* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

United States Department of Energy
Office of Hearings and Appeals

In the matter of Personnel Security Hearing	)	
	)	
Filing Date: September 10, 2012	)	Case No.: PSH-12-0117
	)	
	)	

Issued: March 1, 2013

Decision and Order

Robert B. Palmer, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." [1] For the reasons set forth below, I conclude that the individual's security clearance should not be restored at this time. [2]

I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor, and was granted a security clearance in connection with that employment. During the course of a routine reinvestigation that

[1] An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will also be referred to in this Decision as a security clearance.

[2] Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at http://www.oha.doe.gov . The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at http://www.oha.doe.gov/search.htm.

began in 2009, the local security office (LSO) obtained information about the individual that raised security concerns. This information concerned his marriage in 2002 to a citizen of a sensitive country, his ensuing contacts with other citizens of that country, and his lengthy trips to that sensitive country. [3] In an attempt to resolve these concerns, the LSO summoned the individual for interviews with a personnel security specialist in February 2010 and February 2011. After these personnel security interviews (PSIs) failed to adequately address the LSO's concerns, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. It informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. The DOE introduced 15 exhibits into the record of this proceeding and presented the testimony of two witnesses. The individual introduced 79 exhibits and presented his own testimony and that of his wife.

II. THE NOTIFICATION LETTER AND THE DOE'S SECURITY CONCERNS

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraph (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Under criterion (l), information is derogatory if it indicates that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of national security. As support for this criterion, the Letter cites information provided by the individual on a 2009 Questionnaire for National Security Positions (QNSP) and during Personnel Security Interviews (PSIs) in 2010 and 2011. The Letter also cites a 2010 Office of Personnel Management (OPM)

[3] The country in question is one of 26 nations included on the DOE's Sensitive Countries List. A sensitive country is one to which particular attention is given by the DOE's Office of Intelligence and Counterintelligence. Countries may be designated as sensitive for reasons of national security, nuclear non-proliferation, regional instability, threat to national economic security, or terrorism support.

background investigation and a 2010 letter from the local Field Office of DOE Counterintelligence. All of this information pertained to the individual's 2002 marriage to a foreign national of a sensitive country, his contact with other nationals of that country, and his trips to that sensitive country.

Specifically, the Letter states that on his QNSP, the individual reported that:

- In April 2002, he married the foreign national, and that, as of the date of the QNSP, she was a citizen of a sensitive country living in the U.S. as a permanent resident;
- His mother-in-law (MIL) and his father-in-law (FIL) are native-born citizens of that sensitive country who still reside in that country;
- He had contact with 14 people who were native-born citizens of the sensitive country and still lived in that country, one person who was born in that country but currently resides in Austria, and another who was born in that sensitive country but currently lives in the U.S. He indicated on the QNSP that all of these people were either members of his wife's immediate or extended families, or were her friends; and
- He traveled to the sensitive country for 21 days in June and July 2004 and for 29 days in July and August 2009 to visit with his wife's friends and family.

The Letter further cites statements made by the individual during his 2010 PSI indicating that:

- He met his wife in approximately October 2000 through an on-line dating website
- In approximately July 2001, he traveled to the sensitive country to meet her and her family, staying for approximately two and one-half to three weeks;
- In January 2002 he traveled to the U.S. embassy in the sensitive country to accompany his wife for an interview with embassy officials. He returned to the U.S., and his wife came to the U.S. to live with him in approximately mid-January 2002. They were married in April 2002, and his wife has lived with him in the U.S. ever since. They have a child who was born in 2008.
- During her youth in the sensitive country, his wife was a member of a young people's organization that was a precursor to joining the Communist Party, and that becoming a member of that party was a prerequisite to becoming a part of the society of that sensitive country at that time;
- Both of his wife's parents were members of the Communist Party, and his FIL was a colonel in a non-military organization that was the equivalent of the police department;
- His MIL's niece lives in the sensitive country and owns a company called "Propaganda;"
- One of the individual's wife's friends is a former employee of the state security and counterintelligence agency of the sensitive country;

- One of his wife's aunts works for a municipal utility in a secret, "closed city" that is the center of nuclear research and production in the sensitive country;

The Letter also refers to the results of the 2010 OPM background investigation. During that investigation, a source identified as one of the individual's neighbors told an investigator that the individual and his wife had told the neighbor that the individual's FIL had been "a high-ranking Communist official", and possibly a member of a foreign intelligence service in the sensitive country.

