



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



In the matter of: )  
 )  
 ) ISCR Case No. 16-02038  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

12/19/2017  
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**Decision**  
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RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, foreign influence. Eligibility for access to classified information is granted.

**Statement of the Case**

On August 29, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence, and Guideline C, foreign preference. On December 1, 2016, the Government amended the SOR. 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) effective within the DOD on September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.<sup>1</sup>

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<sup>1</sup> I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

Applicant answered the SOR on October 12, 2016, and the amended SOR on December 12, 2016,<sup>2</sup> and requested a hearing before an administrative judge. The case was assigned to me on June 9, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 18, 2017. I convened the hearing as scheduled on November 14, 2017. The Government offered exhibits (GE) 1 and 2. Applicant testified and offered Applicant Exhibits (AE) A through H. There were no objections to any of the exhibits offered, and they were admitted into evidence. DOHA received the hearing transcript on November 22, 2017.

### **Procedural Issues**

The Government withdrew the SOR allegation under Guideline C.<sup>3</sup>

### **Administrative Notice**

I have taken administrative notice of certain facts about Romania that are supported by information from official U.S. Government publications.<sup>4</sup> The facts are summarized in the Findings of Fact, below.

### **Findings of Fact**

Applicant denied all of the allegations in the SOR. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 46 years old. He was born in Romania. He received his bachelor's and master's degrees from a Romanian university in 1997 and 1998, respectively. His wife was born in Romania, and they married in Romania in 1994. He moved to the United States in 1998, as a student. His wife moved a year later in 1999. He received his Ph.D. from an American university in 2001. His wife also earned a Ph.D. in the United States. They both became naturalized citizens of the United States in 2010. They have two children, ages 15 and 8, who were born in the United States. Applicant has been employed by his current employer, a federal contractor, since 2015. His wife is also employed.<sup>5</sup>

Applicant's father, mother, brother, mother-in-law, and sister-in-law are citizens and residents of Romania.<sup>6</sup> He has contact with his mother about every other month and with his father about twice a month. His father retired from a Romanian government

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<sup>2</sup> The amended SOR corrected ¶ 2.c to reflect Applicant's father vice father-in-law.

<sup>3</sup> To prevent confusion, the paragraph numbers have not been changed.

<sup>4</sup> HE I; See: <http://www.state.gov/r/pa/ei/bgn/35722.htm>.

<sup>5</sup> Tr. 24-27, 49-56.

<sup>6</sup> Applicant's father-in-law is deceased.

agency involved in nuclear research about 15 years ago due to health reasons. He was an electrician and in his mid-50s at the time. His mother's occupation is unknown. She is retired. His parents are not familiar with the Applicant's work.<sup>7</sup>

Applicant's brother works for a heavy equipment rental company, and he does not know the specifics of his brother's job. The last time Applicant had contact with his brother was in 2011, which was the only time Applicant returned to Romania after becoming a U.S. citizen.<sup>8</sup>

Applicant's mother-in-law is a retired paper mill employee. He has not spoken to her in a long time and has not had contact with her in 2017. His brother-in-law is a math teacher in a public school and his wife is a clerk in the city government's administrative office. He estimated that he speaks to his brother-in-law once or twice a year. He has no contact with his sister-in-law.

Applicant's wife has not returned to Romania since immigrating to the United States. Her mother visited them in the United States about ten years ago and another time two or three years before then. Applicant's wife has contact with her mother. It is unknown how often. She also has contact with her brother. It is unknown how often. In 2011, Applicant and his wife began communicating with their family in Romania using Skype, and no longer send birthday or holiday cards.<sup>9</sup>

Since Applicant moved to the United States, he has given a \$1,000 wedding gift to his brother when he married about 14 or 15 years ago. About five to six years ago he gave his mother-in-law \$2,000, so she could insulate her house. He has not given his family or his wife's family any other money.<sup>10</sup>

In 2003, Applicant and his wife purchased a home in the United States for approximately \$200,000. They paid off the home mortgage in 2012. They have approximately \$20,000 in savings and \$500,000 in investment accounts. They have no financial interests in Romania.<sup>11</sup>

Applicant volunteers as a coach for his children's athletic teams and is a certified referee. He also is a volunteer coach for other community teams and is involved with his church. Character references describe him as trustworthy, respected, honest, loyal, meticulous, and dedicated. Applicant is admired by those who work with him. They

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<sup>7</sup> Tr. 27-29, 29-31, 35, 46-48.

<sup>8</sup> Tr. 29, 31-32, 44.

<sup>9</sup> Tr. 32-34, 44, 58-65.

<sup>10</sup> Tr. 35-36, 43, 62-63.

<sup>11</sup> Tr. 35-36, 42-43, 66-69.

believe he is loyal to the United States. His performance evaluations rate him as exceptional.<sup>12</sup>

The Chief Executive Officer for the contractor where Applicant is employed testified on his behalf. He knows Applicant both professionally and socially. He testified that Applicant's critical analysis was instrumental in discovering a flaw in a military component that had serious safety implications and potential loss of life that existed for more than 20 years. Applicant is a dedicated employee. He fully supports Applicant receiving a security clearance.<sup>13</sup>

## **Romania<sup>14</sup>**

In 1947, the United States reestablished ties with Romania after World War II. Relations remained strained during the Cold War era while Romania was under communist leadership. After the 1989 revolution ended communist rule, Romania's policies became unequivocally pro-Western. Romania and the United States deepened their relations and cooperation on shared goals including economic and political development, defense reform, and non-traditional threats such as transnational crime and non-proliferation.

