



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



In the matter of:)
)
) ISCR No. 08-00102
)
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie C. Hess, Esquire, Department Counsel
For Applicant: Ethan D. Dunn, Esquire

May 22, 2009

Decision

DAM, Shari, Administrative Judge:

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

HISTORY OF CASE

On October 27, 2003, Applicant submitted a Security Clearance Application (SF 86). On May 19, 2006, he submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On November 20, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence) and Guideline E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG)

promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on December 29, 2008, and requested a hearing before an administrative judge. DOHA assigned the case to me on February 12, 2009, and issued a Notice of Hearing on March 4, 2009. I convened the hearing as scheduled on April 8, 2009. Department Counsel offered Government Exhibits (GE) 1 through 8 into evidence, which were admitted without objection. Applicant testified and offered Applicant Exhibits (AE) A and K that were admitted into the record without objection. The record remained open until April 15, 2009, to give Applicant an opportunity to submit more legible copies of several exhibits. Applicant timely submitted those copies. DOHA received the transcript of the hearing (Tr.) on April 15, 2009.

PROCEDURAL RULINGS

Administrative Notice

Department Counsel requested administrative notice of certain facts relating to Lebanon. (Tr. 8-9) The request and the attached documents are included in the record as Hearing Exhibit (HE) 1 with attachments I through XIV. Applicant did not object to consideration of those exhibits. (Tr. 10) Hence, the facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact, below.

FINDINGS OF FACT

In his Answer, Applicant admitted the factual allegations contained in SOR ¶ 1. a through ¶ 1.c, and SOR ¶ 2.a and ¶ 2. b. He denied all other allegations and provided additional explanations. His admissions are incorporated herein as findings of fact. After a complete and through review of the evidence of record, I make the following findings of fact.

Applicant is 39-years old and married. He was born in Lebanon and graduated from high school in 1988. He and his family are of the Christian faith. They moved around Lebanon often because of the war between Christians and Muslims. After high school, he worked as a security guard for the Lebanese Forces-Christian Resistance Group (aka the Lebanese Front). He was a member of and worked for the Lebanese Front from 1989 to 1992. (Tr. 33-34)

The Lebanese Front was formed in 1975 to defend Christian citizens against terrorist invaders of Lebanon. Initially the organization played a dual role as a defensive military army and a political operation. In 1989, "it transformed its military resistance into a political resistance." (GE 7) In 1994, the organization was forced to disband by the government and many of its members were arrested. Today, it continues to operate as a political force (but not military) in many areas of the Lebanese society. (Tr. 29-31; GE 4; 7; 8)

Applicant came to the United States for the first time in 1984 with his mother to visit his sister and brother who were living here. They stayed for one month and returned to Lebanon. Later, his mother returned to the United States with immigrant status. It was her wish that all of her children would immigrate to the United States. In early 1992, he arrived in the United States on an immigrant visa and went to live with his brother. He started learning English and attended college, while working at various jobs, as a laborer, pipe fitter and account manager. In July 1999, he became a naturalized U.S. citizen. In May 2001, Applicant married his wife, who was born in Lebanon. She became a naturalized U.S. citizen in May 2006. They have three children, all born in the United States. Applicant owns property in the United States, and none in Lebanon or any other country.

Both of Applicant's parents were born in Lebanon. His mother became a naturalized U. S. citizen in 1999. She resides in the United States. His father died in Lebanon, but was a U.S. permanent resident alien at the time of his death in 1992. His father worked as a driver for an Ivory Coast ambassador before retiring. His mother is a homemaker. Neither parent worked for the Lebanese Army or the Front. (GE 4)

Applicant is one of six children, all born in Lebanon. One of his brothers is deceased and one is a naturalized U.S. citizen, residing in the United States. Two of his brothers are citizen residents of Lebanon. One of those brothers is a barber, but works as a driver for an attorney. At one point, he was captured by Muslim fighters and tortured. The other brother is a school bus driver and insurance inspector. He, too, was a security guard with the Lebanese Forces in the early 1990's. He and his wife have applied for visas to come to the United States. Applicant speaks to his brothers once a month. Applicant's sister became a U.S. naturalized citizen in 1981. She resides in the United States. (GE 4)

Applicant's mother-in-law and father-in-law were born in Lebanon and reside there. His mother-in-law is a homemaker and his father-in-law is a retired blacksmith. Applicant speaks to them about once a month. They came to the United States about two years ago for a visit. (Tr. 64; GE 4)

Applicant is loyal only to the United States and has no allegiance to Lebanon. He is happy to "call himself an American citizen." (GE 4 at 5) He has fully assimilated into the American culture and votes in U.S. elections. (*Id.*) He abhors terrorism and violence, and does not support any organization that engages in such activities. (*Id.*)

Applicant traveled to Lebanon several times since coming to the United States: in 1995, 1999, 2000, and 2004. All of those visits were for pleasure and to see family members residing there. He lost his Lebanese passport years ago.¹

¹ The SOR does not allege security concerns under Guideline C, Foreign Preference, relating to the use of a foreign passport after being issued a U.S. passport.

On October 27, 2003, Applicant completed a SF 86 for employment with a federal contractor. During the process of filling out the application, he spoke with a security officer of the company regarding how to answer the questions. During that conversation, Applicant told the security officer about his work for the Lebanese Front. She asked him if the organization was part of the Lebanese government's army. After he told her that it was not part of the army, she informed him that he did not need to disclose the information because that was not the type of information that the U.S. government was seeking in the application. (Tr. 36; 62) Hence, he did not disclose his employment or association with the Lebanese Front under three sections of the application: Question 11. *Your Military History*; Question 13. *Your Foreign Activities - Employment*; and Question 14. *Your Foreign Activities – Contact with Foreign Government*. However, he did disclose a 1998 alcohol-related driving charge and ten debts that were more than 180 days delinquent.

The following day, Applicant went through a Counterintelligence (CI) screening process that was arranged for him through his employer. Prior to beginning the process, his employer's security officer reminded him that his answers to the SF 86 and CI Screening Questionnaire should be consistent. (Tr. 57-58) During his conversation with a CI interviewer, he did not mention the Lebanese Front because he did not think of it as part of the Lebanese government's army, based on his conversation the previous day. (Tr. 62) Attached to the CI Screening Questionnaire – Middle East, is a list of terrorist organizations. The Government requires applicants to disclose whether they have been associated with said organizations or whether any of their family or friends has been so associated. The Lebanese Front is not included in that list, and Applicant did not write the organization in a column for "Other" because the Lebanese Front is not a terrorist organization. (GE 3; Answer) He was not hired at this time because the employer needed translators who spoke Farsi. (GE 4)

On May 19, 2006, Applicant completed a second security application, an e-QIP, as part of an application with a different defense contractor. He did not disclose his employment or association with the Lebanese Front under Section 17. *Your Foreign Activities*, Subsections (a) through (c), based on his previous conversations with the security officer. He disclosed under Subsection (d) that he held a Lebanese passport from 1998 to 1999. During that same month, Applicant was hired and began working as a bi-lingual translator his current employer, another federal contractor.

In June 2007, Applicant met with a Government investigator. During that interview he discussed his applications and went into substantial detail about his background and early years in Lebanon. He disclosed his work for the Lebanese Front, as well as his brother's work. He talked about his other brother's capture and torture by Muslim terrorists. (GE 4; Tr. 70) According to a summary of that interview, he was very candid. (GE 4)

Since starting his position in May 2006, Applicant has been working a schedule in which he is in Iraq for six months and then returns home for two weeks. (Tr. 54) He speaks Arabic, English and French. While there, he abides by all rules and regulations

pertinent to his employment. (GE 4) He held an Interim Secret clearance until it was revoked pending this proceeding. (Tr. 7) There is no evidence that he has been disciplined for violating security rules or procedures.

In response to the falsification allegations, Applicant denied that he intentionally falsified information to the Government when completing either of the applications or the CI Screening Questionnaire. In reviewing the CI Screening Questionnaire while testifying, he acknowledged that he should have disclosed his work for the Lebanese Front in response to Question 15.7, because the form inquired into paramilitary organizations, which are not government armies, as he previously interpreted. However, on the day he completed the form, he did not clearly understand the distinction between a military (government) and a paramilitary (non-government) army. (Tr. 62) In response to a cross-examination question about whether he was concerned about telling the truth on these forms, he said:

I really had no intention whatsoever to even, you know not say something which is [not] true, because, honestly, I know that this is a background check and it's very simple. They going to come and ask, you know, my friends, my relatives have he ever participated in what's not. Then from them the answer is going to be yes. So why should I be lying about something as clear as the day and, you know, get myself in trouble down the road. It doesn't make sense. [Sic] (Tr. 60)

Applicant submitted nine letters of recommendation from his colleagues, who have known him over the past three years. All of them comment favorably on his professionalism, integrity and outstanding performance. His shift supervisor and the senior interrogator from June 2006 to October 2006, wrote, [Applicant] "displayed a great amount of patriotism to the United States and a great deal of loyalty to the service men and women conducting missions through Iraq. . . [his] potential to support the U.S. Government in any capacity in our current fight against terrorism is limitless." (AE C) His team leader for the period of January 2007 to June 2007 commented that [Applicant] is "without a doubt the best interpreter/translator I have served with in over 20 years of service to the Department of Defense." (AE E) Another team leader (an army captain), who worked with Applicant from June 2008 to October 2008, commented that "Having worked with [Applicant] on many sensitive intelligence operations, solicited the input of fellow team members and observed him both on and off duty, I absolutely have no reservations recommending him for [a security clearance]. I would gladly work with him in any corner of the globe." (AE G) Applicant's performance evaluation, dated January 2007, noted that Applicant exceeded all expectations during the previous reporting period. (AE I)

Throughout the hearing, Applicant credibly asserted his pride of U.S. citizenship. His loyalty is to the United States. (Tr. 55) He noted that he passed a counterintelligence polygraph test in 2008. (Tr. 71)

Lebanon

Lebanon is a parliamentary democracy in which people have the constitutional right to change their government. It has a unicameral legislature, and a president elected by the legislature. Its major elected officials have been allocated among the various religious and ethnic groups for many years, according to the Constitution and a long-ago negotiated agreement among all the parties. Lebanon is located at the eastern end of the Mediterranean Sea in the Middle East area. It operated under a French mandate between World War I and II. It was peaceful until a civil war erupted in 1975 between various religious factions. Due to this civil war the full exercise of political rights were precluded from 1975 until 1991. Lebanon has a free-market economy and a strong laissez-faire commercial tradition. Historically, the Lebanese have been traders throughout the Mediterranean. The economy is service-oriented. The U.S. enjoys a strong exporter position with Lebanon and is its fifth largest source of imported goods. More than 160 offices representing U.S. businesses operate in Lebanon. Since the lifting of passport restrictions in 1997, a number of large U.S. companies have opened branch or regional offices in Lebanon.

The foreign policy of Lebanon reflects its geographic location, the composition of its population and its reliance on commerce and trade. Its foreign policy is heavily influenced by neighboring Syria, which has also long influenced Lebanon's internal policies as well. For over 10 years, Syrian troops occupied part of Lebanon, and controlled its internal politics and policies. About three years ago, Syria was forced to withdraw its troops because of Lebanese opposition expressed in a popular uprising against the Syrian presence. Syria maintains some influence in Lebanon. The U.S. State Department has declared Syria to be a supporter of terrorism. Lebanon, like most Arab states, does not recognize Israel, with which it has been technically at war since Israel's establishment.

Lebanon has had some human rights problems including the arbitrary arrest and detainment of individuals and instances of arbitrary and unlawful deprivation of life, torture and other abuses.

The terrorist group Hezbollah is a Lebanese-based radical Shi'a group and is designated by the U.S. as a "Foreign Terrorist Organization." It is allied to and supported by the Iranian Government. The Lebanese government recognizes Hezbollah as a "legitimate resistance group and political party" and until recently it was represented by elected officials in the Lebanese parliament. Hezbollah also provides support to several Palestinian terrorist organizations and is known to be involved in numerous anti-U.S. and anti-Israeli terrorist attacks. Americans have been the targets of numerous terrorist attacks in Lebanon.

The United States seeks to maintain its traditionally close ties with Lebanon and to help preserve its independence, sovereignty, national unity and territorial integrity. The U.S. provides more than \$400 million in aid to Lebanon and pledged \$1 billion in

additional aid. The aid reflects the importance the U.S. attaches to Lebanon's development as a unified, independent and sovereign country.

U.S. citizens who also possess Lebanese nationality may be subject to laws that impose special obligations on them as Lebanese citizens. Presently there is a travel warning for U.S. citizens traveling to Lebanon due to the threat against westerners.

POLICIES

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching 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.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

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

ANALYSIS

Guideline B, Foreign Influence

The security concern relating to the Government’s concern about foreign influence is set out in AG ¶ 6:

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

AG ¶ 7 describes two conditions that could raise a security concern and may be disqualifying in this case:

- (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and ²
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information.

Applicant has telephonic contact with his two brothers and in-laws, who are resident citizens of Lebanon, a pro-Western country with a parliamentary democracy. It has had a close relationship with the United States for many years. Nonetheless, it also

² The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

continues to have human rights issues and has been victimized by terrorist attacks. This fact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion, and a potential conflict of interest. AG ¶¶ 7(a) and (b) have been raised by the evidence.

Three Foreign Influence Mitigating Conditions under AG ¶ 8 are potentially applicable to the disqualifying conditions:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant's in-laws are retired and his brothers are drivers for civilian employers. In these positions, it is improbable that any of them would have any interest in acquiring protected information. Only their physical presence in Lebanon creates a potential that their interests could be threatened to the point that Applicant would confront a choice between his family's interests and those of the United States. Based on Lebanon's long-term friendship with the United States and the fact that Applicant works in Iraq, not Lebanon, I find it unlikely that Applicant will be placed in a position of having to choose between the interests of his family and those of the United States. AG ¶ 8(a) has some application.

Applicant produced substantial evidence establishing the application of AG ¶ 8(b). Because of his strong connections and feelings for the United States, he can be expected to resolve any conflict of interest in favor of the United States. He has lived in the United States as a naturalized citizen since 1999. Prior to that time he attended college here for a period of time and held various jobs. His family, including his wife, mother, and two siblings are naturalized U.S. citizens, residing in the United States. He has three children who were born in the United States. He owns a home in the United States and has bank accounts. He votes in U.S. elections. He has worked in the United States since arriving in 1992 and currently has a very good job as a translator. There is no evidence that he has connections or contact with any people in Lebanon other than his brothers and in-laws.

AG ¶ 8(c) does not apply because Applicant communicates with his two brothers and in-laws on a consistent basis, such that his communication cannot be construed to be casual or infrequent as required under this condition.

Guideline E, Personal Conduct

The Government's security concern pertaining to personal conduct 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.

One Personal Conduct Disqualifying Condition is particularly relevant and potentially disqualifying in this case. Guideline ¶ 16(a) provides that the "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" may raise a security concern. Applicant incorrectly answered questions on the October 2003 SF 86, the October 2003 CI Screening Questionnaire and the May 2006 SF 86. He denied that he intentionally falsified his answers or attempted to deceive the Government.

When a falsification allegation is controverted or denied, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004).

During his testimony, Applicant acknowledged his mistakes in completing the applications. He explained that he sought assistance in interpreting and answering the questions and believed he answered them correctly. After listening to him and observing his demeanor, I find him credible.

Applicant disclosed the information about his work for the Lebanese Front to his employer early in the investigative process, and later in an interview. He disclosed adverse information about his finances and an alcohol-related driving charge. Those disclosures, along with his explanation that he received advice from a security officer while completing his first SF 86, lead me to conclude that the omission on the

information pertaining to the Lebanese Front was misguided, but not intentional. The Government could have not formulated the SOR allegations, but for Applicant's complete disclosure of his work with the Lebanese Front during a 2007 interview. Hence, the evidence does not establish deliberate falsification. Accordingly, Guideline E is found in his favor and a discussion of mitigating conditions is not warranted.³

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 (APF) listed at AG ¶ 2(a): They are as follows:

(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."

The Appeal Board requires the whole person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family's ties to the U.S. relative to his [or her] ties to a foreign country; his or her ties social ties within the U.S.; and many others raised by the facts of a given case." ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

Substantial mitigating evidence weighs in favor of granting Applicant a security clearance. He is a mature person, who came to the United States to escape persecution of Christians in Lebanon and establish a better life. He has lived in the United States for 17 years, and has been a naturalized citizen for almost ten years. He attended classes at a U.S. university. He has worked in the United States since 1992 and established a successful career. His spouse is a naturalized citizen, residing with him in the U.S. His two children were born in the United States. Other immediate family members are resident citizens of the United States. He has a strong sense of patriotism toward the United States. His ties to the United States are much stronger than his ties to two brothers and two in-laws living in Lebanon. There is no evidence he has ever taken any

³In the event a disqualification were to be found by the reviewing board, there is sufficient evidence in the record to establish 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."

action that could cause potential harm to the United States. His co-workers praise him as loyal and honest, and consider his work to be integral to the U.S. efforts in Iraq. I place great weight on those recommendations because they are submitted by persons who have worked daily and in dangerous conditions with Applicant. They are in a position to assess his character and conduct.

Three circumstances weigh against Applicant in the whole person analysis. First, there is a significant risk of terrorism and various human rights abuses in Lebanon. More importantly for security purposes, terrorists are hostile to the United States and actively seek classified information. Terrorists, and even friendly governments, could attempt to use Applicant's brother to obtain such information. Second, he had numerous connections to Lebanon before leaving it in 1992. Following his birth, he spent his formative years there, along with his family. Third, his brothers and in-laws are resident citizens of Lebanon, with whom he has some contact.

Applicant has held an Interim Secret security clearance while working in Iraq up to recently without any indication that he breached security policies or procedures. While that fact is not normally to be considered a factor in granting a clearance, the Appeal Board noted in ISCR Case No. 05-03846 as follows:

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for purposes of refuting, mitigating, or extenuating the security concerns raised by the applicant's more immediate disqualifying conduct or circumstances. See, e.g., ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the nation security. See, e.g. ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole person, I conclude Applicant mitigated the security concerns pertaining to foreign influence and personal conduct.⁴ Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and

⁴I conclude that the whole person analysis weighs heavily toward approval of his security clearance. Assuming a higher authority reviewing this decision determines the mitigating conditions articulated under AG ¶ 8 do not apply and severs any consideration of them, I conclude the whole person analysis standing alone is sufficient to support approval of a security clearance in this case.

suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his foreign influence and personal conduct.

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 through 1.c	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a through 2.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

SHARI DAM
Administrative Judge