DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 19-03902
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Brittany White, Esquire, Department Counsel
For Applicant: *Pro se*

02/24/2021

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Decision

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GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations, but he did mitigate the foreign influence concerns. Eligibility for a security clearance is denied.

Statement of the Case

On November 29, 2018, Applicant applied for a security clearance and submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86). On August 19, 2020, Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued him a Statement of Reasons (SOR) under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (AG) (December 10, 2016), effective June 8, 2017.

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

In an unsworn statement, dated August 31, 2020, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by the Defense Office of Hearings and Appeals (DOHA) on November 13, 2020, and he was afforded an opportunity after receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to his case. Applicant received the FORM on December 4, 2020. His response was due on January 3, 2021. Applicant responded to the FORM on December 16, 2021. The case was assigned to me on January 21, 2021.

Rulings on Procedure

Applicant objected to certain information and evidence submitted by Department Counsel pertaining to his financial consideration issues, *to wit*: information related to unsecured creditors that were included in his Chapter 13 bankruptcy proceedings, based on his unverified contentions that those creditors had failed to file proof of claim during those proceedings. For reasons discussed below, that objection is denied. He also objected to information appearing in his Enhanced Subject Interview regarding alcohol treatment, information to which he objected during the interview, as well as information regarding his continued use of a foreign passport and his intention regarding renouncing dual citizenship. He did not object to the admission of the Enhanced Subject Interview. Since there are no allegations in the SOR associated with alcohol consumption, an issue that is irrelevant to this case, that objection is sustained.

As to the foreign passport and the dual citizenship issues, both of which were raised in his Enhanced Subject Interview, that objection is denied as possibly being relevant and material to this case. Finally, he objected to any evidence related to information associated with, or set forth in, the Government's Request for Administrative Notice, discussed further below, arguing that the facts are irrelevant and argumentative to the case, as he has no current interests, properties or business in the country. His objection is denied for reasons discussed further below.

Department Counsel requested that I take administrative notice of certain enumerated facts pertaining to the Bolivarian Republic of Venezuela (Venezuela), appearing in extracts of eight U.S. Government publications that were published by the U.S. Department of State. Facts are proper for administrative notice when they are easily verifiable by an authorized source and relevant and material to the case.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. *See McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986); ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)). The most common basis for administrative notice at ISCR proceedings is to notice facts that are either well known or from government reports. *See* Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Requests for administrative notice may utilize authoritative information or sources from the internet. *See, e.g*. *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) (citing internet sources for numerous documents). In this instance, although Department Counsel has selected only certain facts appearing in the identified publications, I have not limited myself to only those facts, but have considered the publications in their entirety.

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts, as set forth below under the Venezuela subsection.

Findings of Fact

In his Answer to the SOR, Applicant admitted, with extensive comments, only one of the factual allegations pertaining to financial considerations (SOR ¶ 1.i.), but admitted, with comments, both of the factual allegations pertaining to foreign influence (SOR ¶¶ 2.a. and 2.b.). Applicant's admissions and comments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Background

Applicant is a 47-year-old Venezuelan-born naturalized U.S. citizen. He arrived in the United States in June 1999 and was naturalized in May 2015. He is an employee of a defense contractor, and he has been serving as an engineering manager with his current employer since November 2018. He previously worked for a variety of employers in engineering management positions, and was self-employed as an engineering consultant on several occasions. He received his General Education Development (GED) diploma in 1991; an associate's degree in 1995; a bachelor's degree in 2007; and a master's degree in 2011. He has never served with the U.S. military. He has never held a security clearance. Applicant was married in 2001 and divorced in 2004. He remarried in 2006 and divorced in 2008. He remarried his first wife in 2010 and divorced in 2014. He remarried in 2015. He has two children, born in 2010, and 2018.

