



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



In the matter of:)	
)	
)	ISCR Case No. 13-01324
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

04/16/2015

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on June 26, 2013. The Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on February 7, 2014, detailing security concerns under Guideline B, Foreign Influence, and Guideline E, Personal Conduct. The action was taken under Executive Order 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 For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR, and he answered it on March 10, 2014. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on February 6, 2015, and I received the case assignment on February 23, 2015. DOHA issued a Notice of Hearing on March 3, 2015, and I convened the hearing as scheduled on March 24, 2015.¹ The Government offered exhibits (GE) marked as GE 1 through GE 6, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits (AE) marked as AE A through AE I, which were received and admitted into evidence without objection. The record closed on March 24, 2015. DOHA received the hearing transcript (Tr.) on April 2, 2015.

Procedural Ruling

Notice

Applicant received the notice of the date, time and place of the hearing less than 15 days before the hearing. I advised Applicant of his right under ¶ E3.1.8. of the Directive to receive the notice at least 15 days before the hearing. Applicant affirmatively waived this right under the Directive. (Tr. 11)

Amendment

SOR ¶ 1.g alleges a trespassing charge in 2004. The record does not contain evidence that Applicant was arrested in 2004 for trespassing. Applicant acknowledges that the 2005 arrest for shoplifting included a trespassing charge, which is also reflected on the Federal Bureau of Investigation (FBI) criminal records report (GE 5). The SOR is amended in accordance with the record to change the date from 2004 to 2005.

Request for Administrative Notice

Department Counsel submitted a request that I take administrative notice of certain facts relating to Morocco. The request and the attached documents were not admitted into evidence, but were included in the record as Hearing Exhibit 1, enclosures I - IV. The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute, and they are set out in the Findings of Fact below.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a - 1.f and 2.a - 2.g of the SOR. His admissions are incorporated herein as findings of fact.

¹The Government submitted a letter of rights and obligations dated November 25, 2014 and mailed to Applicant, to be placed in the file.

He denied the factual allegations in ¶ 2.h of the SOR.² He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 31 years old, worked as a linguist for a DOD contractor in Iraq from October 2009 until December 2011. He received an offer for a similar position in December 2014 and on March 17, 2015. Applicant currently works as a security guard in a non-DOD contract position.³

Applicant enlisted in the United States Army in 2006. During his enlistment, he served as a linguist in Iraq from January 2007 to April 2007 and November 2007 to June 2008. For this service, he received the National Defense Service Medal, Global War on Terrorism Service Medal, and Iraq Campaign Medal with Campaign Star. He also received the Army Service ribbon and Armed Forces Reserve Medal with device. The Army discharged Applicant in June 2009 under honorable conditions (general) because of minor infractions.⁴

Applicant provided two letters of appreciation for his work in 2011. One author opined that Applicant worked as a linguist and that he never mishandled or disclosed any classified information to unauthorized personnel. Another author described him as a skilled linguist who interpreted for high-level government and military officials and as a valued member of their team. A coworker provided a letter of recommendation based on Applicant's service in Guantanamo Bay. His coworker described him as a skilled interpreter who worked well in many highly stressful situations. Applicant also received two certificates of appreciation for his work as an interpreter.⁵

Foreign Influence

Applicant was born and raised in Morocco. He graduated from high school. He immigrated to the United States in March 2003 at the age of 19. He came to the United States by himself. He became a naturalized United States citizen in April 2008. He

²When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). 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. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

³GE 1; AE B; AE G - AE I; Tr. 22.

⁴GE 1 - GE 3; GE 5; GE 6; AE D.

⁵AE A; AE C; AE E; AE F.

holds only a United States passport, after renouncing his Moroccan citizenship and returning his Moroccan passport. Applicant speaks English, Arabic and French.⁶

Applicant married his first wife in 2002 at the age of 18. They divorced about two years later, after he immigrated to the United States alone. He explained that he and his first wife divorced because their families did not get along with each other. He and his second wife married in 2009 and divorced in 2014. He does not have any children.⁷

Applicant's 69-year-old father and 59-year-old mother⁸ are citizens and residents of Morocco. His father retired from the Moroccan military in the late 1990s following about 30 years of service. After his retirement, Applicant's father sold real estate. His father is now retired, and his mother has never worked outside the home. His father receives a retirement income from the Moroccan army. Since his arrival in the United States, Applicant has sent his parents various amounts of money, depending upon his income.⁹ He has not sent money home in approximately two years because he has only enough income to pay his bills. Applicant speaks with his parents one to three times a month, depending upon their health issues. His conversations with his parents revolve around family, their health issues, and daily life. His parents are not involved in political activities or with other governmental organizations.¹⁰

The documentation of record provides confusing information about how many siblings Applicant has.¹¹ His 36-year-old sister is a citizen and resident of Morocco. She is married with three children. She does not work outside of the home. Applicant thinks her husband works for a local or city government. His 39-year-old brother is a resident and citizen of Morocco. He retired from the Moroccan army and now works as a taxi driver. He is married with three children. Applicant lost contact with his 40-year-old brother six to seven years ago because this brother disrespected his parents. His family does not have contact with this brother.¹² The October 2009 background investigation

⁶GE 1; GE 3, p. 29; Tr. 22, 30, 48.

⁷GE 1 - GE 3; GE 6; Tr. 22-23.

⁸At the hearing, Applicant testified that his father was 72 years old and that his mother was 66 years old. On his 2013 e-QIP, he listed his father's birth date as December 1951 and his mother's birth date March 1956. On his 2006 SF-86 (security clearance application), he listed his father's birth date as January 1946 and his mother's birth date as December 1955. In a document prepared during his August 13, 2006 interview, he listed his father's birth date as December 1946 and his mother's birth date as March 1957. Based on the information provided, the beginning of his father's military service in 1966, and the ages of his siblings, I used 1946 as his father's birth year and 1956 as his mother's birth year. GE 1; GE 2.

⁹His e-QIP reflects periods of unemployment from June 2009 until 2013. GE 1.

¹⁰GE 1 - GE 3; Tr. 23-30, 44-45.

¹¹Like his parents, Applicant list various dates for their dates of birth.

¹²This brother is not listed as a security concern on the SOR.

lists a third brother as a citizen and resident of France.¹³ These family members are not active in politics or other governmental organizations. Applicant talks with his sister once a month and his brother in Morocco if this brother is at Applicant's parents' home when Applicant calls.¹⁴

Applicant has returned to Morocco to visit in 2007, 2008, 2009, 2010, 2011, 2012, 2014, and February 2015. Applicant returned home in February to visit his mother who has a serious illness. During his visits, he spends most of his time at his parents' home. Occasionally, he goes to a mall or supermarket. He does not have any contact with government officials on these visits.¹⁵

Personal Conduct

The SOR alleges seven incidents of criminal conduct or other misconduct occurring between 2004 and 2009. In April 2004, the police arrested and charged Applicant, who was 20 years old, as a minor in possession of alcohol.(SOR ¶ 1.e) Applicant and his friends were drinking on the beach. The court gave him community service and later dismissed the charges. In June 2004, Applicant's friend started talking to a young woman at the beach. Her boyfriend and Applicant's friend got in a fight, that Applicant tried to break up. (SOR ¶ 1.f) The police arrived and gave all of them a ticket for disorderly conduct. He received eight hours of community service as his punishment, and the court late dismissed the case. In 2013, Applicant told the investigator that he does not recall a second disorderly conduct charge listed on the FBI criminal record report for him, but advised that the incident may have been related to alcohol use. During his October 2009 investigation interview, he advised that he and his friends got into a fight, and the police arrested them. He paid a \$150 fine. This incident is not alleged in the SOR.¹⁶

In November 2004, Applicant, three of his friends, and an unknown person entered an electronics store. The unknown person stole an item, and store security stopped all them as they left the store. The store retrieved the stolen item and decided not to prosecute them, but told all of them that they were not to return to the store. In January 2005, all of them, including the unknown person, returned to the store. The unknown person stole another item. This time store security called the police, who charged all them with shoplifting and trespassing. (SOR ¶¶ 1.d and 1.g as amended) Applicant remembers paying a fine and receiving community service. Concerning the failure to appear charge (SOR ¶ 1.c), Applicant believes this related to a missed court date for the shoplifting and trespass charges. He had moved without giving the court his new address. Applicant's criminal incidents in 2004 and 2005 were resolved by 2006 as

¹³This brother is not listed as a security concern on the SOR.

¹⁴GE 1 - GE 3; Tr. 25-28, 43.

¹⁵GE 1; Tr. 27, 45-46.

¹⁶GE 2 - GE 4; GE 6; Tr. 36-37.

shown by the evidence. He no longer associates with these individuals. Since enlisting in the Army, he has lived a long distance from these individuals.¹⁷

When Applicant met with the Office of Personnel Management (OPM) investigator on July 12, 2013, he voluntarily advised that he and four other soldiers received an Article 15, nonjudicial punishment, while in the Army Reserve in September or October 2006. He and the four other soldiers received a weekend pass. They did not return from liberty on time. He received three extra days of duty as his punishment.¹⁸

In 2009, Applicant received a second Article 15. He did not feel well and sought medical treatment. The physician gave him a 48-hour "sick in quarters chit". Before the 48 hours expired, Applicant felt better and went for food at a restaurant and pub on base. A sergeant from his unit observed him eating and reported him for not being at his work assignment. On Monday morning, he was called to the battalion office and questioned about this incident. Because his command had not been advised about his medical situation, his command wrote him up as absent without authorization. As a result of his Article 15 proceeding, he received 45 days of extra duty, 45 days of restriction, and a reduction in paygrade from E-3 to E-2. He also forfeited half of his pay for two months. During his punishment, the Army discharged Applicant under honorable conditions.¹⁹

Applicant completed his e-QIP on June 26, 2013. He answered "no" to the following questions in Section 22 - Police Record: "In the past seven years have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you?" and "In the past seven years have you been arrested by any police officer, sheriff, marshall or any other type of law enforcement official?"

The SOR alleges that he intentionally failed to list his arrests in 2004 and 2005 and that the records indicate that his last court appearance was in 2006. The record lacks any evidence which reflects a court date in 2006. Applicant listed his arrests in 2004 and 2005 on his 2006 SF-86 (security clearance application) and his arrests were discussed during his 2006 and 2009 interviews. The SOR does not allege that he failed to list his Article 15s from 2006 and 2009. Applicant acknowledged his general discharge on his e-QIP and during his 2009 interview.²⁰

Morocco

I take administrative notice of the following general facts related to Morocco. Morocco is a constitutional monarchy with a bicameral parliament and independent

¹⁷GE 2 - GE 4; GE 6; Tr. 37-41.

¹⁸GE 6.

¹⁹GE 1; GE 5; GE 6; Tr. 31-35.

²⁰GE 1 - GE 3.

judiciary. The King is the dominant authority and the pre-eminent state authority in Morocco's political system. The King endorses all legislation before it goes to Parliament. He has authority to approve and dismiss government ministers, dissolve Parliament, call elections, and address certain issues through decree. Morocco has human rights problems including, but not limited to, use of excessive force to quell peaceful protests, use of torture by security forces, and a disregard of the rule of law by security forces. Terrorists cells exist in Morocco. The Moroccan government has developed a comprehensive counterterrorism strategy that includes vigilant security measures, regional and international cooperation and counterradicalization policies. Morocco is a long-standing and effective partner in the Department of State's antiterrorism assistance program designed to improve technical investigative training for police and prosecutors. Government officials have been successful in disrupting terrorist cells before they acted against the citizens and guests of Morocco. Morocco is a steady and close ally of the United States and is partner in regional security. During the "Arab spring" in 2011, the King initiated a series of reforms in Morocco, and a new constitution was drafted.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, 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.

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

(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; and

(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.

Applicant's parents, one brother, and one sister are citizens and residents of Morocco. He does not know the whereabouts of his oldest brother because this brother

is estranged from the family. His third brother is a citizen and resident of France. Applicant maintains a normal familial relationship with his family members in Morocco. He talks with his parents one to three times a month. He talks with his sister once a month and occasionally with his brother living in Morocco. He generally visits his family once a year, but visited his parents two months ago because his mother is seriously ill. His family relationships are not *per se* a reason to deny Applicant a security clearance, but his contacts with his family members must be considered in deciding whether to grant Applicant a clearance.

In determining if security risk exists, I must look at Applicant's relationships and contacts with his family, as well as the activities of the Moroccan Government and of terrorist organizations in Morocco. The risk that an applicant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. Applicant's relationship and contacts with his family in Morocco and the Moroccan government create a heightened risk and a security concern because of the ongoing terrorist activities in Morocco and the human rights record of Morocco. There is no evidence that the Moroccan government engages in espionage activities in the United States or targets American-Moroccan citizens by exploiting, manipulating, pressuring, or coercing them to obtain protected information.

Under the guideline, the potentially conflicting loyalties must be weighed to determine if an applicant can be expected to resolve any conflict in favor of U.S. interests. In determining if Applicant's contacts in Morocco cause security concerns, I considered that Morocco and the United States have a close working relationship in the war on terrorism, and Morocco has a strong counterterrorism policy. The human rights issues in Morocco continue to be a concern. While none of these considerations by themselves dispose of the issue, they are all factors to be considered in determining Applicant's vulnerability to pressure or coercion because of his family in Morocco. Applicant's contacts with his family in Morocco raise a heightened risk under AG ¶¶ 7(a), and 7(b).

The Foreign Influence guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 8(a) through ¶ 8(f), and 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 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; 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's parents are retired, and his sister is a homemaker. His one brother works as a taxi driver in private industry, although he is retired from the Moroccan military. Another brother lives in France and is not a security concern. His third brother is estranged from the family. His family members are not politically active and live quietly. They are not in the public eye, which would make them possible targets of terrorists. There is little likelihood the work, lifestyle and activities of Applicant's family members in Morocco would place him in a position of having to choose between the interests of the United States and the interests of a foreign individual, group, organization, or government. Likewise, Applicant's family contacts do not create a conflict of interest because his loyalties are with the United States. He has mitigated the security concerns under AG ¶¶ 8(a) and 8(b), but not under AG ¶ 8(c) because his communications with his family members are not infrequent and casual.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified 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:

(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;

(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, engaging 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 other group; and,

(g) association with persons involved in criminal activity.

The Government alleges two incidents of falsification by Applicant when he completed his 2013 e-QIP (SOR ¶ 2.h). The Government alleges that Applicant failed to list his criminal charges, arrests, and convictions in 2004 and 2005 because his last court date was in 2006. For AG ¶ 16(a) to apply, Applicant's omissions must be deliberate. Applicant denied intentionally falsifying his answers on his e-QIP. He asserted that these charges, arrests, and convictions were beyond the seven-year requirement of the questions.

When the allegation of falsification is controverted, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.²¹

Applicant correctly argues that the arrests and charges in 2004 and 2005 occurred more than seven years before he completed his 2013 e-QIP. The record lacks any evidence that these matters were tried in a court of law after he completed his e-QIP. The SOR does not allege that Applicant failed to list his two Article 15 proceedings. Although both occurred within seven years of his completing his e-QIP, the questions are not directed to conduct which occurred while he was in the military. The Government has not established that he intentionally falsified his e-QIP as alleged. A security concern is not raised under AG ¶ 16(a)

As a new immigrant and youth, the police arrested Applicant and his friends for conduct arising from alcohol use or poor judgment. Applicant did not list these incidents on his 2013 e-QIP, which could create a vulnerability to exploitation, manipulation, and duress. The Government has established a security concern under AG ¶¶ 16(e) and 16(g).

AG ¶ 17 provides conditions that could mitigate security concerns:

(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;

²¹ See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

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

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant's last involvement with the civilian criminal justice system occurred in 2005. Over the last 10 years, Applicant has avoided conduct which is criminal in nature, making it unlikely that he will be vulnerable to exploitation, manipulation, or duress because of his long ago criminal behavior. He no longer associates with these friends and does not live near them.

Applicant listed his discharge from the Army under honorable conditions on his 2013 e-QIP under his military service. He discussed the discharge during his 2009 and 2013 interviews. The Government was fully aware of the circumstances of his discharge from the Army in 2009. Applicant provided the information about his 2006 Article 15. Since 2009, Applicant has not been involved in any questionable activities. He has matured and changed his thinking about how he should behave. There is little likelihood that he can be pressured to mishandle classified information because of his Article 15 proceedings. Applicant has mitigated the security concerns under Guideline E.

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 an applicant's conduct and all relevant 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct,

but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant immigrated to the United States by himself while still a teenager. He made friends with other teenagers. With his new friends, he engaged in activities which resulted in misdemeanor charges for disorderly conduct, shoplifting, minor in possession of alcohol, and trespass. After he enlisted in the Army, Applicant slowly matured. He has not been involved in any criminal activity for at least 10 years and is unlikely to be involved in criminal activity in the future. He received two Article 15 punishments while in the Army for minor incidents. These incidents do not reflect negatively on his overall trustworthiness. He has received letters of appreciation, awards for his service in Iraq, and praise by his superiors and co-workers for his excellent linguist skills.

Applicant's family in Morocco does not raise a security concern given the relationship between the United States and Morocco and the lack of involvement in Moroccan politics by his family members living in Morocco. In considering all the evidence of record, there is little likelihood that Applicant can be pressured, exploited, manipulated or coerced to provide classified information to other governments or terrorists because of his family in Morocco or his past criminal conduct.

Overall, the record evidence leaves me without 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 from his foreign influence and personal conduct under Guidelines B and E.

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.f:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.h:	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.

MARY E. HENRY
Administrative Judge