



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



In the matter of: )  
 )  
 ) ISCR Case No. 23-00935  
 )  
Applicant for Security Clearance )

## **Appearances**

For Government: Brittany C. White, Esq., Department Counsel  
For Applicant: Sean D. Rogers, Esq.

06/10/2025

## Decision

HARVEY, Mark, Administrative Judge:

Guidelines B (foreign influence) and E (personal conduct) security concerns are not mitigated. Eligibility for access to classified information is denied.

## **Statement of the Case**

On July 26, 2021, Applicant completed an Electronic Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On June 9, 2023, the Defense Counterintelligence and Security Agency (DCSA) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and Security Executive Agent Directive 4, establishing in Appendix A, the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DCSA did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine

whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guidelines B and E. (HE 2) On January 19, 2024, Applicant provided his response to the SOR. On February 14, 2024, Department Counsel was ready to proceed. On November 7, 2024, the case was assigned to another administrative judge, and on February 3, 2025, the case was transferred to me for administrative reasons. On February 3, 2025, the Defense Office of Hearings and Appeals issued a notice scheduling the hearing on March 5, 2025. (HE 1) The hearing was held as scheduled, using the Microsoft Teams video teleconference system. The hearing was in Arlington, Virginia, and Applicant was in the Middle East. (Tr. 5)

During the hearing, Department Counsel offered two exhibits into evidence, and Applicant offered 14 exhibits into evidence. (Tr. 12-14; GE 1-GE 2; Applicant Exhibit (AE) A-AE I) There were no objections, and all proffered exhibits were admitted into evidence. (Tr. 13-14) On March 17, 2025, DOHA received a copy of the transcript. The record was not held open after the hearing for post-hearing documentation.

## **Legal Issue**

The parties did not request administrative notice concerning Niger. I emailed two documents to the parties concerning Niger for potential administrative notice, and gave them 10 days to submit comments, objections, or documents. (HE 4) See ISCR Case No. 17-03026 at 4 n.4 (App. Bd. Jan. 16, 2019) The parties did not object to me taking administrative notice of the two documents concerning Niger.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 16-02522 at 2-3 (App. Bd. July 12, 2017); 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 at 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). I have taken administrative notice of the information in the Niger section, *infra*.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

## **Findings of Fact**

In Applicant's SOR response, he admitted the SOR allegations in ¶¶ 1.a, 1.b, 2.a, and 2.b. (HE 3) He also provided mitigating information. His admissions are accepted as findings of fact. Additional findings follow.

Applicant is 58 years old, and he has been employed as a logistics specialist for a DOD contractor since 2008. (Tr. 20-21; GE 1) He joined the Air Force when he was 19 years old. (Tr. 15) He served in the Air Force from 1986 to 2006. (Tr. 16, 50) He served more than 12 years overseas during his Air Force career. (Tr. 17; AE B) He honorably

retired from the Air Force as a master sergeant. (Tr. 17) He received numerous Air Force awards, letters, and certificates of appreciation, recognition, training, and congratulation. (AE B; AE C; AE D) He received one Meritorious Service Medal and four Air Force Commendation Medals. (AE B; AE C) He served on multiple deployments as a contractor in Iraq, Afghanistan, and other places in which there was a risk of injury or death. (Tr. 22-26) He received excellent performance evaluations. (AE A) His resume provides additional information about his professional background, training, and experience. (AE E)

In 1987, Applicant married. (GE 1) His children were born in 1991 and 1994. *Id.* His spouse and children are U.S. citizens. *Id.* His parents were U.S. citizens. *Id.*

## **Foreign Influence**

SOR ¶ 1.a alleges since about January 2021, Applicant maintained contact with a woman (W1) who is a resident of Niger. He had an intimate relationship with W1. He provided W1 about \$500 to \$1,000 in monthly financial support.

In Applicant's July 26, 2021 SCA, he disclosed that he had a friend in Niger, and he provided about \$300 monthly to her. (GE 1 at 28) On October 28, 2021, an Office of Personnel Management (OPM) investigator interviewed Applicant about his relationship with W1. Applicant said his relationship with W1 "evolved into them having real emotions for one another. [Applicant] has love[] for [W1] but he knew the relationship would not last." (GE 2 at 3-4) While he was in Niger, he began providing W1 "\$500 to \$1,000 per month." *Id.* He has daily contact with her by email. *Id.* Applicant informed his spouse of his relationship with W1. *Id.* He sent W1 \$200 in October 2021. *Id.*

At his hearing, Applicant said he met W1 when he was deployed to Niger in October of 2019 as part of his employment, and he was in Niger for about four months. (Tr. 28-29, 53-54) He met W1 in the middle of his deployment. (Tr. 29, 54) The relationship with W1 became intimate towards the end of his stay in Niger. (Tr. 30, 58) He did not give her money after engaging in sexual intercourse with her. (Tr. 58) He left Niger, and he returned on a personal trip in 2021. (Tr. 31) He stayed with W1 when he went to Niger in 2021. (Tr. 44, 62) He considered opening a business in Niger. (Tr. 56) He did not return to Niger after 2021. (Tr. 31-32) He was unaware of whether she had any affiliation with the Niger government. (Tr. 32) She never asked him for any sensitive information. (Tr. 33, 44)

W1 was a waitress and cashier in a restaurant in Niger. (Tr. 34, 54) Her age was between 30 and 40 years old. (Tr. 54) She had a child, and she was living with her father. (Tr. 55) Her monthly income from her Niger employment was about \$100. (Tr. 34) He indicated he paid her about \$300 monthly primarily for apartment expenses, medications, and food. (GE 1) The largest single payment he made was about \$1,000. (Tr. 59) He was unsure about the total amount of funds he gave to W1. (Tr. 67) He was in Niger from January to February 2021. (Tr. 61) He had an emotional attachment to W1, and he considered it to be a "relationship" as opposed to a commercial transaction. (Tr. 62) He did not visit with W1 after February of 2021, which was his most recent visit to Niger. (Tr.

53) He stopped providing financial support to her and ended his contacts with her in December 2023. (Tr. 41, 65, 68) He gave money to W1 because she was impoverished. (Tr. 41) He did not have a child with W1. (Tr. 45) He does not own any property in Niger. (Tr. 45) He told his spouse about his relationship with W1 in 2021 when he completed his SCA. (Tr. 35-36) He hurt his spouse when he disclosed the information about W1. (Tr. 36)

SOR ¶ 1.b alleges since about 2017, Applicant has maintained contact with a woman (W2) who is a citizen and resident of Belize. He had an intimate relationship with her, and he provided her with about \$75 to \$200 in quarterly financial support.

In Applicant's July 26, 2021 SCA, he disclosed that W2 was a friend in Belize, and he occasionally gave her \$75. In his October 28, 2021 OPM interview, he disclosed the information alleged in SOR ¶ 1.b concerning his relationship with W2. (GE 2 at 4-5) He said he provided the quarterly funds, and communicated with her two to four times a month. (GE 2 at 5)

At his hearing, Applicant said in 2017 he went to Belize with his spouse, and he and his spouse stayed in Belize for about two weeks. (Tr. 37, 69) He remained in Belize for about three weeks after his spouse left, and about 10 days after his spouse left Belize, he had an intimate relationship with W2 for about 10 days. (Tr. 37-38, 73) W2 worked at a restaurant where Applicant was staying with his spouse. (Tr. 37, 69-70) He was unaware of any relationship W2 may have had with the Belize government. (Tr. 39) She never asked him for sensitive information. (Tr. 44) He did not return to Belize after 2017. (Tr. 38) He did not have a child with W2. (Tr. 45) He did not provide money to her until after he left Belize. (Tr. 75) He does not own any property in Belize. (Tr. 45) W2's monthly income was about \$275. (Tr. 40) He provided some financial support to her for her living expenses because he was sympathetic about her financial plight. (Tr. 39, 42) He sent funds to her on approximately a quarterly basis from 2017 to 2023. (Tr. 76) He ended the relationship with W2 completely in 2023. (Tr. 40)

Applicant received testing for sexually transmitted diseases (STD) after his sexual activity with W1 and W2. (Tr. 78) He has never had an STD. (Tr. 79) He has had training on sex trafficking. (Tr. 53)

Applicant's payments to W1 and W2 did not cause Applicant financial strain. (Tr. 50) The end of his contacts with W1 and W2 may have been triggered by his receipt of DOHA interrogatories. (Tr. 66, 82) He gave \$28,000 to his church in 2024. (Tr. 50) W1 and W2 knew he worked for the U.S. government; however, they did not know specific information about his employment. (Tr. 81)

Applicant does not have any property in Niger or Belize. (Tr. 45) He does not have any bank accounts or business connections in either country. (Tr. 45) He does not plan to live in Niger or Belize. (Tr. 48)

Applicant's annual salary as a government contractor is about \$120,000. (AE E) He has owned a home in the United States since 2005. (Tr. 46) His spouse and two

children are U.S. citizens. (Tr. 48) When he retires, he plans to live in the United States. (Tr. 48)

## **Personal Conduct**

SOR ¶ 2.a cross-alleges the conduct in SOR ¶¶ 1.a and 1.b under the personal conduct guideline.

SOR ¶ 2.b alleges his spouse is unaware of Applicant's extramarital affair with W2, and the financial support provided to the women in SOR ¶¶ 1.a and 1.b. In 2021, Applicant told his spouse about the adulterous relationships with W1 and another woman. (Tr. 49, 63, 77) He did not specifically tell her his relationship was with W2. (Tr. 38) He and his spouse agreed that he should not tell his children about his contacts with W1 or W2. (Tr. 69, 78) He continued payments to W1 and W2 until 2023 as discussed *supra*.

Applicant's spouse provided a statement in which she said he disclosed his infidelities and payments to the women. (AE I) They prayed about it, and tried to rebuild the trust in their relationship. *Id.* She said, "Having thought that this part of our past was over, I was shocked to learn that it has all resurfaced with this case and am supporting my husband as we continue to try to heal from this hurt or infidelity in our marriage." *Id.* She believes he is a diligent employee, and she requests that DOD give him an opportunity to continue to have access to classified information.

Two coworkers and a friend provided character references. (AE F) They praised Applicant's professionalism, diligence, efficiency, and reliability. Their statements support approval of his access to classified information.

## **Niger**

The Department of State, Country Report on Terrorism 2023: Niger, <https://www.state.gov/reports/country-reports-on-terrorism-2023/niger/> states:

Terrorist organizations exploited Niger's extensive borderlands and sparsely populated regions to attack and recruit among populations where access to government services was weak and economic opportunity negligible. Niger's efforts to fight terrorism were hampered by the small size of its defense force, ineffective coordination among security services, budget shortfalls, and instability in Burkina Faso, Libya, Mali, Nigeria, and the Lake Chad Basin. As a result of the July coup d'état, assistance for the government of Niger was restricted pursuant to section 7008 of the annual appropriations act. Terrorist groups active in Niger included ISIS-Sahel, Boko Haram, ISIS-West Africa (ISIS-WA), and al-Qa'ida affiliate JNIM.

2023 Terrorist Incidents: Terrorist organizations carried out at least 299 attacks in Niger during 2023, including attacks from ISIS-Sahel and JNIM in the West and Northwest, and from ISIS-WA and BH in the Southeast. The following five incidents are examples of the most significant attacks:

On February 10, ISIS-Sahel militants ambushed a Nigerien Armed Forces (FAN) convoy near Intagarmey (Banibangou, Tillabéri Region). Seventeen soldiers were killed, 13 were wounded, 12 went missing. The assailants destroyed and captured five vehicles, according to a government statement. On August 15, ISIS-Sahel militants killed 31 people in the villages of Kodogoria, Tomaré, Issile, and Gaberi in the Tillabéri Region. Separately on August 15, JNIM militants attacked FAN elements near Koutougou in the Tillabéri Region. Seventeen soldiers were killed and 20 others wounded, six of them severely. Two militant convoys were targeted in a counterattack that involved helicopter airstrikes, resulting in the destruction of 50 motorcycles and more than 100 militants “neutralized,” according to a government statement.

On October 2, ISIS-Sahel militants executed a complex ambush involving an IED, a suicide vehicle-borne IED, and direct fire against FAN elements near Takanamat, Tahoua Region. The FAN reported 29 soldiers killed and two injured, dozens of militants killed, 15 motorcycles destroyed, and a significant quantity of weapons and ammunition seized. Local sources reported that at least 109 soldiers were killed in the attack. On December 22, ISIS-WA clashed with FAN elements near Chetimari, Diffa Region. Three soldiers were killed by the militants.

**Legislation, Law Enforcement, and Border Security:** Before the coup d'etat, Niger was recognized by regional partners as a leader in prosecuting terrorism suspects through its specialized antiterrorism court. A DOJ/Overseas Prosecutorial Development Assistance and Training program Resident Legal Advisor worked to improve the capabilities of counterterrorism (CT) investigators, prosecutors, and judges, to support proactive investigations; to increase efficiency in case processing; and to reduce the number of pending cases. Assistance was paused following the coup d'etat and remained suspended at the end of year. A draft penal code revision also was suspended following the coup and remained suspended at year's end.

Niger uses border security systems through the Direction de la Surveillance du Territoire, a bureau within the national police responsible for travel documents, identification credentials, and border security. U.S. Department of State Antiterrorism Assistance programs provided equipment, training, and mentorship for National Guard and Gendarmerie border security operations and urban crisis response. Assistance was paused following the coup d'etat and was subsequently restricted under section 7008.

The State Department Travel Advisory for Niger (Mar. 21, 2025) is available at: <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/niger-travel-advisory.html>. (HE 4) The U.S. State Department Travel Advisory is Level 3: Reconsider travel to Niger due to risk of crime, civil unrest, terrorism, kidnapping, and health. Country Summary: Violent crimes, such as armed robbery, are common. Demonstrations, while generally peaceful, may become violent at any time. They can lead to civil unrest. Terrorist groups continue planning kidnappings and possible attacks in Niger. Terrorists may attack with little or no warning. They target: Tourist destinations visited by foreigners: Foreign and local government facilities; Areas bordering Mali, Libya, Burkina Faso, and throughout northern Niger. Access to medical care in Niger is limited; Facilities may not

have adequate supplies of basic medications, especially outside of larger cities. It is highly recommended to have medical evacuation insurance for travel to Niger.

## 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, “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 applicant’s 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [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

### Foreign Influence

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

Foreign contacts and interests, including, but not limited to, business, financial, and property 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. 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 associated with a risk of terrorism.

AG ¶ 7 lists conditions that could raise a foreign influence security concern and may be disqualifying in this case:

- (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; 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 classified or sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information or technology.

AG ¶¶ 7(a) and 7(b) are established. Additional discussion is in the foreign influence mitigation section, *infra*.

AG ¶ 8 lists 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 United States;
- (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;
- (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 agency head or designee;
- (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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2, [App. A] ¶ 2(b).

Applicant had a relationship with W1, a resident of Niger, from October 2019 to December 2023. He engaged in sexual activity with her in 2019 and 2021. He said he cared for her; maybe he loved her; he sent her a significant amount of money over the years; and he had frequent contact with her. He communicated with her on a daily basis.

Applicant also had a relationship with W2, who is a resident of Belize, from 2017 to December 2023. He had a brief sexual relationship with W2 in 2017, and he provided her with about \$75 to \$200 in quarterly financial support. He has not visited her since 2017. In comparison to his income, his payments to her have been relatively modest. He has never indicated that he had an emotional attachment to her. His connections to the United States are discussed, *infra*. AG ¶¶ 8(a) and 8(b) apply to his relationship with W2. SOR ¶ 1.b is mitigated and will not be further discussed in this decision.

