DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 07-17076
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Marc G. Laverdiere, Esquire, Department Counsel
For Applicant: Leslie McAdoo Gordon, Esquire

February 28, 2011

Decision

HARVEY, Mark, Administrative Judge:

Summary of Case

Applicant was born in Egypt in 1960. He immigrated to the United States in 1979 and became a U.S. citizen in 1990. His spouse was born in the United States; however, she lived in Syria from the age of 3 to 19. She currently lives in the United States and has a Top Secret Department of Defense (DoD)-issued security clearance. She works as a linguist. However, she traveled to Syria in 2007, and she communicates with several aunts and uncles, who live in Syria. Applicant's two children are U.S. citizens and live in the United States. Applicant is a DoD linguist with an exceptional record of service in Iraq. The allegation that Applicant contacted a terrorist entity in Pakistan is not substantiated. Foreign influence concerns raised by his spouse's connection to Syria are mitigated.

Applicant had a 1989 DUI and was arrested in 2002 for impersonating a police officer. He failed to disclose these two events on his 2004 security clearance application (SF-86). In 1992, Applicant's fiancée obtained a restraining order against him, which he violated. In 2003-2004, he engaged in sexual behavior with prostitutes in Southwest Asia. In January 2004, he was accused of threatening his site manager in Iraq. All of the personal conduct allegations, except for the allegation concerning his sexual involvement with prostitutes, are mitigated. Access to classified information is denied.

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History of the Case

On August 1, 2006, Applicant submitted an Electronic Questionnaire for Investigations Processing version of his security clearance application (e-QIP version) (hereinafter SF-86) (Government Exhibit (GE) 1). On August 20, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, alleging security concerns under Guidelines B (foreign influence) and E (personal conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AGs) promulgated by the President on December 29, 2005. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On October 6, 2010, Applicant responded to the SOR and requested a hearing before an administrative judge. On November 1, 2010, Department Counsel was prepared to proceed. On November 3, 2010, the case was assigned to me. The hearing was delayed while Applicant unsuccessfully sought documentation concerning his alleged contact with a terrorist organization in Pakistan. (Tr. 22-23) On December 13, 2010, DOHA issued a hearing notice and the hearing was held on January 25, 2011. At the hearing, Department Counsel offered 13 exhibits (GE 1-13) (Transcript (Tr.) 26), and Applicant offered 20 exhibits (AE A-T). (Tr. 24-25, 39-40) Applicant objected to my consideration of GE 3, and I overruled that objection. *See* Procedural Rulings, *infra*. There were no objections to the other exhibits, and I admitted GE 1-13, and AE A-T. (Tr. 27, 40) Additionally, I admitted the SOR, response to the SOR and the hearing notice. (HE 1-3) On February 2, 2011, I received the hearing transcript. I held the record open until February 3, 2011. (Tr. 167, 219) After the hearing, Applicant provided 13 exhibits, which were admitted without objection. (AE U-AH)[1] Applicant also provided one correction to the transcript. (HE 4)

Procedural Rulings

On December 1 and 3, 2010, Applicant requested information from the Federal Bureau of Investigation (FBI) concerning the allegation in SOR ¶ 1.a that Applicant "had contact with an entity in Pakistan which has been linked to a known terrorist organization." (AE Z, AH)

Applicant objected to my consideration of GE 3, a November 22, 2010, FBI memorandum written to DOHA. GE 3 states, "FBI investigation has determined a possible contact between [Applicant] and an entity in Pakistan which has been linked to a known terrorist organization." Some of the basis of this statement is classified. (Tr. 32-33) Applicant objected to the failure to provide discovery concerning the basis of this FBI's statement. (Tr. 28-34, 37-38, 174-76) Department Counsel described GE 3 as an admissible summary of a police record and cited ISCR Case No. 03-06770 (App. Bd. Sept. 9, 2004) to support admissibility. (Tr. 35-36) I overruled the objection and concluded the objection went to the weight of the evidence, rather than to its admissibility. (Tr. 37) I also noted the document had minimal probative value as "possible contact" showed a speculative and tenuous association between Applicant and a Pakistani-terrorist entity. (Tr. 37) Applicant also objected to the hearing statement of an FBI special agent that explained the basis of the FBI's conclusion that there was a "possible" contact between Applicant and the terrorist entity. (Tr. 177, 179, 189) I overruled these objections. (Tr. 177, 179, 189) Department Counsel had previously received a classified FBI report; however, the FBI refused to grant permission to release that report to Applicant, and the classified FBI report was not provided to me. (Tr. 38-39) Additional information concerning GE 3 is in the section "Link to a known terrorist organization in Pakistan," *infra* at page 5.

Department Counsel requested administrative notice of facts concerning Syria and Pakistan (Tr. 11). Department Counsel provided supporting documents to show detail and context for the facts in the request. Applicant did not object to me taking

[1]I marked each document as a separate exhibit. (AE U to AH)

administrative notice of the facts concerning Syria. (Tr. 11, 17) The Syria section of the Findings of Fact of this decision, *infra*, contains the material facts from Department Counsel's submissions on Syria.

Applicant objected to Department Counsel's administrative notice request concerning Pakistan, arguing it was not relevant because of the lack of evidence of a connection between Applicant and Pakistan. (Tr. 11-16) Department Counsel explained that Applicant's connection to Pakistan was a telephone call from Applicant's telephone to a terrorist organization in Pakistan several years ago. Department Counsel agreed to narrow his request for administrative notice to a statement that the Pakistan Government has a serious problem with terrorism, and there are allegations of linkage between the Pakistani intelligence service and the Taliban and some terrorist organizations. (Tr. 14) I overruled Applicant's relevancy objection. (Tr. 14, 16) Department Counsel's request for administrative notice concerning Pakistan, along with related documents, is attached to the record.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. *See* ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or derived from government reports. *See* Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Findings of Fact[2]

In Applicant's SOR response, he admitted the SOR allegations in subparagraphs 1.b to 1.d, 2.a, 2.b, and 2.d with mitigating explanations to be made at his hearing. (HE 3) He denied the remaining allegations. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 50-year-old linguist, who has been employed by defense contractors for about eight years. In 1960, Applicant was born in Egypt. (Tr. 43) In 1979, he moved to the United States. (Tr. 43,195) In 1990, he became a U.S. citizen. (Tr. 43) He married his spouse in May 2007. (Tr. 149) He has two children from a pervious marriage. (Tr. 41) He attended college from 1980 to 1983; however, he did not receive a degree. (SF-86, GE 1)

[2]The facts in this decision do not specifically describe employment, names of witnesses or locations to protect Applicant and his family's privacy. The cited sources contain more specific information. Applicant's October 10, 2006, May 14, 2007, and June 21, 2007, Office of Personnel Management (OPM) interviews and his September 9, 2008, 33-page affidavit contain thorough descriptions of matters of security concern. (GE 2, 4)

After September 11, 2001, Applicant and his father wanted to help the United States against the terrorists. (Tr. 44-45) They both sought employment with the U.S. Government as linguists. (Tr. 44-45) Applicant's father was deployed as a linguist and analyst to Guantanamo Bay for about four years,[3] and Applicant was eventually deployed to Iraq in 2003. (Tr. 45, 95) Applicant was assigned to a Marine Corps unit, which was one of the first units to enter Iraq in March 2003. (Tr. 47-48) He assisted in the interrogations of prisoners of war, and helped locate weapons caches. (Tr. 48) He also helped locate a captured U.S. servicemember. (Tr. 48-49) Applicant took great pride in his assistance to U.S. forces, and in his role in fighting terrorists and the deaths and capture of terrorists in Iraq. (Tr. 49-50, 195) Applicant was under direct fire while serving in Iraq. (Tr. 50) After he was almost shot during a mission, the Marine Corps battalion commander permitted Applicant to be armed. (Tr. 51) He wore a Marine Corps uniform while in the field supporting his Marine Corps unit. (Tr. 51) Applicant was deployed to Fallujah during the battle in 2004. (Tr. 51)

Applicant had a good reputation as a linguist, and the FBI and CIA requested his assistance on many occasions. (Tr. 51-52) On June 12, 2006, Applicant returned to the United States from Southwest Asia. (Tr. 52)

Applicant currently owns a restaurant in the United States. (Tr. 42) He is married and has two children. (Tr. 41) His children are U.S. citizens and live in the United States.

Link to a known terrorist organization in Pakistan

An experienced counter-intelligence FBI special agent reviewed a classified document, relating to a closed FBI investigation, and provided an unclassified letterhead memorandum which states, "FBI investigation has determined a possible contact between [Applicant] and an entity in Pakistan which has been linked to a known terrorist organization." (Tr. 171-75; GE 3) The quoted sentence was part of the classified investigative report, and was not generated in response to DOHA's request for information about Applicant. (Tr. 172-73) The FBI "associated" Applicant's phone number with an entity in Pakistan. (Tr. 178, 188) The association was through Applicant's telephone subscriber account. (Tr. 181-82) The FBI special agent was not aware of when the investigation was conducted; however, he believed "it's probably about eight years old, eight to ten years old." (Tr. 180, 182) "[I]t was in the 2000s." (Tr. 182) He was not aware who made the telephone call, and he did not know whether Applicant was in the location to use his telephone when the call was made. (Tr. 183, 188) A source mentioned Applicant's name, and what may have happened is they checked Applicant's subscriber account. (Tr. 184-86) The FBI investigation containing the reference to Applicant was not directed towards Applicant's activities. (Tr. 185) Applicant was merely a reference in the unrelated investigation. (Tr. 185) Applicant's phone calls were not monitored. (Tr. 188) Applicant's phone number and service provider were not listed in the classified FBI summary. (Tr. 186) The FBI has no investigative report on Applicant, and declined to search the other investigative case file to determine when the call was made, the number called from, or the name of the

[3]His father recently retired from driving limousines. (Tr. 96)

subscriber. (Tr. 187) In sum, anyone who had access to the phone that called Pakistan could have made the call. (Tr. 188)

Applicant denied any contact with anyone in Pakistan. (Tr. 53, 99, 195; SOR ¶ 1.a) He suggested that if there was contact with an entity in Pakistan, the person who called was Applicant's son, who has the same name as Applicant. (Tr. 54; AE M) Applicant's son was born in 1984 in state N where the phone call was probably made to Pakistan. In 2002 and in 2003, until he was deployed to Hungary, Applicant and his son lived in the same household in state N. (Tr. 191-92) His son was 18 or 19 years old at that time. (AE M) Applicant was not aware that his son had any Pakistani friends at that time. (Tr. 194)

Applicant's 26-year-old son has bipolar disorder and does not take his medications. (Tr. 55) His son is a drug abuser. (Tr. 54) His son has Pakistani friends. (Tr. 54, 60) Applicant's first spouse was a Catholic, and his son was raised as a Catholic. (Tr. 55) His son converted to the Muslim religion. (Tr. 56) Applicant learned his son had become a radical Muslim, who referred to Christians, including his mother and sister, as infidels. (Tr. 56-57) Applicant's son told Applicant he "would feel much happier if my sister and my mom were dead. And he said, I will do it myself because they're infidels, anyway." (Tr. 57) Applicant's first wife obtained a restraining order against her son. (Tr. 57) In November 2009, Applicant notified the FBI of his concerns about his son. (Tr. 57-60, 93; AE T) Applicant provided a document to the FBI, and FBI agents came to Applicant's restaurant and interviewed him. (Tr. 61)[4] Applicant's son said he planned to go to Iraq and join the fight against the United States, including against his cousin, who is a U.S. Marine, serving in Iraq. (Tr. 59)

Applicant's son and his parents currently live in state N. (Tr. 55, 94) Applicant left state N in 2002. (Tr. 96) In January 2010, Applicant's son was indicted for stalking, threatening a witness, and contempt of court, and in October 2010, he pleaded guilty to obstructing government operations/contempt of court by sending a witness a telephonic text message. (AE M)

Applicant said it was tough to inform the FBI about his own son; however, "national security is extremely important" to him. (Tr. 93) He argued that he has proven his integrity during his service overseas for the Marines, CIA and other U.S. Government agencies. (Tr. 92-93)

Foreign influence concerns and Syria

Applicant's 32-year-old spouse was born in the United States. (Tr. 62, 98, 154) When she was three years old, her father passed away, and she and her mother returned to Syria. (Tr. 102, 149) Her mother passed away when Applicant's spouse was 17 years old. (Tr. 150) She lived in Syria until she was 19 years old, when she returned to the United States. (Tr. 103, 149) Her Syrian passport expired in the 1990s. (Tr. 103) From 2003 to the present, she has been employed as a linguist for a DoD contractor.

