



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 08-07648

Appearances

For Government: Eric M. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

April 24, 2009

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines B (Foreign Influence) and E (Personal Conduct), based on Applicant's marriage to an officer in the Royal Thai Air Force while holding a security clearance and eligibility for access to Sensitive Compartmented Information (SCI). Applicant's security clearance and SCI eligibility were revoked in October 2006. Applicant now seeks reinstatement of his security clearance. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on July 30, 2007. On December 16, 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 Guidelines B and E. 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 adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

Applicant received the SOR on December 23, 2008; answered it on January 8, 2009; and requested a hearing before an administrative judge. DOHA received the request on January 12, 2009. Department Counsel was ready to proceed on February 5, 2009; and the case was assigned to me on February 12, 2009. DOHA issued a notice of hearing on February 18, 2009, scheduling the hearing for March 17, 2009. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 10 were admitted in evidence without objection. Applicant testified on his own behalf, presented the testimony of two witnesses, and submitted Applicant's Exhibits (AX) A through D, which were admitted without objection. The record closed upon adjournment of the hearing on March 17, 2009. DOHA received the transcript (Tr.) on March 25, 2009.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Thailand, and Applicant did not object. The request and its enclosures are attached to the record as Hearing Exhibit (HX) I. The facts administratively noticed are set out below in my findings of fact.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations in the SOR. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 55-year-old employee of a federal contractor. He held a security clearance and SCI eligibility from about November 1977 to October 2006. He served as an officer in the U.S. Navy from October 1975 to October 2003, and he retired as a commander (pay grade O-5) (Tr. 70). He holds a master's degree from the Naval Postgraduate School (Tr. 7). During his Navy career, he served in numerous intelligence-related assignments, and he worked with the intelligence community as a civilian contractor employee until October 2006 (Tr. 34-36).

Applicant was married in April 1980 to a citizen of the United Kingdom. They were divorced in October 2003. Applicant has one adult daughter from this marriage (Tr. 46). He held a clearance and SCI eligibility even though his spouse was not a U.S. citizen (Tr. 34, 82).

In March 2003, while Applicant was still on active duty, he prepared a briefing for military and civilian attendees that contained Special Access Program (SAP) information. All attendees had top secret/SCI clearances, but not all were cleared for SAP information. Applicant admitted he had not submitted his briefing for a classification review before it was presented. He attributed this violation to job-related stress (GX 9 at 13). He was counseled but was allowed to retain his clearance and SCI eligibility (GX 9 at 18).

In August 2003, while in the U.S. Navy but assigned to an intelligence agency, Applicant signed a "Personnel Security Policy Advisory." This document informed him, in pertinent part, as follows:

Casual associations with foreign nationals are generally acceptable. Such associations must not, however, develop into "close and continuing" relationships, e.g., those characterized by ties of kinship, obligation (including financial), affection, or other capacities to influence. Such relationships are not compatible with the security of [the agency's] sensitive mission. Affiliates who find themselves involved in such a relationship must immediately seek guidance from a security officer.

(GX 9, Enclosure 13.)

In May 2004, while traveling in Thailand on business for his employer and while holding a security clearance and SCI eligibility, Applicant met a female officer in the Royal Thai Air Force. She speaks fluent English, has attended a U.S. Army school for automation officers, and held a U.S. security clearance while attending the training (Tr. 71). Applicant reported this foreign contact to his security officer (Tr. 38, 62).

After returning to the U.S., Applicant maintained email contact with the Thai officer about once a week, and their relationship developed into a friendship. He visited her in Thailand for about ten days in January 2005, and she visited him for five days in the U.S. during February 2005. Before traveling to Thailand, Applicant filed the required report of foreign travel and listed the Thai officer as a foreign contact (Tr. 38). After he returned from Thailand, he informed his employer's security officer as well as a government employee who was the security officer for the project on which he was working that he and the Thai officer had become "much closer" and had discussed marriage (Tr. 38-39, 64).

The Thai officer visited Applicant for five days in the U.S. during February 2005 and attended training in the U.S. She returned to Thailand in July 2005. By this time, she and Applicant had decided to be married after she retired in October 2006 (Tr. 39, 80).

Applicant underwent a polygraph examination in April 2005, in connection with an application for government employment. The polygraph examiner informed him that his foreign contacts had not been reported to the appropriate government official by his employer. Applicant completed the required reports the next day (Tr. 39).

