



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



In the matter of: )  
 )  
XXXXXXXXXX, XXXXX ) ISCR Case No. 11-03309  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Richard A. Stevens, Esq., Department Counsel  
For Applicant: *Pro se*

05/31/2012

**Decision**

TUIDER, Robert J., Administrative Judge:

In 1986, Applicant was born in Cuba. He immigrated to the United States in 1998, when he was 11 years old. He became a U.S. citizen in 2000. His parents and siblings live in the United States. Some of his distant relatives live in Cuba; however, his contact with them is casual and infrequent. His connections to the United States are much more significant than his connections to Cuba. Foreign influence concerns are mitigated. Access to classified information is granted.

**Statement of the Case**

On March 23, 2010, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (hereinafter SF-86) (Government Exhibit (GE) 1). On February 6, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, alleging security concerns under Guidelines C (foreign preference) and B (foreign influence) (Hearing Exhibit (HE) 2). The action was taken under Executive Order 10865, Safeguarding Classified Information within Industry (February 20, 1990), as amended; Department of Defense Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005. The SOR detailed reasons why DOHA was unable to find that it

is clearly consistent with the national interest to grant, deny, continue, or revoke a security clearance to Applicant, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be denied, granted, continued, or revoked. (HE 2)

Applicant provided an undated response to the SOR. (HE 3) On April 2, 2012, Department Counsel was prepared to proceed. On April 5, 2012, the case was assigned to me. On April 10, 2012, DOHA issued a hearing notice setting the hearing for May 8, 2012. (Transcript (Tr.) 10-11; HE 1) The hearing was held as scheduled. At the hearing, Department Counsel offered two exhibits, and Applicant did not offer any exhibits. (Tr. 15-16; GE 1-2) There were no objections, and I admitted GE 1-2. (Tr. 16, 22) Additionally, I admitted the SOR, response to the SOR, and the hearing notice. (HE 1-3) On May 16, 2012, I received the hearing transcript. After the hearing, I received two exhibits from Applicant, which were admitted without objection. (AE A-B) The record closed on May 18, 2012. (Tr. 64, 71-72)

### **Procedural Ruling**

Department Counsel requested administrative notice of facts concerning Cuba. (Tr. 16-17; Administrative Notice Request, April 3, 2012) Department Counsel provided supporting documents to show verification, detail, and context for these facts in the Administrative Notice request. Applicant objected to me taking administrative notice of all of the facts in all of the documents because the information about espionage by Cuban agents is irrelevant, as he is not involved in espionage. (Tr. 17-20) He objected to information about travel to Cuba because he was restricted from traveling to Cuba. (Tr. 20) Applicant did not contest the accuracy of the information in the documents, and his objections go to the weight given the exhibits, and not to their admissibility. (Tr. 22) I overruled Appellant's objections and took administrative notice of the contents of the proffered documents. See the Cuba section of the Findings of Fact of this decision, *infra*, for the material facts from Department Counsel's submissions on Cuba.

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

## Findings of Fact<sup>1</sup>

Applicant admitted the underlying facts alleged in SOR ¶¶ 2.a to 2.f with explanations. (HE 3) As to SOR ¶ 1.a, he provided an affidavit stating that he destroyed or invalidated his Cuban passport on October 6, 2010, in the presence of his facility security officer. (HE 3) After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 25-year-old employee of a defense contractor, who is in a leadership development program for eventual assignment in management. (Tr. 28) He was born in Cuba in 1986; he immigrated to the United States in 1998, when he was 11 years old; and he became a U.S. citizen in 2000, through his father's U.S. citizenship. (Tr. 24, 52-53) He has never served in the military. (GE 1) His father came to the United States in 1995. (Tr. 26) Applicant's mother and his sister came to the United States with him. (Tr. 25) Applicant's grandfather was a U.S. citizen, and he passed away before Applicant came to the United States. (Tr. 26, 31-32) Applicant's grandfather sponsored his father's immigration to the United States. (Tr. 33)

Applicant went to middle school, high school, and college in the United States. (Tr. 27) Applicant earned a bachelor's of science degree in finance with honors from a large state university. (Tr. 27, 47) He has been accepted as a student in a master's degree program in business administration. (Tr. 63) He has never married, and he does not have any children. (Tr. 31; GE 1)

When Applicant's mother lived in Cuba, she was employed assembling office furniture. (Tr. 34) Applicant's father is a U.S. citizen. (Tr. 35) They are employed in private businesses in the United States. (Tr. 49-50) Applicant's father, mother, and sister are dual citizens of the United States and Cuba because they were all born in Cuba and immigrated to the United States. (Tr. 49-52; SOR ¶ 1.f; SOR response) His sister, who lives in the United States, is 23 years old and sells insurance. (Tr. 51) He is close to his parents and sister, and he frequently communicates with them. (Tr. 58) He does not own any property in Cuba or have any Cuban bank accounts. (Tr. 58) He keeps money in U.S. financial institutions. (Tr. 58) Applicant votes in U.S. elections and is active in church organizations. (Tr. 59) He has traveled to Central America on behalf of his church. (Tr. 60-61)

Applicant's half-sister is 32 years old, and she moved to the United States in 1998; however, he has minimal contact with her. (Tr. 51; GE 1) She has a green card. (Tr. 52)

Applicant's two grandmothers, three aunts, one uncle, and two cousins are citizens and residents of Cuba. (Tr. 35, 39-40, 54-55; SOR ¶¶ 1.a to 1.d; SOR response) He communicates with these relatives in Cuba about once or twice a year.

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<sup>1</sup>The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

(Tr. 57; SOR response) He does not telephone them; however, if his mother calls them on the phone, he will talk briefly to his relatives in Cuba to say “hello.” (Tr. 57) When his mother was visiting them in Cuba, Applicant did call his mother and talk to the relatives who were with her. (Tr. 57) If anyone in Cuba were to threaten them to obtain information from Applicant, he promised to report the threats to proper authorities. (SOR response)

Because the Cuban government owns all property and all businesses in Cuba, citizens and residents of Cuba are dependent on the Cuban Government for employment and shelter. (Tr. 36-37, 54) None of his relatives are in high-profile Cuban Government jobs or in the Cuban military. (Tr. 54-56) Appellant’s father is attempting to sponsor Applicant’s aunt as a U.S. immigrant, and his mother would like to sponsor her mother as a U.S. immigrant. (Tr. 38) His family would like to have his cousin attend college in the United States. (Tr. 38)

Applicant visited Cuba in 2004 for seven days, 2005 for 21 days, and 2008 for 14 days. (Tr. 37, 41) On each trip, Appellant traveled with his parents and sometimes with his sister. (Tr. 41-42) Appellant stayed with his mother’s relatives. (Tr. 42)

Applicant applied for and received renewal of his Cuban passport in 2008 so that he could go to Cuba that year. (Tr. 44) He could not go to Cuba with a U.S. passport because Cuban authorities insist that people born in Cuba use a Cuban passport to visit Cuba. (Tr. 45) When he learned that possession of a foreign passport raised a security concern, he destroyed it in the presence of his facility security officer. (Tr. 44; SOR response)<sup>2</sup> He cannot visit Cuba now that he does not have a Cuban passport. (Tr. 45) He does not intend to apply for a Cuban passport or to visit Cuba because he is conscientious about the limitations on security-clearance holders. (Tr. 60)

## **Character Evidence**

Applicant’s personnel evaluations for 2010 and 2011 depict him as a solid employee with excellent potential to make important contributions to his employer. (AE A, B) He is described as intelligent, diligent, and responsible. (AE A, B) There is no evidence of record showing any U.S. arrests, illegal drug possession or use, or alcohol-related incidents. (GE 1)

## **Republic of Cuba**

In 1902, Spain granted Cuba its independence. Since 1959, Cuba has been a totalitarian state, which controls all aspects of life through the Communist party. The United States and Cuba have had a strained relationship since the early 1960s, when Castro forcibly took over the Cuban government after several years of armed struggle.

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<sup>2</sup>Department Counsel moved to withdraw the allegation under Guideline C that Applicant possessed a Cuban passport. (Tr. 65) Applicant did not object, and I granted Department Counsel’s motion. (Tr. 65-66)

Cuba is a multiracial society, which is primarily urban. Constitutional rights, such as freedom of speech and right to a fair trial, enjoyed by American citizens, are not enjoyed by Cuban citizens. Cuba views Cuban-born American citizens as Cuban citizens only.

The Cuban government retains control through intense physical and electronic surveillance. The Cuban government has harassed its citizens for contacts with Americans. Human rights abuses occur, including abuse of detainees, unlawful killings and beatings, and threats and abuse of Cuban citizens. Political arrests and imprisonment continues.

The U.S. continues the broad embargo established in the 1960s against trading with Cuba and continues to prohibit most commercial imports from Cuba. Between 1989 and 1993, the Cuban gross national product declined by 35% following the loss of Soviet era subsidies. The Cuban economy is still recovering and is controlled by the state. In addition, the military plays a dominant role in the economy. Cuba currently seeks to grow its economy, partially through tourism. The United States continues to maintain economic sanctions against the Cuban government.

Cuba targets the United States for intensive espionage activities, and there have been numerous reported cases of Cuban espionage against the United States. With the loss of Soviet subsidies, Cuba has abandoned monetary support for guerilla movements, although it still maintains relations with several guerrilla and terrorist groups, sometimes providing refuge in Cuba for members of these groups. In 2011, the U.S. Department of State designated Cuba as one of four countries that are state sponsors of terrorism. The Department of State explains the basis of this continuing designation as follows:

Designated as a State Sponsor of Terrorism in 1982, the Government of Cuba maintained a public stance against terrorism and terrorist financing in 2010, but there was no evidence that it had severed ties with elements from the Revolutionary Armed Forces of Colombia (FARC) and recent media reports indicate some current and former members of the Basque Fatherland and Liberty (ETA) continue to reside in Cuba. Available information suggested that the Cuban government maintained limited contact with FARC members, but there was no evidence of direct financial or ongoing material support. In March, the Cuban government allowed Spanish Police to travel to Cuba to confirm the presence of suspected ETA members.

Cuba continued to denounce U.S. counterterrorism efforts throughout the world, portraying them as a pretext to extend U.S. influence and power.

Cuba has been used as a transit point by third-country nationals looking to enter illegally into the United State. The Government of Cuba is aware of the border integrity and transnational security concerns posed by such transit and investigated third country migrant smuggling and related

criminal activities. In November, the government allowed representatives of the Transportation Security Administration to conduct a series of airport security visits throughout the island.

**Legislation and Law Enforcement:** Cuba did not pass new counterterrorism legislation in 2010. The Cuban government continued to aggressively pursue persons suspected of terrorist acts in Cuba. In July, Venezuela extradited Salvadoran national Francisco Antonio Chavez Abarca to Cuba for his alleged role in a number of hotel and tourist location bombings in the mid to late 1990s. In December, a Cuban court convicted Chavez Abarca on terrorism charges and sentenced him to 30 years in prison. Also in December, the Cuban Supreme Court commuted the death sentences of two Salvadorans, René Cruz León and Otto René Rodríguez Llerena, who had been convicted of terrorism, and sentenced them both to 30 years.

**Regional and International Cooperation:** Cuba did not sponsor counterterrorism initiatives or participate in regional or global operations against terrorists in 2010.<sup>3</sup>

In 1999, the U.S. opened travel to Cuba, including allowing Cuban-Americans to travel back to Cuba to visit family members. The new travel rules are governed by The Cuban Assets Control Regulations, which are enforced by the U.S. Treasury Department. These regulations require all U.S. citizens traveling to Cuba to get a license. Visits to family members in Cuba require a specific license and the number of trips is limited. In addition, persons in the U.S. can send up to \$300 every quarter to family members in the same household. Under recent U.S. policy, the U.S. presses for political, economic and democratic change in the Cuban lifestyle.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant 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.

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<sup>3</sup>Chapter 3: *State Sponsors of Terrorism*, Country Reports on Terrorism 2010 (Aug. 18, 2011) (Appendix VIII to Cuba Administrative Notice Materials)

Eligibility for a security clearance is predicated upon meeting the criteria contained in the 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to 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. Adverse clearance decisions are made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned." See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> 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 or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude relevant security concern is under Guideline B (Foreign Influence).

### Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

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

AG ¶ 7 indicates 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
- (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 a sufficiently close relationship with his two grandmothers, three aunts, one uncle, and two cousins, who are citizens and residents of Cuba to create a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion. His connections to his family living in Cuba create a potential conflict of interest because these relatives are vulnerable to potential abuse and coercion by Cuban government agents.

There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at \*8 (App. Bd. Feb. 20, 2002). Applicant has not rebutted this presumption. Applicant’s relationship with his family living in Cuba is sufficient to create



“a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.” His relationship with his family living in Cuba creates a concern about Applicant’s “obligation to protect sensitive information or technology” and his desire to help his family living in Cuba. For example, if the Cuban government wanted to expose Applicant to coercion, it could exert pressure on his family living in Cuba. Applicant would then be subject to indirect coercion through his relationship with his family living in Cuba and classified information could potentially be compromised.

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

The nature of a nation’s government, its relationship with the United States, and its human-rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence collection operations against the United States, or terrorist activity causes widespread fear or destruction. The adversarial relationship of Cuba with the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationship with his family living in Cuba does not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to protect his family living in Cuba from being threatened or coerced by Cuban government entities.

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives in Cuba seek or have sought classified or economic information from or through Applicant, or his family living in Cuba, it is not possible to rule out such a possibility in the future. He continues to feel concern for his family living in Cuba, and this concern is a positive character trait that increases his trustworthiness; however, it also increases the concern about potential foreign influence. Department Counsel produced substantial evidence and raised the

issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

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

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

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

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

AG ¶¶ 8(b) and 8(c) apply. Applicant's most recent travel to Cuba was in 2008, and he will not be able to return to Cuba because he does not have a Cuban passport. Applicant's contact with family living in Cuba is casual and infrequent. He does not have parents, siblings, or children living in Cuba. He left Cuba when he was 11 years old. He has spent over half of his life in the United States. He has been educated in the United States. There is "little likelihood that [his relationships with family living in Cuba] could create a risk for foreign influence or exploitation."

Applicant has "deep and longstanding relationships and loyalties in the U.S." He has strong family connections to the United States. His parent and siblings are U.S. citizens and live in the United States. Applicant's employment is in the United States. Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationship with his family living in Cuba. There is no

evidence that the Cuban government, or that those conducting espionage have approached or threatened Applicant or his family living in Cuba to coerce Applicant to obtain classified or sensitive information. While the Government does not have any burden to prove the presence of such evidence, if such record evidence was present, Applicant would have a heavy evidentiary burden to overcome to mitigate foreign influence security concerns. It is important to be mindful of the United States' adversarial relationship with Cuba, and especially Cuba's systematic human rights violations. The U.S. State Department has designated Cuba as a state sponsor of terrorism. Cuba provides diplomatic support for those who seek to damage U.S interests. Cuba's history of systematic lawless activity makes it more likely that the Cuban Government would attempt to coerce Applicant through his family living in Cuba, if the Cuban Government determined it was advantageous to do so.

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

AG ¶ 8(f) has no applicability. Applicant has some property interests in the United States, which include his employment in the United States. However, this mitigating condition is only available to balance against property interests in a foreign country to mitigate AG ¶ 7(e).<sup>4</sup>

In sum, the primary security concern is Applicant's family members who are citizens and residents of Cuba. They are readily available for coercion. The Cuban Government's systematic failure to follow the rule of law further increases the risk of coercion. Applicant is not that close to his relatives in Cuba, having left that country when he was 11 years old. His relatives in Cuba do not include his parents, children, or siblings. His communication with them is casual and infrequent. Foreign influence security concerns are mitigated under Guideline B. However, even if they are not mitigated under Guideline B, they are mitigated under the whole-person concept, *infra*.

### **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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to

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<sup>4</sup>AG ¶ 7(e) provides, "a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation" could cause a security concern.

which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under this guideline, but some warrant additional comment.

There are some facts supporting mitigation of security concerns. Applicant has strong connections to the United States. In 1998, he immigrated to the United States, when he was 11 years old, and he became a U.S. citizen in 2000. His parents and siblings live in the United States. He attended middle school, high school, and college in the United States. He has been approved for admittance into a U.S. graduate school.

There is no derogatory information concerning Applicant's police or financial records. There is no evidence of record showing any U.S. arrests, illegal drug possession or use, or alcohol-related incidents. His employment evaluations indicate he is a solid employee with excellent potential. He is loyal to the United States and he considers the United States to be his home. Applicant's demeanor, sincerity, and honesty at his hearing are important factors militating towards approval of his access to classified information.

A Guideline B decision concerning Cuba must take into consideration the geopolitical situation in Cuba, as well as the dangers existing in Cuba.<sup>5</sup> The danger of coercion from the Cuban Government is more likely than in many other countries. Applicant's relationships with his family living in Cuba are too distant, as shown by his casual and infrequent contact with them and his departure from Cuba at the age of 11 before he could form closer and stronger bonds with them.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude Applicant has mitigated the foreign influence security concerns.

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<sup>5</sup> See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

## **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 C:	Withdrawn (Tr. 65-66)
Subparagraph 1.a:	Withdrawn (Tr. 65-66)
Paragraph 2, Guideline B:	For Applicant
Subparagraphs 2.a to 2.f:	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.

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Robert J. Tuidor  
Administrative Judge