



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 16-02409
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: Jacob T. Ranish, Esq.

11/29/2017

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant mitigated foreign influence concerns allegedly raised by his past connections to Thailand through an ex-girlfriend, and his present connections to Indonesia through his in-laws. He also refuted the allegation that the financial support he provided an ex-girlfriend and his current wife raise a security concern under the personal conduct guideline. Clearance is granted.

**Statement of the Case**

On December 9, 2016, the Department of Defense (DoD) issued a Statement of Reasons (SOR) alleging security concerns under the foreign influence guideline. Applicant answered the SOR and requested a hearing.

On March 28, 2017, Department Counsel indicated that the Government was ready to proceed. Six months later, on September 12, 2017, Department Counsel amended the SOR to further allege that the past financial support Applicant provided his ex-girlfriend and the money he provided his wife to support her and their three children raised a security concern under the personal conduct guideline. The next day, Applicant submitted a response, denying the new allegation.

On September 26, 2017, I was assigned the case and, based on the parties' availability, scheduled the hearing for November 14, 2017. Applicant testified at the

hearing, and Government Exhibit 1 and Applicant's Exhibits A – M were admitted into the record without objection.<sup>1</sup> Additionally, without objection, I admitted summaries prepared by the parties regarding Thailand and Indonesia, as well as relevant portions of current U.S. State Department reports regarding Indonesia.<sup>2</sup> The transcript of the hearing was received on November 22, 2017.

## **Findings of Fact**

### *General Background & Service in Iraq*

Applicant was born and raised in the United States. After graduating from high school in 2000, he attended college for a year but dropped out because of the expense. For the next few years, he worked in the information technology (IT) field, earning the necessary IT certifications and gaining valuable experience in the cyber security arena.

In 2008, a former coworker told Applicant about a potential IT job opening as a U.S. Government (USG) contractor in Iraq. At the time, Applicant was in his late twenties, single, and unattached. He was looking for adventure and wanted to do his part for his country in the war of his generation. Also, the position paid well and Applicant figured he could save enough money to buy a house one day. He was hired for the position. He submitted a security clearance application, went through the requisite background investigation, and was granted a clearance. He served in Iraq from 2008 to 2011.<sup>3</sup>

Applicant's work in Iraq was highly demanding and, at times, dangerous. For a time, Applicant could set his watch to the enemy's fire and barrage. He testified that during this period "every two to three days there would be eight to a dozen, you know, rockets that would come in. And you just kind of sat there and hoped that it didn't land anywhere near you."<sup>4</sup> He was not physically hurt or injured, but did witness others who were seriously injured or killed.

Applicant's direct supervisor in Iraq wrote the following about Applicant's work under pressure, security record, and overall character:

I have personally found the Applicant to be trustworthy beyond repose. There were several instances [he] was asked to take the fast/easy way and less secure way in establishing communications in support of operations. General Officer names are always hurled about like Petraeus, Odierno, and Austin but, [Applicant] would stick to his guns and do it the secure way. He did not wilt under pressure and did things the right way and reported the

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<sup>1</sup> I sustained Applicant's objection to Government Exhibit 2 for identification, an unauthenticated summary of his security clearance interview.

<sup>2</sup> Appellate Exhibits IV – VI. Directive, ¶ E3.1.19 (a judge may relax the technical rules of evidence to permit the development of a full and complete record); Fed. R. Evid. 201; Fed. R. Evid. 1006.

<sup>3</sup> Tr. 17-20, 67-73; Exhibit 1; Exhibit D.

<sup>4</sup> Tr. 70.

attempts to pressure him into doing things the wrong and unsecure way up his chain.