[4]The FBI agents declined to make statements at Applicant's hearing and to provide written statements about Applicant's disclosures to them. (Tr. 165; AE T)

(Tr. 152-53) In 2004, she received a Secret clearance, and in August 2008, she received a Top Secret clearance. (Tr. 63, 153) Applicant and his spouse met in Kuwait, while pending deployment to Iraq. (Tr. 103-04)

Applicant's spouse's parents were born in Syria, and they are naturalized U.S. citizens. (Tr. 62, 98, 150-51) Applicant did not believe his spouse had dual citizenship with Syria. (Tr. 102) She does not have any siblings. (Tr. 63)

Applicant's spouse has two aunts and three uncles on her mother's side of the family, and one uncle and three aunts on her father's side of the family. (Tr. 151) All of her aunts and uncles live in Syria. (Tr. 63, 151; SOR ¶ 1.c) Her aunts have no relationship to the Syrian Government. (Tr. 143-44) She contacts them or they contact her about three or four times a year. (Tr. 104-05, 143, 155) She is not very close to her other aunts. (Tr. 105) Applicant and his spouse were visited by her aunts, when they were in Syria in 2007. (Tr. 106) After leaving Syria when she was 19, she has been to Syria once in 1999 (when she was 20) and once in 2007. (Tr. 109, 154) She is close to her cousin, who is a U.S. citizen and lives in the United States. (Tr. 155) She communicates with her cousin on a weekly basis. (Tr. 155)

Applicant might communicate with his spouse's aunts once or twice a year to say hello or happy holidays, when they call to speak to Applicant's spouse. (Tr. 64) The last time Applicant talked to anyone in Syria on the telephone was about two years ago. (Tr. 141, 156) Applicant and his spouse went to Syria in 2007 for their honeymoon. (Tr. 64, 153) They stayed for 26 days in two Syrian hotels. (Tr. 65, 107) When Syrians ask about his employment, he tells them that he works in the hotel management industry. (Tr. 107-08)

Syria

Syria borders on Iraq, Israel, Syria, Turkey, and Lebanon. Syria is approximately the same size as North Dakota. Syria's population in 2009 is estimated to be about 21 million people.

Officially Syria is a republic; however, in reality it is ruled by an authoritarian regime. Syria is included on the U.S. State Department's List of State Sponsors of Terrorism. There are several known terrorist groups in Syria. The Syrian Government continues to provide political and material support to Hezbollah and Palestinian terrorist groups. Several terrorist groups maintain their offices and some of their leadership in Syria. In addition, the Syrian Government permits Iran to transfer weapons and supplies through Syria to assist terrorists in Lebanon. Syria is one of the main transit points for foreign fighters entering Iraq. A travel warning for Syria warns about the risks of terrorism due to the September 2006 attack on the U.S. embassy in Damascus. Syrian forces killed the four individuals who attacked the U.S. embassy in 2006. There have been other attacks on the U.S. Ambassador's residence and the U.S. embassy in 1998 and 2000.

The United States instituted economic sanctions against Syria due to their active and passive support of terrorism in the Middle East. No commercial aircraft owned or operated by the Syrian Government may take off or land in the United States. There are human rights abuses in Syria that include: systematic repression of Syrian citizens' ability to peacefully change the government; arbitrary and unlawful deprivation of life; torture and physical abuse of prisoners and detainees; arbitrary arrests and detentions; restrictions on freedom of speech, press, assembly, and association; government corruption; and violence and discrimination against women. Torture is occasionally used, including against foreign citizens. Security personnel have placed foreign visitors under surveillance, have monitored telephones, and have searched hotel rooms and possessions of foreign citizens.

Syria opposed the Iraq war in 2003, and foreign relations between Syria and the United States deteriorated. In 2005, the United States withdrew its ambassador to Syria after the assassination of Lebanese Prime Minister Hariri.

Personal Conduct

In 1989, Applicant was arrested for driving under the influence of alcohol (DUI). (Tr. 65; SOR ¶ 2.a; GE 4 at 7-8) His blood alcohol content was .14. (Tr. 110; GE 4 at 8) Applicant pleaded guilty, received a $250 fine, and six months of probation with suspended license. (Tr. 65-66, 110-11; GE 4 at 8) He received alcohol counseling, and he completed his sentence. (Tr. 65-66, 110-11) He did not have any subsequent alcohol-related incidents. (Tr. 66) He consumes moderate amounts of alcohol, and does not drink alcohol before driving. (Tr. 109; GE 4 at 8)

In 1992, Applicant discovered that his fiancée was seeing another man. (Tr. 67, 112) He demanded that she return the engagement ring he gave her. (Tr. 67, 112; GE 4 at 7) He was devastated that she would cheat on him. (Tr. 116) There was an unpleasant argument. (Tr. 112) He said he would "do what it takes to get it back." (Tr. 113) She perceived his statement as a threat because of the angry tone of his voice. (Tr. 113) She obtained a restraining order against Applicant. (Tr. 66, 111; SOR ¶ 2.b; GE 4 at 5) He went to her door and knocked on it; however, he denied that he damaged her door by kicking it. (Tr. 114, 117-18; GE 4) She accused him of damage to property, obstructing a court order, and harassing communication, and the police arrested Applicant. (Tr. 67, 113-14; SOR ¶ 2.c) He did not assault her and there was no mutual affray. (Tr. 112) Applicant said he was not arrested. (Tr. 68) He learned about the arrest warrant and turned himself in to authorities. (Tr. 68, 117) He said her allegations were false, she withdrew her support for the charges before trial, and the charges were dismissed. (Tr. 67)

