



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 13-00533

Appearances

For Government: Pamela Benson, Esq., Department Counsel

For Applicant: *Pro se*

05/28/2014

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guidelines B, foreign influence, and E, personal conduct. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On July 11, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and E. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

On October 20, 2013, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing.¹ On January 9, 2014, Department Counsel compiled a File of Relevant Material (FORM) that contained documents identified as Items 1 through 8. The FORM also included a request that I take administrative notice of facts regarding Afghanistan, Uzbekistan, and China and provided official U.S. documents as reference materials supporting those facts.

On January 13, 2014, the Defense Office of Hearings and Appeals (DOHA) forwarded to Applicant a copy of the FORM with instructions to submit any objections or additional information within 30 days of its receipt. Applicant timely submitted a response that has been marked as Item 9. The case was assigned to me on March 18, 2014.

Neither Department Counsel nor Applicant objected to the proffered documents. Items 1 through 9 are admitted into the record, and the Department Counsel's request for administrative notice is granted. The facts administratively noticed are contained in the FORM. Those facts are incorporated herein by reference and will not be repeated in this decision.

Findings of Fact

Applicant is a 52-year-old linguist employed by a defense contractor. He has worked for his current employer since October 2012. He was born in Afghanistan. He came to the United States in 1991 and became a U.S. citizen in 1999. He married in Afghanistan in 1986. His wife has become a U.S. citizen. They have four children. Their two oldest children (ages 25 and 26) are naturalized U.S. citizens, while their two youngest children (ages 14 and 19) were born in the United States. All of Applicant's children are students. Applicant held an interim Secret clearance in 2012.²

The SOR asserted four Guideline B allegations and 13 Guideline E allegations. The SOR allegations are identified in footnotes below. In his Answer to the SOR, Applicant admitted all of the allegations, except for SOR ¶ 1.e to which he did not respond. He provided explanations with his admissions.

Foreign Influence

Applicant's mother is a citizen and resident of the United States. His father, who was a mechanic, is deceased. He has three sisters and two brothers. One of his sisters and one of his brothers are citizens and residents of Afghanistan.³ His sister in Afghanistan is a housewife, while his brother living there operates a grocery store. He

¹ Item 4.

² Items 5, 6, 8.

³ SOR 1.a alleges that Applicant's brother and sister are citizens and residents of Afghanistan.

indicated that he has not had contact with his siblings in Afghanistan in almost ten years. Another sister is a citizen of Afghanistan but resides in the United States.⁴ His remaining sister and brother are citizens and residents of the United States. He has contact with his mother about once a year. He indicated that he has not had any contact with his sisters and brothers in six or seven years.⁵

Applicant's mother-in-law and father-in-law are citizens and residents of Uzbekistan. His father-in-law is 85 years old and works as a chef. His mother-in-law is 76 years old and does not work outside the home. He has contact with his parents-in-law about once every two months. His wife has contact with her parents about twice a month.⁶

Applicant operates a jewelry business in the United States. He has traveled to China frequently to purchase gems and precious stones for his business. From about 2009 to 2011, he wired a total of about \$15,000 to an individual named "Mike" in China for the purchase of gems.⁷ During a Counterintelligence/Force Protection (CI/FP) interview in October 2012, Applicant could not remember Mike's last name. In his Answer to the SOR, he provided Mike's last name and indicated that he has not had any contact with Mike in more than a year. Between May 2009 and November 2010, Applicant visited a Chinese Consulate in the United States on three occasions to obtain visas so that he could travel to China. During the CI/FP interview, he provided his current and expired U.S. passports for review.⁸

Applicant indicated that he had no foreign bank accounts or foreign real estate holdings. His brother inherited the family home in Afghanistan.⁹

⁴ Item 6. SOR ¶ 1.c alleged that Applicant's sister is a citizen of Afghanistan currently residing in the United States.

⁵ Item 6.

