



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



In the matter of: )  
 )  
 --- ) ISCR Case No. 17-03229  
 )  
 Applicant for Security Clearance )

**Appearances**

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

03/12/2019

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**Decision**

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GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations and foreign influence concerns. Eligibility for a security clearance is granted.

**Statement of the Case**

On March 8, 2016, Applicant applied for a security clearance and submitted Electronic Questionnaires for Investigations Processing (e-QIP) version of a Security Clearance Application. On October 13, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016) (AG), for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, effective June 8, 2017.

The SOR alleged security concerns under Guidelines F (Financial Considerations) and B (Foreign Influence) and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on November 17, 2017. In a sworn statement, dated January 2, 2018, Applicant responded to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on February 5, 2018. The case was assigned to me on March 20, 2018. While efforts were made to conduct the hearing as early as September 2018, Applicant was deployed in Southwest Asia at the time, so scheduling awaited his return. Upon his return to the United States, it was determined that his sponsorship for a security clearance had been terminated, and no further action could be taken until such time as new sponsorship was achieved. It was, and on December 26, 2018, a Notice of Hearing was issued, scheduling the hearing for January 30, 2019. I convened the hearing as scheduled.

During the hearing, Government exhibits (GE) 1 through GE 5, Applicant Exhibits (AE) A through AE V, and Administrative exhibit I were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on February 7, 2019. I kept the record open to enable Applicant to supplement it. He took advantage of that opportunity and timely submitted several documents. Unfortunately Applicant pre-marked several documents with designations that were redundant to some of the previously admitted exhibits. Some of the pre-marked exhibits were partial or complete copies of earlier documents, and others were completely different documents. To avoid confusion, several pre-marked AEs were remarked and admitted as AE W through AE AD, without objection. The record closed on February 26, 2019.

### **Rulings on Procedure**

Department Counsel requested that I take administrative notice of certain enumerated facts pertaining to the Republic of the Philippines (Philippines) appearing in four U.S. Government publications which were identified, but only fragments of extracts of some of those publications were attached to the request.<sup>1</sup> Facts are proper for administrative notice when they are easily verifiable by an authorized source and relevant and material to the case. In this instance, the Government relied on source information regarding the Philippines in publications of the U.S. Department of State. AG ¶ 6, Foreign Influence, provides, "Assessment of foreign contacts and interests should consider the

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<sup>1</sup> Administrative Notice Request Document Extracts for Philippines: The publications cited are: U.S. Department of State, Bureau of Human Rights, Democracy, and Labor, *Executive Summary: Philippines 2016 Human Rights Report* (Mar 3, 2017); U.S. Department of State, Bureau of Consular Affairs, *Country Information* (Jan 10, 2018); U.S. Department of State, Bureau of Diplomatic Security, Overseas Security Advisory Council (OSAC), *Philippines 2017 Crime & Safety Report* (Feb 14, 2017); U.S. Department of State, Bureau of Consular Affairs, *Philippines Travel Advisory* (Jan 10, 2018).

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.” A risk assessment in this case necessitates administrative notice of facts concerning the Philippines.

Applicant did not object to the administrative notice request, and, in fact, also requested that I take administrative notice of certain additional enumerated facts pertaining to the Philippines appearing in eight U.S. Government publications which were identified.<sup>2</sup> After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by both the Government and Applicant, pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts,<sup>3</sup> as set forth below under the Philippines subsection.

### Findings of Fact

In his Answer to the SOR, Applicant admitted, or admitted in part, with comments, most of the factual allegations pertaining to financial considerations in the SOR (SOR ¶¶ 1.a. through 1.e., and 1.i.), and both of the factual allegations pertaining to foreign influence in the SOR (SOR ¶¶ 2.a. and 2.b.). As to the allegations that he denied, Applicant also furnished comments. Applicant’s admissions and comments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 32-year-old employee of a defense contractor. He has been serving as an information technology force protection specialist since he joined his employer in January 2019. He was previously an electronics technician with another employer from

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<sup>2</sup> U.S. Department of State, Bureau of East Asian and Pacific Affairs, *U.S. Relations with Philippines – Bilateral Fact Sheet* (Jul 17, 2018); U.S. Department of State, Office of the Spokesperson, *Secretary Pompeo’s Meeting with Philippine Secretary of National Defense Lorenzana*, (Sep 19, 2018); U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *Philippine 2017 Human Rights Report* (undated); U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *Executive Summary, Philippines 2017 International Religious Freedom Report*, (undated); U.S. Department of State, *2018 Trafficking in Persons Report – Philippines* (undated); Central Intelligence Agency, *The World Factbook – Philippines* (Dec 12, 2018); Congressional Research Service, *The Republic of the Philippines and U.S. Interests – 2014* (May 15, 2014); Congressional Research Service, *DOD’s Rotation to the Philippines* (May 31, 2016).

<sup>3</sup> Administrative or official notice is the appropriate type of notice used for administrative proceedings. See *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986); 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)). The most common basis for administrative notice at ISCR proceedings is to notice 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). Requests for administrative notice may utilize authoritative information or sources from the internet. See, e.g. *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) (citing internet sources for numerous documents). In this instance, although Department Counsel has selected only certain pages of facts appearing in the identified publications, I have not limited myself to only those facts, but have considered the publications in their entirety.

February 2017. Applicant has been employed as a civilian contractor in several countries in the Middle East for over eight years, commencing in 2010. The day following the hearing, he was scheduled to return to the Middle East. A 2005 high school graduate, Applicant received a technical degree in weather technology in 2010; and a bachelor of science in business administration, *magna cum laude*, in 2017. He enlisted in the U.S. Air Force in December 2005, and served on active duty until he was honorably discharged as a senior airman (E-4) in January 2010. He was granted a secret clearance in 2005. Applicant has never been married, but he began cohabiting with his now-fiancée in July 2012. He has one child, born in 2013.

### **Military Awards and Decorations**

During his period of military service, Applicant served brief deployments in both Afghanistan (as a force protection specialist) and Iraq (as a senior weather forecaster). He was awarded the following awards and decorations: the Air Force Achievement Medal, the Air Force Outstanding Unit Award, the Air Force Good Conduct Medal, the National Defense Service Medal, the Afghanistan Campaign Medal, the Global War on Terrorism Service Medal, the Air Force Overseas Ribbon Long, the Air Force Expeditionary Service Ribbon with gold border, the Air Force Longevity Service Ribbon, the Small Arms Expert Marksmanship Ribbon (Rifle), the Air Force Training Ribbon, and the NATO Medal.<sup>4</sup>

### **Financial Considerations<sup>5</sup>**

For approximately ten years, Applicant has supposedly been supporting his parents – his father had a stroke and a quadruple bypass – with a monthly payment which he inconsistently quantified as \$500, \$700, and \$1,000.<sup>6</sup> It is unclear when Applicant first started having financial difficulties, although he acknowledged that there was some significant adverse impact on his finances as a result of his fiancée’s pregnancy in 2013. Because she was going through pregnancy alone, without any form of family support, Applicant was motivated to go to the Philippines to assist her. In addition, since the birth of his child, Applicant purportedly spent about \$15,000 in medical expenses because his fiancée did not have medical insurance. He has also been sending his fiancée approximately \$1,500 per month in child support, as well as \$800 to \$1,000 per month for housing.<sup>7</sup> During the hearing, Applicant said the monthly rent for the apartment, in a major

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<sup>4</sup> AE D (Certificate of Release or Discharge from Active Duty (DD Form 214), dated January 12, 2010); AE C (Resume, undated); AE B (Biography, undated).

<sup>5</sup> General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 1 (e-QIP, dated March 8, 2016); GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated April 26, 2016); GE 4 (Equifax Credit Report, dated August 29, 2018); AE Y (TransUnion Credit Report, dated January 10, 2018); GE 2 (Triggered Enhanced Subject Interview, dated March 19, 2017); and Answer to the SOR, dated January 2, 2018.

<sup>6</sup> During the hearing, Applicant quantified the payment as \$1,000. See Tr. at 31-32. However, in his Schedule I – Current Income of Individual Debtor(s), which was incorporated in his Voluntary Petition for Bankruptcy, dated August 14, 2013 (GE 5), he listed the payment as \$500 and \$700. He did not submit any documentation such as cancelled checks or bank account statements to support his claim that he was paying any amount to his father.

city, was \$2,500.<sup>8</sup> With respect to the purported medical expenses, child support, or housing support, Applicant did not submit any documentation to support his claim that such payments had been made.

On August 14, 2013, three months before his child was born, Applicant filed a voluntary Petition for Bankruptcy under Chapter 13 of the U.S. Bankruptcy Code, primarily to save his residence from foreclosure. He identified \$208,460 owed to creditors holding secured claims (including \$8,000 in mortgage arrears); \$3,500 owed to creditors holding unsecured priority claims; and \$134,168 owed to creditors holding unsecured nonpriority claims.<sup>9</sup> The child was born in the Philippines through C-section in November 2013, and because Applicant's fiancée and child needed extended assistance, he remained in the Philippines and allowed his employment contract to expire in December 2013. Applicant continued to draw on his savings and a housing allowance to pay his bills. However, the combination of pregnancy and childcare expenses, and a lack of income, eventually caused extreme financial hardship for Applicant, and he was unable to comply with the Bankruptcy Trustee's payment plan, paying only a net total of \$3,795 for attorney's fees and Trustee expenses and compensation. No payments were made to any creditors. On May 1, 2014, the bankruptcy case was dismissed.

When the bankruptcy was dismissed, all of Applicant's delinquent accounts returned to an active collection status, but he claimed that he did not have sufficient funds to address them. One residence was foreclosed in October 2014. In March 2016, when completing his e-QIP, Applicant noted some financial issues such as delinquencies, collections, or accounts being charged off, as well as the foreclosure. In March 2017, Applicant was interviewed by an investigator from the U.S. Office of Personnel Management (OPM). During that interview, Applicant stated that since his bankruptcy dismissal, he engaged the professional services of a law firm to negotiate settlements and set up payment plans for all of his delinquent debts, with the one exception being the mortgage lender on the foreclosed residence.<sup>10</sup> He failed to submit any documentation to support his claims that he has an agreement with the law firm; that the firm is to perform any financial services for him; or that any such prepayment agreements or payments have been made. Applicant added that he "expects to be in the process of resolving [the delinquent accounts] this month,"<sup>11</sup> meaning March 2017.

Nine months later, on December 4, 2017, Applicant enrolled with a credit counseling service to assist him in preparing a customized action plan, and a detailed budget analysis, as well as to review options or alternatives regarding his debt. The program introduced him to several core financial concepts, including prioritizing expenses

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<sup>7</sup> Tr. at 32-34, 47.

<sup>8</sup> Tr. at 72.

<sup>9</sup> GE 5, *supra* note 6.

<sup>10</sup> GE 2, *supra* note 5, at 7.

<sup>11</sup> GE 2, *supra* note 5, at 7.

in order to set financial goals; and examining spending habits in terms of fixed, variable and periodic expenses.<sup>12</sup>

On September 12, 2018, Applicant engaged the services of a “credit repair” organization to require that the credit reporting agencies demonstrate compliance with the various laws governing fair, accurate and substantiated consumer credit reporting,<sup>13</sup> essentially to challenge the accuracy of his credit reports by disputing the reported status of various listed accounts. Applicant explained that they are to dispute “just some old accounts . . . that should have been taken off. . . .”<sup>14</sup> Applicant pays the organization \$100 per month for their services, and while various disputes have been filed, Applicant was unable to articulate any specific reasons to provide a specific reasonable basis to do so.

On September 21, 2018, approximately one year after the SOR was issued, Applicant engaged the professional services of a debt settlement organization to negotiate and secure settlements with his creditors. Under that program, Applicant listed five creditors with total debts of \$121,489 for which settlements and payments are to be negotiated, and Applicant is to pay the organization \$1,834 per month for a period of 53 months. The total estimated cost of the program is \$30,372.<sup>15</sup>

In addition to Applicant’s Chapter 13 Bankruptcy (SOR ¶ 1.i.), the SOR identified eight delinquent accounts that had been placed for collection, charged off, or foreclosed as generally reflected by Applicant’s April 2016, August 2017, or January 2019 credit reports. Those debts, minus the foreclosure, total approximately \$121,161. Applicant’s outstanding financial obligations, all of which were placed for collection, alleged in the SOR are as follows:

(SOR ¶ 1.a.): This is a home mortgage with a high credit of \$205,168 and an unpaid balance of \$193,409 that was foreclosed in October 2014 when the fair market value of the property was listed as \$165,847. A Substitute Form 1099-A, *Acquisition or Abandonment of Secured Property*, was issued to him.<sup>16</sup> Without furnishing a reason, Applicant disputed the account after foreclosure. Since the fair market value of the property is less than the outstanding balance, it is likely there is a deficiency remaining.

(SOR ¶ 1.b.): This is an unsecured loan with an unpaid balance of \$45,369 that was charged off in June 2014. In October 2018, one year after the SOR was issued, Applicant and the creditor agreed to a settlement for \$18,148, with one \$553 payment to be made by October 31, 2018, and 17 remaining monthly payments of \$1,035 to be made

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<sup>12</sup> AE L (Action Plan and Budget Analysis, dated December 4, 2017).

<sup>13</sup> AE I (Engagement Agreement, dated September 12, 2018).

<sup>14</sup> Tr. at 80-82

<sup>15</sup> AE I (Debt Settlement & Negotiation Services Agreement, dated September 21, 2018).

<sup>16</sup> AE U (Substitute Form 1099-A, dated October 7, 2014).

by the end of each succeeding month until March 31, 2020. Applicant submitted documentation to reflect several continuing payments under the settlement.<sup>17</sup> Without furnishing a reason, Applicant disputed the account after resolution. The account is in the process of being resolved.

(SOR ¶ 1.c.): This is a credit-card account with an unpaid balance of \$10,323 that was charged off. While the account is one of those included in his debt settlement organization agreement, Applicant did not offer any evidence to indicate that settlement negotiations had taken place with the creditor or that any payments had yet been made. The account is not yet in the process of being resolved.

(SOR ¶ 1.d.): This is a credit-card account with an unpaid balance of \$10,791 that was charged off. In January 2019, 15 months after the SOR was issued, Applicant and the creditor agreed to a settlement for \$4,020, with 12 payments of \$335 to be made by the 15<sup>th</sup> of each month starting in January 2019 and continuing each succeeding month until December 2019. Applicant submitted documentation to reflect only one such payment under the settlement.<sup>18</sup> Nevertheless, the account is in the process of being resolved.

(SOR ¶ 1.e.): This is an unspecified type of account with an unpaid balance of \$31,174. While the account is one of those included in his debt settlement organization agreement, Applicant did not offer any evidence to indicate that settlement negotiations had taken place with the creditor or that any payments had yet been made. The account is not yet in the process of being resolved.

(SOR ¶ 1.f.): This is a credit-card account with an unpaid balance of \$14,725. In his Answer to the SOR, Applicant denied that he still owed any money on the account, claiming that he had paid it in full in April 2017. However, the account to which the settlement referred, according to the creditor, had a different account number, and the settlement offer was in the approximate amount of \$1,244, a significant difference from the original unpaid balance.<sup>19</sup> Further confusing the situation was the reference by Applicant in his Answer to the SOR to another account with a different creditor. In the absence of some documentation indicating that the settlement was in connection with the subject SOR account, this account remains unresolved.

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<sup>17</sup> AE T (Letter, dated October 9, 2018); AE T (Account Activity Statement, undated); AE X (Account Activity Statement, undated).

<sup>18</sup> AE T (Letter, dated January 10, 2019); AE T (Account Activity Statement), *supra* note 17; AE X (Account Activity Statement), *supra* note 17.

<sup>19</sup> AE K (Letter, dated April 19, 2017).

(SOR ¶ 1.g.): This is a credit-card account with an unpaid balance of \$6,291. In April 2017, Applicant and the creditor agreed to a full settlement for \$2,496, and that payment was received by the creditor in May 2017.<sup>20</sup> The account has been resolved.

(SOR ¶ 1.h.): This is a credit-card account with an unpaid balance of \$2,488 with the same creditor alleged in SOR ¶ 1.f., above. In his Answer to the SOR, Applicant denied that he still owed any money on the account, claiming that he had paid it in full in April 2017. However, the account to which the settlement referred, according to the creditor, had a different account number, and the settlement offer was in the approximate amount of \$1,595, a slight difference from the original unpaid balance.<sup>21</sup> Further confusing the situation was the reference by Applicant in his Answer to the SOR to another account with a different creditor, referred to in SOR ¶ 1.f. In the absence of some documentation indicating that the settlement was in connection with the subject SOR account, this account remains unresolved.

Applicant's income over the past few years has fluctuated. In August 2013, as part of his Bankruptcy Petition, Applicant reported his average monthly net income as \$6,785 – or generally approximately \$80,000 per year; his average monthly expenses as \$5,395; and an average monthly remainder of \$1,390.<sup>22</sup> Upon obtaining a new position in October 2014, following his period of unemployment, his new annual salary was between \$120,000 and \$140,000.<sup>23</sup> In 2017-18, Applicant's annual salary was about \$111,000,<sup>24</sup> and as of two days before the hearing, it increased to \$154,000.<sup>25</sup>

During the hearing, Applicant submitted a Personal Financial Statement. It indicated that his monthly net salary was \$8,386; monthly expenses were \$4,700; monthly debt payments were \$1,455; leaving a monthly remainder of \$2,231, available for discretionary saving or spending.<sup>26</sup> However, considering his newly increased salary, the information in that Personal Financial Statement was no longer considered accurate, and another one was solicited. A substitute Personal Financial Statement was submitted after the hearing. It indicated that his monthly net salary was \$8,345; monthly expenses were \$2,480; monthly debt payments were \$2,145; leaving a monthly remainder of \$3,720, available for discretionary saving or spending.<sup>27</sup> Despite his significant delinquent debt

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<sup>20</sup> AE J (Letter, dated May 3, 2017).

<sup>21</sup> AE K (Letter, dated April 24, 2017).

<sup>22</sup> GE 5 (Schedule I), supra note 6; GE 5 (Schedule J – Current Expenditures of Individual Debtor(s), dated August 14, 2013); Tr. at 48.

<sup>23</sup> Tr. at 48-49, 55.

<sup>24</sup> Tr. at 30.

<sup>25</sup> Tr. at 29, 56.

<sup>26</sup> GE M (Personal Financial Statement, undated).

<sup>27</sup> GE W (Personal Financial Statement, undated).



total, and Applicant's relatively modest monthly payments, considering his annual income, there is evidence to indicate that Applicant's financial situation is now under control.

### **Character References**

The Chief, Special Programs Division, Pacific Air Forces, a major, worked closely, on a daily basis, with Applicant in Iraq for approximately six months. Applicant was timely, courteous, and professional, in addition to being a critical lynchpin as a member and liaison to his team and the U.S. Department of State. Applicant excelled and maintained integrity and honesty with all tasks at hand.<sup>28</sup> Applicant's former flight commander, a retired captain, characterized him as a highly skilled and motivated young man who has shown he has the leadership and skill to excel at any task. She had total confidence in his leadership ability throughout their time together. Applicant's cool-headed thinking and overall planning allowed other to see an example of true leadership. His demonstrated leadership skills lead to the squadron leadership trusting him to represent the squadron and career field through deployments supporting operations. She noted that Applicant's trustworthiness will not disappoint.<sup>29</sup> Applicant's former training manager, a retired master sergeant, stated that Applicant has proven to be trustworthy and reliable.<sup>30</sup> Other former colleagues who have worked with Applicant in Kuwait and Iraq are equally effusive about his integrity, trustworthiness, positive attitude, loyalty, and dedication.

### **Foreign Influence<sup>31</sup>**

Applicant was born in the Philippines. He entered the United States in 1995, and he derived his U.S. citizenship through his parents when they became naturalized U.S. citizens in 2002. Applicant's parents are both Philippine-born residents and citizens of the United States. His two brothers are also Philippine-born residents and citizens of the United States. None of Applicant's family members, identified above, are of any security interest.

Applicant met a young lady in July 2012 when he was vacationing in the Philippines. She was both a resident and citizen of the Philippines, working as a disc jockey. Over time, Applicant and the young lady developed a close relationship, and she became pregnant and they became engaged. Applicant's fiancée gave birth to their daughter in the Philippines in 2013.<sup>32</sup> The child acquired U.S. citizenship at birth as established by documentary evidence presented to the Consular Service of the United

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<sup>28</sup> AE A (Character Reference, dated December 1, 2017).

<sup>29</sup> AE A (Character Reference, dated November 29, 2017).

<sup>30</sup> AE A (Character Reference, dated November 30, 2017).

<sup>31</sup> To protect Applicant and his family's privacy, the facts in this decision do not specifically describe employment, names of individuals, groups, or locations. The cited sources: GE 1, *supra* note 5; GE 2, *supra* note 5; and Answer to the SOR, *supra* note 5.

<sup>32</sup> AE N (Delayed Certificate of Live Birth).

States at Manila, Philippines.<sup>33</sup> She was issued a U.S. passport in November 2018.<sup>34</sup> Applicant's fiancée and daughter reside in an apartment in the Philippines nearly 500 miles from Manila, and a greater distance from areas in the Philippines that are generally under terrorist threats. Applicant's fiancée has applied for a K-1 Visa to enter the United States with the intent of marrying Applicant.<sup>35</sup> There is no evidence that Applicant's fiancée is affiliated with a foreign government, military, security, or intelligence service.

## Philippines

The Philippine Islands became a Spanish colony during the 16<sup>th</sup> century, and they were ceded to the United States in 1898 following the Spanish-American War. In 1935 they became a self-governing commonwealth, and on July 4, 1946, attained independence. The Philippines is a multiparty, constitutional republic with a bicameral legislature. Over the ensuing years, there have been periods of economic and political stability, and instability, with several coup attempts, charges of corruption, and impeachment efforts. The United States closed its last military bases, including Clark Air Base, the largest U.S. air base outside of the United States, in 1992. The country conducted nationwide elections in May 2016 for the presidency, both houses of congress, provincial governors, and local government officials. Some local elections were delayed for one year. International and national observers viewed the 2016 elections as generally free and fair but reported that vote buying was widespread and that dynastic political families continued to monopolize elective offices.

In its most recent annual human rights report, the U.S. Department of State reported that the most significant human rights issues included: killings by security forces, vigilantes and others allegedly connected to the government, and by insurgents; torture and abuse of prisoners and detainees by security forces; often harsh and life threatening prison conditions; warrantless arrests by security forces and cases of apparent government disregard for legal rights and due process; political prisoners; killings of and threats against journalists; official corruption and abuse of power; threats of violence against human rights activists; violence against women; and forced labor.

Extrajudicial killings have been the chief human rights concern in the country for many years and, after a sharp rise with the onset of the antidrug campaign in 2016, they continued in 2017. From January to the end of September 2017, media reports chronicled more than

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<sup>33</sup> AE N (Consular Report of Birth Abroad of a Citizen of the United States of America, dated November 6, 2018); Tr. at 27, 51.

<sup>34</sup> AE N (U.S. Passport, dated November 8, 2018).

<sup>35</sup> AE AB (Declaration, dated February 13, 2019); Tr. at 50. The fiancé(e) K-1 nonimmigrant visa is for the foreign-citizen fiancé(e) of a United States (U.S.) citizen. The K-1 visa permits the foreign-citizen fiancé(e) to travel to the United States and marry his or her U.S. citizen sponsor within 90 days of arrival. The foreign-citizen will then apply for adjustment of status to a permanent resident (LPR) with the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS). Because a fiancé(e) visa permits the holder to immigrate to the U.S. and marry a U.S. citizen shortly after arrival in the United States, the fiancé(e) must meet some of the requirements of an immigrant visa. See <https://travel.state.gov/content/travel/en/us-visas/immigrate/family-immigration/nonimmigrant-visa-for-a-fiance-k-1.html#1>

900 fatalities in police operations suspected to be connected with the government's antidrug campaign. Police claimed to have begun investigations of all reports of extrajudicial killings. As of August 2017, police claimed to have resolved 1,889 cases, and 4,373 remained under investigation.

The Philippine Government investigated a limited number of reported human rights abuses, including abuses by its own forces, paramilitaries, and insurgent and terrorist groups. Concerns about police impunity increased significantly following the sharp increase in police killings. President Duterte publicly rejected criticism of police killings, but he said authorities would investigate any actions taken outside the rule of law. Significant concerns persisted about impunity of civilian national and local government officials and powerful business and commercial figures.

In May 2017, members of the terrorist Maute Group, a radical Islamist group composed of former Moro Islamic Liberation Front (MILF) and supporters of other extremist organizations attacked Marawi City, on the southern island of Mindanao. In response President Duterte declared martial law in all of Mindanao. The Armed Forces of the Philippines (AFP) restored government control of the city in October 2017. Approximately 360,000 persons were displaced as a result of the crisis.

Conflicts continued between the government and Muslim separatist, communist insurgent, and terrorist groups, displacing communities and resulting in deaths of security force members and civilians. Terrorist organizations engaged in kidnappings for ransom, bombings of civilian targets, beheadings, and the use of child soldiers in combat or auxiliary roles, and the organizations operated shadow governments in areas they controlled. The government called off negotiations with the National Democratic Front of the Philippines, the political arm of the New People's Army, in early 2017 after clashes between the armed forces and New People's Army guerilla fighters in violation of a 2016 ceasefire. The government resumed peace talks with the MILF.

In the Philippines, the emergence of Islamic State of Iraq and Syria (ISIS)-affiliated extremist groups, persistent kidnappings by the Abu Sayyaf Group (ASG), attacks on government forces, and bombings, all indicated that domestic and international terrorism remained a serious problem. Terrorist acts included criminal activities designed to generate revenue, such as kidnapping for ransom, extortion, and bombings for hire. However, ASG fighters on Sulu beheaded two Canadian hostages, one in April and one in June 2016, when their ransoms were not paid. The two men had been held captive since September 2015.

The Philippine Government recognized the threat posed by radicalized Philippine citizens supporting ISIS and ISIS supporters traveling to the Philippines to promote violent extremism in the country or seek safe haven. Members of numerous groups – including parts of the ASG; the Dawlah Islamiyah Lanao (DIL), commonly referred to as the Maute Group; and Ansar-al Khalifah Philippines – have pledged allegiance to ISIS. ISIS called on its supporters in Southeast Asia to join these groups and attack targets in the Philippines, and named former ASG leader Isnilon Hapilon as its regional leader.

Philippine military and police counterterrorism efforts kept up pressure on terrorist organizations, but were unable to prevent numerous attacks against government, public, and private facilities, primarily in central and western Mindanao. In November 2016, a bomb was

discovered and disarmed near the U.S. Embassy in Manila. In April and May 2017, bombings in Quiapo, Manila killed two and injured twenty, and conflict between terrorist groups and Philippines security forces in Marawi City, Mindanao resulted in hundreds of dead and injured. In June 2017, security forces rescued at least 60 civilians held hostage by members of the Islamic militant group Bangsamoro Islamic Freedom Fighters (BIFF) after the group launched an attack in North Cotabato. In August 2017, suspected members of the ASG attacked a village in Basilan, killing at least nine civilians and wounding a dozen more. In December 2017, an attack on a police station in Misamis Oriental by approximately 100 members of the New People's Army (NPA), which is the armed wing of the Communist Party of the Philippines (CPP), exemplified the group's frequent strikes at military, police, and local government targets.

The U.S. Department of State advises all U.S. citizens contemplating travel to the Philippines to exercise increased caution due to crime, terrorism, and civil unrest. U.S. citizens are specifically advised to not travel to Sulu Archipelago, including the southern Sulu Sea, and Marawi City, and to reconsider travel to Mindanao which remains under a state of national emergency. Terrorist and armed groups continue plotting possible kidnappings, bombings, and other attacks in the Philippines. The U.S. Department of State has assessed Manila as being a high-threat location of crime directed at or affecting official U.S. government officials. As noted above, Applicant's fiancée and daughter reside nowhere near the identified areas of unrest and terrorist threats.

### **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."<sup>36</sup> 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."<sup>37</sup>

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense

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<sup>36</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>37</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

decision. The entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”<sup>38</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.<sup>39</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”<sup>40</sup>

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.”<sup>41</sup> Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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<sup>38</sup> “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>39</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>40</sup> *Egan*, 484 U.S. at 531.

<sup>41</sup> See Exec. Or. 10865 § 7.

## Analysis

### Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG 19:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

In addition to Applicant's dismissed Chapter 13 bankruptcy, the SOR identified eight delinquent accounts that had been placed for collection, charged off, or foreclosed, totaling approximately \$121,161 (not including the foreclosure). One house was foreclosed, and three accounts were charged off. Several of those accounts remain unaddressed and delinquent. Although Applicant's most recent Personal Financial Statement indicates that he has a monthly remainder of \$3,720 available each month for discretionary saving or spending, he has apparently chosen not to increase his monthly contributions to effectuate a more rapid resolution of those delinquent debts, and it is unclear if he is unwilling to do so. AG ¶¶ 19(a), 19(b) and 19(c) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties under AG ¶ 20:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;<sup>42</sup>

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;<sup>43</sup> and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

AG ¶¶ 20(b), 20(c), and 20(d) apply, but 20(e) does not apply. The nature, frequency, and recency of Applicant's continuing financial difficulties make it difficult to conclude that it occurred "so long ago" or "was so infrequent," or that it is "unlikely to recur." Applicant failed to explain why or how he got into debt before 2013 when he had \$134,168 in creditors holding unsecured nonpriority claims. Instead, he referred to expenses for his parents, his fiancée's pregnancy and medical expenses, his child-care expenses, and his unemployment that started in December 2013. Once he obtained new

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<sup>42</sup> A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

<sup>43</sup> The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

employment in October 2014, Applicant's annual salary increased to between \$120,000 and \$140,000; decreased to \$111,000 in 2017, and then increased to \$154,000 in early 2019. With a substantial salary, Applicant might have more reasonably started addressing his creditors in 2014, not waiting until April 2017 to do so. Filing the Chapter 13 bankruptcy, primarily as a tactical measure to save his house from foreclosure, was not successful.

To his credit, Applicant finally decided to address his delinquent debts around the time he was interviewed by the OPM investigator, and before the SOR was issued. He explored various ways of engaging his creditors, and finally hired a law firm to negotiate settlements and set up payment plans, and actually took some meaningful resolution actions. In December 2017, after the SOR was issued, he enrolled with a credit counseling service to assist him in preparing a customized action plan. He has been making monthly payments to that counseling service since October 2018. As a result of Applicant's independent actions, or his coordinated actions, he has resolved several accounts, and is in the process of resolving other accounts. He submitted some documentation to reflect that he had made various efforts to resolve several of his accounts. While he contended he had made additional efforts to resolve other accounts, he failed to submit any documentation to support those contentions.

Applicant has obtained financial counseling from a legitimate and credible source. Because he was unable to articulate a reasonable basis for disputing the legitimacy of some accounts, Applicant is given no credit for doing so. Normally, an applicant who begins to resolve his financial problems only after being placed on notice that his or her security clearance is in jeopardy may be lacking in the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests.<sup>44</sup> In this instance, there is clear evidence that Applicant took some resolution actions before he received the SOR.

Clearance decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time. Mere promises to pay debts in the future, without further confirmed action, are insufficient. In this instance, there is significant evidence that, after a substantial delay, Applicant finally embraced the paradigm of fiscal responsibility and commenced his corrective actions in an effort to start resolving his delinquent debts. There is clear evidence to conclude that Applicant's finances are now

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<sup>44</sup> See, e.g., ISCR Case No. 17-01213 at 5 (App. Bd. Jun. 29, 2018); ISCR Case No. 17-00569 at 3-4 (App. Bd. Sept. 18, 2018).



under control. Applicant's actions under the circumstances no longer cast doubt on his current reliability, trustworthiness, and good judgment.<sup>45</sup>

## **Guideline B, Foreign Influence**

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6.

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.

The guideline notes conditions that could raise security concerns under AG ¶ 7:

(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

Applicant's fiancée is a resident and citizen of the Philippines, and his minor daughter, a U.S. citizen, currently resides with her mother in the Philippines. There is no evidence that his fiancée is affiliated with a foreign government, military, security, or intelligence service. Applicant maintains an apartment for them in a city that is well outside of the areas of heightened interest in the Philippines, and when he is not visiting them from his Middle East business location, he speaks with them regularly. Applicant's fiancée has applied for a K-1 Visa to enter the United States with the intent of marrying Applicant. His frequent contacts with his fiancée and daughter in the Philippines are manifestations of his care and concern for them.

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<sup>45</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

When foreign family ties are involved, the totality of an applicant's family ties to a foreign country as well as each individual family member must be analyzed.<sup>46</sup> If only one relative lives in a foreign country, and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.<sup>47</sup> The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. Moreover, Guideline B is not limited to countries hostile to the United States.<sup>48</sup> Furthermore, "even friendly countries can have profound disagreements with the United States over matters they view as important to their vital interests or national security."<sup>49</sup> Friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields.

Nevertheless, the nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. It is reasonable to presume that a contentious relationship, or the absence of a democratic government, is not determinative, but it may make it more likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that foreign country. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue.<sup>50</sup>

In this instance, there is no evidence to reflect that the Philippines engages in economic espionage or military intelligence activity directed toward the United States. The most significant fear is not the official actions of the government, but rather the acts of terrorism conducted against individuals and groups, not necessarily specifically targeting Americans. Those terrorist activities in the Philippines are sufficient to establish a "heightened risk" – a risk that is greater than the normal risk inherent in having a family member living under a foreign government where terrorist activities frequently take place. AG ¶¶ 7(a) and 7(b) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence under AG ¶ 8:

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<sup>46</sup> ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

<sup>47</sup> See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 12 (App. Bd. Feb. 8, 2001).

<sup>48</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004) ("The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.").

<sup>49</sup> ISCR Case No. 00-00317 at 6 (App. Bd. Mar. 29, 2002).

<sup>50</sup> See ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

(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; and

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

AG ¶¶ 8(a) and 8(b) apply, but 8(c) does not apply. As noted above, there is no evidence that Applicant's fiancée has been a political activist, challenging the policies of the Philippine Government. There is no evidence that she currently works for or has ever worked for the Philippine Government, military, or intelligence service. Likewise, there is no evidence that terrorists or the Philippine Government have approached or threatened Applicant or his fiancée or his minor child for any reason. And, there is no evidence that they currently engage in activities which would bring attention to them or that they or other Philippine elements are even aware of Applicant's work. As such, there is a reduced possibility that Applicant's fiancée or minor child would be targets for coercion or exploitation. Furthermore, in this instance, if the most significant "heightened risk" is Applicant's or his fiancée's or minor child's potential exposure to terrorist threats, not government intervention, residing in the Philippines is not so different from residing in New York City (2001), Paris (2015), Brussels (2016), Orlando (2016), Barcelona (2017), or London (2017), the locations of significant terrorist attacks.

Applicant's loyalty and connections to his fiancée and minor child are positive character traits. Applicant's ties to the United States run relatively deep. He immigrated to the United States with his parents 24 years ago, and he derived his U.S. citizenship through his parents when they became naturalized U.S. citizens in 2002. His parents and both brothers are U.S. citizens, residing in the United States. His fiancée has applied for a K-1 Visa to enter the United States. Applicant was honorably discharged from the U.S. Air Force after serving on deployments to both Afghanistan and Iraq. His support of the DOD as a civilian contractor throughout the Middle East for over eight years, including the dangers that service entailed, weighs towards mitigating security concerns. He seeks a security clearance to enable him to continue serving the Middle East providing assistance to DOD. He has clearly shown his patriotism, loyalty, and fidelity to the United States during his years in the Middle East as both a member of the military and as a

civilian contractor.<sup>51</sup> His deep relationship with the United States weighs against a security concern for the relationships he has with his fiancée and minor child.

## Analysis

### 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 SEAD 4, App. A, ¶ 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 SEAD 4, App. A, ¶ 2(c), the 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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.<sup>52</sup>

There is some disqualifying evidence under the whole-person concept. To save his residence from foreclosure, Applicant filed for bankruptcy under Chapter 13 of the U.S. Bankruptcy Code in 2013, listing \$134,168 in creditors holding unsecured nonpriority claims. The effort failed when the house was foreclosed, and Applicant cancelled his bankruptcy efforts without making any payments to creditors. There is little evidence to indicate that between 2013 and 2017, Applicant made any good-faith efforts to resolve his delinquent debts. In addition to the foreclosure and the bankruptcy, the SOR identified

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<sup>51</sup> In ISCR Case No. 17-00629 at 4 (App. Bd. May 24, 2018), the Appeal Board cogently explained the relevance of such service on behalf of the United States:

Such evidence demonstrates that Applicant has repeatedly been willing to assume a high level of risk on behalf of the U.S. and shows his ties and sense of obligation to the U.S. could be sufficiently strong enough to support a favorable application of mitigating condition 8(b). See ISCR Case No. 05-03846 at 6 (App. Bd. Nov 14, 2006) (An applicant's work in support of U.S. forces in Afghanistan occurred "in the context of dangerous high-risk circumstances in which [he] made a significant contribution to national security.") See also ISCR Case No. 04-12363 at 2 (App. Bd. Jul. 14, 2006); ISCR Case No. 07-00034 at 2-3 (App. Bd. Feb. 5, 2008); and ISCR Case No. 10-02803 at 6 (App. Bd. Mar. 19, 2012).

<sup>52</sup> See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

seven delinquent accounts that had been placed for collection or charged off, totaling approximately \$121,161. In an effort to repair his credit, Applicant hired a law firm to simply dispute many of his accounts to remove them from his credit reports, without any legitimate basis to do so.

The mitigating evidence under the whole-person concept is simply more substantial. For approximately ten years, Applicant has been supporting his parents with varying monthly payments; when his fiancée became pregnant, and thereafter, he paid her medical expenses, has been sending her child support, and provided her and his minor child with residential support. He was unemployed for a substantial period. While Applicant may have delayed addressing his delinquent accounts, following the dismissal of the bankruptcy, and before the SOR was issued, he engaged the professional services of several different organizations to clean up his financial situation by seeking settlements. He has been paying one organization \$1,834 per month, and is anticipated to continue doing so until all of his delinquent debts are resolved. Several accounts have been resolved, and others are in the process of being resolved. Applicant's monthly net salary is \$8,345, and after monthly expenses and debt payments, he has a monthly remainder of \$3,720 available for discretionary saving or spending. There is clear evidence that his financial situation is now under control. Applicant's loyalty and connections to his fiancée and minor child currently residing in the Philippines are positive character traits. While the foreign influence concerns have been mitigated, once his fiancée's application for a K-1 Visa to enter the United States is approved, the foreign influence security concern will become moot.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:<sup>53</sup>

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first

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<sup>53</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant has demonstrated a belated but good track record of debt reduction and elimination efforts, finely taking meaningful and documented corrective actions with respect to his delinquent debts. Overall, the evidence leaves me without substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude that Applicant mitigated the security concerns arising from his financial considerations and foreign influence concerns. See SEAD 4, App. A, ¶¶ 2(d)(1) through AG 2(d)(9).

### **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 F:	FOR APPLICANT
Subparagraphs 1.a. through 1.i:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a. and 2.b:	For Applicant

### **Conclusion**

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

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ROBERT ROBINSON GALES  
Administrative Judge