Defrauding a bank

A January 11, 1995 preliminary police report indicated on December 22, 1994, Applicant placed three empty deposit envelopes marked with $120, $120, and $50 in a bank in state F, and then withdrew $100 from his account, which had a negative

balance. (GE 4 at 8-9; GE 8)[5] The report was in "default" status and was supposed to be followed up with fingerprinting of the deposit envelopes. (GE 8) The offense is listed as "Fraud-false ID/impersonat" and "petit theft." (GE 8) The bank provided videotapes of the fraudulent deposits to the police. (GE 8) The police report states, "[Applicant] advised that he deposited $120. He than made a withdrawal of $60. At 1812 hrs, he returned to the bank and placed a blank envelope into the drop off box advising that he was depositing another $120. He than made a withdrawal for $40. At 1814 hrs, he deposited an envelope into the drop off box advising that he deposited $50." (GE 8 at 4)

The police report does not indicate whether or not Applicant was arrested. (GE 8) Applicant denied that he attempted to defraud the bank, and asserted he was probably away at sea, working for a cruise ship when the offenses were committed. (Tr. 129-31) He denied that he was ever in city B in 1995, where the offense occurred. (GE 4 at 8-9)[6] However, Applicant's May 14, 2007 OPM PSI indicates he lived in city B where the offense occurred in 1997-1998 and was employed at "P[]'s restaurant," which is located in city B (GE 2 at 9) The 1995 police report indicates Applicant is employed at "P[]'s restaurant," which is located in city B. (*Compare* GE 2 at 9 *with* GE 8 at 2) Applicant recently contacted the police department in city B, where the report originated and was advised they had no record of the incident. (Tr. 131)

Applicant's October 8, 2004 SF-86 indicates he worked at "P[]'s restaurant" from March 1997 to June 1998. (GE 13) He worked at a cruise line in a different city in the state F from January to September 1995. (GE 13) From September 1995 to March 1997, he worked in a restaurant in state N. (GE 13) Applicant's October 8, 2004 SF-86 did not indicate he ever lived in state F. (GE 13)

Applicant addressed the non-SOR allegation that in 1998, Applicant wrote a bad check in Florida. (GE 4 at 1-2) The creditor provided a statement that there was no record of Applicant having a returned check. (AE U)

[5]The SOR did not allege that Applicant committed the 1995 theft from a bank. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

> (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

(citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). I have not considered this non-SOR allegation because it is not substantiated. I have not considered any of the other non-SOR allegations discussed in this decision for any purpose that negatively reflects on Applicant's worthiness to hold a security clearance.

[6]Of course, the offense occurred in 1994, and the police report does not indicate when Applicant was interviewed.

Involvement with prostitutes overseas from 2003 to 2005

From 2003 to 2005, Applicant had sexual encounters with prostitutes on approximately 15 occasions in two foreign countries. (Tr. 73-75, 132; SOR ¶ 2.e; GE 4 at 25) Applicant's September 9, 2008 sworn statement to an OPM investigator discussed his involvement with prostitutes in two Southwest Asia countries:

> Q: How do you reconcile your relationship with your wife (girlfriend at the time) and your solicitation of prostitutes at the same time?
> A: **I was dating my wife** during the last trip to [two Southwest Asian countries in November 2004], but she was not with me in the country. **I felt very guilty after,** however, it really hit me when she arrived and she told me that she missed me. I then made a vow never to do it again and to prove it to myself that I would be more devoted to her, I proposed to her on 3 Apr 2005. **I have never cheated on my wife since**.
>
> Q: Does your wife now know of your conduct at the time?
> A: She knows of the [encounters with prostitutes prior to their dating relationship], **however [she] has no knowledge of the instances that took place while we were dating**.
>
> Q: What would occur if your wife found out about these encounters?
> A: She would be heartbroken. She would be extremely hurt. I don't think she would leave me but it would take a lot to mend the hurt.
>
> Q: Can you be blackmailed with this information?
> A: No. I would inform my wife of my actions rather than being blackmailed to commit any acts against national security. (emphasis added) GE 4 at page 26 of 33 pages.

Applicant began dating his future wife on January 11, 2004. (Tr. 134, 157) At his hearing, he insisted the sexual encounters with prostitutes occurred before he started dating his future spouse. (Tr. 75; 134; 139-41) He said he may have encountered or talked to prostitutes after January 11, 2004, because prostitutes frequent the same clubs and hotels as DoD contractors in two Southwest Asia countries. (Tr. 76-77, 132; GE 4 at 25) Applicant denied that he had sexual contact with any of the prostitutes after January 11, 2004 (Tr. 76-77, 132-134, 139-41). Applicant was confronted with his September 9, 2008 sworn statement, and Applicant responded:

> I didn't tell [the OPM investigator] I slept with prostitutes on every single trip from 2003, 2004, and 2005. This is absolutely not true, sir. **I did not sleep with any women period, never mind prostitutes, ever since I met my wife on January 11th 2004.** I just want to make that clear. I have no reason to sleep with any prostitutes. I am married to a wonderful lady, a very great lady. I had no reason to even look further after I met her. (emphasis added) (Tr. 134)

* * *

Q: . . . [Your September 2008 statement indicates] "During these stays, I met with prostitutes. During each of the trips to [two Southwest Asia countries], I solicited prostitutes about four times . . . "
A: That's correct.

Q: "I was single with no commitments at the time."
A: That's correct.

Q: [Your September 2008 statement continued,] "About a year later, November of '04, I was deployed [and went to two Southwest Asia countries for R&R].
A: Yes.

Q: "During both trips, I met with prostitutes."
A: That is correct.