⁶ Items 4, 6, 9. SOR ¶ 1.b alleged that Applicant's mother-in-law and father-in-law were citizens and residents of Uzbekistan. From July 2008 to February 2009, Applicant sponsored his 25-year-old son-in-law from Uzbekistan to stay with him and his wife in the United States. Presumably, his son-in-law is his daughter's husband, but that is not clear from the record. His son-in-law works as a security guard in Uzbekistan. No SOR allegation pertains to the son-in-law.

⁷ Items 4, 6, 9. SOR ¶ 1.d alleged that Applicant wired approximately \$15,000 to "a business associate ('Mike' last name unknown)" in China from about 2009 to at least 2011 for his personal business. In a Relatives and Associates document completed as part of the CI/FP interview, Applicant was asked to disclose "anyone with whom [he had] a business/financial relationship," and he did not list "Mike." During the CI/FP interview, however, he did disclose his business transactions with Mike.

⁸ Items 4, 6, 9. SOR ¶ 1.e alleged that Applicant visited a Chinese Consulate on at least three occasions to obtain visas for travel to China.

⁹ Item 6.

Personal Conduct

In the late 1980s, Applicant, his wife, and their first child resided in Afghanistan while the communist-led Afghan government and Mujahedeen were engaged in armed conflict. At some point, he was drafted into the Afghan military. He indicated that an unrecalled acquaintance provided him with forged documents from a university that allowed him to be exempted from military service due to his purported continuing education.¹⁰

In August 1988, Applicant and his family fled to India for their safety and a better life. They applied for temporary refugee status with the local United Nations office in India. They struggled while living in India. Specifically, they encountered difficulty in obtaining food, shelter, and medical care. His second child was born in India.¹¹

While Applicant was in India, his parents were living in the United States. His parents tried to obtain a visa for him to come to the United States, but due to age (29 years old) and family status, the request was denied. In about 1990, he paid a smuggler \$2,000 to obtain a fraudulent passport and visa so that he could travel to the United States.¹² In January 1991, Applicant and his family attempted to travel to the United States, via Singapore, using the fraudulent travel documents, but they missed their connecting flight in Singapore.¹³ Their handler arranged for their accommodations in Singapore until their departure for the United States in November 1991.¹⁴ While flying from Singapore to the United States, Applicant destroyed his illegal passport and visa. Upon his arrival in the United States, Applicant and his family was placed in detention.¹⁵

¹⁰ Items 5, 6, 9. SOR ¶ 2.a alleged that Applicant was required to serve in the Afghan military, but was able to be exempted from this requirement after an acquaintance was able to forge university documentation.

¹¹ Items 6, 9.

¹² SOR ¶ 2.b alleged that Applicant paid a smuggler approximately \$2,000 to forge his foreign passport to reflect his name on a U.S. visa the smuggler obtained illegally in about 1990.

¹³ SOR ¶ 2.c alleged that Applicant and his family traveled to “Singapore, China” using his forged passport and/or illegally obtained U.S. visa in about January 1991 in order to board a flight going to the United States. Of note, there is no evidence that Applicant and his family traveled to China during this trip. The author of the SOR apparently believed Singapore was a part of China.

¹⁴ SOR ¶ 2.d alleged that Applicant and his family missed their connecting flight to the United States in about January 1991. They were able to reside in Singapore while their “handlers” took care of all of their arrangements and accommodations until their next flight to the United States was arranged in about November 1991.

¹⁵ SOR ¶ 2.e alleged that Applicant destroyed his forged passport and/or illegal U.S. visa on the airplane while en route to the United States.

