Applicant provided different information at his hearing. He asserted that he was only involved with two women between 2014 and 2017, Ms. B and his wife. He testified that he met Ms. B online in about 2014. Ms. B is a citizen and resident of the Philippines. He stated that they maintained a friendly relationship that was not sexual. They never met in person. He sent her about \$1,000 to help her have “a better life.” He felt that she was looking for a romantic relationship. He did not share her feelings and ended the relationship in about 2016. He admitted in his SOR response that she “may on occasion (at most 15 times) sent illicit sexual pictures via instant messages,” but it happened before he and his wife married. He initially testified that they never shared any naked pictures. He stated that the investigator must have misreported the information. After it was pointed out that the information was not from the ROI, but from his response to the SOR, he admitted receiving some pictures from Ms. B, but he never reciprocated. His wife stated that Applicant told him of his contacts with Ms. B before they married. She wrote that he “has been a 100% faithful and caring husband during [their] marriage.” (Tr. at 73-78, 107-108, 113-115; Applicant’s response to SOR; GE 1, 2; AE F)

Applicant testified that he chatted with a few women on the dating website where he met his wife, but never became serious with any of them, and their chats were not sexual in nature. He asserted he never sent any money to any foreign women besides his wife and Ms. B. He stated that he told the interviewer that he met his wife through a standard online dating site, and the investigator misconstrued that statement to be an admission that he participated in online sexual liaisons with women from Thailand and the Philippines. (Tr. at 71-73, 78-79, 97-113; Applicant’s response to SOR)

Applicant was evaluated at his own expense by a licensed clinical psychologist with extensive experience in sexual matters and disorders. The psychologist wrote in his report about Ms. B that “[t]hey exchanged nonsexual pictures with each other, never talked sexually, and from time to time, she asked for help paying some expenses.” He concluded that Applicant “has no diagnosable mental health conditions, including any sexual disorders, and he does not need any treatment.” Applicant testified that he did not tell the psychologist about the explicit pictures from Ms. B because he “didn’t recall” the pictures. (Tr. at 115; AE I, J)

I did not find Applicant credible. After considering all the evidence, including his inconsistent statements and the character information addressed below, I find by substantial evidence<sup>1</sup> that the ROI accurately describes his involvement with females from Thailand and the Philippines.

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<sup>1</sup> Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” See, e.g., ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019) (citing Directive ¶ E3.1.32.1). “This is something less than the

Applicant was injured by an explosion while working for a defense contractor overseas in 2007. He received the Secretary of Defense Medal for the Defense of Freedom “[i]n honor of his heroism and selfless service beyond the call of duty.” He professed his unconditional allegiance to the United States. (Applicant’s response to SOR; AE D)

Applicant called two witnesses, and he submitted documents and letters attesting to his excellent job performance and strong moral character. The witnesses and authors praised him for his loyalty to the United States, trustworthiness, honesty, professionalism, reliability, work ethic, dedication, and integrity. (Tr. at 20-38; Applicant’s response to SOR; AE B-F)

### **Policies**

This case is adjudicated under Executive Order (EO) 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), which became effective on June 8, 2017.

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(c), 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.”

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,

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weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “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); ISCR Case No. 04-07187 at 5 (App. Bd. Nov. 17, 2006).

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 EO 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* EO 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;

(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; and

(i) conduct, especially while traveling or residing outside the U.S., that may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

Applicant's wife, stepchild, and in-laws are citizens and residents of Thailand. Thailand is a close ally of the United States. There was no evidence presented that it commits espionage against the United States. Applicant's family and small bank account in Thailand do not create a potential conflict of interest or a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a), 7(b), and 7(f) have not been raised by those foreign connections. SOR ¶¶ 1.a through 1.d are concluded for Applicant.

Applicant was living overseas from 2014 to 2017 when he had online sexual liaisons with women from Thailand and the Philippines. He admitted in his background interview that he thought they were sex workers, and he sent them about \$1,000 a month. He was in a relationship with his wife at the time and married her in 2016. His conduct made him vulnerable to exploitation, pressure, and coercion by a foreign person, group, government, or country. AG ¶¶ 7(a) and 7(i) are applicable.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. 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.