Financial Considerations

General source information pertaining to the financial issues discussed below can be found in the following exhibits: Item 2 (Answer to the SOR, dated August 31, 2020); Item 3 (SF 86, dated November 29, 2018); Item 4 (Bankruptcy Court Chapter 13 Petition

(and case file), filed December 24, 2015); Item 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated December 29, 2018); Item 8 (Enhanced Subject Interview, dated March 28, 2019); Item 6 (Equifax Credit Report, dated November 21, 2019); Item 7 (Equifax Credit Report, dated November 9, 2020); and Item 2 (TransUnion Credit Report, dated July 7, 2020, attached to Applicant's Answer to the SOR).

Applicant has gone through repeated periods of unemployment, essentially caused by reductions in force and layoffs. The initial period occurred in January 2015, when he was laid off from a position he had held since January 2008. He was unemployed until March 2015. He was employed from March 2015 until February 2016, when he was laid off again. He was unemployed from February 2016 until July 2016. He considered himself as self-employed from July 2016 until April 2017, when he obtained employment. He was employed from April 2017 until December 2017, when his position was eliminated. He was unemployed from December 2017 until April 2018. He considered himself as self-employed from April 2018 until November 2018, when he obtained his present position. (Item 3) During his periods of unemployment, he was supported by unemployment benefits and withdrawn retirement savings. (Item 8, at 5)

In December 2015, a few months before the commencement of his first period of unemployment, Applicant filed a Voluntary Petition for Bankruptcy under Chapter 13 of the U.S. Bankruptcy Code. At the time, he estimated that he had up to 49 creditors and that his liabilities were as follows: approximately $21,631 in secured claims (consisting of a vehicle); $39,302 in priority unsecured claims (including unpaid income taxes, domestic support, and wages); and $60,272 in nonpriority unsecured claims (consisting of commercial accounts, credit cards, a domestic-support lawsuit, and an overpayment of unemployment benefits), totaling $121,205 in total liabilities. He reported his gross income from the past three years as $72,475 (2013); $81,826 (2014), and $74,844 (2015). He also noted that his 2015 income included gambling income totaling $7,881. (Item 4, at 35) He reported that he had received credit counseling in anticipation of filing for bankruptcy in November 2015. (Item 4, at 8)

On November 14, 2016, the Trustee moved to dismiss the bankruptcy case because Applicant was delinquent in making his required payments, reporting that the last payment received was in July 2016. In June 2016, the Bankruptcy Judge had ruled that if the case was to be dismissed, all funds received by the Trustee prior to such dismissal were to be paid under the terms of the Plan to the creditors. (Item 4) On December 1, 2016, the case was ordered dismissed. (Item 4) The Trustee's Final Report indicated the creditors to be paid, amounts to be paid, amounts received from Applicant, and the actual amounts paid to specific creditors. Applicant contended that he made monthly $800 payments under the Plan, starting in December 2015, but he stopped making those payments a couple of months later because of his new period of unemployment and the costs of his divorce and custody expenses. (Item 2; Item 8) He paid the Trustee $8,400, including $1,391 in administration expenses. Of the $24,044 in claimed secured payments, $2,878 was actually paid. Of the $39,597 in claimed priority unsecured payments, $4,131 was actually paid. (Item 2 – Bankruptcy Trustee's Final Report)

In March 2019, Applicant was interviewed by an investigator from the U.S. Office of Personnel Management (OPM). During the interview, he acknowledged his delinquent accounts and his bankruptcy, attributing his financial difficulties to his divorce. He claimed that he was willing and able to pay off his debts as soon as possible. (Item 8)

In December 2020, in response to the FORM, Applicant argued that once he found employment in May 2017, he engaged the services of his divorce attorney to set up a payment plan to resolve "all secured debts," which he claimed included child support, divorce attorney fees, alimony, and his ex-wife's attorney fees. He minimized the significance of the remaining debts by referring to them as "mainly unsecured debts," and he argued that they were associated with unsecured creditors who failed to file proof of claim during the bankruptcy filing. (Response to the FORM, dated December 16, 2020) He did not support his unverified contentions regarding the payment plan with any documentation, such as a copy of the plan, or proof of payments (such as cancelled checks, bank statements, or receipts).

In addition to an allegation associated with the filing and dismissal of the Chapter 13 bankruptcy (SOR ¶ 1.i.), the SOR alleged eight delinquent accounts totaling approximately $46,798. The accounts are set forth as follows:

SOR ¶ 1.a. refers to an automobile loan with a high balance of $25,495 that was current until November 2015 and was subsequently charged off in the amount of $18,854. (Item 5, at 10; Item 6, at 1; Item 7, at 3). The vehicle was eventually repossessed in December 2016. (Item 2 – Credit Report, at 3) The account was included in Applicant's bankruptcy as a secured liability worth $24,044, and he made payments through the Trustee totaling $2,878. (Item 2 – Bankruptcy Trustee's Final Report) Applicant contends that the vehicle was sold at public auction, leaving an unpaid balance of approximately $214, but that the creditor claimed the unpaid balance was $9,865, and it has refused to furnish him with any documentation to support its claim. He disputed the amount, but no resolution has been reached. (Item 2, at 1; Item 7, at 3) There is no evidence that he made the final $214 payment. While he followed through on early pre-SOR efforts to address the account in bankruptcy, it does not appear that he has made any subsequent efforts to do so. Furthermore, it appears that he is awaiting November 2022 when the account is anticipated to be removed from his credit report. (Item 2 – Credit Report, at 3) The account has not been resolved.

SOR ¶ 1.b. refers to a credit-card account with an unpaid balance of $5,131 that was placed for collection, of which $4,499 was charged off. (Item 5, at 10; Item 6, at 2; Item 7, at 2-3) Applicant made his last payment to the creditor in January 2015. (Item 2 – Credit Report, at 3-4) The account was included in Applicant's bankruptcy as an unsecured liability worth $5,131, but no payments were made through the Trustee. Applicant contends that since the creditor failed to timely file a proof of claim, he is no longer responsible for the debt. He alternatively argued that since the account was included in the bankruptcy, it was placed on "automatic stay." (Item 2, at 1) He has offered no evidence to indicate that he has made any efforts to resolve the account since the bankruptcy was dismissed. Furthermore, it appears that he is awaiting February 2022

when the account is anticipated to be removed from his credit report. (Item 2 – Credit Report, at 3) The account has not been resolved.

SOR ¶ 1.c. refers to a credit-card account with an unpaid balance of $2,357 that was placed for collection, of which $2,363 was charged off. (Item 5, at 7, 11; Item 6, at 2; Item 7, at 3) Applicant made his last payment to the creditor in January 2015. (Item 2 – Credit Report, at 4) The account was included in Applicant's bankruptcy as an unsecured liability, but no payments were made through the Trustee. Applicant contends that since the creditor failed to timely file a proof of claim, he is no longer responsible for the debt. He alternatively argued that since the account was included in the bankruptcy, it was placed on "automatic stay." (Item 2, at 1) He has offered no evidence to indicate that he has made any efforts to resolve the account since the bankruptcy was dismissed. Furthermore, it appears that he is awaiting January 2022 when the account is anticipated to be removed from his credit report. (Item 2 – Credit Report, at 4) The account has not been resolved.

SOR ¶ 1.d. refers to a credit-card account with an unpaid balance of $4,674 that was placed for collection and charged off. (Item 5, at 6) Applicant made his last payment to the creditor in January 2015. (Item 2 – Credit Report, at 3) The account was included in Applicant's bankruptcy as an unsecured liability, but no payments were made through the Trustee. Applicant contends that since the creditor failed to timely file a proof of claim, he is no longer responsible for the debt. He alternatively argued that since the account was included in the bankruptcy, it was placed on "automatic stay." (Item 2, at 1-2) He has offered no evidence to indicate that he has made any efforts to resolve the account since the bankruptcy was dismissed. Furthermore, it appears that he is awaiting March 2022 when the account is anticipated to be removed from his credit report. (Item 2 – Credit Report, at 3) The account has not been resolved.

SOR ¶ 1.e. refers to a credit-card account with an unpaid balance of $5,834 that was placed for collection and charged off. (Item 5, at 7) Applicant made his last payment to the creditor in December 2014. (Item 2 – Credit Report, at 4) The account was included in Applicant's bankruptcy as an unsecured liability, but no claim was asserted or allowed, and no payments were made through the Trustee. Applicant contends that since the creditor failed to timely file a proof of claim, he is no longer responsible for the debt. He alternatively argued that since the account was included in the bankruptcy, it was placed on "automatic stay." (Item 2, at 2) He has offered no evidence to indicate that he has made any efforts to resolve the account since the bankruptcy was dismissed. Furthermore, it appears that he is awaiting February 2022 when the account is anticipated to be removed from his credit report. (Item 2 – Credit Report, at 4) The account has not been resolved.

SOR ¶ 1.f. refers to a credit-card account with an unpaid balance of $8,098 that was placed for collection and charged off. (Item 5, at 7) It unclear when Applicant made his last payment to the creditor. The account was included in Applicant's bankruptcy as an unsecured liability in the amount of $3,229, but no payments were made through the Trustee. It is also unclear as to the source of the SOR allegation that the unpaid balance is $2,357. Applicant contends that since the creditor failed to timely file a proof of claim,

he is no longer responsible for the debt. He alternatively argued that since the account was included in the bankruptcy, it was placed on "automatic stay." (Item 2, at 2) He has offered no evidence to indicate that he has made any efforts to resolve the account since the bankruptcy was dismissed. The account no longer appears in his 2020 credit report. The account has not been resolved.

SOR ¶ 1.g. refers to a credit-card account with an unpaid balance of $2,297 that was placed for collection and charged off. (Item 5, at 10) It is unclear if Applicant made any payments on the account, because it was opened in March 2014 and became delinquent in April 2014. (Item 2 – Credit Report, at 2) The account was included in Applicant's bankruptcy as an unsecured liability, but no payments were made through the Trustee. Applicant contends that since the creditor failed to timely file a proof of claim, he is no longer responsible for the debt. He alternatively argued that since the account was included in the bankruptcy, it was placed on "automatic stay." (Item 2, at 2) He has offered no evidence to indicate that he has made any efforts to resolve the account since the bankruptcy was dismissed. Furthermore, it appears that he is awaiting January 2022 when the account is anticipated to be removed from his credit report. (Item 2 – Credit Report, at 2) The account has not been resolved.

SOR ¶ 1.h. refers to credit-card account with an unpaid balance of $14,283 that was placed for collection in 2011, and eventually charged off. (Item 5, at 10) It is unclear when Applicant made his last payment to the creditor. The account was included in Applicant's bankruptcy as an unsecured liability (Item 4, at 24), but for some unexplained reason, it was not included by the Trustee as a scheduled creditor, and no payments were made through the Trustee. Applicant contends that since the creditor failed to timely file a proof of claim, he is no longer responsible for the debt. He alternatively argued that since the account was included in the bankruptcy, it was placed on "automatic stay." (Item 2, at 2) He has offered no evidence to indicate that he has made any efforts to resolve the account since the bankruptcy was dismissed. The aged account no longer appears in his 2020 credit report. The account has not been resolved.

As noted above, when Applicant was interviewed by the OPM investigator in March 2019 – four months after he obtained his current position – he claimed to be willing and able to pay his delinquent accounts. Nevertheless, he offered no evidence that he had entered into any repayment arrangements or made any payments to his creditors. His current financial status is unreported as he did not submit a Personal Financial Statement to indicate his net monthly income; his monthly expenses; or a possible monthly remainder available for discretionary spending or savings. He produced no family budget. In the absence of present financial information, it remains difficult to determine if Applicant is currently in a better position financially than he had been.

Foreign Influence

As noted above, Applicant was born in Venezuela. Both of his parents were born in Venezuela. His father is deceased, but his mother, a septuagenarian, remains a citizen-resident of Venezuela. She was a stay-at-home wife and mother, and she is now a stay-at-home widow. He has one sibling, a sister, who is a quinquagenarian, citizen-resident

of Venezuela, and an attorney working in children services. (Item 2, at 3) Neither his mother nor his sister has been affiliated with the Venezuelan government, military, security, defense industry, foreign movement, or intelligence service. (Item 3, at 35, 38) He engages with both his mother and his sister on a weekly basis, either by phone, email, or text message. He has not travelled to Venezuela since December 2011, and he professes no interest in doing so "anytime soon." (Response to the FORM, at 2)

Although he became a naturalized U.S. citizen in May 2015, he has taken no formal action under Venezuelan law to renounce his Venezuelan citizenship, and thus, he remains a dual citizen. (Item 3, at 10) During his OPM interview, Applicant expressed interest in renouncing his Venezuelan citizenship and relinquishing his expired Venezuelan passport if asked to do so. (Response to the FORM, at 2) In fact, under U.S. law, he renounced his allegiance to Venezuela when he took his oath of U.S. citizenship. That oath is as follows:

> I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.

https://www.uscis.gov/us-citizenship/naturalization-test/naturalization-oath-allegiance-united-states-america

Venezuela

Venezuela is a multiparty, constitutional republic in constant turmoil. While there have been periods of stability and democracy, Venezuelan history has been marred with *coup d' état* and authoritarian executive political power. The late Hugo Chavez, a multi-term elected President, eventually ushered in socialism, anti-capitalism, and a radical left-wing ideology. The "current" President, Nicolas Maduro, has continued the left-wing march towards authoritarian rule, and driven the once prosperous nation into economic ruin. According to the International Monetary Fund, the cumulative decline of the Venezuelan economy since 2013 will surpass 60 percent, and is among the deepest five-year contractions the world has seen over the last half century. There is a marked decreased in the supply of food and medicine, access to food, decreased hospital services, and increased infant deaths.

The Maduro regime has consistently violated the human rights and dignity of the country's citizens, plundered its natural resources, exercised control over the judicial and legislative branches of government, and established a parallel, illegitimate legislative

body alongside the existing elected one. There is widespread and arbitrary repression of civil society and the democratic opposition. In March 2019, diplomatic personnel were withdrawn from the U.S. Embassy, and all U.S. consular services have been suspended. The U.S. Department of State issued a travel advisory for Venezuela declaring that U.S. citizens should not travel to Venezuela due to COVID-19, crime, civil unrest, poor health infrastructure, kidnappings, and arbitrary arrests of U.S. citizens. Caracas has been designated as being a medium-threat location for both political violence and terrorism directed at or affecting official U.S. government interests. In Venezuela, there were an estimated 16,506 murders and a rate of 60.3 violent deaths per 100,000 inhabitants during 2019. The two largest types of homicide were criminal-caused and those caused by state security forces by excessive use of force or extrajudicial execution.

His regime has provided permissive environments for terrorists, including those associated with dissidents of the Revolutionary Armed Forces of Colombia (FARC-D), the Colombian National Liberation Army (ELN), as well as Hizballah. There is a continued prominence of armed pro-government gang-militias known as “colectivos” that identify as socialist, anti-capitalist, and anti-imperialist. There are extrajudicial killings and torture by security forces; harsh and life-threatening prison conditions; and free expression of individual and the media is routinely blocked. The 2018 presidential elections were widely condemned, as they were not considered to be free or fair. Juan Guaido, an opposition leader as well as the President of the freely-elected National Assembly, assumed the position as President of Venezuela, and is recognized as such by the United States and other countries, but President Maduro, with the backing of a Cuban Security Forces, prevented President Guaido from exercising authority. There is pervasive corruption and impunity among security forces and at the highest levels of state and national government.

Before the United States suspended diplomatic operations in Venezuela, the United States was Venezuela’s largest trading partner. In March 2020, the U.S. Department of Justice charged President Maduro and other current and former Venezuelan officials with offenses related to narco-terrorism, corruption, and drug trafficking.

While the official U.S. commentary regarding Venezuela focuses on corruption, human rights violations, and terrorist activities, there is little, if any, evidence that Venezuela is an active participant in economic espionage, industrial espionage or trade secret theft, or is a violator of export-control regulations.

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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the

national interest to do so." (Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.)

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

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by "substantial evidence." "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." (ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1)) "Substantial evidence" is "more than a scintilla but less than a preponderance." (*See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994))

The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government. (*See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005))

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials." (*Egan, 484 U.S. at 531*)

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 I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

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

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

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

(a) inability to satisfy debts;

(b) unwillingness to satisfy debts regardless of the ability to do so; and

(c) a history of not meeting financial obligations.

The SOR alleged eight delinquent accounts totaling approximately $46,798. Applicant obtained his current position in November 2018, and although he contended in March 2019, that he was willing and able to pay his delinquent debts, he offered no evidence to indicate that he tried doing so. AG ¶¶ 19(a) and 19(c) have been established. Because of his previous indication of an ability to resolve his debts, and his subsequent inaction with respect to satisfying his debts, AG ¶ 19(b) has also been established.

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

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

(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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶¶ 20(b) and 20(c) minimally apply, but none of the other mitigating conditions apply. 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)). The nature, frequency, and recency of Applicant's continuing financial issues, and his failure to voluntarily and timely resolve those delinquent accounts, despite repeated promises to do so, make it rather easy to conclude that they were not infrequent and they are likely to remain unchanged, much like they have been for several years. Applicant has attributed his financial issues essentially to his divorce, custody battle, and periods of unemployment. Those repeated periods of unemployment did create financial difficulties, and his divorce and custody battles exacerbated those financial difficulties. He is also credited with taking early decisive action to resolve his financial problems when he filed for bankruptcy under Chapter 13 in December 2015. He made some favorable strides in making limited payments to the Trustee.

Notwithstanding, once the bankruptcy was dismissed in December 2016, he was no longer protected from any collection actions by his creditors. This means that the automatic stay that was in effect during the processing of the bankruptcy is no longer in place, and the creditors are free to pursue their claims against him. This fact seems to have eluded Applicant, for he is still claiming that since his debts were included in his bankruptcy, he continues to retain the protections and benefits the bankruptcy afforded him. If he wanted those protections and benefits, he should have either refiled a bankruptcy petition under Chapter 13, or converted it to a Chapter 7 bankruptcy. Furthermore, as noted above, his comments regarding the status of the unsecured debts is contrary to the facts reflected in the Trustee's Final Report which states that only one of those debts somehow was not included. Applicant's debts, whether secured or

unsecured deserved his timely attention. There is insufficient evidence to support his unverified claim that he is now addressing his secured debts. There is evidence that he did not, and does not, intend to address his unsecured debts. Moreover, since he returned to the workforce, initially and temporarily in April 2017, and then permanently in November 2018, his inactions while employed with respect to his creditors have gone unexplained. Applicant's failure to follow-up on his promises made to the OPM investigator reflect a disregard and disinterest to resolve his delinquent debts.

An applicant who begins to resolve his or her financial problems only after being placed on notice that his or her security clearance is in jeopardy may be lacking in the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests. (*See, e.g.,* ISCR Case No. 17-01213 at 5 (App. Bd. Jun. 29, 2018); ISCR Case No. 17-00569 at 3-4 (App. Bd. Sept. 18, 2018). Applicant completed his SF 86 in November 2018; underwent his OPM interview in March 2019; the SOR was issued in August 2020; and the FORM was issued in November 2020. Each step of the security clearance review process placed him on notice of the significance of the financial issues confronting him. With respect to his delinquent debts, he offered no verifiable evidence that he took any action to resolve any of those debts. By failing to address his delinquent debts since December 2016, he does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information.

Clearance decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time. Mere promises to resolve financial issues in the future, without further confirmed action, are insufficient.

The Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. (ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)) In this instance, there is no verifiable evidence, either verbally or supported by documentation, that Applicant fulfilled his promises or took any good-faith corrective actions with respect to his financial issues, to date. And, after reviewing his Response to the FORM, it is clear that does not expect to do so.

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

> In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay

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

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

Applicant's actions, or inaction since December 2016, and especially following his reemployment in 2018, under the circumstances cast doubt on his current reliability, trustworthiness, and good judgment. (*See* ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).)

Guideline B, Foreign Influence

The security concern under the Foreign Influence guideline is set out in AG ¶ 6:

> Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

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

> (a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and
>
> (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

The SOR focused on Applicant's mother's and sister's Venezuelan citizenship and residence. Applicant is bound to his family in Venezuela by mutual affection. In addition

to the citizenship and residence issues, other facts of particular note in the Government's argument in the FORM are generally as follows: the Maduro regime has consistently violated the human rights and dignity of the country's citizens, plundered its natural resources, exercised control over the judicial and legislative branches of government, and established a parallel, illegitimate legislative body alongside the existing elected one. There is widespread and arbitrary repression of civil society and the democratic opposition. There is a permissive environment for terrorists. All of these facts concerning country conditions in Venezuela demonstrate a potentially heightened risk of exploitation, coercion or duress that are present due to Applicant's close ties to his two family members who reside in Venezuela.

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." (*See* Case No. 17-00507 at 2 (App. Bd. June 13, 2018) (citing ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018))

There are safety issues for residents of Venezuela primarily because of the presence of terrorists, pervasive crime, civil unrest, poor health infrastructure, kidnappings, and arbitrary arrests. But, the mere possession of close family ties with relatives living in Venezuela is not, as a matter of law, disqualifying under the foreign influence guideline. However, if an applicant 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 sensitive information. (*See* ISCR Case No. 08-02864 at 4-5 (App. Bd. Dec. 29, 2009); ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 12 (App. Bd. Feb. 8, 2001)) These types of relationships could create a "heightened risk" of foreign inducement, manipulation, pressure, or coercion. Furthermore, as a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. (*See* ISCR Case No. 17-03450 at 3 (App. Bd. Feb. 28, 2019); ISCR Case No. 09-06831 at 3 (App. Bd. Mar. 8, 2011); 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 foreign influence 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." (*See* 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, terrorists cause 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 Venezuela with the United States, and the situation in Venezuela places a significant burden of persuasion on Applicant to demonstrate that his relationship with any family member living in Venezuela does 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 a desire to assist a relative living in Venezuela.

Foreign influence security 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)) Friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security, and 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)). But, in this instance, there is little, if any, evidence that Venezuela is an active participant in economic espionage, industrial espionage or trade secret theft, or is a violator of export-control regulations. It is simply a rogue nation that is suppressive of its citizens.

While there is no evidence that intelligence operatives, criminals, or terrorists from Venezuela seek or have sought classified or economic information from or through Applicant or his family, it would not be wise 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 Venezuela, like many countries, has a problem with terrorism. But, those terrorists in Venezuela are present to stabilize the authoritarian regime, not to engage in economic espionage, industrial espionage or trade secret theft, or to violate export-control regulations. Applicant's family in Venezuela "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." (ISCR Case No. 14-02950 at 3 (App. Bd. May 14, 2015)) Nevertheless, as noted above, because of the citizenship and residence issues of his family members; and the other facts of particular note in the Government's argument, the issues of potential foreign pressure or attempted exploitation have been raised, and AG ¶¶ 7(a) and 7(b) apply. However, further inquiry is necessary to determine the degree of "heightened risk" as well as the application of any mitigating conditions.

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

> (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, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; 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.

As noted above, at some point during the Chavez administration, there was a significant increase in authoritarian rule and the establishment of a socialist agenda. President Maduro has continued that path. Many daunting challenges remain largely because of the Cuban Security Forces, terrorists, and other unfriendly forces that continue to support Maduro and assert power and intimidation within the country. However, the Venezuelan government is not focusing on economic espionage, industrial espionage or trade secret theft. Applicant's mother and sister are merely potential targets in this war on civilized humanity. The presence of radical groups and increased levels of terrorism, violence, and insurgency in Venezuela have also been described for events (terrorism, civil unrest, and other riots) occurring on September 11, 2001, and more recently in Fort Hood, Boston, Paris, Nice, Orlando, San Bernardino, Portland, Seattle, Minneapolis, Kenosha, and New York City.

There is no evidence that Applicant's mother or sister are or have ever been political activists, challenging the policies of the Venezuelan government; that Cuban Security forces or terrorists have approached or threatened them for any reason; that the Venezuelan government or any terrorist organization have approached them; or that they currently engage in activities that would bring attention to themselves. As such, there is a reduced possibility that they would be targets for coercion or exploitation by the Venezuelan government or the terrorists, which may seek to quiet those who speak out against them. Under these circumstances, the potential heightened risk created by their residence in Venezuela is greatly diminished. Under the developed evidence, it is unlikely Applicant 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.

Applicant has substantial connections to the United States, having lived in the United States for over two decades. His wife and two children are native-born U.S. citizens residing in the United States.

Applicant has met his burden of showing there is little likelihood that relationships with his mother or sister could create a risk for foreign influence or exploitation. I am persuaded that Applicant's loyalty to the United States is steadfast and undivided, and that he has "such deep and longstanding relationships and loyalties in the U.S., that he

can be expected to resolve any conflict of interest in favor of the U.S. interest." AG ¶¶ 8(a), 8(b), and 8(c) apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at SEAD 4, App. A, ¶ 2(d):

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

Under SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis. (*See U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); *See also* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006))

Applicant is a 47-year-old employee of a defense contractor. He has been serving as an engineering manager with his current employer since November 2018. He previously worked for a variety of employers in engineering management positions, and was self-employed as an engineering consultant on several occasions. He received his GED diploma in 1991; an associate's degree in 1995; a bachelor's degree in 2007; and a master's degree in 2011. In December 2015, in an effort to address his delinquent debts, he filed for bankruptcy under Chapter 13 of the U.S. Bankruptcy Code.

The disqualifying evidence under the whole-person concept is simply more substantial and compelling. In December 2015, when he claimed to have $121,205 in liabilities, Applicant filed for bankruptcy under Chapter 13. He paid the Trustee $8,400, but stopped making additional payments, even for scheduled creditors for which claims were allowed, because his period of unemployment left him with insufficient funds to do so. The bankruptcy was dismissed on December 1, 2016. Although he subsequently regained employment, temporarily in 2017 and permanently in November 2018, he failed to readdress any of his delinquent accounts. He offered unverified claims in December 2020, that he had set up a payment plan to resolve all secured debts. He minimized the significance of the remaining unsecured debts, and he argued that they were associated with unsecured creditors who failed to file proof of claim during the bankruptcy filing. Of

the eight alleged debts in the SOR, Applicant has taken no verifiable action since December 2016 to resolve any of them.

Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his financial considerations. He has mitigated the security concerns arising from his foreign influence. *See* SEAD 4, App. A, ¶¶ 2(d)(1) through AG 2(d)(9).

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.i.:	Against 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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

_____
ROBERT ROBINSON GALES
Administrative Judge