Two weeks later, he formally applied for political asylum and was released from detention. He was granted political asylum in 1994.¹⁶

Applicant's Electronic Questionnaires for Investigations Processing (e-QIP) reflected that he worked as a taxicab driver for six years. In the past ten years, Applicant was charged with at least six moving traffic violations.¹⁷ The seriousness of these traffic violations is unknown. He paid all of the traffic fines in a timely manner. In September 2000, he was arrested and charged with inflicting corporal injury on his spouse. The prosecutor released him, and the arrest was categorized as a "detention only" for lack of sufficient evidence.¹⁸ In May 2002, he was arrested and charged with threatening crime with the intent to terrorize, battery of spouse, and battery. He was convicted of the battery of spouse offense and sentenced to one day in jail. He also attended anger management classes, performed community service, and served about one year on probation. This conviction was later dismissed.¹⁹

In October 2, 2012, Applicant submitted an e-QIP. In Section 5 of the e-QIP, he responded "No" to the question that asked whether he had used any other names. The SOR alleged that he falsified material facts in his response to that question because he failed to list one of the names he used.²⁰ When he applied for political asylum, an error was apparently made in the spelling of his last name. Specifically, an extra letter was added to his last name and this misspelled last name was added to his existing name. As part of his U.S. naturalization process, he corrected this error in his name. The petition to change his name was attached to his e-QIP. He provided the petition during the CI/FP interview.²¹

In Section 20B of the e-QIP, Applicant responded "No" to questions that asked whether within the past seven years he had provided advice or support to any individual associated with a foreign business; whether he had provided advice or served as a consultant to any foreign government official or agency; or whether he was offered a job by any foreign national, including as a consultant. He also responded "No" to a question that asked whether he had "**in the past seven (7) years** been involved with any other type of business venture with a foreign national not described above (own, co-own, serve as business consultant, provide financial support, etc)". The SOR alleged that he falsified material facts in his response to that latter question because he was involved in

¹⁶ Items 4, 6. SOR ¶ 2.f alleged that Applicant arrived in the United States illegally in about November 1991.

¹⁷ SOR ¶ 2.g.

¹⁸ Items 4, 6, 7. SOR ¶ 2.h.

¹⁹ Items 4, 6, 7. SOR ¶ 2.i. The dismissal of the conviction is set forth in a Supplemental Court Data entry (DISM 1203.4PC) in Item 7.

²⁰ SOR ¶ 2.j.

²¹ Items 4, 6.

business transactions in China and had wired about \$15,000 to a business contact there named “Mike” since approximately 2009.²²

In Section 20C of the e-QIP, Applicant responded “Yes” to a question that asked whether he had traveled outside of the United States in the past seven years. He then listed four trips to China and one trip to Saudi Arabia. The SOR alleged that he falsified material facts in his response to that question because he failed to list four other trips to China. The tables below set forth the trips to China that he listed in the e-QIP and those trips he allegedly did not list.²³

<u>Foreign Travel Disclosed on e-QIP</u>
China: 12/08-12/08 Purpose: Business
China: 8/10-9/10 Purpose: Business
China: 12/10-12/10 Purpose: Business
China: 10/11-10/11 Purpose: Business

<u>Foreign Travel Allegedly Not Disclosed on e-QIP</u>
China: 6/09
China: 11/09
China: 4/10
China: 5/11

On the same day Applicant submitted his e-QIP, he also submitted a Foreign Travel document. This document requested that he list all foreign travel, to include transit/layovers, starting with his birth country and working forward in chronological order ending with the present. The SOR alleged that he falsified material facts in filling out the Foreign Travel document because he failed to disclose one trip to Uzbekistan and five trips to China.²⁴ The tables below set forth the trips to China that he listed in the Foreign Travel document and the trips he allegedly did not list.

<u>Foreign Travel Disclosed on Foreign Travel Document</u>
China: 6/09 Purpose: Tourism/Work
China: 11/09 Purpose: Tourism/Work
China: 4/10 Purpose: Tourism/Work

<u>Foreign Travel Allegedly Not Disclosed on Foreign Travel Document</u>
Uzbekistan: 9/01-10/01
China: 12/08
China: 8/10-9/10
China: 12/10
China: 5/11
China: 10/11

A comparison of the above tables reveals that Applicant disclosed all of his foreign travel on either the e-QIP or Foreign Travel document with the exception of his trip to China in May 2011 and his trip to Uzbekistan in 2001.