Applicant executed a security clearance application (SF 86) in November 2005 in which he disclosed his romantic relationship with the Thai officer. He stated the Thai officer intended to retire in 2006, after which they intended to marry and live together in the U.S., and that she intended to seek U.S. citizenship (GX 9 at Encl 14, p. 11).

In late 2005, Applicant was offered a government position. At this point, he was still employed by a government contractor but preparing to accept a position as a government employee. In early January 2006, he was informed that a compelling need statement was required for his future government position because of his relationship with a foreign national. He drafted the document, which recited his marriage plans, and took it to the government security officer (Tr. 40). The document was transmitted to the deputy commander of the activity for which Applicant would be working, who had authority to sign it. Applicant testified he watched the deputy commander sign it (Tr. 67-68). He testified he told the deputy commander he intended to be married during his trip to Thailand in January 2006 (Tr. 77), but this information about the intended date of marriage apparently was not reduced to writing. Applicant and his fiancée had decided to be married in Thailand, because they concluded that the fiancée visa process was too complicated and time-consuming. Neither Applicant nor Department Counsel produced a copy of the compelling need statement at the hearing, but the fact that it was drafted and submitted was corroborated by one of Applicant's colleagues (AX A).

After the compelling need statement was signed, Applicant traveled to Thailand, filing the required trip report beforehand. He was married on January 13, 2006 (Tr. 40). Upon returning to the U.S. a few days later, he was summoned to meet with a counterintelligence officer. He informed the counterintelligence officer of his recent marriage, and was told, "You should have talked to us first." Applicant testified he then realized that more than a compelling need statement was required (Tr. 41; GX 9 at Encl 8, p. 2). He testified that he was aware of the requirement for a compelling need statement, but was unaware of the requirement for a foreign spouse waiver until his meeting with the counterintelligence officer (Tr. 69).

Applicant had previous experience with a compelling need statement, because he needed one for a Navy assignment in 2001, when he was married to his previous wife, a citizen of the United Kingdom (Tr. 72). He testified he believed, based on his experience, that the person for whom a compelling need statement is submitted is not given a copy of it and does not receive written approval. He testified he believed approval is indicated by granting access to the work space and programs for which SCI clearance is required (Tr. 73-74). Finally, he testified that he assumed it was permissible for him to be married after the deputy commander signed the compelling need statement (Tr. 75).

Applicant's access to SCI was suspended in late January 2006 and revoked in October 2006, along with his collateral security clearance (Tr. 9; GX 7, 8). His appeal of the revocation was supported by several senior civilian officials, but it was denied in May 2007 (GX 9 at 3). The decision memorandum (GX 9 at 18) recites that Applicant "demonstrated irresponsible behavior and disregard for [agency] policies" by marrying a foreign national, without the agency's knowledge or consent and "in knowing and deliberate violation" of its policies. The decision memorandum concludes: "His marriage makes him ineligible to hold SCI access; his calculated decision to violate [agency] policy raises questions about his willingness and ability to safeguard [agency] information."

Applicant's wife was unable to retire as she had planned, because all retirements were cancelled after the military coup in Thailand. Applicant visited her in Thailand in January 2007. She retired in April 2007 and came to the U.S. in July 2007 (Tr. 42). She is now a permanent resident of the U.S. (AX C). She receives about \$1,200 in monthly retirement pay from the Thai government that she uses to support her son, who is a citizen and resident of Thailand (Tr. 52). She owns a condominium in downtown Bangkok that she is trying to sell, and some undeveloped oceanfront property (Tr. 52-53). Her son sometimes resides in the condominium (Tr. 53).

Applicant testified his wife intends to become a U.S. citizen. Her son, who is a student in Thailand, has received an immigrant visa and is awaiting a quota from the U.S. Department of State (AX D; Tr. 30, 49-50). Applicant's contact with his wife's son is limited to courtesy greetings when she calls him (Tr. 43).

Applicant's wife was previously married to an officer in the Royal Thai Air Force, who has since retired (Tr. 43). Applicant has never met him, and his wife has no contact with her ex-husband (Tr. 43, 57).

Applicant's wife has a sister who lives in Germany (Tr. 48) and brother who is a mid-level employee of the Thai government. Applicant has never met her brother (Tr. 43).

