



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



In the matter of:)
)
) ISCR Case No. 14-02730
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: *Pro se*

04/21/2016

Decision

CERVI, Gregg A., Administrative Judge:

Applicant has not mitigated the drug involvement concerns, including under personal conduct, but mitigated the falsification concern and the foreign influence concerns. Overall, eligibility for access to classified information is denied.

Statement of the Case

Applicant completed a Questionnaire for National Security Positions (SF 86)¹ on February 26, 2013. On February 18, 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR)² to Applicant detailing security concerns under Guidelines H: Drug Involvement; E: Personal Conduct; and B: Foreign Influence.³

¹ Also known as a Security Clearance Application (SCA).

² Item 1. (SOR)

³ The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DoD on September 1, 2006.

Applicant responded to the SOR on March 2, 2015,⁴ and elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on January 4, 2016.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit documentary material to refute, extenuate, mitigate or explain the security concerns. Applicant received the FORM on January 7, 2016. He submitted a response to the FORM to include a letter of recommendation from his employer (marked as AE A), and a cover letter and personal statement labeled "Reasons for Granting a Security Clearance" (marked as AE B). He did not assert any objections to the Government's evidence. Department Counsel did not object to Applicant's submissions. AE A and AE B are admitted into evidence.

The case was assigned to me on February 26, 2016. The Government's exhibits included in the FORM (Items 1 to 6) are admitted into evidence. Additionally, Department Counsel requested that I take administrative notice of certain facts concerning the country of the Ukraine, which I have done. Those specific facts are detailed later in this decision.

Findings of Fact

The SOR alleges use of marijuana over a period of years to 2013; use of hallucinogenic mushrooms on several occasions to 2008; use of illegal drugs while holding a security clearance; personal conduct concerns regarding drug use and failing to report his past drug use on his SF 86 in 2002; and foreign influence issues related to his spouse and parents-in-law.

Applicant admitted all of the SOR allegations except for SOR ¶ 1.b, although he admits he used hallucinogenic mushrooms while in college and last in November 2008 while in Amsterdam. The SOR allegations are supported by Applicant's SF 86's, summary of interview (PSI), Answer, and his exhibits.⁵ Since Applicant and Department Counsel elected to proceed with a decision without a hearing, I was unable to evaluate Applicant's credibility and demeanor, or to make further inquiry into the drug use and falsification allegations, and his personal status.

Applicant is a 46-year-old furniture installer/foreman for a Government contractor. He completed his bachelor's degree in 1997 and is currently married with one child.⁶ He was previously granted a security clearance in November 2002, and has been

⁴ Item 3. (Answer), notarized and submitted on March 3, 2015.

⁵ Items 3-6; AE B.

⁶ Items 3-4.

employed as an independent contractor to fulfill requirements to install or supervise furniture construction projects at U.S. embassies, consulate compounds and other smaller installations throughout the world. He is employed by a U.S. consulting firm for jobs that last anywhere from a few days to a few months at a time. From 2003 to 2013, Applicant reported working on jobs in 32 countries for two government contractors. He has worked for his current employer since 2005 and completed 26 international installation projects.⁷ Applicant's employer describes him in glowing terms, noting he is an "integral part" and their "singular focus" on international U.S. government work for the company. He is viewed as a "highly valuable team member," and possessing a "current security clearance is vital" to his future participation in the business.⁸

Applicant acknowledged his illegal drug use, including use after being granted a security clearance in 2002. He explained that his marijuana use began while he was in college, and continued to May 2013. He claimed that on most occasions, he obtained marijuana from his brother, who supplied it in return for work that Applicant did for him, or was purchased using a joint bank account intended to assist with maintenance of their father's home.⁹ He claimed that he used marijuana about five times a week in the morning, while between jobs, to alleviate his "bad moods" which resulted from his chronic back pain. He described his marijuana use as "self-prescribed medicinal use." His last purchase and use of hallucinogenic mushrooms occurred in 2008 while Applicant was in Amsterdam, where he asserts it was legal.

