DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 08-02849
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: Kathleen E. Voelker, Esquire

May 12, 2009

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86) on April 11, 2006. He submitted an earlier SF 86 on October 26, 2004. On May 23, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing 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 acknowledged receipt of the SOR on July 10, 2008, and elected to have his case decided on the record in lieu of a hearing. Department Counsel submitted the

Government's written case on September 4, 2009.[1] Applicant received a complete file of relevant material (FORM) on October 24, 2008, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's case. Applicant submitted thirteen documents (AE A-M). The case was assigned to me on May 4, 2009. Eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Iraq. The request and the attached documents are included in the record as Exhibits I-V. 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 to the SOR, Applicant admitted the factual allegations in ¶ 1.a-1.f and ¶ 2.a, c and d with explanations. He denied the other allegation (¶ 2.b) in the SOR based on the fact that he did not deliberately falsify the information on his security clearance. His admissions in his answer to the SOR are incorporated in my findings of fact. I make the following findings:

Applicant is a 61-year-old man who was born and educated in Iraq. He graduated from a teaching institute and taught English in the public schools in Iraq from 1967 to 1991 (Item 8; SOR ¶ 1.d). Applicant was drafted into the Iraqi military and served from 1988 until 1989 (Item 5). He and his family fled Iraq in 1991. He has lived in the United States since October 1993 (Item 8). He became a naturalized U.S. Citizen in July 2000. He has been employed with his current employer since October 2004 as a translator (linguist) (GE 1). Applicant has held an interim security clearance for almost six years. He is currently working in Iraq for the U.S. Government.

Applicant married his wife in 1982 in Iraq (Item 5). She is a naturalized U.S. citizen and resides with Applicant in the U.S. They have three children, ages 25, 21 and 19, who acquired U.S. citizenship in 2000. His father and father-in-law are deceased. Applicant's mother, who is 70 years old, is a homemaker. She is a citizen and a resident of Iraq. Applicant talks to her on the phone approximately one time a month.

Applicant has a brother and sister-in-law who are citizens and residents of Iraq (SOR ¶ 1.b). His brother is a high school teach in Iraq. His sister-in-law teaches in an elementary school in Iraq. Applicant reports limited to no contact with his brother. His brother does not have a telephone. When Applicant was in Iraq working for the U.S. in 2003, he did see his brother on one occasion (Item 8).

[1]The Government submitted eight items in support of its contention.

Applicant has three sisters and two brothers-in-law who are citizens and residents of Iraq (SOR 1.c). Applicant had not seen these relatives from 1991 until 2003. He received permission to see them from one of the Army personnel. Also, at that time, there was no policy prohibiting translators from visiting their family (AE A).

Applicant's two sisters are homemakers in Iraq. His other sister in Iraq is not married and lives with Applicant's mother. His one brother-in-law is now retired after owning a liquor store. His other brother-in-law works for an Iraqi oil company.

Applicant's other sisters live in Sweden with their husbands. They are residents and citizens of Sweden. He has seen some of them when they have visited the U.S. His one-brother-in-law in Sweden retired from the Iraqi military. Applicant visited two sisters in Sweden in 2008.

Applicant's mother-in-law left Iraq in 1992 and lives in the U.S. She is 67 years old. She is a permanent resident alien although she is a citizen of Iraq (SOR ¶ 1.f).

Applicant's family knows that he is a translator for the U.S. but they do not know the details of his work. His family is supportive of the efforts of the U.S. in Iraq. None of his family members have been the victims of violence or have been threatened due to Applicant's work for the U.S. His entire family are Christians.

In 2003, Applicant served as an interpreter for the U.S. Army in Iraq. He translated interrogations of detainees at a prison in Iraq. Applicant admits that he was consuming alcohol (which was sold in the work area) in his room on one of his days off while employed with the defense contractor in 2004 in Iraq. However, he reports that consumption of alcohol was a common practice and that it was not prohibited by his contract. He remained in his position until he was sent back to the U.S. in late July 2004 (SOR ¶ 2.a). He was not given any written notice of his termination as a contractor. Applicant did not believe he had been fired. He believed his contract at will had ended. He did not ask for an explanation from the contractor. He now realizes that this was a mistake on his part.