The individual further addressed these issues during his 2011 PSI. According to the Letter, during this Interview, the individual said that:

- His FIL was a high ranking police official, and he denied information obtained during his OPM background investigation linking his FIL to the foreign intelligence service. However, later he said that his FIL could have been employed by the foreign intelligence service, since he had no way of knowing otherwise, but that he did not think this to be the case. He also knew that his FIL had previously served in some capacity in the sensitive country's military services; and
- After being advised of the results of a polygraph examination, during which the examiner found the individual to have exhibited indications of deception regarding questions concerning the hiding of foreign contacts from the DOE, the individual produced and submitted a list of approximately 30 names of foreign contacts whom he had not previously disclosed to the DOE.

Finally, the letter cites a 2010 communication from the local Field Office of DOE Counterintelligence. Than communication expressed Counterintelligence concerns about the individual's spouse and in-laws being citizens of the sensitive country, and about the individual's FIL possibly being a former member of that country's intelligence service.

This derogatory information adequately justifies the DOE's invocation of criterion (l), and raises significant security concerns. Foreign contacts and interests are a security concern if the individual has divided loyalties, may be manipulated or induced to help a foreign person, group, organization or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Also, 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. *See Revised*

Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005) (Adjudicative Guidelines), Guidelines B and E.

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting or restoring a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual's eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. ANALYSIS

My evaluation of the security concerns set forth in the Letter and the individual's attempts to mitigate those concerns is informed by the *Adjudicative Guidelines*. *Adjudicative Guideline B*, Foreign Influence, sets forth nine conditions that could raise a security concern and may be disqualifying, and also six conditions that could mitigate security concerns. I will consider each of these conditions, and their application to the case at hand, *seriatim*.

A. Potentially Disqualifying Conditions

1. Foreign Contacts

The first condition that could raise a security concern is "contact with a foreign family member, . . . , friend, or other person who is a citizen of or a resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." Implicit in this language is the concept that not all foreign contacts raise security concerns; only ones that create a "heightened risk" are potentially disqualifying. In this case, there are two characteristics of the individual's foreign contacts that are troubling. The first is that at least one, and possibly two, of those contacts were employed by intelligence-gathering or state security agencies in a sensitive country that has devoted, and is still devoting, substantial resources to intelligence gathering activities against the United States. The individual testified that his wife's friend held an administrative position at the state security agency in the sensitive country, and is, in fact, no longer employed there. Moreover, he said that neither he nor his wife has ever talked about the individual's job with this person. Hearing transcript (Tr.) at 242-247. Regarding the second contact with possible state security ties, the individual's FIL, the individual testified that the FIL was not a former employee of the sensitive country's foreign intelligence service. He further said that he had identified the source quoted in the OPM investigative report, that she was an elderly lady who had her facts confused, and that neither he nor his wife had ever told her that his FIL was a former employee of the foreign intelligence service. Tr. at 213-217. This testimony does not alleviate my concerns. First, it is certainly conceivable that someone working for a security or intelligence-gathering organization might seek to conceal or misrepresent his or her employment or the true nature of his or her duties. Indeed, although the individual stated during his 2011 PSI that he had not seen or heard anything that would indicate that his FIL was a former foreign intelligence service employee, he could not totally discount the possibility. DOE Exhibit (Ex.) 9, February 16, 2011, PSI at 42. Second, the individual admitted that the alleged source continues to believe that the information in the OPM report attributed to her is true. Tr. at 218-219.

The other concerning factor is the sheer number of foreign contacts. On his 2009 QNSP and after his first polygraph examination, the individual has identified a total of over 40 foreign contacts, all residing in a sensitive country. As the number of foreign contacts increases, the means of potential

access to the individual by agents of a foreign intelligence gathering service also increases. This potentially disqualifying condition exists in the case at hand.

2. Foreign Connections

The second potentially disqualifying condition is "connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information." A preponderance of the evidence in this case indicates that the individual's interactions with the vast majority of his named foreign contacts are so casual and infrequent that they raise little or no possibility of a conflict of interest that could compromise national security. This potentially disqualifying condition is not applicable.

3. Counterintelligence Concerns

The next condition is that "counterintelligence information, that may be classified, indicates that the individual's access to protected information may involve unacceptable risk to national security." At the hearing, the senior local officer of the DOE's Office of Intelligence and Counterintelligence testified. He said that the counterintelligence assessment of risk associated with the individual's access to protected information is a function of three factors: the threat that the intelligence services of the sensitive country poses to the U.S., the vulnerability of the individual to those services, and the possible consequences of a security breach involving the individual. Tr. at 103-104. Regarding the first factor, the Counterintelligence officer testified that the sensitive country has a "very formidable, very aggressive and highly capable foreign intelligence service," that there are more intelligence officers from this country in the U.S. today than in years past, and that the threat posed by this sensitive country "remains very prominent." Tr. at 94. Concerning the second factor, vulnerability, the Counterintelligence officer cited the substantial potential for access to the individual by the sensitive country's intelligence services because of his large number of foreign contacts, including contacts with past or current connections to the government of the sensitive country, and his extended visits of up to a month to the sensitive country. Tr. at 104, 107. The Counterintelligence officer also testified about the importance of the classified information that the individual has access to, which relates to the third factor, the possible consequences of a security breach. Tr. at 101-103. He concluded by stating that these factors, when coupled with his problematic polygraph results and his subsequent disclosure of additional foreign contacts, led him

to conclude that continued access authorization on the part of the individual would represent an unacceptable security risk. Tr. at 110. This potentially disqualifying condition is applicable.

4. Shared Living Quarters

The fourth potentially disqualifying condition is "sharing 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." In 2002, the individual married a woman, who at that time, was a citizen of the sensitive country, and whom he met through an internet website that was designed to facilitate marriages between residents of his wife's former community in the sensitive country and foreigners. Although she has since become an American citizen, Individual's Exhibit (Ind. Ex.) 46, her parents, other relatives, and many of her friends still live in the sensitive country. The individual testified that he never discusses his work with his wife. Tr. at 247. He also said that his relationships with his wife's friends and relatives are casual, and that he likes, but does not love, his in-laws. Tr. at 265, 275. Consequently, he contends that these relationships do not create a heightened risk of foreign inducement, manipulation, pressure or coercion. However, the individual does love his wife and his child, and while this is admirable, I find that it does create a heightened risk of foreign inducement, manipulation or coercion. The individual could possibly be influenced to act in a manner that is detrimental to national security by the promise of gain to, or the threat of negative consequences for, his wife's parents and his child's grandparents. This potentially disqualifying factor exists in the matter at hand.

5. Substantial Business Interests

There is no evidence that the individual has "a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business." Consequently, the fifth potentially disqualifying condition does not apply.

6. Failure to Report Foreign Associations

The sixth potentially disqualifying condition is "failure to report, when required, association with a foreign national." As set forth above, the Letter alleges that after being advised that his first polygraph examination showed indications of deception concerning whether he had hidden contacts with foreign nationals from the DOE, the individual disclosed approximately 30 additional names of previously unidentified foreign contacts. At the hearing, the individual testified that he provided the additional names after the polygraph examiner told him that the individual was "having problems" with the question concerning reporting foreign contacts. According to the individual, the test results were inconclusive on this issue, rather than indicative of deception. Tr. at 238-239.

Consequently, after the first polygraph, he consulted with his wife and decided to list every native of the sensitive country with whom they had had any sort of contact with, rather than only those with whom he had had "close and continuing contact" as specified in question 19 of his QNSP. *Id.* Accordingly, the individual argues that his provision of the additional names was not required and did not indicate a failure to comply with the DOE's foreign contact reporting policies.

However, after the individual supplied the additional foreign contacts, he took a second polygraph examination. That examination revealed "indications of deception" regarding the individual's answers to questions about whether he was concealing foreign contacts from the DOE. The individual's response to this finding of possible deception is two-fold. First, he challenges the validity of polygraph examinations in general and their use in security clearance proceedings. In support of his position, he cites the conclusion of the U.S. Supreme Court in *U.S. v. Scheffer,* 523 U.S. 303 (1998) (*Scheffer*), that "there is simply no consensus that polygraph evidence is reliable." *Id.* at 309. The individual also cites a paper issued by the National Research Council that concludes that the polygraph's "accuracy in distinguishing actual or potential security violators from innocent test-takers is insufficient to justify reliance on its use in employee security screening in federal agencies," Tr. at 252; an article from *Psychology Today* claiming that polygraph machines are incapable of detecting lies; [4] and a previous OHA personnel security decision in which the hearing officer declined to consider polygraph evidence because of questions concerning its reliability. Ind. Ex. 68, 69 and 70. *See also Personnel Security Hearing*, Case No. TSO-1023 (2011). Second, he claims that the DOE's guidance as to what constitutes a foreign contact that must be reported has been inconsistent, and that his resulting confusion on the issue caused the contested polygraph results.

The individual correctly states that there is no consensus that polygraph evidence is reliable. This lack of consensus is reflected in the disagreement among state and federal courts as to both the admissibility and reliability of polygraph evidence. *See Scheffer*, 523 U.S. 303 at 310- 311, and cases cited therein. However, I need not decide the issue of whether polygraph evidence is *per se* inadmissible in DOE security clearance proceedings, because I conclude that, even if it is admissible under certain circumstances, there is an insufficient foundation in this case for the admission of such evidence. Courts and administrative bodies that have previously considered this question have predicated the admission of such evidence on the presence of information concerning the qualifications and competence of the polygraph examiner, the type of equipment used, the examiner's familiarity with that equipment, and other factors concerning the reliability and

[4] Instead, the machines detect physiological changes in the test subject, which then must be interpreted by the polygraph examiner. The author argues that these interpretations are subject to the same uncertainties and inaccuracies as are the evaluation of body language and vocal inflections.

acceptance of polygraph examinations. *See, e.g., Larry W. Meier v. Department of the Interior*, 3 M.S.P.R. 247, 254-255 (1980) (Merit Systems Protection Board); *In re* _____, ISCR Case No. 96-0785 (1998) (Defense Office of Hearings and Appeals), and cases cited therein. In this case, there is no evidence in the record concerning the qualifications of the examiner, the type of equipment used, or the circumstances surrounding the examinations. Consequently, I will not consider the findings of the polygraph examiner that the individual's answers to questions concerning his foreign contacts were inconclusive during his first examination, and indicative of deception during the second examination in reaching my decision in this case. [5]

Discounting evidence concerning the polygraph results, there is insufficient information in this record supporting the existence of this potentially disqualifying condition. Although the individual's provision of over 30 additional contacts, on its face, would seem to indicate that the foreign contact information that he provided on his QNSP was not complete, the individual presented uncontroverted testimony that he did not have "close and continuing" contact with these people, as specified on the QNSP. This potentially disqualifying condition is not applicable to the present case.

7. Unauthorized Association with Suspected Foreign Intelligence Agents and the Remaining Potentially Disqualifying Factors

The seventh potentially disqualifying condition is "unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence service." Although the weight that I attribute to this factor is limited due to the fact that there are only suspicions concerning the involvement of the FIL with the sensitive country's intelligence service and the wife's friend's continuing involvement with the state security agency in the sensitive country, this factor does apply to the case at hand.

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[5] To the extent that the individual is arguing that the Office of Counterintelligence improperly relied on polygraph evidence, that contention is clearly foreclosed by 10 C.F.R. § 709.1 *et seq.*, which expressly permits the use of polygraphs under the conditions and guidelines set forth in those regulations. Moreover, nothing in this Decision should be interpreted as questioning the validity or admissibility of information obtained during pre- or post-polygraph interviews, or of the answers given by the test subject during the polygraph examination itself. Such information has been admitted and considered in a number of decisions by OHA Hearing Officers. *See, e.g.*, *Personnel Security Hearing*, Case No. PSH-12-0160 (2012); *Personnel Security Hearing*, Case No. TSO-0679 (2008); *Personnel Security Hearing*, Case No. TSO-0025 (2003). My disposition of this issue also makes it unnecessary to consider the individual's second claim, that his confusion as to the DOE's policy regarding the reporting of foreign contacts led to the contested polygraph results.

There are no indications that foreign country nationals are acting to increase the individual's vulnerability to possible future exploitation or manipulation, or that the individual has engaged in conduct that could make him vulnerable to pressure or coercion by a foreign entity. Consequently, the eighth and ninth potentially disqualifying conditions, respectively, are not applicable.

B. Potentially Mitigating Conditions

My conclusion that certain potentially disqualifying conditions are applicable does not end my inquiry in this matter. I am required by the *Adjudicative Guidelines* to engage in a "careful weighing of a number of variables," both "favorable and unfavorable," in reaching a determination regarding the individual's eligibility for access authorization. *Adjudicative Guidelines*, ¶ 2. I must therefore consider all relevant and material mitigating factors, including those enumerated under *Adjudicative Guideline B*, which are set forth below.

1. The Likelihood of the Individual's Having to Choose Between Foreign Interests and the Interests of the U.S.

The first mitigating condition is that "the nature of the relationships with foreign persons, the country in which these persons are located, or the activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S." The evidence in this case indicates that the individual's relationships with his foreign contacts other than his in-laws are sporadic and casual, and the individual has testified that, while he likes his wife's parents, he does not love them. However, as previously stated, I find that there is a potential for foreign manipulation or undue influence based on his love for his wife and her close relationship with her parents. As for the foreign country involved, it is a sensitive country that is aggressively focusing its intelligence-gathering efforts on the U.S. The evidence further indicates that, while the vast majority of the individual's foreign contacts do not appear to be engaged in activities in that country that would raise concerns, the individual's wife's father and friend were possible, or admitted employees of state security organizations in the sensitive country. This potentially mitigating condition is not applicable to this proceeding.

2. Conflict of Interest

The second potentially mitigating factor is that "there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so

minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest." There is no indication of a current conflict of interest in this case. There is no evidence that the individual has more than a minimal sense of loyalty or obligation to any foreign person, and no evidence that he has any sense of loyalty or obligation to any foreign group, government or country. The individual's testimony that his loyalties are solely to the U.S. is uncontroverted, and there is no evidence that he has engaged in any espionage or questionable activities against the U.S. This mitigating factor is applicable.

3. Casual and Infrequent Contact or Communication with Foreign Citizens

The next potentially mitigating factor is that "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." The record in this matter indicates that the vast majority of the individual's foreign contacts have been casual, in large part because of the language barrier between the individual and the citizens of the sensitive country. However, the individual's contact with foreign citizens has not been infrequent. The individual testified that he communicates very briefly with his wife's parents once or twice per month via Skype. Tr. at 274. Moreover, on five occasions since being introduced to his wife, he has traveled to the sensitive country, spending approximately two to three weeks there per visit. During these extended visits, his contact with foreign citizens has virtually been constant. This extended contact results in an expanded opportunity for access by the intelligence services of the sensitive country. This potentially mitigating condition does not exist in the current case.