Applicant did not report any past drug use when he completed his first SF 86 in 2002. He claimed that his failure to report was under the "guidance" of the company owner, who assisted him with the security clearance application.¹⁰ He indicated that he knew it was wrong and was looking forward to correcting the record. He did not correct the record until he completed his second SF 86 in 2013. However, in his 2013 SF 86, he asserted that his marijuana use was private with only a few people knowing, that he used drugs only while unemployed between jobs, that current legislation has changed the way society looks at the use of THC,¹¹ and that his use of THC never put any project or information at risk. He stated in his Answer that since May 2013, he ceased all use of drugs for various reasons, and vowed to not use them again.

⁷ Item 4. AE A indicates that Applicant completed 24 projects for his current employer since 2005.

⁸ Item AE A.

⁹ Applicant also described two occasions where he personally purchased marijuana in Jamaica and mushrooms in Amsterdam.

¹⁰ Applicant does not describe the type of "guidance" he received, nor did he assert that he was coerced into falsifying his SF 86.

¹¹ THC is an abbreviation for tetrahydrocannabinol: the active ingredient in cannabis, giving it its narcotic and psychoactive effects. Dictionary.com. *Dictionary.com Unabridged*. Random House, Inc. <http://www.dictionary.com/browse/thc> (accessed: March 11, 2016).

While working in the Ukraine from May 2011 to October 2011, Applicant met his spouse. She is 27 years old and was a former concierge manager for a hotel. She was born and resided in a town in western Ukraine, where the pro-Ukrainian movement is strongest. Applicant returned to the Ukraine in February 2012 to propose. His spouse entered the United States in October 2012 on a fiancée visa, and they were married in November 2012. Applicant's spouse is a citizen of Ukraine, but holds the status of a U.S. permanent resident. At the conclusion of the three-year waiting period, she intends to apply for U.S. citizenship. Applicant notes that his spouse has submitted herself for investigation by the U.S. Government for a security clearance or trustworthiness determination, and to obtain a U.S. green card.¹² They have a child, recently born in the U.S., who is an American citizen and resides with them in the United States.

Applicant's mother-in-law, a restaurant worker, and father-in-law, who is self-employed, are citizens and residents of northwest Ukraine. They have no reported relationships with the Ukrainian or Russian governments, allegiance to Russia, or anyone involved in the conflict in eastern Ukraine. They speak little to no English, and do not receive support from Applicant or his spouse. Applicant's spouse has regular contact with them by phone and they occasionally visit the Ukraine, but Applicant has little meaningful contact over the phone or in person because of the language barrier.

Administrative Notice: Ukraine

Ukraine is a republic with a political system composed of three branches of government. In February 2014, the parliament voted to remove President Yanukovich from office after he fled the country. This followed three months of massive anti-government protests on Kyiv's central square (the Maidan) over his decision to postpone signing political and trade agreements with the EU, in favor of closer ties with Russia, as well as his violent responses to the protests. In February, Russian armed forces intervened militarily in Crimea, which Russia occupied and purported to "annex" in March. Additional unrest and civilian deaths occurred when pro-Russian protesters in eastern and southern Ukraine seeking more autonomy from the national government, clashed with government forces. In May 2014, President Poroshenko was elected, which signaled a strong democratic mandate for change in Ukraine.

The Russian occupation of Crimea has displaced more than 18,000 Crimeans and caused numerous human rights abuses. Russia has been accused of orchestrating attacks by Ukrainian separatists. Ukraine has also been cited for abuse of persons in custody, harsh prison conditions and a corrupt judiciary, societal violence against women, children, and ethnic minorities, and human trafficking.