When Applicant completed his security clearance application in April 2006, he answered Section 22: Your Employment Record with a "no". He did not list any adverse termination from employment in 2004 (SOR ¶ 2.c). He also completed an earlier security clearance application in October 2004, and he did not record any information concerning an adverse termination in response to Question 20. (SOR ¶ 2.d).

In June 2007, Applicant spoke to an interviewer concerning his security clearance application. He stated that concerning the consumption of alcohol, the regulations were not in writing and were never enforced. He reported that the person who came into his room unexpectedly in 2003 wanted to have him fired because Applicant had complained to an Army officer about his translating skills.

During that same 2007 interview, Applicant volunteered the information that when he was interrogating a detainee in 2004, he was recognized. He reported his concerns to the unit and asked for a change of location. He also acknowledged in the interview that he was imprisoned in Iraq in 1986 because he did not support Saddam Hussein (SOR ¶ 1.e). He was released when he paid one of the members of the Ba'ath party. He was returned to his teaching position.

Applicant acknowledged that he saw his mother and his one sister in 2007 when they were in Jordan. His mother was ill and she was seeking medical treatment. When his father died in 2007, Applicant did not visit his family (AE A).

Applicant has no financial interest in Iraq. He has no desire to return to the country. Applicant owns a home in the U.S. He has given up a teaching pension that he had in Iraq. He has no contact or affiliation with any former colleagues in Iraq.

Applicant asserted his pride of U.S. citizenship and love for his work with the Army (AE A). He worked in a war zone in Iraq. He worked very long hours for six days a week. He has gone out on missions with the U.S. army approximately 20 times. He has lost friends and co-workers on these dangerous missions. He has willingly put himself in danger every day for almost six years in order to help the U.S.

Applicant emphasized that he would never betray the U.S. He noted that he was sorry that he could not come to the U.S. for a hearing because he is in Iraq and does not have vacation time. He related that he could not afford to pay his expenses back to the U.S. at this time and could not afford to lose his pay. His 2009 affidavit, submitted in response to the FORM, emphasizes his allegiance to the U.S. He has lived in the U.S. for sixteen years.

There is no evidence in the record that Applicant breached any security policies or procedures while holding a security clearance in Iraq. He has two Certificates of Appreciation for his work in Iraq (AE C-D).

Applicant presented a 2008 recommendation from a Senior Research Specialist (Applicant's supervisor) who serves with the U.S. Army in Iraq. Applicant has worked closely with his team since October 2004. Applicant has provided total commitment to the mission. He is a competent and experienced professional. He is a mentor to others. His loyalty to the unit has never been questioned. Applicant has been trusted with team-critical responsibilities. He is an honest worker. He has always been an asset to the to his team. He is recommended for a permanent security clearance (AE E).

Applicant has several recommendations from other specialists with the U.S. Army. He is lauded for his preparation and motivation. He is described as professional, reliable, and honest. He is mature which serves as an advantage. He works long hours at a tireless pace in an often thankless environment.

An Army interrogator who has worked with Applicant and sees him on a daily basis does not doubt his competence or dedication. He believes he is a true U.S. patriot. He is the type of person that can be trusted with information.

Applicant's current employer vouches for Applicant's professionalism and work ethic. His skill set is second to none. He has the highest recommendation and his skills are greatly needed with the Joint Special Operations Task Force.

Applicant received several Certificates of Appreciation while serving as a translator in Iraq. He is noted for his outstanding support of a unit in Operation Iraqi Freedom. He was praised for his expert linguistic skill and professionalism in his duties from May 2005 until July 2007 (AE E-M).

I take administrative notice of the following facts about Iraq set forth in the Hearing Exhibits, including the fact that in 2003, the United States led a coalition to remove Saddam Hussein from power in Iraq. After free elections, Iraq's new government took office. Despite the elections and new government, Iraq remains engulfed in violence, perpetrated by Al Qaeda terrorists and other insurgents. Numerous attacks and kidnappings have targeted the United States Armed Forces, contractors, and other civilians, as well as Iraqis. Even with aggressive governmental action against terrorists, the threat of terrorism in Iraq remains. Terrorist groups can conduct intelligence activities as effectively as state intelligence services.

Policies

"[N]o 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 occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the

possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See* Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance

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

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

Analysis

Guideline B (Foreign Influence)

The SOR alleges Applicant has a mother, mother-in-law, brother, sister-in-law, four sisters and brothers-in-law who are citizens of and residents of Iraq. (SOR ¶ 1.a-c and 1.f). It also alleges Applicant was an employee of the Iraqi Government (SOR ¶ 1.d) and that in 1986 he was imprisoned by the Iraqi Government and paid a bribe for release (SOR ¶ 1.e). The security concern relating to Guideline B is set out in AG ¶ 6 as follows:

> Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or

> financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

A disqualifying condition may be raised by "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." AG ¶ 7(a). A disqualifying condition also may be raised by "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." AG ¶ 7(b). Applicant's mother, brother and three sisters are citizens and residents of Iraq. Applicant maintains weekly phone contact with his mother and his sister who lives and cares for his mother. Applicant's brother and sister-in-law teach in public schools in Iraq. He took an assignment in Iraq as a translator and he acknowledged that his family knows about his work. Based on this evidence, AG ¶¶ 7(a), and (b) are raised.

Since the government produced evidence to raise the disqualifying conditions in AG ¶¶ 7(a) and (b), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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). Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S.

Security concerns under this guideline can be mitigated by showing that "the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is

unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S." AG ¶ 8(a). The totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Similarly, AG 8(c) "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation." Applicant has monthly phone contact with his mother. This appears to be casual and only based on telephone communication rather than physical contact with family members while he is stationed in Iraq. Applicant did not visit his family in Iraq when his father died in 2007. Thus, this mitigating condition has some partial application in this case.¶

Security concerns under this guideline also can be mitigated by showing "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." AG ¶ 8(b). Applicant spoke to his undivided loyalty to the U.S. Based on his relationship and loyalty to the U.S., he can be expected to resolve any conflict of interest in favor of the U.S. interest. He has lived in the U.S. since 1993, after fleeing Iraq, and did not return to Iraq until his employment with the U.S. Army in June 2003. The majority of the members of his large family, including his wife, are naturalized citizens of the U.S. or living outside of Iraq. He has three children who are naturalized citizens. He owns property in the U.S. He has worked in the U.S. for many years. He has endured dangerous conditions in Iraq on behalf of the U.S. Army. There is no evidence that he has connections or contact with any people other than his sister and mother in Iraq. He has established application of AG 8(b).

Guideline E (Personal Conduct)

The SOR alleges Applicant deliberately provided false or misleading information on his 2006 and 2004 security clearance applications, when he did not list a 2004 termination from employment due to alcohol consumption. (SOR ¶ 2.a). It also alleges consumption of alcohol in violation of policy in Iraq (SOR ¶ 2.b). The security concern relating to the guideline for 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 cooperate with the security clearance process.

AG 16 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

(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; and

(C) 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 judgement, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulation, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Applicant incorrectly answered employment questions concerning whether he had been terminated under adverse circumstances on two security clearance applications. He denied that he intentionally falsified his answers or attempted to deceive the government.

When a falsification 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 considers the record evidence as a whole to determine where there is direct or circumstantial evidence concerning an applicant's state of mind a the time of 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).

Applicant never believed he violated the contractor's policy, so he denied the allegations in the SOR. He knew that consumption of alcohol was common practice and was easily available and that it was not prohibited by the contract. Any policy was not in writing. When he was initially told that he was fired by the person who came into his room, he continued to work. He was not given any written notice of his termination as a contractor. The contract was at will and thus he could be terminated at any time for any reason with or without explanation. Applicant did not think of himself as fired. Only when it was discussed with the investigator in 2007, did he realize he should have asked for an explanation from the contractor so that he could accurately complete the SF 86. Thus, his failure to disclose that he had been terminated was not intentionally false. It was based on a misunderstanding of what happened.

Applicant admitted that he omitted information. However, he also provided evidence that he thoroughly discussed and disclosed the information, allegedly omitted, in the 2007 interview. I do not find his omissions rising to a level of intentional wrongdoing in an effort to deceive the Government. Nor do I find that such omissions

raise questions about his reliability or ability to protect classified information. Based on the documentary evidence in this record, and Applicant's affidavit submitted in response to the FORM, his explanations are reasonable. His state of mind at the time he completed his security clearance application does not establish deliberate falsification. When he provided erroneous information, it was based on the mistaken belief that he was not fired and not an intentional, deliberate lie. Under AG ¶ 17 falsification is not substantiated.

Concerning the use of alcohol in 2004 and the admission of use of alcohol once or twice during his 2007 interview, Applicant has mitigated any security concern.

Based on the above discussion, he consumed alcohol in his room on a day off in 2004 which was against the contract. It has been mitigated by time and behavior.

Paragraph 17 lists conditions that could mitigate security concerns. In pertinent part, AG ¶ 17 provides:

> (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
>
> (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
>
> (f) the information was unsubstantiated or from a source of questionable reliability.

I have considered these mitigating conditions and find them applicable. The other mitigating conditions are not relevant in this case:

Whole Person Concept

Under the whole person concept, an 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. An 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 common sense judgment based upon careful consideration of the guidelines and the whole person concept.

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 ties to the U.S. relative to his or her ties to a foreign country; his or her 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).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Four circumstances weigh against Applicant in the whole person analysis. First, there is a significant risk of terrorism and various human rights abuses in Iraq. More importantly for security purposes, terrorists are hostile to the U.S. and actively seek classified information. Terrorists, and even friendly governments, could attempt to use Applicant's sisters, brother and brothers-in-law and mother to obtain such information. Second, he had numerous connections to Iraq before he immigrated to the U.S. in 1993. Following his birth, he spent his formative years there, along with his large family. He was educated in Iraq and subsequently conscripted into Iraq's army. Third, his sister, brother and mother remain citizens of Iraq. Fourth, he has some contact with his mother and sibling.

Substantial mitigating evidence weighs in favor of granting Applicant a security clearance. He is a mature person, who has lived in the U.S. since 1993, and has been a naturalized citizen for many years. His spouse is a naturalized citizen and resides with him, as do his three children. He obviously has a strong sense of patriotism toward the U.S., as witnessed by his dedication and work with the U.S. Army. There is no evidence that he has ever taken any action that could cause potential harm to the U.S. His military supervisors, who work with him daily in a war zone, praised his work in the cause of freedom in Iraq. After fleeing Iraq in 1991, he never returned until he worked with the U.S. Army and his contractor in 2003. He has established his life in the U.S.

Applicant held a security clearance during his tenure with the U.S. Army without indication that he breached security policies or procedures. He served the U.S. in a dangerous, high-risk situation and his character references establish his significant contributions to U.S. national security. 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 at 6 (App. Bd. Nov. 14, 2006) 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 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 4 (App. Bd. Mr. 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 made a significant contribution to the nation's 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 to 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 has mitigated the security concerns pertaining to foreign influence and personal conduct.[2] Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his foreign influence and personal conduct.

Formal Findings

I make the following formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25 of Enclosure 3:

Paragraph 1, Foreign Influence:	FOR APPLICANT
Subparagraphs 1.a through 1.f:	For Applicant
Paragraph 2, Personal Conduct	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 national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Noreen A. Lynch
Administrative Judge

[2]I 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.