



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
XXXXXXXXXXXX, XXXXX) ISCR Case No. 13-01318
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: Ronald C. Sykstus, Esq.

10/22/2014

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guidelines H (drug involvement) and B (foreign influence). Clearance is granted.

Statement of the Case

On January 30, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or security clearance application (SF 86). On March 21, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guidelines H (drug involvement), B (foreign influence), and E (personal conduct). The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with the national interest to continue a security clearance for Applicant, and it recommended that his case be

submitted to an administrative judge for a determination whether his clearance should be continued or revoked.

On March 31, 2014, Applicant responded to the SOR. On May 20, 2014, Department Counsel was ready to proceed on Applicant's case. On July 18, 2014, DOHA assigned Applicant's case to me. On July 30, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a hearing notice, setting the hearing for August 27, 2014. Applicant's hearing was held as scheduled. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4, and Hearing Exhibit (HE) I, which were received into evidence without objection. (Tr. 13-17.) Applicant called two witnesses, testified, and offered Applicant Exhibits (AE) A through X, which were received into evidence without objection. (Tr. 18-19, 21-92.) On September 5, 2014, DOHA received the hearing transcript (Tr.).

Procedural Matters

Department Counsel moved to withdraw SOR ¶ 3.a, a sole allegation under Guideline E (personal conduct). Without objection from Applicant's counsel, I granted Department Counsel's motion. (Tr. 8-9.)

Findings of Fact

In his SOR answer, Applicant admitted SOR ¶¶ 1.a, 2.a, 2.b, and 2.c with explanations. He denied SOR ¶¶ 2.d and 3.a with explanations. Applicant's answers and explanations are incorporated as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact.

Background Information

Applicant is a 34-year-old radar systems engineer, who has been employed by a defense contractor since November 2009. Before his current job, he worked for a defense contractor from June 2003 to October 2009. Applicant has continuously held a security clearance since 2003. He seeks to retain his security clearance, which is a requirement of his continued employment. Applicant deployed overseas for his current employer on assignments to include Afghanistan from 2011 to 2012. (GE 1, AE W, Tr. 23, 28-29, 60-62.)

Applicant graduated from high school in 1998. He was awarded a bachelor of science degree in electrical engineering and a bachelor of science degree in physics in May 2003. Applicant was awarded a master of science degree in applied physics in May 2009. (GE 1, AE A – AE C, Tr. 25-28.) Applicant married his wife (W) in December 2012 and at the time of his hearing W was eight months pregnant with their first child, discussed *supra*. At present, she does not work outside the home. (Tr. 49, 60.) Applicant has not served in the U.S. armed forces. (GE 1, Tr. 25-27.)

Drug Involvement

The basis of Applicant's past drug involvement is derived from his self-disclosure in his January 2013 e-QIP. He was forthcoming about his drug involvement in his March 2013 Office of Personnel Management Personal Subject Interview (OPM PSI) and in his SOR answer. The facts surrounding his drug involvement are not in dispute. At age 27, while living with two roommates, Applicant smoked marijuana two times, once per night, on two consecutive evenings in September 2007. At the time Applicant smoked marijuana he held a security clearance. He has not used any type of illegal drug since then. (SOR ¶ 1.a, GE 1, GE 2, Tr. 31-33, 40-48.)

Applicant has long since terminated his relationship with his roommates or anyone who used or uses drugs. He explained that he let his roommates influence his decision to use marijuana. Applicant chose to disclose his marijuana use knowing that he would suffer consequences. (SOR answer, Tr. 43-44, 64.) In addition to the responsibilities of being married, Applicant will have the added responsibilities of being a father. (Tr. 63.)

At his hearing, Applicant submitted a signed, sworn statement of intent, dated August 21, 2014, to continue abstaining from any drug abuse or other illegal use of drugs both presently and in the future, with the understanding that any drug violation will result in the automatic revocation of his security clearance. Applicant took and passed a drug test before he began working for his current employer and is willing to take additional random drug tests. (AE F, Tr. 33, 48, 63-64.)

Foreign Influence

The basis of foreign influence concerns arise from Applicant being married to a Romanian citizen, that his in-laws are resident citizens of Romania, that his father-in-law was a Romanian politician who purportedly maintains contact with Romanian government officials, and his wife purportedly has financial and property interests in Romania. (SOR ¶¶ 2.a – 2.d.)

Applicant met W, age 32, through an online dating site in February 2012. She was born and educated in Romania, where she earned a bachelor of science degree in geography and a master of science degree in travel and tourism. At the time W met Applicant, she was working for the Romanian government recording temperature and humidity levels in a non-supervisory position. W has no siblings. (SOR answer, Tr. 33-23, 49-53, 66.) W holds a "green card" issued in May 2013 with an expiration date in May 2015 and intends to become a U.S. citizen as soon as she is eligible. (AE G, Tr. 66-67.) After the birth of their child, W plans to pursue a Ph.D. program in anthropology. (AE H, Tr. 68.)

Applicant's father-in-law (FL) and mother-in-law (ML) are resident citizens of Romania. FL is a university professor at a private university and ML is a teacher at a public school. Applicant communicates with his in-laws by e-mail or telephone on

average “once a month.” (Tr. 51-53.) Applicant’s FL ended his career as a politician in 1996 and no longer maintains contact with Romanian government officials. (AE H, Tr. 35.)

Applicant has no financial or property interests in Romania. However, W owns a one-acre vineyard in her birth village. The grapes grown on her vineyard are harvested to make wine for personal consumption and are not used for commercial purposes. (Tr. 35-37, 58.) Apart from the one-acre vineyard, W has divested herself of all personal property that she may have had in Romania. The value of W’s one-acre vineyard is approximately \$10,000 to 15,000. (Tr. 54-57, 69.) Applicant and W sent a total of “around \$300” on two occasions to W’s grandmother to help defray the cost of cancer drugs for W’s grandfather. (Tr. 57.)

Applicant visited Romania in December 2012 to get married, and a second time in the fall of 2013. W went with him both of those times and a third time on her own during the summer 2012 to prepare for their “church” wedding in Romania. They had a civil ceremony in the United States before their church wedding in Romania. (Tr. 53-54, 68.)

Applicant’s connections are substantial and numerous in the United States as opposed to having minimal attenuated connections with Romania through his wife. For example, Applicant’s U.S. connections consist of: (1) owns a home in the United States valued at \$200,000; (2) has a checking and savings account in the United States with a combined value of \$16,000; (3) has a 401(k) retirement account with a current value of \$190,000; (5) registered to vote and regularly exercises his right to vote in the United States; and (6) makes an annual income of \$120,000. Applicant has no real or personal property in Romania. (Tr. 58-60, 64, 69.)

Character Evidence

Two character witnesses testified on Applicant’s behalf – W and a senior company executive (CE). W has never seen Applicant use marijuana nor would she condone his use of marijuana or any other drug. W intends on becoming a U.S. citizen when eligible. W corroborated Applicant’s testimony regarding her connections to Romania. W intends to remain in the United States, which is now her home. CE is a retired Navy officer, has held a security clearance his entire professional career, and is Applicant’s supervisor. CE has known Applicant for several years and described his work performance as being at a “very high level.” CE is aware of Applicant’s past marijuana use and is of the view that he has “addressed it properly.” Furthermore, after being made aware of and reviewing the facts surrounding Applicant’s marriage to W, CE does not have any security concerns. CE maintains complete trust in Applicant and recommended him for a security clearance. (Tr. 71-93.)

A company vice president (VP), and holder of a security clearance for 32 years, submitted a reference letter on Applicant’s behalf. He has known Applicant for four years, and spoke about him in the highest possible terms with regard to his

professionalism, honesty, and trustworthiness. VP strongly recommended Applicant for a security clearance. (AE I.) Applicant submitted: (1) work performance evaluations for the years 2010 to 2013; (2) a May 2014 company letter request to postpone Applicant's hearing because of his critical role in overseas travel; (3) three work-related awards; and (4) documentation of the favorable relationship enjoyed between the United States and Romania. (AE J – AE V.)