[Applicant] is a Security Network Engineer, and a real American citizen. He did not sit on his couch and watch TV, saying “Woo is me and/or curse our involvement in the War on Terror.” He got his training, certification and volunteered to come over to a hostile work environment in very austere conditions to support the United States in the manner he knew he could make a difference. [He] has received [numerous awards] for his hard work and dedication to duty for his support of the warfighter and keeping our information as secure as possible. He is committed to the defense of our nation and our way of life and displayed courage, candor and commitment throughout and is unwavering in his support of the American dream.<sup>5</sup>

Several others who served with Applicant in Iraq, including his former roommate, share similar views and opinions about Applicant.<sup>6</sup> The person who audited Applicant’s work to make sure he did not, intentionally or unintentionally, violate security rules and regulations writes:

Applicant has never once given me reason to doubt his allegiance. To the contrary, he has given me every reason to believe he will always put US interests ahead of his own. This is a man that maintained stacks of energy drinks so that he could continue working through the night, sometimes days without sleep, to complete a task that he felt was vital to securing US networks. We audited his work . . . and never once was there a “mistake” that would compromise US interests.<sup>7</sup>

#### *Former relationship with a citizen of Thailand*

After serving in Iraq for three-and-half years, Applicant decided that he needed a break. He decided to remain overseas, because he did not want to lose the tax benefits he had earned by serving overseas in support of the U.S. military in a combat zone. He decided to go to Thailand, because several months earlier he had met a woman there while on a short vacation with coworkers. Applicant and the woman started dating and lived together in Thailand for the next nine months or so. Applicant then accepted a job offer from a USG contractor to work in Country Y. Applicant and his Thai girlfriend continued their relationship after he moved to Country Y.

Applicant financially supported his ex-girlfriend while they dated from 2011 to 2014. A year or two after they had first met, Applicant sent her about \$50,000 to purchase property in Thailand. She bought the property in Thailand in her name alone. At the time, Applicant planned on marrying his ex-girlfriend, retiring early in Thailand, and living off his

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<sup>5</sup> Exhibit E at 1-2.

<sup>6</sup> Exhibit E at 7-8, 11-15.

<sup>7</sup> Exhibit E at 9.

savings and any money generated by the property. Those dreams were dashed when he discovered that she had been unfaithful and left him for another person.

After Applicant and his ex-girlfriend broke up, he asked her to return at least some of the money he had given her for the property. She did not. Applicant does not have an ownership interest in or legal right to the property. He considers the money he gave his ex-girlfriend and the land she bought a gift that he lost comparable to an engagement ring that a person gives another in hopes of marriage. Applicant last saw his ex-girlfriend in approximately July or August 2014. He has had no contact with her in over three years.

Applicant has discussed his relationship with his ex-girlfriend with his wife. He fully reported the information about his ex-girlfriend, including overseas trips they took together and the land she purchased with the money he gave her, on his security clearance application. His numerous references, including his former military and civilian supervisors, are aware of this past relationship. No evidence was submitted that Applicant's ex-Thai-girlfriend worked for a foreign intelligence service or is otherwise connected to a foreign government or entity. Applicant did not reveal or discuss with his ex-girlfriend any classified or sensitive information.<sup>8</sup>

U.S. diplomatic relations with Thailand stretch back nearly 180 years. In 2003, the U.S. designated Thailand a major non-NATO ally. The two countries work collaboratively together on a number of issues, including counterterrorism. Historically, Thailand has been viewed as a model democracy in Southeast Asia, although this image has been complicated in the wake of two military coups in the past nine years. Nonetheless, the United States considers Thailand a key U.S. security ally.<sup>9</sup>

#### *Post-Iraqi USG contract work & relationship with foreign-born wife*

Applicant worked as a USG contractor in Country Y from 2012 to late 2016. A U.S. General for a U.S. Combatant Command appointed Applicant the information system's security officer for the command's theater of operations. Applicant was responsible for enforcing all security policies and regulations within the command's area of responsibility. He had the authority to approve all changes to firewalls and IT systems, and alter or remove systems that he deemed vulnerable.<sup>10</sup> His supervisors and coworkers, both in and out of uniform, provided their favorable opinion regarding his work, dedication to the U.S. mission, close observance of security rules and regulations, and overall reliability.<sup>11</sup> One of Applicant's coworkers from this period, a former U.S. Marine, writes:

I have personally found the Applicant to be someone I can trust, no questions asked. . . . I served 10 years in the United States Marines to

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<sup>8</sup> Tr. 27-32, 36-50, 64-65; Answer; Exhibit 1; Exhibit E at 9. At hearing, Applicant answered all questions posed to him about his ex-girlfriend in a straightforward fashion, including when asked by Department Counsel if the bar his ex-girlfriend worked at was a "go-go bar." She did not. (Tr. 39.)