4. DOE Approval of Foreign Contacts and Activities

Although the individual's trips to the sensitive country did receive prior approval from the DOE, *see* Ind. Ex. 8, 11, 16, 21, his foreign contacts and activities were for personal reasons, not for government business, and were not approved by the cognizant DOE security authority. Consequently, the fourth potentially mitigating factor is not applicable.

5. Compliance with DOE Reporting Requirements

The fifth potentially mitigating condition is that "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." As previously discussed in section IV.A.6 above, there is insufficient evidence to refute the individual's testimony that he has complied to the best of his ability with the DOE's requirements regarding the reporting of foreign contacts. This mitigating condition exists in the case at hand.

6. Foreign Interests

Finally, there is no evidence that the individual has any business, financial, or property interests in the sensitive country. Consequently, the potentially mitigating factor that such interests are so minimal that they are unlikely to result in a conflict and could not be used to influence or pressure the individual does not exist.

C. Hearing Officer's Determination

After considering the totality of the circumstances in this case, including the potentially disqualifying and mitigating conditions described above, I continue to harbor serious doubts about the individual's suitability for access authorization. These doubts are caused primarily by four factors.

First, the foreign country in question is a sensitive country whose intelligence-gathering agencies have aggressively targeted the U.S. in the past, and continue to do so. The senior counterintelligence officer testified that this sensitive country has attempted to collect information against the U.S. throughout his lengthy career, and that there are more agents from the sensitive country today than at any time in the past. Tr. at 94-95.

The second factor is the individual's extensive exposure to that sensitive country, both through his large number of foreign contacts and his periodic, prolonged visits to that country. Two of those contacts were, or are suspected to have been, employees of state security and intelligence-gathering organizations. A third, the individual's wife's aunt, works in a city in the sensitive country to which access is restricted to the public or all non-cleared persons because it is a center for nuclear research and production. This extended exposure affords the sensitive country's intelligence agencies increased access to the individual, both through his foreign contacts and during his visits. While it is understandable that the individual's wife would want to visit her parents with their child, that the individual would sometimes accompany them, and that the distances involved would make shorter visits impractical, these factors do not decrease the individual's vulnerability.

The third factor is the expert testimony of the senior counterintelligence officer, who is, as his title implies, charged with protecting the U.S. against the intelligence-gathering efforts of other countries. As previously described, he stated his opinion that continuing the individual's access authorization represented an unacceptable risk to national security because of the threat posed by the sensitive country's intelligence-gathering agencies, the individual's extensive exposure to the sensitive country and its citizens, and the potential damage to national security that would ensue if the sensitive country obtained the information that the individual has access to. While the

recommendation regarding this individual's eligibility for access authorization rests with me in the present proceeding, I attributed substantial weight to this testimony

Fourth, I am concerned about the fact that the individual is married to a native of the sensitive country, and about the manner in which he met his wife. The individual shares his living quarters with a woman whose father may have been a member of the sensitive country's foreign intelligence service and whose friend was employed by a security agency of the sensitive country. Although the individual testified that he does not love his in-laws and has no loyalty to them or to the wife's friend, this does not appear to be the case concerning his wife. Consequently, her ties to them and his love for her creates an increased risk of pressure, exploitation, or manipulation that could cause the individual to act contrary to the best interests of national security. Finally, as set forth above, the individual met his wife through a website that facilitates marriages between women from the sensitive country and foreigners. Although there is no evidence that the individual's wife has acted on behalf of, or in a manner that would benefit a foreign intelligence service, if such an organization wanted to gain access to a male U.S. clearance holder, this would seem to be a logical and effective way to do so.

VI. CONCLUSION

As set forth above, I find that the individual has not successfully addressed the DOE's security concerns under criterion (l). I therefore conclude that he has not demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the individual's security clearance should not be restored at this time. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Hearing Officer
Office of Hearings and Appeals

Date: March 1, 2013