Q: All right. What is the difference between soliciting and meeting?
A: I mean, when I went to [two Southwest Asia countries], I specifically went there to meet with and sleep with prostitutes. This is the main reason why I used to go. **But after I met my wife, I continued to go to [two Southwest Asia countries] with other friends, but never slept with prostitutes.** I just met with them because they are almost impossible to avoid. They are everywhere. (emphasis added) (Tr. 140-41)

Applicant and his spouse agreed that he disclosed to his spouse his sexual contacts with prostitutes before their dating relationship. (Tr. 78, 159-62)

Threats to site manager in 2004

On February 25, 2004, Applicant's site manager and a Human Relations (HR) Assistant Manager accused Applicant of calling the site manager on February 26, 2004, and stating Applicant would, "kick your ass," "you're a liar," and "you better not let me see you. I'll do something bad to you." (Tr. 79, 135; GE 11, GE 12, AE R) Applicant explained that the site manager called Applicant "a moron and stuff." (Tr. 80) Applicant denied the site manager's allegations about Applicant threatening to kick the site manager's ass, and promising to do something bad to him. (Tr. 135) Applicant's site manager and the HR Assistant Manager said Applicant was upset that he was being transferred from his present unit to Baghdad. (GE 11, 12)

At his hearing, Applicant said that in January 2004, a new site manager in Iraq "made a pass at [Applicant's future spouse's] breasts." (Tr. 79, 135) Applicant said he told the site manager to stay away from his girlfriend, otherwise he would report the site manager to the company. (Tr. 136) (As indicated previously on page 10, Applicant said his first date with his future spouse was on January 11, 2004.) On January 25, 2004, Applicant received a written counseling for insubordination and assault from the site

manager. (Tr. 81; SOR ¶ 2.f; GE 9) The January 25, 2004 counseling, which was witnessed by the HR Assistant Manager, stated that Applicant admitted that he requested a transfer to Baghdad, and then told members of his unit he was being forced to go to Baghdad by the site manager. (GE 9, 10)

The site manager's MFR recommended to the site manager's company that Applicant be processed for termination based on his threatening and unprofessional behavior as well as Applicant's opposition to the transfer. (Tr. 81; SOR ¶ 2.g; GE 9, 11) However, Applicant's employer, which was a subcontractor of the site manager's company, doubted the credibility of the site manager's allegations, and rejected any disciplinary action. (Tr. 82; AE R) Applicant stayed in country, and the site manager was transferred out of country. (Tr. 83) Applicant left employment with the contractor in June 2004. (AE Q) He provided a March 8, 2006 email from his employer asking Applicant to return to work for the company. (AE P) An October 26, 2009 email from his employer in 2004 indicates their records show Applicant resigned from his employment; however, he is "eligible for rehire." (AE Q)

Falsification of 2004 security clearance application (SF-86)

On October 8, 2004, Applicant completed an SF-86, which asked one question about his alcohol-related offenses, and one question about serious criminal offenses: "Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?" and "In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not [previously] listed? (Leave out traffic fines of less than $150 unless the violation was alcohol or drug related.)" Applicant responded, "No" to both questions. He failed to disclose his DUI in 1989 and his arrest for impersonating a police officer in 2002. (SOR ¶¶ 2.h and 2.i; Tr. 85-86, 136)

Applicant explained that he failed to provide accurate information because he rushed through completion of the 2004 SF-86. (Tr. 85-86) This was his first SF-86, and he thought he was supposed to list offenses in the last seven years. (Tr. 87, 137-38) He disclosed the DUI to counterintelligence before his first deployment to Iraq about the same time he completed the SF-86. (Tr. 138) He also thought he did not have to list offenses with fines of less than $150, and therefore he failed to list the arrest for impersonating a police officer. (Tr. 89-90; GE 4 at 4-5)

In 2006, Applicant completed his SF-86. The facility security officer (FSO) told everyone that that was completing their SF-86 to be sure and list all drug and alcohol-related offenses, and that there was no time limit. (Tr. 88) He disclosed the 1989 DUI. (Tr. 88; GE 1) He also disclosed the disorderly conduct charge because his FSO said it should be disclosed. (Tr. 90-91; GE 1)

Misuse of badge and a unit coin

Applicant donated money to the police department in state N, and he received a badge indicating "Honor Legion Police Department." (Tr. 70-71, 119-20) Applicant glued the badge inside his wallet, hoping that if the police in state N stopped him for a traffic

violation they would notice the badge and let him out of a traffic ticket. (GE 4 at 3, 31) In December 2002, Applicant and several linguists learned they were selected for a DoD program and were celebrating their assignments at a restaurant in state V. (Tr. 69) After eating in the restaurant, they were waiting for a cab. (Tr. 70, 118-19) The bouncer told them to wait outside; however, Applicant objected because it was cold outside. (Tr. 70, 119) Applicant took the cab driver's card out of his wallet to show the card to the bouncer. (Tr. 120) When he opened his wallet, the bouncer evidently saw the badge for the Honor Legion Police Department. Applicant was arrested later that evening for impersonating a police officer. (Tr. 69-72, 118, 120; SOR ¶ 1.d; GE 4 at 3-5)

When Applicant went to court, the judge dismissed the impersonating police officer offense, and he pleaded guilty to disorderly conduct and paid a $73 fine. (Tr. 69, 72, 121) The reason he pleaded guilty to the disorderly conduct offense was because he did not want to miss his deployment, and he did not want to hire a lawyer to contest the offense. (Tr. 73) He denied that his conduct was disorderly. (Tr. 73)

Applicant bought a coin with a badge on it from an Air Force base exchange (BX). (Tr. 124; GE 4 at 5, 32) The unit coin was for the unit Applicant was supporting as a contractor. (Tr. 125; GE 4 at 5) The BX sells the item with glue so that it can be placed in one's wallet. (Tr. 124) He purchased the item because he was proud of his association with the unit. (Tr. 125; GE 4 at 32) Most of the contractors he knew had the same type of unit coin in their wallets. (Tr. 125) Applicant volunteered to an OPM investigator during his personal subject interview (PSI) that in 2005, an inspector general officer (IG) noticed that Applicant had this item glued into the inside front of his wallet when he went into a club overseas. (Tr. 122-24; GE 4 at 5) Applicant was accused by another contractor of using the coin to obtain privileges from hotels or bars in Southwest Asian countries. Applicant got rid of the unit coin after the IG noticed it. (Tr. 125) Misuse of the unit coin was not listed as an SOR allegation, and is not substantiated as an offense. *See* n. 5, *supra*.