The Appeal Board has concluded that contact every two months or three months constitutes “frequent contact” under AG ¶¶ 7 and 8. ISCR Case No. 14-05986 at 3-4 (App. Bd. Oct. 14, 2016). See also ISCR Case No. 04-09541 at 2-3 (App. Bd. Sept. 26, 2006) (finding contacts with applicant’s siblings once every four or five months not casual and infrequent and stating “The frequency with which Applicant speaks to his family members in Iran does not diminish the strength of his family ties.”). Frequency of contact is not the sole determinant of foreign interest security concerns.

The mere possession of close ties with people living in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if an applicant, his or her spouse, or someone sharing living quarters with them, has such a relationship with even one person 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 ISCR Case No. 08-02864 at 4-5 (App. Bd. Dec. 29, 2009) (discussing problematic visits of that applicant’s father to Iran).

Not every foreign contact or tie presents the heightened risk under AG ¶ 7(a). The “heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. The nature and strength of the ties and the country involved (i.e., the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability to coercion. “[T]he nature of the foreign government involved, and the intelligence-gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the Judge’s ultimate conclusions in the case. The country’s human rights record is another important consideration.” ISCR Case No. 16-02435 at 3 (App. Bd. May 15, 2018) (citing ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017)). These factors are relevant in assessing the likelihood that an applicant’s family members or friends living in that country 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, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorism causes a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The situation in Niger involving terrorists, insurgents, and criminals in that country places a significant burden of persuasion on Applicant to demonstrate that his relationships with anyone living in that country does not pose a security risk. Applicant should not be placed into a position where

he might be forced to choose between the protection of classified information and concerns about assisting someone living in Niger.

The issue under Guideline B is whether Applicant has ties or contacts with W1, who lives in Niger, which raise security concerns because those ties and contacts create a potential vulnerability that criminals, or terrorists could seek to exploit in an effort to get unauthorized access to U.S. classified information that he has by virtue of a security clearance. Applicant may be vulnerable to influence or pressure exerted on, or through, W1.

International terrorist groups and insurgents are known to conduct intelligence activities as effectively as capable state intelligence services, and Niger has a significant problem with terrorism and crime. W1 lives in Niger and his relationship with her “could be a means through which Applicant comes to the attention of those who seek U.S. information or technology and who would attempt to exert coercion upon him.” ADP Case No. 14-01655 at 3 (App. Bd. Dec. 9, 2015) (citing ISCR Case No. 14-02950 at 3 (App. Bd. May 14, 2015)).

Applicant’s relationship with W1 creates a potential conflict of interest because terrorists, insurgents, or criminals could place pressure on her to attempt to cause Applicant to compromise classified information. This relationship creates “a heightened risk of foreign inducement, manipulation, pressure, or coercion” under AG ¶ 7. The record contains substantial evidence of Applicant’s relationship with W1, her residence in Niger, and of violence and criminal activity in Niger.

A key factor in the AG ¶ 8(b) analysis is Applicant’s “deep and longstanding relationships and loyalties in the U.S.” His relationship with the United States must be weighed against the potential conflict of interest created by his connections to Niger. Applicant was born, raised, and educated in the United States. His spouse and children are U.S. citizens. He is an Air Force retiree, and is receiving retirement pay. His annual income from his DOD contractor employment is about \$120,000. He owns a home in the United States.

These factors are balanced against the security concerns outlined in the SOR. Applicant’s access to classified information could add risk to W1. There is no allegation that he would choose to help the terrorists or criminals against the interests of the United States. A Guideline B adjudication is not a judgment on an applicant’s character or loyalty to the United States. It is a determination as to whether an applicant’s circumstances foreseeably present a security risk. See ISCR Case No. 19-00831 at 5 (App. Bd. July 29, 2020). The concern here pertains to the risk to W1, who is living in Niger, and how that risk could be used to coerce Applicant. It does not relate to his loyalty or patriotism to the United States.

