



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



In the matter of: )  
 )  
 [NAME REDACTED] ) ISCR Case No. 12-03363  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Candace L. Garcia, Esq., Department Counsel  
For Applicant: *Pro se*

04/27/2017

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**Decision**

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BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the sexual behavior, personal conduct, and foreign influence security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On August 11, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline D (sexual behavior), Guideline E (personal conduct), and Guideline B (foreign influence). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on October 14, 2015, and he elected to have his case decided on the written record in lieu of a hearing. On April 15, 2016, Department Counsel submitted her file of relevant material (FORM) and provided a complete copy to Applicant. Applicant received the FORM on June 14, 2016. He was afforded an

opportunity to respond to the FORM within 30 days of its receipt and to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant responded to the FORM. The case was assigned to me on February 17, 2017.

Department Counsel offers FORM Items 3 and 4, which are admitted into evidence as Government Exhibits (GE) 3 and 4, without objection.<sup>1</sup> FORM Item 5 is Department Counsel's request for administrative notice and the supporting materials. FORM Item 5 is admitted for administrative notice as Administrative Notice (AN) I. Applicant's FORM response includes a copy of the FORM with notations and a family photograph, which are admitted as Applicant Exhibits (AE) A and B, without objection.

### **Findings of Fact**

The SOR alleges that Applicant paid four foreign-national prostitutes for sex between August 2006 and January 2011 (SOR ¶¶ 1.a. and 2.a.). The SOR also alleges his foreign contacts with these prostitutes and his Georgian family members (SOR ¶ 3). Applicant admitted all of the allegations. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 57 years old. He was born in Zimbabwe. His father, two brothers, and two sisters are citizens of and reside in Zimbabwe. He has one sister who is a citizen of Zimbabwe and lives in the United States. He has a 28-year-old son who is a citizen of and resides in Zimbabwe.<sup>2</sup>

In 1982, Applicant married a U.S. citizen in the United States, and they divorced in 1984. He married a Zimbabwean citizen in Zimbabwe in 1985, and they separated in 1986. He attended trade school in the U.S. from 1992 to 1997, and he received an associate's degree. He became a naturalized U.S. citizen in September 1998.<sup>3</sup>

From June 2006 to November 2007, Applicant was employed as a contractor for another government agency (AGA), and he held a security clearance from the AGA. He was posted in the People's Republic of China (PRC). Since November 2008, Applicant has been employed by DOD contractor and posted in Iraq.<sup>4</sup>

From August 2006 to May 2007, Applicant had a relationship with woman who was a citizen of and resided in the PRC. He had contact with her more than 15 times during this span. Although Applicant paid her and she was a prostitute, he claims that he paid for her companionship and not sex. His contact with her ceased in May 2007,

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<sup>1</sup> FORM Items 1 and 2 are the SOR and Applicant's response to the SOR. These documents are pleadings and are included in the record.

<sup>2</sup> GE 3; GE 4.

<sup>3</sup> GE 3; GE 4.

<sup>4</sup> GE 3; GE 4.

when the regional security officer (RSO) assigned to the U.S. embassy directed him to cease all contact with her.<sup>5</sup>

Between June 2006 and November 2007, Applicant paid for sex with a prostitute who was a citizen of and resided in Mongolia. He had contact with her approximately three to seven times during this span.<sup>6</sup>

Between July 2006 and February 2009, Applicant paid for sex with a prostitute who was a citizen of and resided in the PRC. On at least one occasion, Applicant traveled to the PRC to pay her for sex. Even after their in-person contacts ceased in February 2009, Applicant maintained phone contact with her until October 2010.<sup>7</sup>

Between February 2009 and at least June 2011, Applicant paid for sex with a prostitute who was a PRC citizen and resided in the United Arab Emirates (UAE). He had in-person contact with her approximately three to seven times a year, and they had monthly video-telephonic contact until at least June 2011, while he was a DOD contractor in Iraq.<sup>8</sup>

In about May 2011, Applicant met a citizen and resident of Georgia, whom he later married in Georgia in May 2013. Between May 2011 and September 2014, he made approximately 14 trips to see her and her family. In May 2012, she became pregnant, and their daughter was born in February 2013.<sup>9</sup>

Applicant's wife, stepson, parents-in-law, brother-in-law, and wife's grandmother are citizens of and reside in Georgia. Applicant and his wife now have two children together, and these children reside with his wife in Georgia. There is no evidence as to his wife's and in-law's occupations, backgrounds, or connections with the Georgian government or military. There is no evidence as to what educational, financial, or social benefits Applicant's family may receive while residing in Georgia.<sup>10</sup>

During his June 2011 security interview, Applicant claimed that, during an initial briefing with the U.S. embassy RSO, he was informed that he was permitted to engage the services of prostitutes as long as he reported the dates, names, pictures, and nature of the interactions. Applicant has provided no documentation to corroborate this claim or whether this RSO briefing was during his AGA employment or his DOD employment. Finally, there is no documentation that Applicant adhered to his reporting requirements or that Applicant's wife and in-laws are aware of his activities with foreign-national

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<sup>5</sup> GE 3; GE 4.