<sup>9</sup> Appellate Exhibit V.

<sup>10</sup> Exhibits B-D.

<sup>11</sup> Exhibit E at 3-4, 16-17, 20-21.

include combat service in Iraq, and would trust [Applicant] more than any Marine I met. . . . [Applicant] is a straight shooter, he has nothing to hide. . . . [He] is someone who would immediately report a wrongdoing to higher leadership (e.g. NCIS, FBI, CID) – as I have witnessed him do in the past several times.<sup>12</sup>

A few weeks after his ex-girlfriend dumped him, Applicant was introduced to his future wife by a co-worker. Applicant's wife was born in Indonesia, but by the time they met, she had been working and living in Country Y for 15 to 16 years. She has a daughter from a prior marriage.

In May 2015, after dating for about nine months, Applicant and his wife married. Before marrying, Applicant met his future father-in-law, brothers-in-law, and other distant relatives who are citizens and residents of Indonesia. Applicant describes his meeting with his future father-in-law as lasting a total of about five minutes, enough to shake the man's hand and exchange pleasantries. Applicant's father-in-law is a retired mechanic, and his brothers-in-law are taxi drivers. Applicant's wife is not close to her father, but respects him and will sometimes send him \$20. She also sends money to her extended family in Indonesia to cover incidental expenses for a property she purchased years before she met and married Applicant. None of his wife's relatives work for or have any connection to the Indonesian or other foreign government. They are unaware of Applicant's USG employment.<sup>13</sup>

Indonesia is a multiparty democracy. It is the world's third largest democracy, has the largest Muslim-majority population and, when measured in terms of purchasing power, is the tenth-largest economy in the world.

The United States was one of the first countries to establish diplomatic relations with Indonesia in 1949, following its independence from the Netherlands. Indonesia's democratization and reform process since 1998 has increased its stability and security, and resulted in strengthened U.S.-Indonesia relations. Currently, the United States and Indonesia have a strategic partnership that extends to cooperation on issues of regional and global significance.

The U.S. State Department's current human rights reports regarding Indonesia notes that civilian authorities generally maintained control over security forces. The report goes on to note that, despite high-profile arrests and convictions, widespread corruption remained a problem, and some elements within the government, judiciary, and security forces obstructed corruption investigations and harassed their accusers. Impunity for serious human rights violations remained a concern. The government failed to conduct transparent, public investigations into some allegations of unjustified killings, torture, and abuse by security forces. Elements within the government applied treason, blasphemy, defamation, and decency laws to limit freedom of expression and assembly. There was a notable increase in rhetoric against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons during the year.

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<sup>12</sup> Exhibit E at 5.

<sup>13</sup> Tr. 35, 50-67; Answer; Exhibit 1; Exhibits F - M.

Indonesia does not recognize dual citizenship. It has been the victim of attacks by terrorist and extremist elements. Currently, travel by USG personnel to certain areas of Indonesia is restricted.<sup>14</sup>

Applicant started providing his wife financial support shortly after they started dating. His wife used the money to buy their wedding rings, pay for a family vacation to Disney, and satisfy old debts that could have posed an immigration issue. Applicant also gave his wife money to financially support his stepdaughter and to pay for the legal cost associated with his wife gaining sole legal custody of his stepdaughter. Applicant plans on adopting his stepdaughter. Applicant and his wife celebrated the birth of their first son in January 2016. Although their son was born overseas, he is a U.S. citizen.

Applicant accepted a stateside job offer from his employer. He remains a USG contractor. After his wife and stepdaughter were granted U.S. permanent residency status, the family permanently relocated from Country Y to the United States. Applicant purchased a home that is relatively close to his job. This new home is also close to where Applicant's parents and sister live. Applicant gave his parents \$250,000 to purchase their home and loaned his sister \$50,000 to help her and her husband, who works for a USG agency, buy their home. He put down approximately 80% of the \$540,000 purchase price of his new home. He also purchased new vehicles for himself and his wife totaling over \$110,000. He used his savings to make these and other purchases. Applicant reports that after making these large purchases, he has over \$250,000 in U.S. savings and investment accounts. He has no overseas property or assets. His U.S. assets and property total over \$1.5 million. He is in his mid-thirties, plans on returning to college to earn his undergraduate degree, and then move into management at his company.

Applicant earns approximately \$135,000 annually. Although Applicant's current take-home pay is less than half what he was earning overseas as a USG contractor, he credibly testified that he plans to live and raise his children in the United States. His stepdaughter has adjusted well to her new home and is looking forward to Christmas. His wife and mother have become close. Applicant and his wife recently celebrated the birth of their youngest son.<sup>15</sup>

Applicant's current supervisor ranks Applicant as his number one employee for three years running.<sup>16</sup> Applicant has received successive promotions in recognition of exceptional work. His performance appraisals reflect favorable contributions to DoD's cyber security posture and compliance with security rules and regulations. For instance, a recent appraisal notes that Applicant "significantly increased the security posture of [X system] by properly configuring the local firewall . . . this was the first firewall in [redacted] network and possibly all of [redacted] to be configured correctly IAW DoD policy." The appraisal goes on to note that Applicant is a recognized "subject matter expert."<sup>17</sup>

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<sup>14</sup> Appellate Exhibits IV and VI.

<sup>15</sup> Tr. 35, 50-67; Answer; Exhibit 1; Exhibits F - M.

<sup>16</sup> Exhibit E at 18.

<sup>17</sup> Exhibit A.

A former coworker in Iraq, who has known Applicant in both a professional and social capacity for ten years, writes:

[Applicant] is a resource that cleared individuals all over the globe utilize to get the final word on how to best protect classified information and military systems. . . . His judgment on the job is unquestionably sound and is the standard, literally, that other cyber security professionals are measured by.

Further, [Applicant] has no reservation about making the decision to follow a DoD directive and terminate communications services based on security requirements or situational necessities, and that is something many career signal officers waiver on, but [he] sees past those emotional barriers . . . The unwavering commitment to duty that [he] has demonstrated has been an example and is the reference point that most judge themselves by. While many make jokes and feign disregard for procedures . . . those words never enter [Applicant's] lexicon and he is always very clear as to what the regulation is and what is expected of them; even while others jest, he is clear about protecting classified information and materials.

There are few people in this industry, military or otherwise, that can be unquestionably trusted to conduct themselves in accordance with regulations and in the best interest of the US Government at all times and [Applicant] is the measure that others are judged by. . . . [Applicant] has made great sacrifices living overseas and traveling into very dangerous, austere locations in the desire to protect American's communications interests. It is impossible to calculate the amount of American lives that have been protected as a direct result of his work.<sup>18</sup>

### **Law, Policies, and Regulations**

This case is decided under Executive Order (E.O.) 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 National Security Adjudicative Guidelines (AG), which became effective on June 8, 2017. ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DoD policy and standards).

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Instead, persons are only eligible for access to classified information "upon a finding that it is clearly consistent with the national interest" to authorize such access. E.O. 10865 § 2.

When evaluating an applicant's eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner,

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<sup>18</sup> Exhibit E at 13-15.

considering all available and reliable information, in arriving at a fair and impartial decision. AG ¶ 2.

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

Administrative Judges must remain fair and impartial, and conduct all hearings in a timely and orderly manner. Judges must carefully balance the needs for the expedient resolution of a case with the demands of due process. Therefore, an administrative judge will ensure that an applicant: (a) receives fair notice of the issues, (b) has a reasonable opportunity to address those issues, and (c) is not subjected to unfair surprise. Directive, ¶ E3.1.10; ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014).

In evaluating the evidence, a judge applies a “substantial evidence” standard, which is something less than a preponderance of the evidence. Specifically, substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive, ¶ E3.1.32.1.<sup>19</sup>

Any doubt raised by the evidence must be resolved in favor of the national security. AG ¶ 2(b). See *also* Security Executive Agent Directive 4 (SEAD-4), ¶ E.4. Additionally, the Supreme Court has held that responsible officials making “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

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. 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 an 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.