Applicant's mother-in-law is a citizen and resident of Thailand, residing in the Bangkok area. Applicant's contact with her is limited by the language barrier (Tr. 43). He does not know if she ever worked outside the home. Her husband is deceased (Tr. 48). Applicant's wife talks to her mother by telephone three or four times a week (Tr. 50).

A long-time colleague of Applicant, who is now a senior government employee in the intelligence community, submitted a letter supporting Applicant's application for a clearance. He described Applicant as a "consummate professional, fully committed to the security of the nation and his fellows, and diligently observant of all security regulations and policies." He stated that Applicant enjoys a reputation in the intelligence community as a "highly skilled professional; consistent, dedicated, diligent, an adherent to the letter of the law and policy, and fully committed to the security of this nation." He was familiar with Applicant's marital situation. He stated that Applicant informed his superiors of his intended marriage and waited until the compelling need statement was completed, but was unaware of the requirement to wait for a foreign spouse waiver (AX A). This witness was present when Applicant drafted the compelling need statement for his superiors, and he was later present when Applicant was escorted out of the facility for not completing the appropriate paperwork regarding his marriage (Tr. 46).

A former supervisor serving in a senior executive service position also supported Applicant. He stated, "I can categorically say that I continue to see [Applicant] as a trusted advisor, a person whose sound judgment, personal character, integrity and loyalty is beyond reproach." He noted that many of Applicant's accomplishments cannot

be fully divulged, but that he has had a lasting impact on the national security of the United States (AX B).

A U.S. Navy captain with 24 years of service and a top secret clearance, for whom Applicant worked for nine months as an executive assistant, testified he regards Applicant as trustworthy and was considering him for a position in his organization (Tr. 87-88). A retired Navy captain now working in a high-level intelligence position as a civilian, who has known and worked with Applicant with 1993, testified in support of his application for a clearance. He regards Applicant as absolutely trustworthy (Tr. 99). This witness also testified that the intelligence threat level from Thailand is low (Tr. 98). Finally, he testified that the intelligence threat level posed by a foreign spouse is less when the spouse is a military officer, because the activities of military officers usually are more visible than those of civilians (Tr. 108).

I have taken administrative notice that Thailand is a constitutional monarchy that was considered a functioning democracy until military leaders overthrew the democratically-elected government in September 2006 and declared martial law. Before the military coup, Thailand enjoyed good relations and military alliances with the U.S. and cooperated with the U.S. on a wide variety of diplomatic and foreign policy issues. After the coup, the U.S. suspended funding for several military assistance programs, military education programs, and joint counterterrorism programs. Funding was restored when a democratically-elected government took office in February 2008. Although the government generally respects the human rights of its citizens, there have been problems with security forces, which have used excessive force and sometimes have been connected to extrajudicial, arbitrary, and unlawful killings. The administrative notice documents do not reflect any Thai intelligence activity directed at the U.S., but the country continues to experience political instability, and there has been an increased risk of terrorism, particularly in the southern regions.

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 have 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’s spouse is a citizen of Thailand residing in the U.S. (¶ 1.a); she was serving as an officer in the Royal Thai Air Force when they were married (¶ 1.b); his spouse’s brother-in-law is employed at the Thai Ministry of Interior (¶ 1.c); his spouse’s former husband is an officer in the Royal Thai Air Force (¶ 1.d); his spouse’s mother and son are citizens and residents of Thailand (¶ 1.e); and he traveled

to Thailand in “at least” 2004, 2005, 2006, and 2007 (¶ 1.f). The security concern under this guideline is set out in AG ¶ 6 as follows:

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

Three disqualifying conditions under this guideline are relevant. First, 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). Second, a disqualifying condition 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). Third, a security concern may be raised if an applicant is “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” AG ¶ 7(d).

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). “[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). Applicant has rebutted this presumption.

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. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

AG ¶¶ 7(a) and (d) require substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard, denoting a risk greater than the normal risk inherent in having a family member living under a foreign government. The requirement for a "heightened risk" in this case is established by the political instability in Thailand, the connections between Applicant's spouse and the Royal Thai Air Force, and the presence of his spouse's mother and son in Thailand.

Applicant's spouse only recently retired from a career in the Royal Thai Air Force, and she receives retirement pay from the Thai government. Although Applicant testified his spouse intends to become a U.S. citizen, she did not testify, leaving the extent and depth of her loyalties to the government of Thailand and her former military colleagues unclear. Her connections to Thailand and the political instability in that country raise the potential conflict of interest in AG ¶ 7(b).

All of Applicant's travel to Thailand was either for official business or to visit his future wife. As such, it has no independent security significance. See ISCR Case No. 02-26978 (App. Bd. Sep 21, 2005).

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 7(a), (b), and (d), 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).

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). Without evidence from Applicant's spouse, the depth and breadth of her loyalties to Thailand and her former military colleagues is difficult to assess. His spouse's mother and son reside in the Bangkok area and not in the southern regions where the threat of terrorism is greatest. Thailand has been a traditional ally of the U.S., but has recently experienced political instability. Applicant has not shown that it is

unlikely he will be placed in a position of having to choose between the interests of his wife and her family and the interests of the U.S. Thus, I conclude AG ¶ 8(a) is not established.

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’s attachment to his wife is not “minimal,” but he has spent all his adult life in the service of the U.S., most of it in the intelligence community. He served as a career officer in the U.S. Navy, retiring as a commander. He has no financial interests in Thailand and no intention to live there. He believes his wife will become a U.S. citizen and they will live out their lives in the U.S. While the evidence indicates Applicant would be likely to resolve any conflict of interest in favor of the U.S. if he realized there was a conflict, the evidence also suggests he has a “blind spot,” raising doubt whether he would recognize that a conflict of interest existed if it involved his spouse. I conclude AG ¶ 8(b) is not established.

Security concerns under this guideline also may be mitigated by showing that “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.” AG ¶ 8(c). This mitigating condition is established because Applicant has virtually no contact with his wife’s mother, son, and siblings.

Guideline E, Personal Conduct

The SOR alleges Applicant married a foreign military officer while employed by a government contractor and holding a security clearance without obtaining a foreign national waiver (¶ 2.a). It also alleges Applicant’s SCI eligibility was revoked in October 2006 and the revocation was sustained on appeal (¶ 2.b). The concern under this guideline is set out in AG ¶ 15, in pertinent part as follows: “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.” The SOR does not allege any security concerns under Guideline K (Handling Protected Information).

SOR ¶ 2.b does not allege conduct by Applicant but merely describes the decision of another agency. It does not describe conduct covered by any of the disqualifying conditions in AG ¶ 7. The basis for that agency’s decision is the same conduct alleged in SOR ¶ 1.a and 1.b. For all these reasons, I resolve SOR ¶ 2.b in Applicant’s favor.

The applicable directive at the time of Applicant’s marriage was Director of Central Intelligence Directive (DCID) 6/4. That directive required that an individual seeking access to SCI be a U.S. citizen and that the individual’s immediate family also

be U.S. citizens (DCID 6/4 ¶¶ 5a and b). Exceptions to the requirement that immediate family members be U.S. citizens were required to be approved by a Senior Official of the Intelligence Community (SOIC), defined as the head of an organization or activity within the Intelligence Community (DCID 6/4 ¶ 6.b). Exceptions to the citizenship requirement required a “certification of compelling need” (DCID 6/4 ¶ 6.c). The term “foreign national waiver” did not appear in DCID 6/4, although it provided for approval of an exception to the requirement of U.S. citizenship. Department Counsel produced no evidence of any other directives, regulations, or policies providing for a “foreign national waiver.” The first reference to a “waiver” was in Intelligence Community Directive (ICD) 704, which was not promulgated and effective until October 1, 2008.

The Personnel Security Policy Advisory signed by Applicant in August 2003 advised him that “close and continuing” relationships with foreign nationals “are not compatible with the security of [the agency’s] sensitive mission.” It also advised him to “seek guidance from a security officer” if he found himself involved in such a relationship. Similar advice was contained in DCID 6/4 ¶ 9, requiring individuals with SCI access “to report to their cognizant security officer, in writing and when feasible in advance, activities, conduct, or employment that could conflict with their ability to protect classified information from unauthorized disclosure or counterintelligence threats.”

The evidence reflects that Applicant reported his relationship as it developed, and he reported his trips to Thailand and his intention to marry an officer in the Royal Thai Air Force. He drafted a statement of compelling need for the signature of his superior, but he did not wait for an exception to be approved. Instead, he was married a few days after the statement of compelling need was signed. Although he testified he was unaware of the requirement for approval (or waiver) before his marriage, he knew, based on his employer’s Personnel Security Policy Advisory, that his relationship was “not compatible” with his agency’s mission.

Three potentially disqualifying conditions under Guideline E are relevant. AG ¶ 16(c) applies when there is:

credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

AG ¶ 16(d) applies when there is:

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 . . . a pattern of dishonesty or rule violations.

AG ¶ 16(f) applies when there is “violation of a written or recorded commitment made by the individual to the employer as a condition of employment.”

Applicant’s professed ignorance of the provisions of DCID 6/4 in spite of his long history of working within the intelligence community is troubling. His relationship with a foreign military officer began shortly after his divorce and about a year after his careless security breach in March 2003. He knew his relationship with a foreign military officer raised security concerns, and he dutifully reported the progress of his relationship to his security officers. He appears to have been waiting for someone to wave a red flag and tell him to stop, but no one did. He either believed, based on his earlier experience with marriage to a citizen of the United Kingdom, that his supervisor’s signature on the compelling need statement was tantamount to granting an exception to DCID 6/4, or he believed that his marriage without formal approval was a minor violation of the rules that could be dealt with later. If he was ignorant of the requirement for SOIC approval of his marriage, it was due to culpable negligence. A cursory review of DCID 6/4 would have made it clear that more than a compelling need statement was required.

On the other hand, the evidence reflects that Applicant complied with the guidance in the Personnel Security Policy Advisory by informing his security officer when his casual acquaintance blossomed into a friendship, progressed to a romantic relationship, and finally led to marriage. He reported his trips to Thailand and his intention to marry. He reported his marriage shortly after it occurred, but he did not wait for approval of an exception to the familial U.S. citizenship requirement.

Whether Applicant was culpably negligence or chose to marry without formal approval, there is sufficient evidence of bad judgment and inattention to security requirements to raise AG ¶¶ 16(c) and (d). AG ¶ 16(d) is raised because it was his second security violation within a relatively short time period, sufficient to constitute a “pattern” of rules violations. AG ¶ 16(f) is not raised because Applicant heeded the admonition in the Personnel Security Policy Advisory to seek guidance from a security officer. There are no other documents in the record that substantiate a “written or recorded commitment.”

Applicant’s security violation in March 2003 was not alleged in the SOR. Conduct not alleged in the SOR may be considered to assess an applicant’s credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole person analysis” ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted). I have considered the March 2003 incident for these limited purposes.

Security concerns arising from personal conduct can be mitigated if “the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.” AG ¶ 17(c). Applicant's dereliction was not “minor,” because it raised sufficiently serious security concerns to make him ineligible for SCI access. His marriage was relatively recent, and it was his second security-related incident in a three-year period. His involvement with a foreign military officer did not occur under unique circumstances. Notwithstanding Applicant's long service in the intelligence community and the testimonials submitted on his behalf, his conduct raises doubt about his trustworthiness and good judgment. I conclude AG ¶ 17(c) is not established.

Security concerns under this guideline can be mitigated if “the individual has acknowledged the behavior” and has taken “positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.” AG ¶ 17(d). Applicant has acknowledged his behavior, and he is no longer undergoing the personal and professional stressors that existed between March 2003 and January 2006. He and his new wife apparently have settled into life in the U.S. What is uncertain, however, is whether he will again allow his personal desires to cloud his judgment when they are impeded by security requirements. Accordingly, I conclude AG ¶ 17(d) is not established.

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. 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 those guidelines, but some warrant additional comment.

Applicant is a mature, well-educated adult with a long record of government service. He held a clearance and SCI eligibility for many years. His application is supported by several senior civilian and military officials who provided testimonials to his good judgment and trustworthiness. Although his marriage makes him ineligible for SCI eligibility unless a waiver is granted in accordance with ICD 704, it does not disqualify him from holding a clearance.

Applicant explained his March 2003 security violation by attributing it to job-related stress. His hasty marriage without formal SOIC approval was motivated by his desire to begin his life together with his new wife, coupled with his professed ignorance of the applicable directive. The period from around March 2003 until January 2006 was an unsettled time in Applicant's life. His reaction to the stress factors in his life during that period raises doubt about his current trustworthiness and good judgment, and the evidence he presented at the hearing has not dispelled that doubt.

After weighing the disqualifying and mitigating conditions under Guidelines B and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on foreign influence and his personal conduct. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25:

Paragraph 1, Guideline B (Foreign Influence):	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraphs 1.c-1.f:	For Applicant
Paragraph 2, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant

Conclusion

In light of all of the circumstances, 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.

LeRoy F. Foreman
Administrative Judge