<sup>6</sup> GE 3; GE 4.

<sup>7</sup> GE 3; GE 4.

<sup>8</sup> GE 3; GE 4.

<sup>9</sup> GE 4.

<sup>10</sup> GE 4.

prostitutes. During his June 2011 security interview, Applicant admitted that his U.S. girlfriend of 20 years was unaware of his activities with foreign prostitutes.<sup>11</sup>

### **Administrative Notice**

I take administrative notice of the following adjudicative facts about the country of Georgia: Georgia is a constitutional republic with a developing democracy and economy. The United States established diplomatic relations with Georgia in 1992 following Georgia's 1991 independence from the Soviet Union. The United States supports Georgia's sovereignty and territorial integrity within its internationally recognized borders and does not recognize the breakaway regions of Abkhazia and South Ossetia currently occupied by Russia. These regions were seized by the Russian military following a 2008 military conflict between Russia and Georgia. In violation of the 2008 ceasefire accords, Russia established military bases in Abkhazia and South Ossetia.<sup>12</sup>

The Department of State strongly warns U.S. citizens against travel to the Russian-occupied regions of South Ossetia and Abkhazia. In the past, Georgia has experienced several improvised explosive device attacks and attempted attacks, both in Tbilisi and elsewhere in the country. Targets have included government facilities, public places, and diplomatic missions. There are continuing concerns about Georgia as a transit and source country for international terrorism. In 2014, there were an estimated 50 to 100 Georgian nationals fighting in Syria and Iraq for either al-Qa'ida affiliates or ISIL. Given Georgia's geographic location and border security challenges, Islamist extremists continue to transit through the country between the Russian Federation's North Caucasus and Syria and Iraq.<sup>13</sup>

### **Policies**

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all

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<sup>11</sup> GE 4.

<sup>12</sup> AN I.

<sup>13</sup> AN I.

available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. As noted by the Supreme Court in *Department of Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>14</sup> Under *Egan*, EO 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

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

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

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

## **Analysis**

### **Guideline D, Sexual Behavior**

The concern under this guideline is set out in AG ¶ 12:

Sexual behavior that involves a criminal offense, indicates a personality or emotional disorder, reflects lack of judgment or discretion, or which may subject the individual to undue influence or coercion, exploitation, or duress can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. No adverse inference concerning the standards in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

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<sup>14</sup> *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988). See *Duane v. Department of Defense*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

Under AG ¶ 13, the following disqualifying conditions potentially apply:

(c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress; and

(d) sexual behavior of a public nature and/or that reflects lack of discretion or judgment.

Between 2006 and at least June 2011, Applicant paid foreign-national prostitutes for sex on several occasions, while he was deployed as a contractor for an AGA and the DOD. He did not reveal these activities to his girlfriend at the time, and there is no evidence that he has informed his wife of these activities. His contacts with at least one prostitute continued after he met his wife. Furthermore, there is no documentary evidence that he reported his foreign contacts as required by his employer. Applicant's activities while in a cleared or sensitive position posted in a foreign country reflect questionable judgment and expose him to coercion and exploitation. AG ¶¶ 13(c) and 13(d) apply.<sup>15</sup>

Because the Government established security concerns under AG ¶¶ 13(c) and 13(d), the burden shifts to Applicant to present evidence in mitigation. Under AG ¶ 14, the following mitigating conditions potentially apply:

(b) the sexual behavior happened so long ago, so infrequently, or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(c) the behavior no longer serves as a basis for coercion, exploitation or duress; and

(d) the sexual behavior is strictly private, consensual, and discreet.

There is no evidence that Applicant's activities with prostitutes has recurred since June 2011. He is now married and has two minor children. Although his activities with prostitutes are unlikely to recur, this conduct while an AGA and DOD contractor in a foreign country still reflects questionable judgment. Applicant bears the burden to demonstrate reform, rehabilitation, and good judgment. AG ¶ 14(b) does not apply.

There is no documentary evidence that Applicant has informed his wife or in-laws about his past activities with foreign-national prostitutes or that he adhered to the reporting requirements with his employer. AG ¶ 14(c) does not apply.

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<sup>15</sup> Department Counsel did not establish that Applicant's activities with the prostitutes were illegal in the countries where these activities occurred.

Applicant has provided no information about the nature or circumstances of his sexual encounters with the foreign-national prostitutes to establish that his activities were strictly private, consensual, and discreet. AG ¶ 14(d) does not apply.

Applicant's activities with foreign-national prostitutes while deployed as a contractor with an AGA and the DOD raise concerns about his reliability and good judgment. He has not demonstrated that he adhered to his employer's reporting requirements or that he is not vulnerable to coercion. I find that sexual behavior security concerns remain.

## **Guideline E, Personal Conduct**

The concerns under this guideline is set out under AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or other failure to cooperate with the security clearance process.

Under AG ¶ 16, the following disqualifying conditions potentially apply:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for any 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 information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Applicant's activities with foreign-national prostitutes raise concerns about his judgment and reliability and create a vulnerability to exploitation. His conduct was illegal in the United States and may serve as a basis for exploitation. AG ¶¶ 16(d) and 16(e) apply, thereby shifting the burden to Applicant to present evidence in mitigation. Under AG ¶ 17, the following mitigating conditions potentially apply:

(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; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Although Applicant's activities with prostitutes occurred several years ago, this conduct while an AGA and DOD contractor reflects questionable judgment. Applicant bears the burdens of production and persuasion to demonstrate reform and rehabilitation. AG ¶ 17(c) does not apply.

There is no documentary evidence that Applicant adhered to his employer's reporting requirements or that his wife is aware of his contacts with foreign-national prostitutes. AG ¶17(e) does not apply. I find that personal conduct security concerns remain.

## **Guideline B, Foreign Influence**

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.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding [sensitive] 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."<sup>16</sup> Furthermore, "even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security."<sup>17</sup> Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation's government, its relationship with

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<sup>16</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

<sup>17</sup> ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002).



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.

One disqualifying condition under this guideline is relevant to this case:

AG ¶ 7(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.

To establish AG ¶ 7(a) the Government must demonstrate a "heightened risk" due to Applicant's foreign contacts. The administrative notice materials – outlining Georgia's geopolitical security profile, Russia's significant influence in Georgia, and Georgia's position as a transit and source country for international terrorism – establish the "heightened risk" element under AG ¶ 7(a) as to his relatives in Georgia. As to his contacts with the foreign-national prostitutes, the nature of these relationships establishes the "heightened risk" element under AG ¶ 7(a).

The following mitigating conditions under this guideline are potentially relevant:

AG ¶ 8(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;

AG ¶ 8(b): there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

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's contacts with the four foreign-national prostitutes began in 2006 and ceased in 2011. There is no evidence of any ongoing contacts, relationships, or obligations. AG ¶¶ 8(a), 8(b), and 8(c) apply to his contacts with these prostitutes, and I find that Applicant mitigated the foreign influence security concerns raised by his contacts with these prostitutes.

Applicant's spouse, stepson, and in-laws are citizens of and reside in Georgia, and his two minor children reside in Georgia. Applicant has not provided any evidence about his wife's and in-law's occupations, contacts, and connections with the Georgian

government and military. He bears the burdens of production and persuasion in mitigation.<sup>18</sup> AG ¶ 8(a) does not apply as to his family members in Georgia.

Applicant's strong ties to his spouse, children, and in-laws are established by his frequent visits and prevent me from concluding that his obligation to his Georgia relatives is "so minimal." Although Applicant has been employed as an AGA and DOD contractor overseas for the last decade, he has not provided any evidence of deep and longstanding relationships in the United States. AG ¶ 8(b) does not apply to Applicant's contacts with his relatives in Georgia.

Applicant's frequent visits to his family in Georgia buttress the presumptions that his relationships with his immediate family members and his wife's family members are not casual.<sup>19</sup> AG ¶ 8(c) does not apply to his relatives in Georgia. Applicant's strong ties with his relatives in Georgia remain unmitigated foreign influence security concerns.

### **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 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 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. In light of all the facts, I have considered the potentially disqualifying and mitigating conditions, and I have incorporated my comments under Guideline C and the factors in AG ¶ 2(c) in this whole-person analysis.

While deployed as an AGA and DOD contractor, Applicant demonstrated questionable judgment when he paid foreign-national prostitutes for sex. These activities remain a security concern as there is no evidence that his wife is aware of these contacts or that he adhered to his employers' reporting requirements. Applicant's

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<sup>18</sup> See ISCR Case No. 08-04488 at 6 (App. Bd. Apr. 23, 2009) ("[G]iven Applicant's burden of production in mitigation, the Board is not able to conclude that the evidence of record is sufficient to overcome the government's security concerns.").

<sup>19</sup> See ISCR Case No. 02-11570 at 7 (App. Bd. May 19, 2004).

strong ties with his family members in Georgia constitute an unmitigated security concern, particularly absent evidence of his strong ties and relationships in the United States. I conclude that Applicant did not mitigate the sexual behavior, personal conduct, and foreign influence security concerns.

### **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:

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|---------------------------|-------------------|
| Paragraph 1, Guideline D: | AGAINST APPLICANT |
| Subparagraphs 1.a.:       | Against Applicant |
| Paragraph 2, Guideline E: | AGAINST APPLICANT |
| Subparagraph 2.a.:        | Against Applicant |
| Paragraph 3, Guideline B: | AGAINST Applicant |
| Subparagraph 3.a.         | For Applicant     |
| Subparagraphs 3.b.-3.c.:  | Against Applicant |

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Eric H. Borgstrom  
Administrative Judge