²² Items 4, 6. SOR ¶ 2.k.

²³ SOR ¶ 2.l.

²⁴ SOR ¶ 2.m.

Character Evidence

Applicant has been serving as a linguist in Afghanistan for the past year and a half. He received certificates of appreciation from Romanian and U.S. forces that are part of the International Security Assistance Force in Afghanistan. In the certificates, he received praise for his dedication and professional support. His employer also issued him a certificate of appreciation that highlighted his drive and commitment to military members.²⁵

Policies

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's 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 access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of

²⁵ Item 9.

the possible risk the applicant may deliberately or inadvertently fail to protect or 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.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them, and the following disqualifying conditions potentially apply:

- (a) contact 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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information;
- (d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; and

(e) substantial business, financial, or property interest in a foreign country or any foreign-owned or foreign-operated business, which could subject that individual to heightened risk of foreign influence or exploitation.²⁶

AG ¶¶ 7(a), 7(d), and 7(e) require substantial evidence of a “heightened risk.” The “heightened risk” required to raise this disqualifying condition is a relatively low standard. “Heightened risk” denotes a risk of greater than the normal risk inherent in having a family member or friend living under a foreign government or owning property in a foreign country. It is not necessary for the Government to prove affirmatively that a country specifically targets U.S. citizens in order to raise Guideline B security concerns.²⁷ Furthermore, factors such as family members’ obscurity or the failure of foreign authorities to contact them in the past do not provide a meaningful measure of whether an applicant’s circumstances pose a security risk.²⁸

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.”²⁹

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.”³⁰ Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, 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 foreign contacts 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.³¹

²⁶ In the FORM, Department Counsel indicated that AG ¶ 7(f) – *failure to report, when required, association with a foreign national* – was raised because Applicant initially failed to report his business relationship with “Mike” in China on the Relative and Associated document completed during the CI/FP interview. However, Applicant was not in a business relationship with Mike. He merely purchased items from him. It does not appear such commercial transactions needed to be reported.

²⁷ ISCR Case No. 08-09211 (App. Bd. Jan. 21, 2010).

²⁸ ISCR Case No. 07-13696 at 5 (App. Bd. Feb 9, 2009).

²⁹ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

³⁰ ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

³¹ 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).

When foreign family ties are involved, the totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered.³² There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual.³³

Applicant's brother and sister are citizens and residents of Afghanistan. He has another sister who is a citizen of Afghanistan, but resides in the United States. His parents-in-law are citizens and residents of Uzbekistan. He and his wife maintain regular contact with her parents. Due to the threat of terrorism and the potential for human rights abuses in Afghanistan and Uzbekistan, the presence of Applicant's family members in those countries creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. AG ¶¶ 7(a), 7(b), and 7(d) apply.

On the other hand, Applicant's contacts and interests in China do not raise foreign influence security concerns. Applicant operates a jewelry business in the United States. He purchased gems and precious stones from an individual named Mike in China. He visited a Chinese Consulate three times to obtain visas so that he could travel to China and traveled there frequently for business purposes. Spending \$15,000 on gems over a two-year period for his business is not alarming. No information was presented that Applicant owned any business or financial interest in China. Additionally, no evidence was presented to show his purchases in question were something other than arm's length transactions. These purchases appear merely to be routine business transactions. As such, AG ¶¶ 7(a), 7(b), or 7(e) do not apply to his purchase of goods or his trips to China. Moreover, the mitigating condition in AG ¶ 8(f), *i.e.*, the routine nature of foreign business interests is unlikely to result in a conflict and could not be used to manipulate an individual, applies to Applicant's foreign business transactions. I find in favor of Applicant on SOR ¶¶ 1.d and 1.e.

