

2017 AFSA GUIDANCE ON ASSIGNMENT LIMITATIONS RELATED TO SECURITY CLEARANCES

Foreign Service employees are required to maintain a Top Secret security clearance. In determining whether an employee should be granted a clearance, the Foreign Affairs agencies utilize the government-wide Adjudicative Guidelines for Security Clearances.

<http://www.fas.org/sgp/spb/class.htm>. The Diplomatic Security Service (DS) at the Department of State and the offices of security at the other Foreign Affairs Agencies have the ability to limit where an employee can serve (and in some cases, the issues on which an employee may work) based upon concerns regarding the employee's security clearance. At the State Department, new provisions governing these limitations (which were negotiated with AFSA) were implemented on 10-21-17 and can be found in 12 FAM 233.5. In most cases, these restrictions are based upon concerns relating to Guideline B (Foreign Influence) of the Adjudicative Guidelines. However, restrictions can also be based upon other factors, as discussed below. There are two mechanisms for limiting an employee's assignment: Assignment restrictions or preclusions and the Pass-through program.

Assignment Restrictions – DS's Office of Personnel, Security, and Suitability (PSS) and the other foreign affairs agencies' offices of security have the ability to place a restriction on an employee's security clearance which precludes the employee from serving at certain posts (and in some cases, working on certain issues while posted in the United States). An assignment restriction (also known as an assignment preclusion) may be imposed at the time of hire or when there is a change in the employee's familial situation (for example, upon marriage to or cohabitation with a foreign national). DS notifies employees of an assignment restriction by email or letter – the employee should insist upon a dated letter and maintain a copy of all correspondence. The notification provides general information regarding the basis for the restriction. In most cases, the restriction is based on Foreign Influence concerns -- which means DS or the office of security is concerned that, if assigned to the country or countries in question, the employee may be subjected to pressure by the host government or intelligence service based upon the employee's or the employee's family members' ties to the country or countries in question.

12 FAM 233.5 now provides that State Department employees may appeal the initial decision made by PSS to impose the assignment restriction to the Director of DS. In addition, employees are now able to request the adjudicative analysis, which contains the grounds for the decision. For those restrictions imposed after the October 21, 2017 implementation of these regulations, there is a 30 day deadline from notification of the assignment restriction to submit an appeal. If the assignment restriction was imposed before this date, DS will honor an appeal request without regard to the 30 day deadline. All employees (regardless of the date of assignment restriction) are permitted to request the adjudicative analysis.

Employees should address the adjudicative guideline(s) identified in the notice of restriction and explain any factual errors and/or why concerns have been mitigated. AFSA is available to help members with such requests. Please email afsa@state.gov for assistance.

In AFSA's experience, most attempts to have DS lift a restriction are unsuccessful. Employees have succeeded, however, where they have been able to establish factual errors or where their family situation has changed in a way that mitigates foreign influence concerns (for example, their close foreign national relative(s) have all become U.S citizens and no longer live in the country at issue, etc.). DS also reviews whether an assignment restriction is warranted each time it updates an employee's security clearance and may impose a restriction or lift an existing restriction if there has been a material change in circumstances.

Pass-Through Program – Foreign Service employee's assignments to certain countries and domestic assignments can also be impacted by what is colloquially known as the "pass through" program. At the State Department, the program is administered by DS's Office of Counter Intelligence. This office, and its counterparts at the other foreign affairs agencies, evaluate an employee's suitability to serve at critical Human Intelligence (HUMINT) threat posts using the criteria at 12 FAM 263.3-2, <http://fam.a.state.gov/fam/12fam/12fam0260.html>, as well as the Adjudicative Guidelines. While the potential for foreign influence under Adjudicative Guideline B (Foreign Influence) is one of the criteria DS reviews under the pass-through program, other criteria include a history of poor security practices, drug or alcohol abuse, emotional instability, financial mismanagement, and previous service at the same post. After reviewing an employee's security file, DS prepares a recommendation to the Director General regarding the employee's suitability for assignment to the HUMINT post. If the DG accepts DS's recommendation to deny such an assignment, the employee is notified (usually orally by his or her Career Development Officer). He or she has 10 calendar days to present an appeal to the Director General. As DS does not provide written notice of its objection to the assignment and because the employee is not permitted to see his or her security file, he or she must try to ascertain the basis of the negative recommendation by reviewing the 12 FAM 263.3-2 criteria and the Adjudicative Guidelines. Appeals must be filed with the Director General within 10 days under 3 FAH-1 H-2425.3-2. <http://fam.a.state.gov/fam/03fah01/03fah012420.html#H2420>. The DG rarely overturns DS's recommendation against an assignment to a critical HUMINT threat post.

Availability of Other Forums within Which to Appeal - Employees may not grieve an assignment decision, unless they can establish that the assignment or failure to assign is contrary to law or regulation. See 3 FAM 4412 <http://fam.a.state.gov/fam/03fam/03fam4410.html>. Employees who feel that an assignment action may be based upon a protected category, such as their race, national origin, sexual orientation, etc. may file an informal complaint with their agencies' Office of Civil Rights. Such complaints must be filed within 45 days of the employee's notice of the assignment restriction or notification of failure to get through the pass-through program. See 3 FAH-1 H-1510. <http://fam.a.state.gov/fam/03fah01/03fah011510>

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