Despite attempts to cease hostilities and establish peace through political dialog, the government's efforts have been largely rejected and the situation in Ukraine remains precarious. Violent clashes between Russia-backed separatists and Ukrainian forces continue in eastern regions of the country. In addition, Russian military forces continue

¹² Item 3, AE B. Applicant noted that his spouse has been "investigated by DSS (with an SF 86)" and by "USCIS for immigration status."

to occupy the Crimean Peninsula, supply weapons and material support to the separatists, and are present on the eastern border of Ukraine.

In December 2015, the State Department issued a warning to U.S. citizens to defer all travel to Crimea and the eastern regions of Donetsk and Luhansk oblasts. Separatist groups have threatened, detained or kidnapped persons, including U.S. citizens, and violent clashes have caused over 9,000 deaths. There are reports of abuse against local populations that oppose separatist goals.

The United States has stood by Ukraine as Russia has sought to stymie its new democratic government. The leaders of the past who controlled Ukraine for decades are fighting back using their control of the media, state owned enterprises, Rada (parliament) deputies, the courts and the political machinery, while holding old loyalties and threats over the heads of decision-makers to block change.¹³

Since the start of the crisis, the United States has committed over \$760 million in assistance to Ukraine, in addition to two, \$1 billion loan guarantees. U.S. advisors serve in almost a dozen Ukrainian ministries and localities and help deliver services, eliminate fraud and abuse, improve tax collection, and modernize Ukraine's institutions.¹⁴

Since November 2015, the United States has noted that Ukraine has largely stabilized its currency and is rebuilding its reserves; seen some modest growth in the economy; approved a 2016 budget in-line with IMF requirements; passed civil service reform to create competition and transparency; stood up an independent Anti-Corruption Bureau and Special Prosecutor; and, has begun to decentralize power and budget authority to local communities to improve services and policing for its citizens.¹⁵ The Ukrainian government has not been recently cited for targeting U.S. citizens for human rights abuses or intelligence collection.

Policies

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

¹³ Statement of Victoria Nuland, Assistant Secretary, Bureau of European and Eurasian Affairs before the Senate Foreign Relations Committee, Washington, DC, March 15, 2016.

¹⁴ *Id.*

¹⁵ Statement of Victoria Nuland, Assistant Secretary, Bureau of European and Eurasian Affairs before the Senate Foreign Relations Committee, Washington, DC, March 15, 2016.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security clearance decision.¹⁶ In *Department of Navy v. Egan*,¹⁷ the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁸

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." It is well-established law that no one has a right to a security clearance. As noted by the Supreme Court in *Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.¹⁹

The Government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive and classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive or classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive or classified information.

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

¹⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan.27, 1995).

¹⁷ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

¹⁸ *Egan*, 484 U.S. at 531.

¹⁹ *Egan*, 484 U.S. at 531.

Analysis

Guideline H: Drug Involvement

The concern under this guideline is set out in AG ¶ 24:

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." Drugs are defined in AG ¶ 24(a)(1) as "[d]rugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens).

The guideline notes several conditions that could raise security concerns. Based on the evidence, I find that the following disqualifying conditions apply:

AG ¶ 25(a): any drug abuse, defined in AG ¶ 24(b) as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction";

AG ¶ 25(c): illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

AG ¶ 25(g): any illegal drug use after being granted a security clearance.

Applicant has a long history of marijuana use, including use through May 2013. Additionally, he has used hallucinogenic mushrooms and marijuana after being granted a security clearance in 2002.

The following mitigating conditions are potentially relevant:

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;

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

Based on the record evidence, mitigation conditions is not applicable. Although Applicant provided a statement of intent to discontinue drug use and claimed his last use was in 2013, Applicant has a long history of marijuana use, to include periods of renewed situational use. His claim of regular, near-daily use to alleviate his poor mood caused by back pain only while between jobs, is troubling. Since he elected a decision without a hearing, I am unable to make a determination as to his current circumstances, or his views with regard to substance abuse. Although Applicant claims that he stopped using illegal drugs after completion of his recent SF 86, the circumstances in which he used drugs in the past remain the same today. He has not provided evidence from close friends, family or co-workers with knowledge of his past drug use to substantiate his claims of abstinence, nor has he undergone a drug treatment program or drug counseling to assist him to refrain from future use or to aid me to determine his current status. His long history of substance abuse and relatively recent use of marijuana while holding a security clearance outweigh his claim of abstinence from illegal drug use.

Guideline E: Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

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.

The guideline notes several conditions that could raise security concerns. Based on the evidence, I find that the following disqualifying conditions apply:

AG ¶ 16(a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . used to conduct investigations . . . [or] determine security clearance eligibility or trustworthiness . . . ; and

AG ¶ 16(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.

Applicant admitted to intentionally falsifying his 2002 SF 86 by not disclosing his past drug use (SOR ¶ 2.a), and the underlying allegations related to SOR ¶ 1.a-c²⁰ (Use

²⁰ Although he denied SOR ¶ 1.b, he admitted to use of illegal mushrooms while in college and in 2008; clarifying that he used mushrooms once in the last 18 years. See Item 3.

of marijuana and hallucinogenic mushrooms, including while possessing a security clearance). Although Applicant claimed that he completed the 2002 SF 86 under the “guidance” of his employer, he acknowledged that his false response to the SF 86 question involving past illegal drug use was improper.

The following mitigating conditions are potentially relevant:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

AG ¶ 17(b): the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

AG ¶ 17(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;

AG ¶ 17(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; and

AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

While not disclosing his past drug use as a young adult when completing his SF 86 in 2002, Applicant voluntarily disclosed his illegal drug use when completing his SF 86 to renew his security clearance. Recognizing that the guidance provided by his former employer may have improperly influenced his decisions at the time, he acknowledged his previous failure to disclose and forthrightly provided corrected information when the opportunity presented itself. I find that mitigating factors AG ¶ 17(a)-(d) apply with regard to SOR ¶ 2.a. Mitigation is not appropriate for SOR ¶ 2.b. Applicant’s relatively recent use of marijuana, his use of mushrooms and illegal drug use while holding a security clearance, has not been mitigated. The amount of time since his last use of mushrooms may invoke some mitigation credit, however overall, his current use of illegal drugs after being granted a clearance weighs heavily on his overall reliability and trustworthiness.

Guideline B: Foreign Influence

The SOR alleges that Applicant's spouse is a citizen of the Ukraine, and his mother-in-law and father-in-law are citizens and residents of the Ukraine.

The security concern under this guideline is set out in AG ¶ 6 as follows:

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.

Two disqualifying conditions under this guideline are relevant:

AG ¶ 7(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

AG ¶ 7(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.

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.²¹ Thus, I have considered not only Applicant's relationships to his spouse and in-laws in the Ukraine, but also the citizenship and residency of family members who may be vulnerable to kidnapping or exploitation by insurgent and terrorist elements.

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."²²

²¹ ISCR Case No.01-22693 at 7 (App. Bd. Sep. 22, 2003).

²² ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

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.”²³ 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 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 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.²⁴

AG ¶ 7(a) requires substantial evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. I am satisfied that the activities of Russian supplied separatist groups and activity of Russian elements inside of eastern Ukraine and the Crimea, are sufficient to establish the “heightened risk” in AG ¶ 7(a) and the potential conflict of interest in AG ¶ 7(b).

A finding that Applicant’s circumstances raise the above listed disqualifying conditions does not end the foreign influence analysis. However, Applicant’s burden in mitigating concerns that he could be influenced or coerced through his foreign family members must be examined under the “very heavy burden” standard that the Appeal Board has usually reserved for cases involving hostile foreign countries.²⁵ Although U.S. relations with the current Ukrainian government are good, foreign-backed forces with interests inimical to the United States operate freely in parts of Ukraine and pose a significant threat not only to Ukraine’s sovereignty, but also to U.S. national security interests. In light of these circumstances, the serious security concerns that are raised by an individual with family members in a hostile foreign country are also present in the current case. Accordingly, Applicant’s mitigation case must be examined through the lens of this heightened scrutiny.