Applicant has not rebutted the concern arising from his relationship with W1. His payments to her until December 2023 even though he knew his spouse would be hurt by that information is a factor indicating the degree of his care and concern for W1. His connections to the United States, taken together, are strong; however, they are

insufficient to overcome the foreign influence security concerns under Guideline B relating to SOR ¶ 1.a.

## **Personal Conduct**

AG ¶ 15 explains why personal conduct is a security concern stating:

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 any other failure to cooperate with the security clearance process. . . .

AG ¶ 16 provides two personal conduct conditions that could raise a security concern and may be disqualifying as follows.

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of: (1) untrustworthy or unreliable behavior . . . ; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group.

AG ¶¶ 16(d) and 16(e) are established for SOR ¶ 2.a. No disqualifying conditions are established for SOR ¶ 2.b because he disclosed his adulterous affairs in Belize and Niger to his spouse. Additional discussion concerning SOR ¶ 2.a is in the personal conduct mitigation section, *infra*.

AG ¶ 17 provides conditions that could mitigate security concerns in this case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

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

(f) the information was unsubstantiated or from a source of questionable reliability.

None of the mitigating conditions fully apply. Applicant showed poor judgment when he engaged in the intimate relationship with W1 and then made payments to her until December 2023. He revealed his relationship with W1 to his spouse in 2021, and he continued to make payments to her until December 2023. Applicant's statements at his hearing about the magnitude of his payments to W1 were vague. His rationale for the payments was charity because she needed the money. This explanation lacks credibility. His payments and connections to her may have exposed her to dangers from criminals and terrorists. Moreover, Applicant did not provide any evidence that he disclosed his sexual relationships with W1 and W2 and cash payments to them to his children, co-workers, and friends. Information about his relationships with W1 and W2 could adversely affect Applicant's standing among his children, friends, and co-workers. He continues to be vulnerable to coercion because he desires to keep his relationships with W1 and W2 secret to protect his personal and professional reputation. See ISCR Case No. 20-01142 at 3, 5 (App. Bd. Jan. 11, 2023).

None of the mitigating conditions fully apply. Personal conduct security concerns are not mitigated.

### **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), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guidelines B and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is 58 years old, and he has been employed as a logistics specialist for a DOD contractor since 2008. He served in the Air Force from 1986 to 2006, including more than 12 years overseas. He honorably retired from the Air Force as a master sergeant. He received numerous Air Force awards, letters, and certificates of appreciation, recognition, training, and congratulation. He served on multiple deployments as a contractor in Iraq, Afghanistan, and other places in which there was a risk of injury or death. He received excellent performance evaluations, and he provided three statements which praised his good character. His whole-person evidence provides important support for approval of his access to classified information.

The reasons for denying Applicant’s security clearance are more persuasive. A Guideline B decision concerning Niger must take into consideration the geopolitical situation and dangers in that country. 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); ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing grant of security clearance because of terrorist activity in the West Bank). Niger is a dangerous place because of violence from terrorists, insurgents, and criminals. Terrorists and criminals in Niger continue to threaten the interests of the United States, residents of Niger, and those who cooperate and assist the United States.

Applicant had frequent contacts with W1, a resident of Niger. He provided financial support to her until December 2023. He is emotionally connected to her. Additional discussion is in the analysis section, *supra*. Applicant did not meet his burden of showing that their relationship was unlikely to come to the attention of those interested in acquiring U.S. classified information. “Application of the guidelines is not a comment on an applicant’s patriotism but merely an acknowledgment that [he] may act in unpredictable ways when faced with choices that could be important” to W1. See *Generally* ISCR Case No. 17-01979 at 5 (App. Bd. July 31, 2019).

It is well settled that once a concern arises regarding an applicant’s security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board’s jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to mitigate foreign influence and personal conduct 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:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant

Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant

## **Conclusion**

Considering all the circumstances in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Mark Harvey  
Administrative Judge