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8. The following mitigating conditions potentially apply:

- (a) the nature of the relationship 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 and interests of the U.S.;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships

³² ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

³³ ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002).

and loyalties in the U.S., that the individual can be expected to resolve any conflict of interests in favor of the U.S. interests; 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 had no contact with his sister and brother who reside in Afghanistan in almost ten years. He has not had contact in the past eight years with his sister in the United States who remains an Afghan citizen. His relationships with these family members are not casual, but his contact with them is infrequent. There is little likelihood of risk for foreign influence or exploitation given the nature of his relationship with these siblings. AG ¶ 8(c) applies to SOR ¶¶ 1.a and 1.c.

On the other hand, Applicant's and his wife's contact with her parents is not casual, infrequent, or minimal. Given such close family contacts in Uzbekistan and the security conditions there, Applicant could be placed in a position of having to choose between the interests of foreign family members and the interests of the United States. AG ¶ 8(a) and 8(c) do not apply to his parents-in-law.

Applicant came to United States 23 years ago and became a U.S. citizen 15 years ago. His wife, children, mother, one brother, and one sister are citizens and residents of the United States. Another sister is a permanent resident of the United States. He operates a jewelry business in the United States and has no foreign property holdings. In considering his contacts and interests in the United States in comparison to those in Uzbekistan, I find that he can be expected to resolve any conflict of interest in favor of U.S. interests because of his deep and longstanding relationships and loyalties in the United States. I find AG ¶ 8(b) applies to SOR ¶¶ 1.a, 1.b, and 1.c.

In cases of this nature, an additional analysis is necessary. The Appeal Board has stated:

As a general rule, an applicant's prior history of complying with security procedures and regulations is considered to be of relatively low probative value for the purposes of refuting, mitigating, or extenuating the security concerns raised by that applicant's more immediate disqualifying conduct or circumstances. However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security. The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to

recognize, resist, and report a foreign power's attempts at coercion or exploitation.³⁴

Applicant has received praise for his service as a translator in support of U.S. and allied forces. Nonetheless, details of Applicant's compliance with security procedures in dangerous, high-risk circumstances are unknown. Consequently, he receives only limited credit under the Appeal Board's exception.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

- (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;
- (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;
- (c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

³⁴ ISCR Cases No. 06-25928 at 4 (App. Bd. Apr. 9, 2008) (internal citations omitted). See also ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006) citing ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May, 30, 2006); ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006); ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006).

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available evidence information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;

(2) disruptive, violent, other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations;

(4) evidence of significant misuse of Government or other employer's time of resources; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaged in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation, or pressure by the foreign security or intelligence service or group.

Applicant avoided military service in Afghanistan by providing fraudulent educational documents to authorities. He traveled to the United States on a fraudulent passport and visa. He destroyed the fraudulent travel documents before arriving in the United States. He has been charged twice with assaulting his wife. He was convicted of one of those assault offenses. After attending anger management classes, performing community service, and serving probation, the assault conviction was later dismissed. He committed several traffic violations, but the seriousness of those violations is unknown. Such conduct raises questions about Applicant's trustworthiness and reliability. AG ¶ 16(c), 16(d), and 16(e) apply to SOR ¶¶ 2.a through 2.i.

The SOR alleged that Applicant falsified his e-QIP by failing to disclose that he used another name. This other name arose because his last name was misspelled when he applied for political asylum. It is unknown whether he ever used that misspelled name. He corrected the error in the spelling of his last name when he obtained his U.S. citizenship. The petition to change his name was attached to his

e-QIP and provided during the CI/FP interview. Given the unusual circumstances under which this other name came into existence, it is plausible that Applicant had no intent to deceive when he answered “No” to that e-QIP question. I find in favor of Applicant on SOR ¶ 2.j.

The SOR further alleged that Applicant falsified his e-QIP by failing to disclose that he was involved in business transactions in China and had wired money there. The operative e-QIP question asked whether he was involved in any type of “business venture” with a foreign national. The examples of such business ventures included owning, co-owning, serving as a business consultant, or providing financial support. In this case, Applicant purchased gems and precious stones from an individual named Mike in China. These appeared to be routine, arms-length purchases of goods. No evidence was presented that Applicant had any financial interest in Mike’s business, served in a management or consultant capacity in that business, or provided financial support to it. From the evidence presented, it appears that Applicant answered the pertinent question in Section 20B correctly. I find in favor of Applicant on SOR ¶ 2.k.

SOR ¶¶ 2.l and 2.m alleged that Applicant falsified his e-QIP and Foreign Travel document by failing to disclose foreign trips. The e-QIP and Foreign Travel document were submitted on the same day, *i.e.*, October 2, 2012. A comparison of these documents reveals that he disclosed all of his foreign travel on both documents with the exception of a trip to Uzbekistan in 2001 and a trip to China in 2011. In total, he disclosed to the Government that he made seven trips to China between 2008 and 2011. He also disclosed that his oldest child was born in Uzbekistan and his parents-in-law are citizens and residents of that country. Given the extent of his disclosures of foreign travel in these documents, the evidence does not support a finding that Applicant deliberately tried to conceal a trip to China in 2011 or a trip to Uzbekistan in 2001. I find in favor of Applicant on SOR ¶¶ 2.l and 2.m.

Because none of the falsification allegations support a determination that Applicant deliberately tried to conceal information from the Government, AG ¶¶ 16(a) and 16(b) do not apply.

AG ¶ 17 lists personal conduct mitigating conditions that are potentially applicable:

(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 caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

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

(f) the information was unsubstantiated or from a source of questionable reliability.

Applicant submitted a fraudulent document to avoid military service with a communist regime. He purchased and used fraudulent documents to travel to the United States. He destroyed the fraudulent travel documents while on the flight to the United States. Because he did not present the fraudulent travel documents to U.S. authorities, it is unknown whether his entry or attempted entry into the United States would be characterized as illegal. He was detained by U.S. authorities for a period upon his arrival. Under these circumstances, it is likely that U.S. authorities were aware of the steps Applicant took to obtain the travel documents to travel to the United States. He was granted political asylum in 1994 and allowed to become a U.S. citizen in 1999. While his use of fraudulent documents is not condoned in any manner, these events occurred over 23 years ago and happened under unique circumstances that do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 17(c) applies to SOR ¶¶ 2.a through 2.f.

Applicant committed six moving traffic violations over a ten-year period. It is possible that some or all of these violations occurred when he was a taxicab driver. The seriousness of the traffic violations is unknown. Given the lack of information about these violations, limited weight is given to them. Applicant was charged twice with battery upon his spouse. One of those charges was dismissed. The other resulted in a conviction about 12 years ago. This conviction was later dismissed after he attended anger management classes and served probation. There is no evidence that Applicant has been charged with any other criminal offenses in the past 12 years. Applicant discussed these matters in his CI/FP interview, and they do not create vulnerability for manipulation or exploitation. AG ¶ 17(c) and 17(e) applies to SOR ¶¶ 2.g through 2.i, while AG ¶ 7(d) partially applies.

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 AG ¶ 2(a):

(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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and E in my whole-person analysis. Some of the factors in AG ¶ 2 were addressed under those guideline, but some warrant additional comment.

Applicant has lived in the United States for 23 years and has been a U.S. citizen for 15 years. He worked as a linguist in Afghanistan for the past year and a half. He has been commended for his service in support of U.S. and allied forces in a combat zone. His family ties in Afghanistan and Uzbekistan are outweighed by his interests and relationships in the United States. He can be expected to resolve any potential conflicts in the interests of the United States. His questionable conduct occurred a number of years ago and is unlikely to recur.

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the foreign influence and personal conduct guidelines.

Formal Findings

Formal findings 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 E:	FOR APPLICANT
Subparagraphs 2.a-2.m:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

James F. Duffy
Administrative Judge