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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant's 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of 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. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the [A]pplicant concerned." See Exec. Or. 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. 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 not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant

from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the Applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). 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). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Drug Involvement

AG ¶ 24 articulates the security concern concerning drug involvement:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual’s reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations.

The Government established its case under Guideline H through Applicant’s admissions and the evidence presented. He fully disclosed his drug abuse in his March 2013 OPM PSI, SOR response, and at his hearing.

A review of the evidence supports application of three drug involvement disqualifying conditions. AG ¶ 25(a): “any drug abuse (see above definition);”¹ AG ¶ 25(c) “illegal drug possession;” and AG ¶ 25(g): “any illegal drug use after being granted a security clearance.”

Considering the totality of the circumstances in this case, I find application of drug involvement mitigating conditions AG ¶ 26(a) “the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;” and AG ¶ 26(b): “a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate

¹AG ¶ 24(b) defines drug abuse as the illegal use of a drug or use of a legal drug in a manner that deviates from approved medication direction.

period of abstinence; and (4) a signed statement of intent with automatic revocation of clearance for any violation.”

Concerning AG ¶ 26(a), there are no “bright line” rules for determining when conduct is “recent.” The determination must be based “on a careful evaluation of the totality of the record within the parameters set by the Directive.” ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). For example, the Appeal Board determined in ISCR Case No. 98-0608 (App. Bd. Aug. 28, 1997), that an applicant's last use of marijuana occurring approximately 17 months before the hearing was not recent. If the evidence shows “a significant period of time has passed without any evidence of misconduct,” then an administrative judge must determine whether that period of time demonstrates “changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation.”²

AG ¶ 26(a) applies. Applicant's last drug use was in September 2007, about seven years before his hearing. His illegal drug use consisted of two uses on two consecutive evenings when he was single and living with roommates. Applicant realized that drug use was incompatible with holding a security clearance and that there was no room for drug use of any kind in his life. The absence of evidence of more recent or extensive drug use, and his promise not to use illegal drugs in the

²ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). In ISCR Case No. 04-09239 at 5 (App. Bd. Dec. 20, 2006), the Appeal Board reversed the judge's decision denying a clearance, focusing on the absence of drug use for five years prior to the hearing. The Appeal Board determined that the judge excessively emphasized the drug use while holding a security clearance, and the 20 plus years of drug use, and gave too little weight to lifestyle change and therapy. For the recency analysis the Appeal Board stated:

Compare ISCR Case No. 98-0394 at 4 (App. Bd. June 10, 1999) (although the passage of three years since the applicant's last act of misconduct did not, standing alone, compel the administrative judge to apply Criminal Conduct Mitigating Condition 1 as a matter of law, the Judge erred by failing to give an explanation why the Judge decided not to apply that mitigating condition in light of the particular record evidence in the case) with ISCR Case No. 01-02860 at 3 (App. Bd. May 7, 2002) (“The administrative judge articulated a rational basis for why she had doubts about the sufficiency of Applicant's efforts at alcohol rehabilitation.”) (citation format corrections added).

In ISCR Case No. 05-11392 at 1-3 (App. Bd. Dec. 11, 2006) the Appeal Board, considered the recency analysis of an administrative judge stating:

The administrative judge made sustainable findings as to a lengthy and serious history of improper or illegal drug use by a 57-year-old Applicant who was familiar with the security clearance process. That history included illegal marijuana use two to three times a year from 1974 to 2002 [drug use ended four years before hearing]. It also included the illegal purchase of marijuana and the use of marijuana while holding a security clearance.

future eliminates doubts about his current reliability, trustworthiness, or good judgment with respect to abstaining from illegal drug use.³

AG ¶ 26(b) lists four ways Applicant can demonstrate his intent not to abuse illegal drugs in the future. With maturity, he has broken or reduced the prevalence of his patterns of drug abuse, and he has changed his own life with respect to illegal drug use. He has abstained from drug abuse for seven years and has no problem in continuing to do so. AG ¶ 26(b) applies.

The testimony from a senior company representative as well as a reference letter from a senior company executive show Applicant's work behavior has not been indicative of his having a drug problem. He is viewed as a valuable employee, who is reliable, dependable, and professional. His value to the defense industry is supported by senior company officials, who know him personally and professionally, and by his own credible testimony and evidence presented. At his hearing, Applicant acknowledged that drug abuse is incompatible with his future career and family plans. He expressed a steadfast commitment to continue lifestyle changes consistent with total abstinence of marijuana or any other drugs.

Foreign Influence

AG ¶ 6 explains the security concern about "foreign contacts and interests" stating:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, [he or she] 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 indicates four conditions that could raise a security concern and may be disqualifying in this case:

(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;

³In ISCR Case No. 02-08032 at 8 (App. Bd. May 14, 2004), the Appeal Board reversed an unfavorable security clearance decision because the administrative judge failed to explain why drug use was not mitigated after the passage of more than six years from the previous drug abuse.

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

The Government established its case under Guideline B through Applicant's admissions and the evidence presented. Applicant is married to a Romanian citizen, his in-laws are resident citizens of Romania, and his wife owns a one-acre vineyard in Romania valued at \$10,000 to \$15,000. Although Applicant's father-in-law was involved in Romanian politics in the past, that is no longer the case today. W has no siblings. Applicant's contact with his in-laws is infrequent.

W has ties of affection for her family living in Romania. She also has provided modest funds to defray the cost of her grandfather's cancer drugs. In 2011, the Appeal Board stated:

[I]n-laws represent a class of persons who are contemplated by the Directive as presenting a potential security risk. As a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse.

ISCR Case No. 09-06457 at 4 (App. Bd. May 16, 2011) (citing ISCR Case No. 03-26176 at 5 (App. Bd. Oct. 14, 2005)).

Applicant has not rebutted this presumption. His relationship through his spouse with her family living in Romania is sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion," and a potential conflict of interest between Applicant's "obligation to protect sensitive information or technology and [his] desire to help" his family and in-laws living in Romania. See ISCR Case No. 09-06457 at 4 (App. Bd. May 16, 2011). He has affection for his spouse, and she has affection for her family living in Romania. His communications with his in-laws living in Romania are less frequent, and accordingly, his own personal relationship to his in-laws does not raise a security concern.

The mere possession of close family ties with family living in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if an applicant

has a close relationship with even one relative, who has a relationship with another family member living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence collection operations against the United States, or the country has a significant problem with lawless elements or terrorists. The relationship of the Romanian government with the U.S. government reduces Applicant's burden of persuasion to demonstrate that his or his spouse's relationships with family in a foreign country do not pose a security risk. The United States and Romania have close ties forged through several years.⁴ Nevertheless, 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 his in-laws living in Romania.

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." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

There is no evidence that intelligence operatives from Romania or terrorists seek or have sought classified or economic information from or through Applicant or his in-laws. Nevertheless, his relationship with his in-laws living in Romania creates a potential conflict of interest. His relationship with them is sufficiently close to raise a security concern about his desire to assist them by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant's contacts with his spouse, and his spouse's contacts with her family living in Romania. His and his spouse's relationships with family members living in Romania raise the issue of potential foreign pressure or attempted exploitation. In addition, W has a one-acre vineyard in Romania valued at \$10,000 to \$15,000, which are sufficient to subject Applicant to a heightened risk of foreign influence or exploitation. AG ¶¶ 7(a), 7(b), 7(d), and 7(e) apply, and further inquiry is necessary about potential application of any mitigating conditions.

⁴Applicant submitted evidence to establish the cordial and ongoing positive relationship between the United States and Romania. (AE R – AE V.)

AG ¶ 8 lists six 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 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 and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant has frequent contact with and affection for his spouse, who lives with him, and she has a close relationship with her family living in Romania, which includes her mother and father. He is not able to fully meet his burden of showing there is "little likelihood that [his relationships with his relatives, friends, and business associates who are Romanian citizens and living in Romania] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) fully applies. Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with his spouse and through her with her family living in Romania. Although there is no evidence that terrorists or criminals have approached or threatened Applicant because of his work for the United States, he is nevertheless potentially vulnerable to threats and coercion made against his in-laws living in Romania. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S."

Applicant has established that “[he] can be expected to resolve any conflict of interest in favor of the U.S. interest.” Applicant was born in the United States. He has worked for defense contractors for 11 years and has deployed to Afghanistan for his current employer. All of Applicant’s assets are in the United States in contrast to having no assets in Romania. Furthermore, as of the hearing date, Applicant was about to become a first-time father. Through Applicant’s many years of service as a defense contractor, he has repeatedly shown his patriotism, loyalty, and fidelity to the United States.

AG ¶ 8(f) applies to the allegations in SOR ¶ 2.d because the value of W’s one-acre vineyard in Romania is insignificant in contrast to Applicant’s U.S. assets.

In sum, Applicant’s connections through his spouse to her family living in Romania are much less significant than his strong connections to the United States. His connections to the United States taken together are sufficient to fully overcome the 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 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 have incorporated my comments under Guidelines H and B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant has been and is willing to maintain conduct expected of one entrusted with a security clearance. His employer and family support him. His employment history to date is indicative of stability and a strong work ethic. This support and self-introspection should ensure his continued success. Applicant demonstrated the correct attitude and commitment to remaining drug free. Considering his demeanor

and testimony, I believe Applicant has learned from his mistakes, and his questionable behavior is unlikely to recur. I find Applicant has presented sufficient evidence of rehabilitation.

There are important factors supporting a foreign influence security concern and tending to support revocation of Applicant's security clearance because of Applicant's connections to Romania, and the risk that his in-laws face in the event that terrorists or criminals discover his relationship to them. In ISCR Case No. 09-06457 (App. Bd. May 16, 2011), the Appeal Board concluded that an Applicant's father, who was prominent in the Afghan Government and who had guards for protection because of his position, might receive additional danger or threats because his son wanted to be a linguist in Afghanistan. The Appeal Board explained their rationale for reversing that grant of access to classified information stating:

In the case before us now, those who might be tempted to use Applicant's father as a means of coercion include terrorist organizations that are hostile to the U.S. and that are engaged in operations designed to defeat our geopolitical goals. As we have previously stated, terrorist activity in a foreign country is an important consideration in Guideline B cases. See, e.g., ISCR Case No. 05-03250 at 4 (App. Bd. Apr. 6, 2007).

Applicant has emotional ties to his spouse, and she has emotional ties to her mother and father, who are citizens and residents of Romania. Should insurgents, terrorists, or criminals discover their connections to Applicant, his family living in Romania would face some increased probability of reprisal, especially kidnapping for ransom. They are vulnerable should terrorists or insurgents seek to harm them.

The whole-person factors weighing towards granting Applicant's security clearance are more significant. He was born in the United States 34 years ago. He has been employed by defense contractors for 11 years and deployed to Afghanistan with his current employer. All of Applicant's assets are in the United States as opposed to having no assets in Romania. His employer lauds his duty performance and contributions to mission accomplishment. He is mature and responsible.

Applicant's strong connections to the United States, community, and his employment establish "such deep and longstanding relationships and loyalties in the U.S., [he] can be expected to resolve any conflict of interest in favor of the U.S. interest." See Discussion of AG ¶ 8(b), *supra*. To conclude, Applicant presented sufficient evidence to explain, extenuate, or mitigate the security concerns raised. Applicant met his ultimate burden of persuasion to obtain a favorable clearance decision. I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole-person factors"⁵ and supporting evidence, my application of the pertinent factors under the Adjudicative

⁵See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

Process, and my interpretation of my responsibilities under the Guidelines. For the reasons stated, I conclude he is eligible for access to classified information.

Formal Findings

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

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a – 2.d:	For Applicant
Paragraph 3, Guideline E:	Withdrawn
Subparagraph 3.a:	Withdrawn

Decision

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Clearance is granted.

ROBERT J. TUIDER
Administrative Judge