Applicant has not had any ongoing contact with the foreign women after 2017. I find that his foreign ties are outweighed by his deep and long-standing relationships and loyalties in the United States. It is unlikely he will be placed in a position of having to choose between the interests of the United States and the interests of Thailand or the Philippines. There is no conflict of interest, because he can be expected to resolve any conflict of interest in favor of the United States. AG ¶¶ 8(a), 8(b), and 8(c) are applicable.

#### **Guideline D, Sexual Behavior**

The security concern for sexual behavior is set out in AG ¶ 12:

Sexual behavior that involves a criminal offense; reflects a lack of judgment or discretion; or may subject the individual to undue influence of coercion, exploitation, or duress. These issues, together or individually, may raise questions about an individual's judgment, reliability, trustworthiness, and ability to protect classified or sensitive information. Sexual behavior includes conduct occurring in person or via audio, visual, electronic, or written transmission. No adverse inference concerning the standards in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

AG ¶ 13 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

- (a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted;
- (c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress; and
- (d) sexual behavior of a public nature and/or that reflects lack of discretion or judgment.

Applicant was arrested in December 1997 and charged with the felony offenses of child molestation and deviate sexual assault of a minor. He had online sexual liaisons with women from Thailand and the Philippines, who he described as sex workers. He admitted in his background interview that he sent them about \$1,000 a month. He was in a relationship with his wife at the time and married her in 2016. His conduct reflected a lack of judgment and made him vulnerable to coercion, exploitation, and duress. AG ¶¶ 13(a), 13(c), and 13(d) are applicable.

Conditions that could mitigate sexual behavior security concerns are provided under AG ¶ 14. The following are potentially applicable:



(b) the sexual behavior happened so long ago, so infrequently, or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or judgment;

(c) the behavior no longer serves as a basis for coercion, exploitation, or duress; and

(d) the sexual behavior is strictly private, consensual, and discreet.

The 1997 charges were *nolle pros* in 1998. Applicant adamantly denied committing any kind of sexual assault or indecent act upon his daughter. He stated that his ex-wife made the complaint in order to gain a custody advantage. There is no police report in evidence to counter his assertions. AG ¶¶ 13(b) and 13(c) are applicable to that conduct.

Applicant asserted that he was only involved with two foreign women between 2014 and 2017, Ms. B and his wife. He stated that he chatted with a few women on the dating website where he met his wife, but never became serious with any of them, and their chats were not sexual in nature. He asserted he never sent any money to any foreign women besides Ms. B and his wife. He stated that the interviewer misconstrued his statement that he met his wife through a standard online dating site to his having participated in online sexual liaisons with women from Thailand and the Philippines.

Applicant responded to DoD interrogatories in which he was asked to authenticate the ROI of his background interview. He corrected six parts of the ROI, and he submitted additional information, none of which had anything to do with the paragraphs about his online sexual liaisons with sex workers from Thailand and the Philippines, which were not corrected. I did not find Applicant credible. I find the ROI to be far more reliable than Applicant's version of the events. I further find that his testimony was intentionally false.

The Appeal Board has held that “[a]n applicant's refusal to acknowledge his misconduct or accept responsibility for it seriously undercuts a finding that the applicant has mitigated his misconduct.” See, e.g., ISCR Case No. 22-00761 at 6 (Jun. 13, 2024). Since I cannot trust Applicant's testimony, I cannot find that problematic sexual behavior is unlikely to recur. It continues to cast doubt on his current reliability, trustworthiness, and good judgment. None of the mitigating conditions are sufficiently applicable to mitigate sexual behavior security concerns.

### **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 and D in my whole-person analysis. I also considered Applicant's work for defense contractors in support of the U.S. military, his injury sustained while doing so, and his favorable character evidence.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the security concerns under Guideline B, but he did not mitigate security concerns under Guideline D.

### **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.e:	For Applicant
Paragraph 2, Guideline D:	Against Applicant
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant

### **Conclusion**

It is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge