



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



In the matter of: )  
)  
) ISCR Case No. 19-00461  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: Leon J. Schachter, Esq.

05/03/2021

**Decision**

HARVEY, Mark, Administrative Judge:

Guideline B (foreign influence) security concerns are mitigated; however, Guideline F (financial considerations) security concerns are not mitigated. Applicant did not act responsibly with respect to his mortgage debt. Eligibility for access to classified information is denied.

**Statement of the Case**

On August 4, 2016, Applicant completed and signed an Electronic Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On August 15, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; as amended, and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Specifically, the SOR set forth security concerns arising under Guidelines F (financial considerations) and B (foreign influence). (HE 2) On October 3, 2019, Applicant responded to the SOR and requested a hearing. (HE 3)

On February 5, 2020, Department Counsel was ready to proceed. On February 19, 2020, the case was assigned to me. On March 5, 2020, DOHA issued a notice of hearing, setting the hearing for March 26, 2020. (HE 1A) Processing of the case was delayed due to COVID-19, and the original hearing was cancelled. On February 24, 2021, DOHA issued a notice setting Applicant's hearing for March 15, 2021; however, that hearing was cancelled because of unavailability of a party. On March 17, 2021, DOHA issued a notice setting Applicant's hearing for March 19, 2021. (HE 1B) Applicant waived his right under the Directive to 15 days of notice of the date, time, and location of the hearing. (Transcript (Tr.) 10-11) His hearing was held as scheduled on March 19, 2021, in the vicinity of Arlington, Virginia using the U.S. Cyber Command video teleconference system. (*Id.*) Applicant was located at an overseas location. The hearing was held as scheduled.

During the hearing, Department Counsel offered seven exhibits; Applicant offered 11 exhibits; there were no objections, except for GE 2; and all proffered exhibits, except for GE 2, were admitted into evidence. (Tr. 15-23, 26-27; GE 1-7; Applicant Exhibits (AE) A-AE K) Applicant objected to the admissibility of his Office of Personnel Management (OPM) personal subject interview (PSI) because there was no authenticating witness and admissibility was "ridiculous" and "an abuse of power." (Tr. 18-23; GE 2) Applicant had previously authenticated GE 2 by providing a notarized signature agreeing to the accuracy of the OPM PSI. (GE 2) I overruled the objection, but offered Applicant an opportunity to file a post-hearing objection concerning the relevance of anything in the OPM PSI. Applicant did not object to anything in the OPM PSI after his hearing.

On March 31, 2021, DOHA received a transcript of the hearing. Applicant provided two additional documents after his hearing, and they were admitted into evidence without objection. (AE L (Request for Administrative Notice) and AE M (Closing Argument and Information about Mortgage) The record closed on April 15, 2021. (Tr. 95-96, 103; AE M)

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript. ISCR and ADP decisions and the Directive are available at <https://ogc.osd.mil/Defense-Office-of-Hearings-and-Appeals/>.

### **Administrative Notice**

Applicant and Department Counsel requested administrative notice concerning the Philippines. (Tr. 23-24) Department Counsel did not object to consideration of Applicant's information; however, he noted the some of the sources were not particularly recent. (Tr. 24-25) Applicant did not object to Department Counsel's request for administrative notice. (Tr. 25)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 16-02522 at 2-3 (App. Bd. July 12, 2017); ISCR Case No. 05-11292 at 4 n. 1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n. 4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

The facts accepted for administrative notice are contained in “The Philippines” section of this decision, *supra*. The motions for administrative notice do not contain inconsistent information, and both administrative notice requests are granted. Applicant’s request is substantially quoted in the first six paragraphs with minor grammatical and punctuation changes and without footnotes. Most of Department Counsel’s request is quoted in the remainder of the Philippines section, and some punctuation and footnotes were omitted. Some details of Department Counsel’s request were summarized.

### **Findings of Fact**

In Applicant’s SOR response, he admitted the allegations in SOR ¶¶ 1.d, 1.e, and 2.a, and he partially admitted and denied the allegations in SOR ¶ 2.b. (HE 3) He also provided mitigating information. (*Id.*) He denied the remaining SOR allegations. (*Id.*) His admissions are accepted as findings of fact.

Applicant is a 52-year-old employee of a DOD contractor who is employed overseas. (Tr. 28) For his first three marriages, he was married from 1989 to 1994, from 1995 to 2001, and from 2004 to 2012. (Tr. 55, 61; GE 1 at 24-25) In 2016, he married his fourth wife. (GE 1 at 22-23) His two children are ages 15 and 30. (Tr. 29; GE 1 at 27-28) In 2016, he received a college education-related certificate. (GE 1) He requires 35 additional college credits to receive his bachelor’s degree. (Tr. 29; GE 1)

Applicant served 24 years in the Air Force, and in June 2013, he was honorably retired as a master sergeant (E-7). (Tr. 30, 54, 56) He received three Meritorious Service Medals (MSM) while he was on active duty. (Tr. 82) He completed numerous training courses. (AE A) After retiring from the Air Force he worked overseas for almost eight years as an expert in munitions. (Tr. 30-31) He was recently promoted to be a superintendent. (Tr. 31)

### **Financial Considerations**

The SOR alleges financial consideration security concerns based on six allegations. The status of each allegation is as follows:

SOR ¶¶ 1.a and 1.b allege Applicant failed to timely file his federal and state income tax returns for tax years 2014, 2016, and 2017. He has resided overseas since 2013. (Tr. 42; SOR response at 1-2) According to Executive Order No. 12744, the overseas country where he has lived has been designated as a combat zone since

January 17, 1991, for purposes of filing deadlines for tax returns. See IRS website, *Combat Zones Approved for Tax Benefits*, <https://www.irs.gov/newsroom/combat-zones>. (AE F) As a civilian contractor, Applicant was eligible for the filing extension to the same extent as military personnel. IRS website, *Eligibility for Military Tax Benefits*, <https://www.irs.gov/individuals/military/eligibility-for-military-tax-benefits>. (AE G)

According to Applicant's state of residence Department of Taxation and Revenue, Applicant does not need to file for an extension to file his tax return in his state of reference because the state "honors [his] federal automatic extension of time to file." (AE I at 2) Applicant believed that he was entitled by IRS and state tax rules not to file his tax returns until he returned to the United States from his overseas deployments. (Tr. 43-45) Notwithstanding Applicant's right not to file federal income tax returns under IRS and state tax filing rules, he elected to file his tax returns in 2018. He has filed all required tax returns. (Tr. 44-45) He intends to timely file all future required tax returns. (Tr. 72)

SOR ¶ 1.c alleges Applicant owes \$479 in delinquent state taxes for tax year 2017. Applicant indicated he was not required to file a state tax return, and thus, he did not owe taxes. (SOR response at 3) He also believed he did not have to file a state tax return because he was no longer a resident of the state. (Tr. 45) He may be incorrect about not needing to file a state tax return because he retained his home in the state and may therefore continue to be subject to that state's taxes. See U.S. Tax Help website, *Am I Required to File a State Tax Return if I Live Abroad?*, available at <https://www.ustaxhelp.com/am-i-required-to-file-a-state-tax-return-if-i-live-abroad/> (HE 6); Greenback Tax Services website, *Determining . . . State Residency for Your Expat Tax Return*, available at: <https://www.greenbacktaxservices.com/blog/expat-tax-...-residency/> (HE 7), *but see* AE I-3 (indicating determining factor is whether source of income is from the state and not mentioning property ownership in the state as a factor). Applicant did not indicate where his employer had its headquarters. The state also bases residency on the location of source of income. Applicant said he paid the state \$479, and he may seek a refund. (Tr. 47) He did not contact the state and inform the state he was no longer a resident. (Tr. 72) He has not registered to vote in any state in the last seven years. (Tr. 73)

SOR ¶ 1.d alleges Applicant has an account placed for collection for \$765. Applicant said he was overseas when his credit card was illegally used in the United States. (SOR response at 3) He indicated this debt is not his debt, and he is the victim of identity theft. (*Id.*) Applicant's January 26, 2021 credit report indicates he disputed his responsibility for the debt with the credit reporting company. (Tr. 48; GE 7)

SOR ¶ 1.e alleges Applicant's mortgage account is more than 120 days delinquent in the approximate amount of \$7,962 on a total balance of \$253,178. In 2009, Applicant purchased his residence for \$290,000 in the state where he was filing his state tax returns. (Tr. 50-51) He understood when he obtained the funds from the mortgage company that he was assuming the responsibility to make his mortgage payments. (Tr. 67) He was on active duty and stationed at a nearby Air Force base. (Tr. 50-51) He said activity at the Air Force base was subsequently reduced. (Tr. 51) He did not provide any statistical or other corroborative information showing the base was reduced in population or economic

activity. He said the nearest town is economically depended on the Air Force base. (Tr. 51) He was solely responsible for the mortgage. (Tr. 52) He was earning about \$3,000 per month when he qualified for the loan. (Tr. 52) He received a pay raise after he retired from the Air Force and became employed by a DOD contractor. (Tr. 62)

From 2009 until September 2013, Applicant lived in his home. (Tr. 53) He made his mortgage payments until March 2019. (Tr. 55, 65) He chose to stop making payments on his mortgage for five reasons: (1) his home has been on the market for six years; (2) the missions at the nearby Air Force base changed; (3) in January 2019, the house was vandalized, and items were stolen from it such as furniture and appliances; (4) real estate values in the area of his residence decreased; and (5) the fair market value of his residence may be down to about \$160,000 to \$170,000. (Tr. 57-58, 68, 86; SOR response at 4) In January 2019, two vehicles and other items were stolen from his residence. (SOR response at 4) He filed a police report and insurance claim for \$30,000 after the 2019 burglary because of damage to his residence; however, his insurance claim was not paid. (Tr. 83, 87) He stopped having the house cleaned after February 2019. (Tr. 88) Around June 2019, he ended his relationship with a real estate agent who was attempting to market his property. (Tr. 88) He did not employ another real estate agent. (Tr. 88) Then in 2021, there was a second theft from his house where the house was basically cleaned out including parts of the plumbing. (Tr. 84) He has not yet filed a police report concerning the second theft. (Tr. 84)

A real estate agent told Applicant around August 2020 that there was an offer to purchase his residence; however, the real estate agent said it was about \$50,000 under expectations. (Tr. 85) The real estate agent suggested he let the house go into foreclosure because there was no interest from purchasers apparently at the listed price. (Tr. 58-59) The mortgage was already delinquent at the time the real estate agent suggested he let the property go into foreclosure. (Tr. 68) He had some contacts from potential buyers; however, none of them resulted in offers acceptable to the mortgage company. (Tr. 89) He did not detail the amounts of offers or indicate he actually provided them to the mortgage company. He did not indicate the mortgage company's acceptable price or how much he would have to pay to complete the sale.

Applicant believed the mortgage lender foreclosed on his house; however, he had not heard for sure what happened. (Tr. 59) He did not have any idea about how much his liability might be. (Tr. 60) He was essentially waiting to hear from the mortgage lender about whether they wanted money from him. (Tr. 59-61) He indicated after paying his monthly child support of \$800, and his \$1,891 monthly mortgage payment, that his monthly remainder was about \$3,000. (Tr. 65-66, 78, 83) He was capable of continuing to make his mortgage payments. (Tr. 66-67, 80) There was no outside event in March 2019 that caused him to stop making his mortgage payments aside from his decision that he was losing money by making his payments and his recognition that his property was valued less than the mortgage or "underwater." (Tr. 72)

Applicant's January 26, 2021 credit report reflects: the Department of Veterans Affairs (VA) guaranteed repayment of his mortgage; the date of last payment was February 2019; the past due amount was \$41,839; and the monthly payment was \$1,880.

(GE 8) Applicant was unaware of the amount the VA guarantee. (Tr. 80) The last time Applicant checked the value of his residence on the Internet, he learned the value was about \$210,000 to \$215,000. (Tr. 81)

Under VA rules, “The veteran’s basic entitlement amount is \$36,000. If the loan amount exceeds \$144,000, an additional amount of entitlement is available, for a maximum entitlement of 25 percent of the Freddie Mac conforming loan limit for a single-family residence (currently \$417,000 . . . ).” VA website, VA Guaranteed Home Loans at 8, available at <https://www.benefits.va.gov/homeloans/documents/docs/va101handout.pdf> . . . . The maximum potential guaranty is \$104,250, if the veteran has full eligibility.” (HE 8) Applicant will not have to repay the VA unless the VA finds “evidence of fraud, misrepresentation, or bad faith on [his] part.” VA website, VA help to avoid foreclosure, available at <https://www.va.gov/housing-assistance/home-loans/trouble-making-payments/> (HE 9). Applicant did not provide any information about correspondence with the VA after he stopped making payments to the mortgage lender.

On February 21, 2020, the Notice of Sale on his former residence indicated the amount of the judgment due is \$264,943. (AE J-2) On March 31, 2020, the foreclosure sale of Applicant’s residence was delayed to May 29, 2020. (AE J-1) Applicant said he believed his house was foreclosed in January 2021. (Tr. 91) He said he gave a document to his attorney in January 2021 indicating the property was foreclosed. (Tr. 82) He said he believed the foreclosure amount was \$212,000 and the mortgage was \$260,000 resulted in a “\$40,000” difference. (Tr. 91) The document showing the completed foreclosure is not part of the record. On April 15, 2021, Applicant’s counsel indicating he was unable to provide documentation showing the final disposition of the residence, and the amount Applicant may owe to the mortgage lender. (AE M)

SOR ¶ 1.f alleges Applicant has an account placed for collection for \$931. Applicant said he paid this bill in September 2019. (Tr. 49-50, 76-77; SOR response at 5)

Applicant has about \$50,000 in his bank account. (Tr. 75) His social security income statements (AE D) for the last 10 years indicate the following Medicare income information:

Year	Taxed Medicare Earnings (1)	Retired Pay (2)	Total (3)
2009	\$47,724	n/a	\$47,724
2010	\$49,575	n/a	\$49,575
2011	\$51,345	n/a	\$51,345
2012	\$52,948	n/a	\$52,948
2013	\$53,196	n/a	\$53,196
2014	\$86,583		
2015	\$88,149		
2016	\$91,784		
2017	\$115,266		
2018	\$105,526	\$24,000	\$129,526

Applicant's October 2019 personal financial statement (PFS) shows the following monthly items: gross income \$7,662; net income \$6,316; expenses \$6,501; and net remainder \$1,161. (AE C) He included \$1,891 for his mortgage payment in his PFS monthly expenses. (*Id.*) He made some errors in his PFS. Applicant said his Air Force retired pay in 2018 was about \$24,000. (Tr. 79) His gross pay in 2018 was about \$129,526. (Tr. 79-80; AE D) His spouse earned about \$18,000 in 2018. (Tr. 80) His PFS appears to have understated his and his spouse's gross income. Applicant's employee retirement account had a balance of \$27,327 as of June 30, 2019. (AE E) In 2019, Applicant received a certificate of completion for financial counseling. (AE C)

## Foreign Influence

SOR ¶¶ 2.a and 2.b allege and Applicant admits that his mother-in-law, two brothers-in-law, and one sister-in-law are citizens and residents of the Philippines. (Tr. 36, 39) He has much less affection for his in-laws than he does for his own relatives. (Tr. 40) Unless stated otherwise, the source for the information in the Foreign Influence section is Applicant's SOR response.

Applicant's spouse was born in the Philippines. In July 2018, she received a permanent resident card or green card. (Tr. 35) His spouse owns part of a home in the Philippines. (Tr. 74) She is close to her mother and siblings who are living in the Philippines. (Tr. 76) She communicates with them on a weekly basis. (Tr. 76) His in-laws who live in the Philippines live in the Central Philippines, and not in the areas which are high risk for terrorist activity. (Tr. 37; SOR response) Applicant met his mother-in-law and one of his brothers-in-law twice. His mother-in-law has never worked for the Philippine military or government. His mother-in-law's income is from a government retirement system similar to U.S. Social Security. (Tr. 38) His mother-in-law and brothers-in-law do not speak very much English, and Applicant does not speak very much Tagalog, which is their native language. (Tr. 38-39)

One of Applicant's brothers-in-law lives and works overseas in the same country as Applicant and his spouse. (Tr. 39) Applicant sees this brother-in-law on a weekly basis. (Tr. 39) This brother-in-law works in a department store as a sales associate, and he has no connections to the Philippine government or military.

Applicant's sister-in-law is a housewife in the Philippines. Applicant has contact with her about every six months. Their contacts are casual, and there are no discussions of Applicant's work. Applicant's spouse's grandmother, aunts, uncles, and cousins live in the United States. Three of her cousins serve in the U.S. armed forces.

Applicant was born and educated in the United States. (Tr. 32) He served 24 years in the U.S. Air Force. His sons are citizens and residents of the United States. His father, brother, and sister live in the United States. (Tr. 34; GE 1; SOR response) All of his investments and his residence or former residence are in the United States. He has cousins, aunts, and uncles who live in the United States. (Tr. 34; SOR response) He intends to permanently reside in the United States.

## **Character Evidence**

Applicant's performance evaluations and character statements support his access to classified information. (AE B) His performance evaluations indicate he is knowledgeable, diligent, professional, and trustworthy. (*Id.*) His positive work attributes contributed to the success of the enterprises where he is employed. (*Id.*) Friends, employment colleagues, and a supervisor wrote describing Applicant as responsible, diligent, reliable, honorable, and honest. (SOR response, enclosures)

## **The Philippines**

The U.S. and the Philippines maintain a close relationship stemming from the U.S. colonial period (1898-1946), the bilateral security alliance bound by the Mutual Defense Treaty of 1951, and common strategic and economic interests. Relations are based on strong historical and cultural links and a shared commitment to democracy and human rights. In 1946, the United States recognized the Philippines as an independent state and established diplomatic relations. The U.S. has since designated the Philippines as a Major Non-NATO Ally. Former U.S. President Barack Obama visited the Philippines in 2014 to reaffirm the United States' commitment to the security alliance, and to discuss the United States' strategic vision for the bilateral relationship. President Obama noted the two nations' strong people-to-people ties, commitment to peace and stability in the Asia-Pacific region, and commitment to build prosperity for our people and the global economy.

Although the U.S. closed its military bases in the Philippines in 1992, the two nations have maintained security cooperation ever since. The Manila Declaration, signed in 2011, reaffirmed the 1951 U.S.-Philippines Mutual Defense Treaty as the foundation for a robust, balanced, and responsive security partnership. Since 2012, the Philippines has played a key role in the U.S. goal of rebalancing foreign policy priorities to Asia, particularly as maritime territorial disputes between China and other claimants in the South China Sea have intensified.

In 2014, the two countries confirmed agreement of an Enhanced Defense Cooperation Agreement (EDCA), which helps promote the peace and stability that has underpinned Asia's remarkable economic growth over the past six decades. The EDCA allows for the increased presence of U.S. military forces, ships, aircraft, and equipment in the Philippines on a nonpermanent basis and greater U.S. access to Philippine military bases. As part of the security alliance, Members of the U.S. Navy and Marine Corps have conducted Cooperation Afloat Readiness and Training (CARAT) exercises with the Armed Forces of the Philippines (AFP) since 1995. The training exercises develop strong partnerships that contribute to the greater peace and stability of the region and allow both nations to gain valuable experience and increase our interoperability. The U.S. and the Philippines have the same mission, that is, to further strengthen the Philippines' security operations and maritime domain awareness capabilities. The U.S. has begun to provide \$40 million in technical expertise, training, and equipment through the Global Security Contingency Fund. The U.S. is also helping to construct a Philippine National Coast Watch Center in Manila.



In the past decade, the Philippines has been one of the largest recipients of U.S. foreign assistance in Southeast Asia, including over \$143 million following Typhoon Yolanda (Haiyan) in 2013. U.S. assistance in the Philippines fosters broad-based economic growth; improves the health and education of Filipinos; promotes peace and security; advances democratic values, good governance, and human rights; and strengthens regional and global partnerships. The U.S. and the Philippines have a strong trade and investment relationship, with over \$25 billion in goods and services traded. As the Philippine's third-largest trading partner, the U.S. is one of the nation's largest foreign investors. The Philippines has been among the largest beneficiaries of the Generalized System of Preferences program for developing countries, which provides preferential duty-free access to the U.S. market. In 1989, the two countries signed a bilateral Trade and Investment Framework Agreement and a tax treaty.

An enhanced engagement of 15 U.S. government agencies is aiming to address the most significant constraints to growth in the Philippines and to stimulate inclusive economic expansion through a Partnership for Growth (PFG). USAID and the Millennium Challenge Corporation account for the majority of PFG financial resources amounting to more than \$750 million. The two countries have made enormous strides in deepening the economic linkages between them, including: Removal of the Philippines from the Special 301 Watch List, based on significant advances in the protection and enforcement of intellectual property rights and considerable progress on worker rights issues in the Philippines, which will allow the U.S. government to close a Generalized System of Preferences (GSP) review of worker rights in the Philippines without any change to the Philippines' GSP trade benefits.

The Philippines and the U.S. share extensive people-to-people ties. About 350,000 Americans reside in the Philippines, and approximately 600,000 U.S. citizens visit the country each year. There are approximately four million people of Philippine descent in the U.S. The Philippines has the world's oldest continuous operating Fulbright program: the Philippine-American Educational Foundation, established in 1948. The U.S. has had a Peace Corps program in the Philippines for over 50 years.

The Philippines is a multiparty, constitutional republic with a bicameral legislature. President Rodrigo Roa Duterte, elected in May 2016, began his constitutionally limited six-year term in June 2016.

Since the 1980's at least five Americans, including Leandro Aragoncillo, have been convicted of espionage, or espionage-related crimes, involving transmission of information to the Philippines. According to the U.S. Department of Justice, there have been numerous criminal cases concerning export enforcement related to the Philippines.

As of September 2020, the U.S. Department of State travel advisory for the Philippines is Level 3: Reconsider Travel Due to COVID-19. Additionally, Exercise Increased Caution due to crime, terrorism, civil unrest, a measles outbreak, and kidnapping. It directed Americans: Do Not Travel to the Sulu Archipelago, including the southern Sulu Sea, due to crime, terrorism, civil unrest, and kidnapping and to Marawi

City in Mindanao due to terrorism and civil unrest. It suggested citizens reconsider travel to other areas of Mindanao due to crime, terrorism, civil unrest, and kidnapping. It noted that the Philippine government has declared a State of National Emergency on Account of Lawless Violence in Mindanao. Philippine government law enforcement agencies are engaged in a nationwide counternarcotics campaign that has resulted in a sharp increase in violence between police and individuals suspected of involvement in the drug trade. As part of this campaign, law enforcement is engaged in aggressive search and buy-bust operations that could affect foreigners. The U.S. Department of State has assessed Manila as being a high-threat location for terrorism directed at or affecting official U.S. government interests. Terrorist violence continues to affect primarily the Mindanao region, in the country's south.

At least eight terrorist groups operate in the Philippines. For more than a decade, terrorists, insurgents, and criminal actors have carried out major attacks against civilians. In 2018, four notable attacks resulted in the deaths of two to eleven people and numerous additional people were injured. In 2019, the Philippines made the list of the top 10 countries with the most terrorist incidents and the most terrorist casualties. There were 351 incidents in the Philippines, with 1,192 casualties (3 percent of the global total of casualties). This constitutes a small increase in incidents over 2018, as well as a seven percent increase in casualties. The most deadly attack involved a bombing of a Mass at the Jolo Cathedral in Sulu killing 23 people and wounding 102. Multiple suicide bombings in the Philippines were a new phenomenon for the region. On August 24, 2020, dual suicide bombings in Jolo, Sulu and Mindanao, killed 15 people and injured 77 others.

The State Department designated the Philippines a major money laundering jurisdiction in 2019. The Philippines' growing economy and geographic location within key trafficking routes place it at elevated risk of money laundering and terrorism financing. Recent growth in the online gaming industry also presents increased risk. Corruption and human trafficking constitute some of the principal sources of criminal proceeds. Insurgent groups operating in the Philippines derive funding from kidnapping for ransom and narcotics and arms trafficking. Additionally, the large volume of remittances from Filipinos living abroad increases the monitoring burden on anti-money laundering authorities.

In its most recent annual human rights report, the State Department reported that significant human rights issues included: unlawful or arbitrary killings, including extrajudicial killings, by and on behalf of the government and non-state actors; reports of forced disappearance by and on behalf of the government and non-state actors; torture by and on behalf of the government and non-state actors; arbitrary detention by and on behalf of the government and non-state actors; harsh and life-threatening prison conditions; arbitrary and unlawful interference with privacy; significant problems with the independence of the judiciary; the worst forms of restrictions on free expression and the press, including violence, threats of violence, and unjustified arrests or prosecutions of journalists, censorship, and the existence of criminal libel laws; corruption; and unlawful recruitment or use of child soldiers by terrorists and groups in rebellion against the government.

Concerns about police impunity increased significantly following the sharp increase in killings by police in 2016. Significant concerns also persisted about impunity for the security forces, civilian national and local government officials, and powerful business and commercial figures. Slow judicial processes remained an obstacle to bringing government officials allegedly involved in human rights abuses to justice.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria

listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Financial Considerations**

AG ¶ 18 articulates the security concern for financial problems:

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

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)).

AG ¶ 19 includes disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(b) unwillingness to satisfy debts regardless of the ability to do so”; “(c) a history of not meeting financial obligations”; and “(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.” The record establishes AG ¶¶ 19(b) and 19(c). AG ¶ 19(f) is not established because Applicant was not required to file federal and state tax returns until he returned to the United States from overseas, and SOR ¶¶ 1.a, 1.b, and 1.c are refuted.

AG ¶ 20 lists financial considerations mitigating conditions which may be applicable in this case:

(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;

(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; 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.

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

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

to classified information will be resolved in favor of the national security.”  
Directive, Enclosure 2 ¶ 2(b).

The debt in SOR ¶ 1.d for \$765 was generated while Applicant was overseas, and he was not responsible for it. He disputed it under AG ¶ 20(e). In September 2019, he paid the \$931 debt described in SOR ¶ 1.f. SOR ¶¶ 1.d and 1.f are mitigated.

Applicant listed five reasons why he stopped making his mortgage payments: (1) his home has been on the market for six years; (2) the missions at the nearby Air Force base changed; (3) in January 2019, the house was vandalized, and items were stolen from it such as furniture and appliances; (4) real estate values in the area decreased; and (5) the fair market value of his residence may be down to about \$160,000 to \$170,000. These were circumstances beyond his control that reduced the fair market value of his residence, and indicated to him that he would lose money if he sold his residence.

Applicant did not act responsibly under the circumstances. He had sufficient income to continue making the mortgage payments on the debt in SOR ¶ 1.e. He walked away or abandoned his responsibility for the debt when he was unable to sell his residence for a sufficient amount to pay the mortgage or meet his desires. He did not provide proof that he contacted the creditor or VA to seek alternative resolutions of the debt through a deed in lieu of foreclosure, short sale, or other good faith negotiated resolution. He did not prove that he could not have sold the property for less than the mortgage amount and accepted responsibility for part or all of the loss to the mortgage company through financing from the mortgage creditor, another creditor, or the VA. He did not prove that the state had an anti-deficiency provision excusing him from liability. He did not prove the debt in SOR ¶ 1.e is resolved.

Over the last two years, Applicant has owed his mortgage company thousands of dollars in interest payments and real estate taxes. He had sufficient income to have maintained his mortgage in current status. There is insufficient evidence showing Applicant’s failure to pay his mortgage was a responsible, prudent, and good-faith decision. He is receiving a substantial income and had the financial resources to pay his mortgage. Applicant failed to establish mitigation of financial considerations security concerns.

## **Foreign Influence**

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

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest

is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

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

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(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; and

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant's mother-in-law, one brother-in-law, and one sister-in-law are citizens and residents of the Philippines. One of Applicant's brothers-in-law is a citizen of the Philippines, and Applicant, his spouse, and the brother-in-law live at the same overseas location. Applicant occasionally communicated with his mother-in-law and siblings-in-law. Applicant's spouse is a citizen of the Philippines and a permanent resident of the United States. She is close to her family in the Philippines.

When an allegation under a disqualifying condition is established, "the Directive presumes there is a nexus or rational connection between proven conduct or circumstances . . . and an applicant's security eligibility. Direct or objective evidence of nexus is not required." ISCR Case No. 17-00507 at 2 (App. Bd. June 13, 2018) (citing ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018)).

The mere possession of close family ties with relatives living in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if an applicant, his or her spouse, or someone sharing living quarters with them, has such a relationship with even one person living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 08-02864 at 4-5 (App. Bd. Dec. 29, 2009) (discussing problematic visits of applicant's father to Iran).

There is a rebuttable presumption that a person has ties of affection for, or obligation to, his or her immediate family members, and this presumption includes in-laws. ISCR Case No. 07-06030 at 3 (App. Bd. June 19, 2008); ISCR Case No. 05-00939 at 4 (App. Bd. Oct. 3, 2007) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)).

The DOHA Appeal Board has indicated for Guideline B cases, “the nature of the foreign government involved and the intelligence-gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the Judge’s ultimate conclusions in the case. The country’s human rights record is another important consideration.” ISCR Case No. 16-02435 at 3 (May 15, 2018) (citing ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017)). Another important consideration is the nature of a nation’s government’s relationship with the United States. These factors are relevant in assessing the likelihood that an applicant’s family members living in that country are vulnerable to government coercion or inducement.

The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorism causes a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The relationship of the Philippines with the United States, the situation in the Philippines, including crime and terrorism, place a burden of persuasion on Applicant to demonstrate that his and his spouse’s relationships with any family member or friend living in or visiting the Philippines do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and concerns about assisting someone living in or visiting the Philippines.

The Appeal Board in ISCR Case No. 03-24933, 2005 DOHA LEXIS 346 at \*20-\*21 n. 18 (App. Bd. 2005), explained how relatives in a foreign country have a security significance:

The issue under Guideline B is not whether an applicant’s immediate family members in a foreign country are of interest to a foreign power based on their prominence or personal situation. Rather, the issue is whether an applicant’s ties and contacts with immediate family members in a foreign country raise security concerns because those ties and contacts create a potential vulnerability that a foreign power could seek to exploit in an effort to get unauthorized access to U.S. classified information that an applicant -- not the applicant’s immediate family members -- has by virtue of a security clearance. A person may be vulnerable to influence or pressure exerted on, or through, the person’s immediate family members -- regardless of whether the person’s family members are prominent or not.

Guideline B security or trustworthiness concerns are not limited to countries hostile to the United States. “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.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound



disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 02-22461, 2005 DOHA LEXIS 1570 at \*11-\*12 (App. Bd. Oct. 27, 2005) (citing ISCR Case No. 02-26976 at 5-6 (App. Bd. Oct. 22, 2004)) (discussing Taiwan).

While there is no evidence that intelligence operatives, criminals, or terrorists from or in the Philippines seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and the Philippines has a significant problem with terrorism and crime. Applicant's family in that country "could be a means through which Applicant comes to the attention of those who seek U.S. information or technology and who would attempt to exert coercion upon him." ADP Case No. 14-01655 at 3 (App. Bd. Dec. 9, 2015) (citing ISCR Case No. 14-02950 at 3 (App. Bd. May 14, 2015)).

Applicant's relationships with people who are living in the Philippines or visiting that country create a potential conflict of interest because terrorists could place pressure on those living in the Philippines in an effort to cause Applicant to compromise classified information. These relationships create "a heightened risk of foreign inducement, manipulation, pressure, or coercion" under AG ¶ 7. Department Counsel produced substantial evidence of Applicant and his spouse's relationships with people living in the Philippines or citizens of the Philippines and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(e) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

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

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

- (d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee; and
- (e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country.

As indicated in the disqualifying conditions section, Applicant has three in-laws who are citizens and residents of the Philippines. The Appeal Board has concluded that contact every two months or more frequently constitutes “frequent contact” under AG ¶¶ 7 and 8. ISCR Case No. 14-05986 at 3-4 (App. Bd. Oct. 14, 2016). *See also* ISCR Case No. 04-09541 at 2-3 (App. Bd. Sep. 26, 2006) (finding contacts with applicant’s siblings once every four or five months not casual and infrequent and stating “The frequency with which Applicant speaks to his family members in Iran does not diminish the strength of his family ties.”). ). Frequency of contact is not the sole determinant of foreign interest security concerns based on connections to family. “[I]nfrequency of contact is not necessarily enough to rebut the presumption an applicant has ties of affection for, or obligation to, his or her own immediate family as well as his or her spouse’s immediate family.” ISCR Case No. 17-01979 at 4 (App. Bd. July 31, 2019).

A key factor in the AG ¶ 8(b) analysis is Applicant’s “deep and longstanding relationships and loyalties in the U.S.” Applicant has significant connections to the United States. Applicant was born in the United States, served in the Air Force for 24 years, and is not and never has been a citizen of the Philippines. His children, siblings, and other relatives are citizens and residents of the United States. He intends to permanently reside in the United States.

It is important to be mindful of the United States’ relationship with and historical investment in the Philippines. The Philippines is a U.S. ally in combatting terrorism after 9/11. The Philippines and the United States are allies with the goal of maintaining the Philippines territory and freedom of the seas.

Applicant’s relationship with the United States must be weighed against the potential conflict of interest created by his relationships with his spouse’s relatives who are citizens and residents of the Philippines. They are at risk from criminals, terrorists, and human rights violations of the Philippines government. Applicant’s access to classified information could theoretically add risk to his spouse’s relatives living in the Philippines.

In sum, Applicant and his spouse’s connections to his spouse’s relatives who are living in the Philippines are much less significant than his connections to the United States. AG ¶ 8(b) is established and it fully mitigates foreign influence security concerns under Guideline B.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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

Applicant is a 52-year-old employee of a DOD contractor who is employed overseas. He served 24 years in the Air Force, and in June 2013, he was honorably retired as a master sergeant. He received three MSMs when he was on active duty. He completed numerous training courses. After retiring from the Air Force he worked for almost eight years overseas as an expert in munitions. He was recently promoted to be a superintendent.

Applicant's character evidence supports his access to classified information. The general sense of his character evidence is that he is knowledgeable, diligent, professional, responsible, reliable, honorable, trustworthy, and honest.

The DOHA Appeal Board has previously emphasized that security clearance determinations are not a debt-collection procedure. A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. Applicant stopped paying his mortgage in March 2019, which was two years before his hearing. He owed more than \$40,000 in delinquent interest and real estate taxes to his mortgage company. Most importantly, he had the means to continue making his mortgage payments. He did not provide proof that he took reasonable, prudent, and good-faith actions to communicate his intentions to the mortgage company and the VA and to responsibly resolve his mortgage debt. He did not mitigate the mortgage debt in SOR ¶ 1.e.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Foreign influence security concerns are mitigated; however, unmitigated financial considerations security concerns

relating to his handling of his mortgage debt lead me to conclude that grant of a security clearance to Applicant is not warranted at this time.

## 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:	AGAINST APPLICANT
Subparagraphs 1.a through 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	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 not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Mark Harvey  
Administrative Judge