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<sup>19</sup> However, a judge’s mere disbelief of an applicant’s testimony, without actual evidence of disqualifying conduct or admission by an applicant to the disqualifying conduct, is not enough to sustain an unfavorable finding. ISCR Case No. 15-05565 (App. Bd. Aug. 2, 2017); ISCR Case No. 02-24452 (App. Bd. Aug. 4, 2004). Furthermore, an unfavorable decision cannot be based on solely non-alleged conduct. ISCR Case No. 14-05986 (App. Bd. May 26, 2017). Unless an applicant is provided notice that unalleged conduct raises a security concern, it can only be used for specific limited purposes, such as assessing mitigation and credibility. ISCR Case No. 16-02877 at 3 (App. Bd. Oct. 2, 2017).



## Analysis

### Guideline B, Foreign Influence

Foreign contacts and interests . . . are a national security concern if they result 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. (AG ¶ 6.)

A person is not automatically disqualified from holding a security clearance because they have relatives living in a foreign country. Instead, in assessing an individual's potential vulnerability to foreign influence, a judge considers the foreign country involved, the country's human rights record, and other pertinent factors.<sup>20</sup>

In assessing the security concerns at issue, I considered the disqualifying and mitigating conditions listed under Guideline B, including:

AG ¶ 7(a): contact . . . with a foreign family member . . . 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(b): connections to a foreign person . . . 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 . . . by providing that information or technology;

AG ¶ 7(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(f): substantial . . . property interests in a foreign country . . . that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest;

AG ¶ 7(i): conduct, especially while traveling or residing outside the U.S., that may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country;

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 United States;

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<sup>20</sup> See *generally* AG ¶ 6. See also ISCR Case No. 05-03250 at 4 (App. Bd. Apr. 6, 2007) (setting forth factors an administrative judge must consider in foreign influence cases).

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

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;

AG ¶ 8(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

AG ¶ 8(f): the value or routine nature of the foreign . . . 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.

An applicant with relatives in a foreign country faces a high, but not insurmountable hurdle in mitigating security concerns raised by such foreign ties. An applicant is not required “to sever all ties with a foreign country before he or she can be granted access to classified information.”<sup>21</sup> However, what factor or combination of factors may mitigate security concerns raised by an applicant with ties to a foreign country through their relatives is not easily identifiable or quantifiable.<sup>22</sup>

Here, Applicant clearly showed that his past ties to Thailand through his ex-girlfriend and present ties to Indonesia through his wife’s relatives do not pose a security risk. Applicant has had no contact with his ex-girlfriend in over three years. He has no legal or personal connection to the property that she bought in Thailand. He no longer harbors any illusions or dreams of retiring at 40 and living the life of an ex-pat in a tropical overseas location. He is now a husband and father of three young children, living and working in the United States. He is clearly dedicated to his family and job. He wants to raise his children in the United States, which is, in part, evidenced by his decision to purchase a home close to where his parents and his sister and her family reside.

Applicant’s ties to Indonesia through his wife’s extended family there are as weak as his alleged foreign ties to Thailand. He barely recalls meeting his father-in-law and that one meeting lasted just a few minutes. He has no meaningful contact or relationship with any of his wife’s relatives in Thailand.<sup>23</sup> Although his wife’s contact with her relatives is somewhat more extensive, her relationship and contact with them does not raise a heightened security concern or pose a conflict of interest with Applicant’s security responsibilities. Of note, Applicant’s wife has not lived in Indonesia for quite some time.

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<sup>21</sup> ISCR Case No. 07-13739 at 4 (App. Bd. Nov. 12, 2008).

<sup>22</sup> ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).

<sup>23</sup> See ISCR Case No. 14-05986 (App. Bd. May 26, 2017) (applicant’s lack of contact and meaningful relationship with foreign in-laws supported judge’s favorable Guideline B decision).

Her relationship with her father, her sole living parent, is respectful, but distant. She is now settling into her new life in the United States. Her daughter from a previous relationship, who Applicant is looking to adopt, is fully embracing her new life in the United States. Furthermore, the record is clear that Applicant can be expected to place his security responsibilities above his and his wife's connection to her relatives in Indonesia. None of the above disqualifying conditions fully apply.

In contrast to the weak foreign ties alleged in the SOR, the record evidence clearly shows that Applicant's professional, familial, personal, and financial ties are in the U.S. and his loyalty is to the United States. He decided in 2008 to serve his country in Iraq as a contractor. He served in that hostile, dangerous environment for three and half years. He has amassed a favorable record of handling and safeguarding sensitive and classified information. He has routinely placed the protection of sensitive information and complying with security rules and regulations above personal convenience and professional expediency. Applicant's ties to Indonesia through his wife's relatives in that country do not undercut this and the other favorable record evidence.<sup>24</sup>

Security clearance assessments about a person require a judge to closely examine the individual's conduct and circumstances, both past and present. In a Guideline B case this assessment necessarily requires a judge to consider the relevant country or countries at issue. Furthermore, a past favorable clearance adjudication does not bar security officials from reassessing an applicant's eligibility, especially when new matters arise.

After considering and weighing the evidence, both favorable and unfavorable, including the matters admitted into the record regarding Thailand and Indonesia, I find that Applicant mitigated the security concerns at issue. All of the above listed mitigating conditions apply, in full or in part, and together with the favorable whole-person factors raised by the evidence,<sup>25</sup> mitigate the foreign influence security concerns.

## **Guideline E, Personal Conduct**

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 or sensitive information. (AG ¶ 15.)

Department Counsel contends that Applicant's decision to provide financial support to his ex-girlfriend and his wife shortly after he started dating them shows a

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<sup>24</sup> See also Tr. 76 ("And the Government does recognize now that the Applicant himself lives in the United States. . . . all his immediate relatives to include his wife and children are in the United States, and he does have some significant ties to the U.S. While the Government also does recognize that [Applicant's] wife does still have family members over in Indonesia, based on the testimony today it doesn't appear that he's particularly close with them. There is some financial support that is sent over to Indonesia, but the Government recognizes that the Applicant has worked for Government contractors for quite a number of years and is not particularly concerned about his loyalties to the United States.").

<sup>25</sup> See AG ¶ 2 (whole-person concept). See also SEAD-4, ¶ E.4 (relevant factors to consider in determining whether granting a person a clearance is clearly consistent with the interests of the United States).

purported lack of judgment.<sup>26</sup> The facts do not support Department Counsel's view. Applicant became romantically involved with his ex-girlfriend shortly after leaving Iraq, where he had been working continuously for three and half years. For the next three years, Applicant was in a relationship with his girlfriend before she dumped him for another man. No evidence was submitted that Applicant's ex-girlfriend worked for a foreign intelligence service, government, or entity, or attempted to use their relationship to pressure or coerce Applicant into taking some action that would harm the United States.

While on the rebound, Applicant was introduced to his wife by a coworker. Applicant and his wife subsequently married. He has financially supported his wife and their three children. Nothing about the circumstances giving rise to these relationships, the relationships themselves, or Applicant's conduct raises a security concern under Guideline E. In short, the Government failed to meet its burden of proof and persuasion.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive, ¶ E3.1.25, are:

Paragraph 1, Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraphs 1.a – 1.e:	For Applicant
Paragraph 2, Guideline E (Personal Conduct):	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

In light of the record evidence, it is clearly consistent with the interests of national security to grant Applicant initial or continued eligibility for access to classified information. Applicant's request for a security clearance is granted.

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Francisco Mendez  
Administrative Judge

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<sup>26</sup> Tr. 9-10 (In her opening remarks, Department Counsel stated, "The Guideline E was also included because it's, the Government's position that his history of providing substantial amounts of money to foreign national women after knowing them for only a short period of time does at least on its face reflect some questionable judgment."); Tr. 77-78 (Department Counsel conceded in her closing argument that no case law supports the Government's position).