In 2001, Romania and the United States issued a joint declaration of strategic partnership for the 21<sup>st</sup> century. The two countries identified key areas of enhanced cooperation, focusing on political-military relationships, law-enforcement cooperation, trade and investment opportunities, and energy security. In 2016, the two countries reaffirmed their commitment to this cooperation. They mutually committed to supporting human rights, the rule of law, and peace and freedom for everyone. The two countries are bound together through people-to-people ties in business, the arts, scholarship, and other exchanges. Romania has promoted great cooperation among its Black Sea neighbors in the areas of defense, law enforcement, energy, economic development, and the environment, which complement the U.S. goal of enhancing stability in this sensitive and important region.

Romania joined the North Atlantic Treaty Organization (NATO) in 2004 and has established itself as a steadfast ally of both the United States and NATO. It has repeatedly deployed forces and assets in support of shared national security interests, including contributions of troops, equipment, and other assistance in Afghanistan, Iraq, Libya, and Kosovo.

The Romanian constitution provides for freedom of speech and press, and the government generally respects these rights. An independent press, largely independent

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<sup>12</sup> Tr. 38-41; AE B, C, D, F, G, H.

<sup>13</sup> Tr. 16-23; AE C.

<sup>14</sup> [https:// www.state.gov/r/pa/ei/bgn/3522.htm](https://www.state.gov/r/pa/ei/bgn/3522.htm).

judiciary, and functioning democratic political system combine to promote freedom of speech and press.

Human rights problems include police and gendarme mistreatment and harassment of detainees. Prison conditions remain harsh and do not meet international standards. Government efforts to address systematic corruption continue, but remain widespread. There are no reports that the government or its agents committed arbitrary or unlawful killings. There are no reports of politically motivated disappearances. The constitution and law prohibit arbitrary arrest and detention and the government generally respect these prohibitions. The constitution provides for an independent judiciary and the government generally respects this provision. There are no reports of political prisoners or detainees.<sup>15</sup>

## **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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 available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

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

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

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<sup>15</sup> <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>.

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

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

## **Analysis**

### **Guideline B: Foreign Influence**

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they resulted in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is it associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

(a) contact, regardless of method, 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;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and

(e) shared 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(a) requires evidence of a “heightened risk.” The “heightened risk” required to raise this disqualifying condition is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant’s family ties to a foreign country as well as each individual family tie must be considered.

The mere possession of a close personal relationship with a person who is a citizen and resident of a foreign country is not, as a matter of law, disqualifying under Guideline B. However, depending on the facts and circumstances, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.

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.”<sup>16</sup>

Romania was under communist rule until 1989. Since then, the United States has a commitment to cooperation and diplomatic, military, and economic ties with Romania, which is a member of NATO. Although there are some human rights issues, Romania generally has a good human rights record. Romania’s former communist ties creates some heightened risk. .

Applicant’s father, mother, brother, mother-in-law, brother-in-law and sister-in-law are citizen and residents of Romania. He and his wife have ongoing contact with their parents and some contact with their siblings and spouse. His family ties to Romania create a heighten risk, a potential foreign influence concern, and a potential conflict of interest. AG ¶¶ 7(a), 7(b), and 7(e) apply.

I have analyzed the facts and considered all of the mitigating conditions under AG ¶ 8 and conclude the following are potentially applicable:

(a) the nature of the relationship 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 and interests of the U.S.;

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

(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 interests in favor of the U.S. interests; and

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

Applicant and his wife have lived in the United States since 1998 and 1999, respectively. They have been citizens of the United States since 2010. Their children were born in the United States, and they own a home here. All of their financial investments are in the United States. They have no financial interests in Romania. Applicant has returned to Romania once since immigrating, and his wife has not returned. Through Applicant's skill and knowledge he was instrumental in correcting a problem with U.S. military hardware that potentially saved lives. Applicant is ensconced in his community and involved in volunteer work.

Applicant's father, mother, and mother-in-law are retired. His brother works in the private sector. His brother-in-law is a teacher, and his sister-in-law works for the local government. The only matter that raised any concern was Applicant's father's past employment at an agency that was involved with nuclear research. His father was an electrician and has been retired for 15 years. There is no evidence that he has any involvement with government entities. I have considered Romania's human rights record and its commitment as a member of NATO. I have also considered Applicant's dedication and loyalty to the United States. I find it is unlikely that Applicant would be placed in a position of having to choose between the interests of his family and the interests of the U.S. AG ¶ 8(a) applies.

Applicant and his wife maintain communication with their family in Romania, and their relationship with them is more than casual and is not infrequent. AG ¶ 8(c) does not apply.

There is sufficient evidence to conclude that Applicant has a deep, longstanding, loyal, and dedicated relationship with the United States. His only contacts in Romania are his immediate family. He rarely travels there. He has established personal, professional, and financial connections in the United States. His children were born in the United States. Through his work he has shown his commitment to this country. I am confident that Applicant would resolve any conflict of interest in favor of the United States. AG ¶ 8(b) applies.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's



conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 46 years old and has lived in the United States since 1998. He became a naturalized U.S. citizen in 2010. He mitigated the security concerns raised by his family ties to Romania. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns raised under Guideline B, foreign influence.

### **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
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs: 2.a-2.d	For Applicant

## **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge