



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



In the matter of:)
)
) ADP Case No. 19-03926
)
)
Applicant for Public Trust Position)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

July 29, 2021

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant has not mitigated Foreign Influence, Personal Conduct, and Financial Considerations security concerns. Based upon a review of the pleadings, the documentary evidence, and Applicant's testimony, eligibility for a public trust position is denied.

Statement of the Case

On April 25, 2018, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). The Department of Defense Counterintelligence and Security Agency, Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant on March 4, 2020, detailing national security concerns under Guidelines B (Foreign Influence), E (Personal Conduct), and F (Financial Considerations). The DoD CAF acted under DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive); DoD Manual 5200.02, *Procedures for the DoD Personnel Security Program (PSP)* April 3, 2017; and the adjudicative guidelines (AG) promulgated in Security Executive Agent

Directive 4, *National Security Adjudicative Guidelines* (Dec. 10, 2016), effective within DoD on June 8, 2017.

On March 26, 2020, Applicant answered the SOR allegations in writing (Answer). He requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was significantly delayed due to the COVID-19 pandemic. On March 2, 2021, the case was assigned to me. DOHA issued a Notice of DCS Video Teleconference Hearing on April 26, 2021, scheduling the hearing for May 12, 2021.

I convened the hearing as scheduled. Department Counsel presented six exhibits, marked as Government Exhibits (GE) 1 through 6. She also offered the Government's Request for Administrative Notice regarding the Russian Federation (Russia). I admitted the Government's exhibits into the record without any objection. I have also taken administrative notice below of certain undisputed facts regarding Russia based upon the Government's request. (Tr. at 16-19.)

Applicant offered no exhibits at the hearing. I left the record open until June 18, 2021, to give him the opportunity to submit any additional documents he would like to have entered into the record. On June 14, 2021, Applicant submitted seven documents via email as well as an email with some additional information relating to the current status of his debts. I marked the exhibits and his email as Applicant Exhibits (AE) A through I. All of his exhibits were admitted into the record without objection. The record closed on June 18, 2021. DOHA received the hearing transcript (Tr.) on May 25, 2021. (Tr. at 17-19.)

Findings of Fact

Applicant's personal information is extracted from his e-QIP unless otherwise indicated by a parenthetical citation to the record. After a thorough and careful review of the pleadings, including Applicant's admissions in his Answer, his testimony, and the documentary evidence in the record, I make the following findings of fact.

Applicant is 40 years old. He was adopted at the age of four and grew up in poverty. He has married and divorced twice (2000 to 2005 and 2005 to 2013). He remarried for a third time in 2013 and has one child, age 11, with his current wife. He has four other children, ages 19 to 27, from prior marriages and other relationships. Applicant works as a training coordinator instructing hospital personnel on the use of new health-care software. He began this job about seven months ago. He served in the U.S. Navy Reserve on active duty from 2000 to 2004 and again in 2012 to 2014. He was on Inactive Reserve duty from 2004 to 2008. He received an honorable discharge from active duty in 2004. In 2014, he was suffering from several stressful circumstances and failed to report for duty. He was subsequently discharged and received a general discharge under honorable conditions. Applicant attended an online university from July 2008 to 2013. He received an associate's degree. The university subsequently lost its accreditation. (Tr. at 25-36, 72; GE 2 at 1, 2.)

Following his discharge from the Navy in 2004, Applicant did not have any significant employment opportunities. He experienced periods of unemployment and homelessness, starting in 2007. He also met his current wife in 2007 while still married to his second wife. He and his current wife were homeless together for about three years, including living on the streets for about eight months. When the couple had a child in 2010, he was able to afford a home for his family. Over the years preceding 2012, he incurred a financial obligation for arrearages in his child-support payments for his four oldest children totaling about \$70,000. He is presently paying down the arrearage every month. He currently owes about \$65,000. For many years, he was unsuccessful finding good-paying jobs because of his child-support delinquency, which appeared on his credit report and was checked by prospective employers. (Tr. at 73-79.)

For ease of discussion, the SOR allegations will not be discussed in the order alleged in the SOR.

Paragraph 2, Guideline E, Personal Conduct

The Illegal Alien Status of Applicant's Wife

In his Answer, Applicant admitted the single allegation under Guideline E. The allegation is as follows:

- a. You are married to and living with your wife, who has illegally remained in the U.S. since the expiration of her visa in 2007.

The factual background regarding this allegation is the following. Applicant married his second wife in 2005 after his first discharge from the Navy Reserve. She was a citizen of Uzbekistan. Applicant testified that "she was pretty hot," and he did not want to lose her. He sponsored her to obtain resident alien status in the United States. As soon as she received her permanent resident card, she left him to be with a man who was Russian. Applicant felt used by her. (Tr. at 43-55.)

In 2007, Applicant met his current wife, a Russian citizen. She did not have a permanent resident card and her visa was about to expire. He was reluctant to take on the responsibility of helping another woman from the former U.S.S.R. obtain legal status to remain in the United States and risk being used again. Eventually, the relationship developed, and he came to realize that she was not with him so that he could help her obtain a green card and U.S. citizenship. He was, however, experiencing serious financial and employment problems and could not afford to help her change her immigration status. Over the subsequent years, she was ineligible to work in the United States and never tried to do so. They began looking for help on her status in 2012, two years after the birth of their child. But even then, Applicant still had debts he could not pay, including the large child-support arrearage. They looked at her immigration status again in 2017 and hired an attorney. Applicant's financial problems prevented them from taking any further steps. They began exploring the necessary steps to change her status a month or two prior to the hearing. He testified that he was "100% positive" that he would be filing the necessary

papers to start the process during the following four weeks. He was given until June 18, 2021, to produce evidence of his filing. He did not include any immigration documents with his June 14, 2021 submission. (Tr. at 43-55, 70-74, 121.)

Paragraph 1, Guideline B, Foreign Influence

Applicant's Wife and her Russian Family Members

In his Answer, Applicant admitted the four allegations under Guideline B. The allegations are as follows:

a. Applicant's wife is a Russian citizen. As noted, she resides illegally in the United States. She is an ethnic minority from Siberia and is ethnically Asian rather than Russian. Her ethnic group is the subject of significant societal prejudice and mistreatment in Russia. One reason she left Russia and has stayed away despite multiple hardships of living in the United States without a valid visa is that she believes the alternative of living in Russia would be worse. She strongly supports the United States and is opposed to the Russian Government. Her only significant connection to Russia is through her mother because her mother lives there. By way of background, she grew up in a Siberian village of 300 to 400 people. She graduated from high school and went to university in Moscow, earning a master's degree in history. She also served in the Russian military. At age 21, she traveled to the United States for the first time on a four-month summer work visa. She returned to Russia on time as required. Two years later, in 2007, she traveled to the United States again on a similar summer work visa. Then she met Applicant and decided to stay with him, even though he was homeless at that time. She overstayed her visa two months after meeting Applicant. She was seeking to escape from an abusive personal relationship in Russia. Three years later, she and Applicant had a child. She was 27 at the time. She has not returned to Russia in the last 14 years. She is now 37 years old. She suffers from rheumatoid arthritis and is confined to a wheelchair. (Tr. at 36-50, 59-60, 66-67, 71-72.)

b. Applicant's mother-in-law (MIL) is a citizen and resident of Russia. Like her daughter, she is part of an ethnic minority living in Siberia. Her husband, the father of Applicant's wife, is deceased. In addition to Applicant's wife, MIL has two other children, a son and another daughter. MIL is 72 years old and is a retired school teacher. Her husband was also a school teacher. Neither Applicant nor his wife have ever sent money to help support her mother or either of her two siblings. MIL has never worked for the Russian Government. She and Applicant's wife have a strained relationship because of her daughter's decision to leave Russia and marry a U.S. citizen who was homeless and unable to support his wife. In the last 14 years, they have talked on the phone about 12 times. They have communicated a little more frequently through the Internet. MIL has never met her grandchild in person, though she has seen the child on computer or phone screens. MIL does not speak English and Applicant does not speak Russian or MIL's native ethnic language. (Tr. at 51-59, 65.)

c. Applicant's brother-in-law (BIL) is a citizen and resident of Russia. Applicant has seen him three times over video screens around the holidays. He works as an engineer, to the best of Applicant's knowledge. He has never worked for the Russian Government. BIL rarely communicates with Applicant's wife because they have a difficult relationship. BIL and Applicant's sister-in-law (SIL) helped pay for their sister's education, and they are upset with her that she left Russia and her family behind to live in a country where she cannot even work legally. BIL and SIL have told her to come home and have asked Applicant's wife why she is still living in the United States. In the past 14 years, Applicant's wife has talked with her siblings on the phone only 12 to 14 times. These conversations typically end poorly with Applicant's wife feeling badly. (Tr. at 60.)

d. SIL is a citizen and resident of Russia. Applicant has seen her two times over video screens around the holidays. The last Applicant knew, SIL worked as an accountant for the business of a family friend. She has never worked for the Russian Government. Applicant's wife has not spoken with her sister in three years. (Tr. at 61.)

Administrative Notice

Russia has a highly centralized, authoritarian political system dominated by its President. Russian intelligence services target the United States seeking to collect intelligence, erode U.S. democracy, undermine U.S. national policies and foreign relationships, and increase Russia's global position and influence. The U.S. Government assesses Russia as posing a cyber espionage, influence, and attack threat to the United States and as having interfered in the integrity of U.S. elections. Russia continues to occupy and purports to have annexed Ukraine's Crimean Peninsula. The Russian Government has engaged in significant human rights abuses of its citizens.

Paragraph 3, Guideline F, Financial Considerations

SOR Debts

The SOR alleges that Applicant is delinquent on debts owed to 17 creditors in the total amount of about \$29,000. In his Answer, Applicant admitted ten of the SOR debts and totaling about \$24,000. The SOR debts, Applicant's response to each allegation in his Answer, and the record evidence regarding each debt are described below.

3.a. Admitted medical account in the amount of \$105. Applicant has not paid this debt. He wrote in AE I, his June 14, 2021 email, that he has been unable to learn more about his medical bills. See 3.n, below, for further information. **This debt is not resolved.** (Tr. at 80-81; GE 4 at 2; GE 5 at 2; GE 6 at 6; AE I.)

3.b. Denied medical-account in the amount of \$425. Applicant has not paid this debt. At the hearing, he was unable to explain why he disputed this debt in his Answer. He wrote in his June 14, 2021 email that he has been unable to learn more about his medical bills. See 3.n, below, for further information. **This debt is not resolved.** (Tr. at 81-85; GE 4 at 2; GE 6 at 6; AE I.)

3.c. Admitted education loan account in the amount of \$1,737. Applicant's six education loans that are the subject of SOR subparagraphs 3.c through 3.h were opened during the period November 2011 through January 2013. He repaid the student loans for about four months and then stopped. They became delinquent in 2015. In his Answer, he admitted he was delinquent on this debt and his other student loans. (Answer at 1, 2; Tr. at 88-93; GE 2 at 5; GE 3 at 3; GE 4 at 2; GE 5 at 2; GE 6 at 8.)

A class-action lawsuit was filed against the university attended by Applicant, and he is a member of the class. Applicant wrote in his Answer that his university has "been ordered to eliminate debt owed [by its students] as part of the [lawsuit]." The basis of the litigation was that the university had engaged in fraudulent student recruitment activity. Applicant testified that he is hoping to have these student loan debts removed from his credit. Applicant attached a document to his Answer that states that the university has agreed in the settlement "**to write to request deletion** of any negative credit events it reported about you [Applicant] from January 1, 2008 to December 15, 2016." (Emphasis added.) Applicant actually paid his tuition using the GI Bill. Separately, the funds he borrowed were paid to him, not to the university. There is nothing in the record to suggest that Applicant borrowed any funds from or through the university or that the university reported any negative credit events about Applicant to a credit bureau. The credit reports in the record state that the loans have been assigned to U.S. Department of Education (DOE) for collection and that they were originally "Direct Loans," which are Federal loans. (Answer at 2, 11; Tr. at 88-93; GE 2 at 5.)

Applicant has been trying to figure out how he can take advantage of the settlement of the class-action lawsuit to extinguish his student-loan debt owed to DOE, assuming that is even possible. The document he attached to his Answer specifically states that the settlement does not "affect your ability to claim debt forgiveness or submit a Borrower Defense to Repayment claim" based upon the legal theories alleged in the litigation. Applicant presented no evidence suggesting that he has taken any such actions. (Answer at 11.)

There is also no documentary evidence in the record that the settlement would result in the extinguishment of any student loans incurred by Settlement Class Members from any sources or the removal of those debts from the credit reports of the members. Applicant has not shown that he made a demand on the university that it request the deletion of any negative information it may have reported to the credit bureaus. In his post-hearing email, Applicant asserts that he has been advised by a representative of the university that it will submit at a later date a request to the credit bureaus to remove the student-loan debts. (AE A.)

In his post-hearing submission, Applicant provided a copy of a court order, dated October 8, 2020, approving the settlement of the class-action lawsuit. The order does not include the actual Settlement Agreement of the litigation, which provides the specific terms of the relief or payments to be awarded to each "Settlement Class Member." The order does note at paragraph 20 that checks sent to Settlement Class Members that were not cashed within 90 days would be forfeited, which suggests that the relief from the

settlement fund of about \$45,000,000 would be in the form of payments to the members. There is no evidence, documentary or otherwise, in the record as to whether Applicant timely submitted the required Claim Form to receive a payment, whether he received that class-action settlement payment, and whether he timely cashed the check. (AE A.)

Applicant is not prioritizing the repayment of his delinquent student loans at this time. He is saving the available funds to help pay for his wife's naturalization as a U.S. citizen. In his background interview, Applicant claimed that he was waiting to repay these loans until after the U.S. Department of Veteran's Affairs pays its portion of his education expenses. This statement is inconsistent with his hearing testimony about the class-action litigation. Based upon the record evidence, Applicant remains liable on this student loan and the others. **This debt has not been resolved.** (Answer at 11; Tr. at 88-93; GE 2 at 5; AE A.; AE I.)

3.d-3.h. Admitted education loan accounts in the amount of \$4,005; \$2,001; \$2,917; \$1,951; and \$9,055, respectively. Applicant has not paid these debts. See 3.c, above. **These debts have not been resolved.** (GE 3 at 3-4; GE 4 at 2; GE 5 at 2; GE 6 at 9.)

3.i. Admitted Credit Account in the amount of \$144. Applicant wrote in his Answer that he intends to pay this debt when he receives his next paycheck, and in any event, prior to his hearing. In his October 2018 background interview, he reported that this debt was paid in 2014 and that he had an account with this bank, which was in current status. Applicant testified that he paid off this debt and would provide evidence of the payment in a post-hearing submission. In his post-hearing email, Applicant again asserted that this debt has been paid, though he did not say when he made the payment. He wrote that the creditor advised him that it could not provide evidence of the payment in a timely manner. The Government's February 12, 2021 Equifax credit report in the record (GE 3) continues to list this debt as unpaid. Applicant has not provided sufficient evidence of payment, such as a copy of a check or a credit-card statement. **Applicant has not documented that this debt has been resolved.** (Answer at 2; Tr. at 93-94; GE 2 at 4; GE 3 at 2; GE 4 at 4; GE 6 at 9; AE I.)

3.j. Denied utility account in the amount of \$347. Applicant disputes this debt as fraudulent. In his Answer, he claimed that his roommate at the time put this electric bill in Applicant's name without his permission after Applicant left the premises. Applicant testified that he and his wife never had an account with this creditor. He also said that he confronted his former roommate and determined that the roommate had nothing to do with this debt. He testified that he has disputed the bill with the credit bureaus, but he has not contacted the creditor and asked for a record of this bill or otherwise disputed the debt directly with the creditor. The Government's most recent credit report, GE 3, does not reflect that this bill is disputed. Applicant wrote in his post-hearing email that he recently called the utility company and disputed the debt. He was advised that it would be removed from his credit in 30 to 60 days. **This debt is being resolved.** (Answer at 2; Tr. at 94-97; GE 3 at 6; GE 4 at 5-6; GE 5 at 2; GE 6 at 8.; AE B; AE C; AE D; AE I.)

3.k. Denied fitness center account in the amount of \$406. Applicant disputes this debt for monthly membership fees at a fitness center for months after he had canceled his membership and relocated to another state. He claims that the center's manager agreed that the bill was an error. The debt has since been eliminated from the Government's most recent credit reports, *i.e.*, GE 3, 4 and 5. **This debt has been resolved.** (Answer at 2; Tr. at 98-99; GE 6 at 6.)

3.l. Admitted communications account in the amount of \$235. This debt is for internet and cable equipment that Applicant failed to return after moving out of an apartment. After learning that this debt was on his credit report, he returned the equipment and paid \$100. The debt does not appear on the Government's more recent credit report, GE 3. **This debt has been resolved.** (Answer at 2; Tr. at 99-100; GE 6 at 6.)

3.m. Denied medical account in the amount of \$423. Applicant has not paid this debt. At the hearing, he was unable to explain why he disputed the debt in his Answer. He wrote in his June 14, 2021 email that he has been unable to learn more about his medical bills. See 3.n, below, for further information. **This debt is not resolved.** (Tr. at 81-85; GE 6 at 7.)

3.n. Admitted medical account in the amount of \$1,988. Applicant testified that this debt or one of the other large medical debts was not actually incurred for medical services. He entered this debt into the hospital's records as part of his training on how to use the hospital billing system software, and he failed to delete the debt when the training was completed. He has not taken any steps, however, to correct the bill. In his background interview, he reported that he has high blood pressure and has sought care at hospital emergency rooms on several occasions. He acknowledged that he had some unpaid medical bills due to his condition and emergency treatment. **This debt has not been resolved.** (Tr. at 83-88; GE 2 at 5; GE 6 at 7.)

3.o. Denied medical account in the amount of \$958. At the hearing, he was unable to explain why he disputed the debt in his Answer. He wrote in his June 14, 2021 email that he has been unable to learn more about his medical bills. See 3.n, above, for further information. **This debt is not resolved.** (Tr. at 81-85; GE 6 at 7; AE I.)

3.p. Denied medical account in the amount of \$1,106. At the hearing, he was unable to explain why he disputed the debt in his Answer. He wrote in his June 14, 2021 email that he has been unable to learn more about his medical bills. See 3.n, above, for further information. **This debt is not resolved.** (Tr. at 81-85; GE 6 at 7.)

3.q. Denied residential rental account in the amount of \$1,125. Applicant and his family lived in this apartment complex starting in 2010 after about three years of homelessness. This debt is for cleaning fees at the end of the rental term. The landlord claimed that Applicant left the apartment in poor condition. Applicant claims that the landlord or the apartment complex manager engaged in predatory leasing practices. He hired a debt-resolution law firm to assist him with this debt. He does not know what the firm did to resolve this debt. The debt has since been eliminated from the Government's

most recent credit reports. In his October 2018 background interview, he reported that the debt was no longer enforceable because it was more than seven years old. Applicant has not produced any evidence to show that he has taken steps to pay or resolve this debt. Moreover, he has not produced any documents substantiating the basis of this dispute. **This debt is not resolved.** (Answer at 2; Tr. at 101-105; GE 2 at 4; GE 6 at 9.)

Applicant is current with his ongoing bills today. He earns about \$75,000 per year. He pays his car loan and child-support arrearage every month. He is budgeting his expenses and saving money to pay for his wife's visa and U.S. citizenship. He plans to go through that process without legal help to save money. He is hopeful that his wife will be successful even though she has overstayed her visa since 2007. (Tr.at 105-109.)

Policies

Positions designated as ADP I/II/III are classified as "sensitive positions." The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to the DoD and DOHA by the Defense Security Service and Office of Personnel Management. DoD contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.

When evaluating an applicant's suitability for national security eligibility for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AGs. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2(d), describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." 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.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable national security eligibility decision.

A person who applies for access to sensitive information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Analysis

SOR Paragraph 1, Guideline B, Foreign Influence

The security concern under this guideline 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 maybe 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 evidence establishes the following disqualifying conditions 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;

(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.

The guideline in AG ¶ 8 contains six conditions that could mitigate security concerns arising from foreign influence. Three of them have possible applicability to the facts of this case:

(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.

Applicant has not mitigated the security concerns raised by his wife's Russian citizenship. As noted below under Guideline E, Applicant is vulnerable to a heightened risk of foreign exploitation, manipulation or coercion due to his cohabitation with his wife, the mother of his child. He is exposed to having to choose between the interests of his wife, who is subject to deportation to Russia, and the interests of the United States. His situation also gives rise to a conflict of interest. Lastly, he has non-casual, daily contact with his wife. AG ¶¶ 8(a), (b), and (c) have not been established.

With respect to his wife's three family members in Russia, Applicant has established all three mitigating conditions. The nature of the relationships of Applicant's wife with her Russian family members and the positions of those family members is such that it is unlikely that Applicant would have to choose between the interests of his wife's family and the interests of the United States. Also, there is no conflict of interest because the sense of loyalty of Applicant and his wife to her Russian family is minimal and the couple's deep and longstanding relationships and loyalties in the United States are such that Applicant can be expected to resolve any conflicts of interest in favor of the U.S. interest. And lastly, Applicant and his wife have such casual and infrequent contacts and communication with her Russian family members that there is little likelihood that the relationships could create a risk of foreign influence or exploitation.

Overall, Applicant has not mitigated all of the security concerns under Guideline B. SOR paragraph 1 is found against Applicant.

SOR Paragraph 2, Guideline E, Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

Applicant's admissions in his SOR Answer and his testimony, as well as the documentary evidence in the record, raise the possibility that the following disqualifying conditions under AG ¶ 16 apply:

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

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

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing; . . . and

(g): association with persons involved in criminal activity.

At the time Applicant entered into a second relationship with a foreign national without a visa to remain in the United States, he exercised questionable judgment and a disregard for the immigration laws of the United States. That situation has continued since 2007. AG ¶ 16(d) is established.

AG ¶ 16(e) is also established. Applicant's marriage and co-habitation with an illegal alien from Russia creates a vulnerability to exploitation, manipulation or duress by a Russian intelligence agency. The Appeal Board noted that "sharing living quarters with someone who is in violation of U.S. immigration laws poses the requisite heightened risk" of exploitation. That is, it is foreseeable that this relationship is one that could be exploited by those interested in acquiring U.S. [protected] information, should it come to their attention." ISCR Case No. 15-00693 at 2 (App. Bd. Dec. 22, 2016). The logic of the Appeal Board's decision applies to the facts in the instant case.

There is no evidence in the record that Applicant's wife actions of overstaying her visa since 2007 constitutes a crime. She legally entered the United States in 2007, and as a result, did not commit the crime of unlawful entry under 18 U.S.C. §1325(a). AG ¶ 16(g) is not established.

The guideline in AG ¶ 17 contains seven conditions that could mitigate security concerns arising from personal conduct. Two conditions have possible applicability to the facts of this case:

(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

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

Applicant had full knowledge of the immigration rules from his first marriage to a foreign national. He knew that living in the United States without a valid visa was not a minor violation of U.S. law. He was aware that his current wife could have been deported at any time over the past 14 years and that this risk continues. He did not repeat the process to obtain a permanent resident card for his current wife. When given the opportunity to submit her application to the immigration officials and present a copy of it after the hearing as additional evidence in mitigation, he failed to do so. Applicant has not mitigated doubts that his inaction about his wife's immigration status has created about his reliability, trustworthiness, and judgment. Moreover, he has not taken the steps necessary to reduce his vulnerability to exploitation, manipulation, or duress by filing the paperwork to seek the legalization of his wife's immigration status and submitting that paperwork into the record in this case when given the opportunity to do so after the hearing. AG ¶¶ 17(c) and (e) have not been established

SOR Paragraph 3, Guideline F, Financial Considerations

The security concern under this guideline is set out in AG ¶ 18 as follows:

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. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified

information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

Applicant's admissions in his SOR Answer and his testimony, as well as the documentary evidence in the record, establish the following disqualifying conditions under AG ¶ 19:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators.

The guideline in AG ¶ 20 contains seven conditions that could mitigate security concerns arising from financial difficulties. Four of them have possible applicability to the facts of 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.

AG ¶ 20(a) is not established. Most of Applicant's numerous delinquent debts remain outstanding. In part, they occurred as a result of gaps in his employment after specific contracts have been concluded. Given the nature of his employment, future gaps

between contracts will be difficult to avoid, increasing the likelihood that he may run into financial difficulties in the future. In addition, he exercised poor judgment marrying and supporting his second wife, who was born in Uzbekistan and spending his limited financial resources trying to help her become a legalized resident alien. As a result, those resources were not available to pay down his substantial child-support arrearage. He again exercised poor judgment in marrying another foreign-born woman who did not have legal status to live and work in the United States. He was unable to support her and the couple were homeless for an extended period. Applicant's evidence in mitigation is insufficient to meet his burden to show that he is reliable, trustworthy, and has good judgment.

AG ¶ 20(b) is only partially established. After his discharge from the Navy Reserve in 2004, Applicant experienced extended periods of unemployment and underemployment. This caused him to be unable to pay his child-support obligations, which hindered his ability to secure suitable new employment. This became a circular problem resulting in extreme poverty and homelessness. He finally broke out of that circle and has a viable career as a software instructor earning a living that could support his family if he had no other financial obligations. His chief concern today is saving to help pay for his wife's legalization in the United States. As of this point in time, he has a substantial amount of student loans that he is unable to pay or otherwise resolve and cannot afford to pay several smaller medical and other bills. Applicant's evidence in mitigation is insufficient to meet his burden to show that he acted responsibly under the circumstances.

AG ¶ 20(c) is only partially established. Applicant claims that he received financial assistance with respect to SOR debt 3.q, but he failed to provide any documentation to establish that as a fact, or even that he has retained a reputable financial counselor. Moreover, there is insufficient evidence of debt resolution to establish that Applicant's financial problems are being resolved or are under control.

AG ¶ 20(d) is not established. Applicant's evidence of making a good-faith effort to resolve his debts is limited to just three small SOR debts, 3.i, 3.j, and 3.k. Even with those debts, there is no documentary evidence of payments. Applicant has not produced evidence of a sufficient track record of payments to satisfy the requirements of this mitigating condition.

AG ¶ 20(e) is not established. Applicant disputed seven debts in his Answer. His evidence was insufficient to establish that he had a reasonable basis to dispute the debts, and he failed to provide documentation to substantiate the basis of the disputes.

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a

security clearance by considering the totality of the applicant's conduct and all relevant circumstances and applying the adjudicative factors in AG ¶ 2(d), specifically:

- (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.

I have incorporated my comments under Guidelines E and F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Additional comments are warranted. I have given weight to Applicant's service in the Navy Reserve. I have also weighed with empathy the substantial suffering Applicant and his wife have experienced and their hopes of continuing Applicant's career to pay for his family's living expenses. Unfortunately, Applicant's mitigating evidence fell far short of the standards established by the DoD for eligibility for a public trust position. After weighing the applicable disqualifying and mitigating conditions and evaluating all of the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his personal conduct and his delinquent debts.

Formal Findings

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b through 1.d:	For Applicant
Paragraph 2, Personal Conduct:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraphs 3.a through 3.i:	Against Applicant
Subparagraphs 3.j through 3.l:	For Applicant
Subparagraph 3.m through 3.q:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interests of the United States to grant Applicant national security eligibility for a public trust position. Eligibility for a public trust position is denied.

John Bayard Glendon
Administrative Judge