²³ ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at 15-16 (App. Bd. Mar. 29, 2002).

²⁴ 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).

²⁵ ISCR Case No. 10-09986 at 3 (App. Bd. Dec. 15, 2011) (“an applicant with family members in a country that is hostile to the U.S. bears a ‘very heavy burden’ to show that the family members are not a means of coercion or exploitation.”). See *also* ISCR Case No. 11-12202, n. 10 (App. Bd. June 23, 2014) (after declining to extend heightened scrutiny to cases involving punitive discharges or dismissals from the military, Appeal Board reaffirmed use of heightened standard in cases involving hostile foreign countries).

In meeting this higher standard of proof and persuasion, an individual is not required “to sever all ties with a foreign country before he or she can be granted access to classified information.”²⁶ However, what factor or combination of factors will mitigate security concerns raised by an applicant with family members in a foreign country is not easily identifiable or quantifiable.²⁷ An administrative judge’s predictive judgment in these types of cases must be guided by a commonsense assessment of the evidence and consideration of the adjudicative guidelines, as well as the whole-person factors set forth in the Directive.²⁸ A judge’s ultimate determination must also take into account the overarching standard in all security clearance cases, namely, that any doubt raised by an applicant’s circumstances must be resolved in favor of national security.²⁹

The following mitigating conditions under this guideline are potentially relevant:

AG ¶ 8(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.;

AG ¶ 8(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

AG ¶ 8(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 is a natural-born U.S. citizen with a child born in the United States, and all of his financial interests and personal family ties are in the United States. He sponsored his spouse for a fiancée visa, and it was granted. They married in the United States in 2012, and she has resided in the U.S. since. She is a U.S. permanent resident and must wait three years before she can apply for U.S. citizenship. Applicant and his spouse have expressed a desire to apply for U.S. citizenship for her as soon as it is legally permitted.

Applicant’s in-laws are Ukrainian citizens living in western Ukraine, and speak little to no English. Applicant and his spouse do not provide financial support to these

²⁶ ISCR Case No. 07-13739 at 4 (App. Bd. Nov. 12, 2008).

²⁷ ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).

²⁸ Directive, ¶ 6.3.

²⁹ AG ¶ 2(b); ISCR Case No. at 5 (App. Bd. Aug. 4, 2014).

relatives. Neither his spouse nor his in-laws have reported any affiliations with the Ukrainian or Russian government or ties to the Ukrainian separatist movement within the eastern part of Ukraine. There was no evidence to suggest that his spouse or in-laws are influenced by the politics of the Ukraine. It is clear that even in the unlikely event a risk should arise, Applicant would choose in favor of the interests of the United States. Outside of typical telephone contact between his spouse and her parents, and occasional visits, Applicant's contact with his in-laws is minimal.

After carefully weighing the evidence, both favorable and unfavorable, and considering the heightened risk of potential foreign influence raised by Applicant's foreign contacts and connections in Ukraine, I find that he met the standards set forth above and mitigated the foreign influence concerns. AG ¶¶ 8(a), (b), and (c) apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(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 all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated the evidence, my findings of fact and comments under Guidelines H, E and B in this whole-person analysis.

Although I find that Applicant has mitigated the Government's concerns in SOR ¶¶ 2.a, 3.a and 3.b, I am not convinced that his illegal use of drugs, including while holding a security clearance, and his concomitant lack of judgment to participate in these activities, have been sufficiently mitigated at this time. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. Clearance is denied.

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:	Against Applicant
Subparagraphs 1.a – 1.c:	Against Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against Applicant
Paragraph 3, Guideline B:	For Applicant
Subparagraphs 3.a – 3.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Gregg A. Cervi
Administrative Judge