Character Evidence

A senior executive employed by a U.S. intelligence agency, who served with Applicant and his spouse in Southwest Asia, described Applicant as talented, hard working, well-liked, and patriotic. (AE A) Applicant has a positive attitude towards his service in support of missions, and expressed a sincere debt of gratitude to the United States for helping his family. (AE A)

A DoD field counterintelligence specialist, who served with Applicant in Southwest Asia from May 2003 to March 2004 and has known him for more than seven years, lauded Applicant's contributions to mission accomplishment. (AE B) He emphasized Applicant's hard work, dedication, trustworthiness, and professionalism. (AE B) Applicant was his team's "top selection" among the linguists available for their missions. (AE B) Two U.S. Army captains, who served with Applicant in Southwest Asia in 2003-2004, made similar positive statements about Applicant's dedication and professionalism. (AE E, J)

Applicant received certificates of appreciation or commendation in 2003, 2004, 2006, and 2008 for his contributions to mission accomplishment. (AE C, D, G, K, L) These certificates cite his professionalism, dedication, initiative, and loyalty. *Id*. He received a letter of appreciation in 2003 for his "superb assistance" on a mission for a U.S. Marine Corps Expeditionary Unit serving in Southwest Asia. (AE F)

Applicant's award of the Navy and Marine Corps Achievement Medal was signed by the Secretary of the Navy on May 6, 2003. (AE H) This award notes in part:

> [Applicant] spent many long, arduous hours translating during the meetings of senior officers and key Iraqi officials, assisting in interrogations of enemy prisoners of war, and debriefing civilians ranging from Saddam Hussein's senior leaders to common people on the street. He worked tirelessly, often without sleep and under direct enemy fire. Interrogations that he helped to conduct resulted in information that helped [his Marine Corps battalion] capture key enemy facilities, paramilitary leaders and weapons caches. During the entire operation, he showed unyielding courage and dedication to his country and his fellow citizens. [Applicant] brings great credit upon himself and the United States of America. (AE H)

A May 5, 2003, letter of appreciation from a Marine Corps counterintelligence element described Applicant's extraordinary efforts on behalf of the U.S. war effort stating:

> [Applicant provided] critical information [though his interrogations of Iraqi personnel] leading to the rescue of an American Prisoner of War,[7] the capture of over 25 enemy paramilitary officers, countless weapons caches and the capture of the first enemy headquarters facility taken during the war. [He] was pivotal in his role as a linguist, not only translating secret enemy documents and conducting simultaneous interpretation for countless meetings, debriefings and interrogations, but doing all of that for over six weeks on an average of three hours [of] rest per day and often under direct enemy fire. (AE I)

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

[7]The identity of the American POW is restricted. (Tr. 48-49; GE 4 at 29)

clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. 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 overarching adjudicative goal is a fair, impartial, and commonsense 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 applicant concerned." *See* Exec. Or. 10865 § 7. *See also* Executive Order 12968 (Aug. 2, 1995), § 3.1. 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 about 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).

The DOHA Appeal Board has repeatedly stated:

> Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. *See* Directive ¶ E3.1.15. "The application of disqualifying and mitigating conditions and whole person factors does not turn simply on a finding that one or more of them apply to the particular facts of a case. Rather, their application requires the exercise of sound discretion in light of the record evidence as a whole."

ISCR Case No. 09-01015 at 3 (App. Bd. July 16, 2010); ISCR Case No. 07-16427 at 2 (App. Bd. Feb. 4, 2010); ISCR Case No. 07-16841 at 4 (App. Bd. Dec. 19, 2008).

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). The DOHA Appeal Board may reverse the administrative judge's "decision to grant, deny, or revoke a security clearance if it is arbitrary, capricious, or contrary to law." ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) (citing Directive ¶¶ E3.1.32.3 and E3.1.33.3.).[8] The federal courts generally limit appeals to whether or not the agency complied with its own regulations.

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guidelines B (foreign influence) and E (personal conduct).

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, 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 three conditions that could raise a security concern and may be disqualifying in this case:

[8]See ISCR Case No. 09-03773 at 7 n. 4-6 (A.J. Jan. 29, 2010)(discussing appellate standards of review).

> (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;
>
> (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and
>
> (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.

The allegation that Applicant had "possible contact" with "an entity in Pakistan which has been linked to a known terrorist organization" (SOR ¶ 1.a) is refuted. The FBI did not provide the date of the possible contact, or the telephone number used to call the Pakistani entity. Applicant may not have been in state N when the call was made to Pakistan. Applicant denied making any contacts with anyone in Pakistan. Applicant's son has a criminal record and is mentally unstable. His son has adopted jihad, stated he wants to attack the United States, and he has threatened Applicant's former spouse because she is a Christian. Applicant's son or one of Applicant's son's friends may have used Applicant's telephone to call the entity in Pakistan associated with terrorism. It is telling that the FBI never interviewed Applicant about the call to Pakistan, or made other investigative efforts to verify the contact. Applicant's honorable and brave service in Iraq on behalf of the Marine Corps and a DoD intelligence service is inconsistent with allegiance to a known terrorist organization. In sum, there is insufficient evidence that Applicant contacted a Pakistani entity, and this allegation is resolved for Applicant.

AG ¶¶ 7(a), 7(b), and 7(d) apply to Applicant's spouse's connection to Syria. Applicant's spouse was born in the United States, and then she lived in Syria from age 3 to 19. She has five aunts and four uncles who currently live in Syria. She communicates with some of them three or four times per year. She traveled to Syria in 1999 and 2007. Applicant shares living quarters with his spouse. He and his spouse visited Syria in 2007, where they went for their honeymoon.

Applicant's spouse has a sufficient relationship with her aunts and uncles because of communications and visits to raise a security concern. "[T]here 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. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). Although aunts and uncles are not immediate family members, his spouse has a sufficient emotional connection with one or more of her Syrian aunts and uncles to establish a security concern. Applicant's relationship with his spouse, and through her with her aunts and uncles creates "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion" because of Syria's "disregard for human rights, its sponsorship of terrorism, and its

antipathy to U.S. regional Interests" *See* ISCR Case No. 09-03114 at 2 (App. Bd. Oct. 22, 2010) (discussing insufficient mitigation because of Syria's internal circumstances).

Similarly, Applicant and his spouse's relationships with one or more of her aunts and uncles living in Syria create a potential conflict of interest between Applicant's "obligation to protect sensitive information or technology and [his] desire to help" any of her family members who are in Syria. For example, if terrorists or the Syrian Government wanted to expose Applicant to coercion, they could exert pressure on his spouse's aunts and uncles.

The mere possession of close family ties with a family member living in Syria is not, as a matter of law, disqualifying under Guideline B. However, if an applicant or their spouse has a close relationship with even one relative, 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 or inducement. 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 collection operations against the United States. The relationship of Syria with the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his spouse's relationships with her family members living in Syria do not pose a security risk. 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 one of his spouse's aunts or uncles living in Syria, who might be coerced by the Syrian Government or terrorists operating in Syria.

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).

While there is no evidence that intelligence operatives from Syria or terrorists seek or have sought classified or economic information from or through Applicant, his spouse, or her relatives living in Syria, it is not possible to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities, and Syria has a problem with terrorism. Department Counsel produced substantial evidence

of Applicant's spouse's contacts with one or more of her aunts or uncles living in Syria and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(d) apply, and further inquiry is necessary about potential application of any mitigating conditions.

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 visited Syria in 2007, which is recent. Applicant's spouse has frequent contact with her relatives in Syria. *See generally* ISCR Case No. 09-03114 at 2 (App. Bd. Oct. 22, 2010) (holding communications once a month were sufficient to be frequent). However, because of his connections to his spouse, and her connections to relatives in Syria, Applicant is not able to fully meet his burden of showing there is "little likelihood that [his relationships with his relatives who are Syria citizens] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) fully applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has strong family

connections to the United States. His spouse and two children are U.S. citizens. His spouse has a Top Secret DoD-issued security clearance and is a linguist. Applicant and his spouse have served as linguists in Southwest Asia in a combat zone. Applicant's service is especially noteworthy and includes exposure to direct enemy fire on multiple occasions in Iraq.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationship with his spouse, and her relationships with her aunts and uncles living in Syria. There is no evidence that terrorists, criminals, the Syrian Government, or those conducting espionage have approached or threatened Applicant, his spouse, or her family in Syria to coerce Applicant or his spouse for classified or sensitive information. As such, there is a reduced possibility that Applicant, Applicant's spouse, or Applicant's spouse's aunts and uncles living in Syria would be specifically selected as targets for improper coercion or exploitation. While the U.S. Government does not have any burden to prove the presence of such evidence, if such record evidence was present, Applicant would have a heavy evidentiary burden to overcome to mitigate foreign influence security concerns. It is important to be mindful of the United States' contentious relationship with Syria, and especially Syria's support for terrorist groups and systematic human rights violations. Syria's conduct makes it more likely that Syria would coerce Applicant through his spouse's family, if Syria determined it was advantageous to do so. The fact that Applicant's spouse's family members living in Syria are unaware that he or his spouse has U.S. Government-related employment or that they hold security clearances reduces the risk that Applicant will be coerced through his spouse's family living in Syria; however, the risk is still substantial. Syrian intelligence agents and terrorists might learn that Applicant or his spouse has a clearance through means other than his family living in Syria.

AG ¶¶ 8(d) and 8(e) do not apply. The U.S. Government has not encouraged Applicant or his spouse's involvement with her family members living in Syria. Applicant is not required to report his contacts with his spouse's family members living in Syria.

AG ¶ 8(f) does not apply because it is only available to mitigate concerns raised by property interests in Syria under AG ¶ 7(e). Applicant and his spouse do not have any property interests or investments in Syria.

In sum, the primary foreign influence security concern is Applicant's spouse's relationships with her aunts and uncles living in Syria. These relatives live in Syria and are readily available for coercion. The Syrian Government's antipathy towards the United States and failure to follow the rule of law further increase the risk of coercion. However, Applicant and his spouse have made extraordinary contributions to the United States war effort as linguists in Southwest Asia. Those contributions demonstrate their "deep and longstanding relationships and loyalties in the U.S.," and I am confident that Applicant will "resolve any conflict of interest in favor of the U.S. interest." *See* AG ¶ 8(b).

Personal Conduct

AG ¶ 15 expresses the security concern for 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 four conditions that could raise a security concern and may be disqualifying with respect to the SOR allegations in this case:

> (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;
>
> (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;
>
> (d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: . . . (3) a pattern of dishonesty or rule violations; and
>
> (e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

There is sufficient evidence to apply AG ¶¶ 16(a), 16(b), 16(d), and 16(e). When Applicant completed his 2004 SF-86, he did not disclose his 1989 DUI, and he did not disclose his 2002 arrest for impersonating an officer. There is also substantial evidence that he violated a restraining order in 1992, had sexual encounters with prostitutes in two Southwest Asia countries in 2003 and 2004, committed the 1989 DUI, engaged in the disorderly conduct in 2002, and threatened bodily harm to his supervisor in Southwest Asia in 2004. His behavior violates multiple statutes and rules.

Certainly, such crimes and rule violations violate important civil and criminal rules in our society, and these offenses are conduct a person might wish to conceal, as it adversely affects a person's professional and community standing. Thus, AG ¶ 16(e)(1) applies and further inquiry concerning the applicability of mitigating conditions is required.

AG ¶ 17 lists seven conditions that could mitigate security concerns including:

> (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
>
> (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;
>
> (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
>
> (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
>
> (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
>
> (f) the information was unsubstantiated or from a source of questionable reliability; 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.

AG ¶ 17(f) applies to the allegations in SOR ¶¶ 2.f to 2.i. As to the allegations in SOR ¶¶ 2.f and 2.g, Applicant denied that he threatened his site manager with bodily injury. He attributed the site manager's allegations to Applicant's threat to tell his site manager's supervisor about the site manager's inappropriate sexual advances towards his future spouse. Applicant's company doubted the credibility of the site manager's allegation, and Applicant did not receive any disciplinary action.

The allegations in SOR ¶¶ 2.g and 2.h are that he failed to disclose[9] derogatory criminal information on his 2004 SF-86. Applicant credibly denied that he intentionally failed to disclose his 1989 DUI and 2002 arrest for impersonating a police officer on his 2004 SF-86. He explained that he hurried through the completion of his SF-86 and failed to disclose the 1989 DUI because it was more than seven years previously, and he did not disclose his 2002 arrest because it resulted in a $73 fine for disorderly conduct. In 2004, he did not consult with his security officer concerning these issues. In 2006, Applicant's security officer advised him that he needed to disclose all alcohol-related offenses regardless of the passage of more than seven years, and misdemeanor-criminal arrests, even though the fine was less than the $150 threshold in the SF-86 question. Applicant complied with this advice, and disclosed both arrests on his 2006 SF-86.

AG ¶¶ 17(c) to 17(e) apply to the allegations in SOR ¶¶ 2.a to 2.d. Applicant's 1989 DUI was 22 years ago, and no other alcohol-related offenses have occurred. Applicant's 1992 violation of the restraining order was relatively minor and did not result in a conviction or physical harm to the victim. Applicant's 2002 impersonation of a police officer and 2005 misuse of a unit coin are not substantiated. His 2002 disorderly conduct is substantiated; however, it is a relatively minor, isolated offense that resulted in a $73 fine.

The mitigating condition outlined in AG ¶ 17(e), "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress" applies to all of Applicant's offenses, except for the allegation in SOR ¶ 2.e. Security officials and Applicant's spouse are well aware of the issues raised by the allegations in the SOR. His conduct is well-documented in law enforcement and security records. The federal government's knowledge of these allegations eliminates any vulnerability to exploitation, manipulation or duress. I do not believe Applicant would compromise national security to avoid public disclosure of these offenses.

The allegation in SOR ¶ 2.e is not fully mitigated. Applicant's sexual conduct with prostitutes in Southwest Asia remains a security concern because Applicant was evasive or deceptive at his hearing about his conduct with prostitutes after he began dating his future spouse on January 11, 2004. His September 9, 2008 statement to an OPM investigator was more credible than his statement at his hearing about his conduct

[9]The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

> (a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

with prostitutes after January 11, 2004. He was unwilling to be fully candid at his hearing about why he was ashamed of his conduct with the prostitutes, and his expressed rationale to the OPM investigator is the probable motive for his failure to the candid at his hearing. He did not want his spouse to know that he continued to engage in some type of sexual conduct with prostitutes after they began dating.

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 B and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under this guideline, but some warrant additional comment.

There are some facts supporting mitigation of security concerns; however, they are insufficient to fully mitigate all concerns. In regard to the foreign influence concerns raised by Applicant's spouse's aunts and uncles living in Syria under the whole-person concept, consideration must be given to the geopolitical situation in Syria, as well as the dangers existing in Syria.[10] The danger of violence or coercion from terrorists in Syria and the threat of coercion from the Syrian Government make coercion and abuse more likely than in many other countries. Terrorists continue to threaten the interests of the United States, as well as those who cooperate and assist the United States. Syria has provided support for terrorist groups and shown some hostility towards United States efforts in Iraq, Israel, Palestine, and Lebanon.

In 1979, Applicant immigrated to the United States. In 1990, he became a U.S. citizen. Applicant's spouse and son were born and live in the United States. Applicant and his spouse have served with U.S. forces in Southwest Asia. Applicant significantly contributed to mission accomplishment of U.S. forces in Iraq. Applicant was under direct enemy fire on multiple occasions. Applicant and his spouse are absolutely loyal to the

[10] See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

United States. They love the United States and consider the United States to be their home, and not Syria. The connections to Syria are too attenuated and limited to outweigh Applicant's connections to the United States and past service to the Department of Defense.

Applicant provided exceptionally positive character evidence. His performance as a linguist in 2003-2006 in Southwest Asia was truly extraordinary. His efforts under dangerous, arduous conditions result in important mitigation of security concerns. His 2003 award of the Navy and Marine Corps Achievement Medal by the Secretary of the Navy and 2003 letter of appreciation from a Marine Corps counterintelligence element, quoted starting at page 14, provide a detailed description of his heroism, dedication and bravery. Multiple character statements and certificates of appreciation laud Applicant's dependability, competence, professionalism, loyalty, and trustworthiness.

Nevertheless, the circumstances tending to support revocation of his security clearance are too significant to be mitigated at this time under the whole-person concept. Applicant's sexual conduct with prostitutes in Southwest Asia continued until after January 11, 2004, as indicated in his September 2008 OPM PSI. Applicant was evasive or deceptive at his hearing about his conduct with prostitutes after he began dating his future spouse on January 11, 2004. Applicant's September 9, 2008 statement to an OPM investigator was more credible than his statement at his hearing about his conduct with prostitutes after January 11, 2004. He was unwilling to be fully candid about why he was ashamed of his conduct with the prostitutes because he did not want his spouse to know that he continued to engage is some type of sexual conduct with prostitutes after they began dating.

After weighing all the facts and circumstances in this decision, including Applicant's demeanor, sincerity, and honesty at his hearing, I conclude he has not fully honest or candid concerning his involvement with prostitutes in Southwest Asia after January 11, 2004, and SOR ¶ 2.e cannot be mitigated.

I have carefully applied the law, as set forth in *Department of Navy v. Egan,* 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude foreign influence concerns are mitigated; however, personal conduct concerns are not fully mitigated. For the reasons stated, I conclude he is not 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 B:	FOR APPLICANT
Subparagraphs 1.a to 1.d:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a to 2.d:	For Applicant
Subparagraph 2.e:	Against Applicant
Subparagraphs 2.f to 2.i:	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.

_____
Mark Harvey
Administrative Judge