



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



In the matter of:)
)
) ISCR Case No. 21-00285
)
Applicant for Security Clearance)

Appearances

For Government: John C. Lynch, Esq., Department Counsel
For Applicant: *Pro se*

01/31/2022

Decision

HARVEY, Mark, Administrative Judge:

Applicant honorably retired from the Marine Corps. He made significant progress resolving the five debts listed on the statement of reasons (SOR). He established a track record of debt payments. His connection to a former Saudi Arabian enlisted person began when they worked together in Saudi Arabia and ended in October 2021. Guideline F (financial considerations) and B (foreign influence) security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On August 10, 2020, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1). On March 12, 2021, the Defense Counterintelligence and Security Agency, Consolidated Adjudications Facility (CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 1)

The SOR detailed reasons why the CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to

determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline F. (Hearing Exhibit (HE) 1)

On April 5, 2021, Applicant provided a response to the SOR, and he requested a hearing. (HE 2) On December 15, 2021, the case was assigned to me. On December 17, 2021, the Defense Office of Hearings and Appeals issued an electronic notice setting his hearing on January 3, 2022. On December 20, 2021, Department Counsel provided an amended SOR adding SOR ¶ 2.a, which is an allegation under Guideline B. (HE 3) On December 20, 2021, Applicant responded to the amended SOR. (HE 3) Applicant did not object to the amendment of the SOR, and the motion to amend the SOR was granted. (Tr. 24) His hearing was held as scheduled.

At hearing, Department Counsel offered seven exhibits; Applicant objected to the information that he was aware his security clearance was previously revoked; and with that clarification accepted, Department Counsel's exhibits were accepted into evidence. (Transcript (Tr.) 20-24; GE 1-7) Applicant offered five exhibits; there were no objections; and all proffered exhibits were admitted. (Tr. 20-25; GE 1-7; AE A-E) On January 10, 2022, DOHA received a transcript of the hearing. After the hearing, Applicant provided two exhibits, and Department Counsel provided one exhibit. (AE F-G; GE 8) There were no objections, and all post-hearing exhibits were admitted into the record. (AE F-G; GE 8) The record closed on January 17, 2022. (Tr. 102; HE 4)

Legal Issues

Department Counsel requested administrative notice concerning the Kingdom of Saudi Arabia (Saudi Arabia). (Tr. 28) Applicant did not object to Department Counsel's request for administrative notice. (Tr. 30) Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 16-02522 at 2-3 (App. Bd. July 12, 2017); ISCR Case No. 05-11292 at 4 n. 1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n. 4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Department Counsel's request for administrative notice concerning Saudi Arabia is granted. Department Counsel's request is substantially quoted in the Saudi Arabia section with minor grammatical and punctuation changes and deletions, and without footnotes. Some incidents involving terrorists are omitted. Applicant had no connection to these incidents.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

Findings of Fact

In Applicant's SOR response, he admitted he incurred the debts listed in SOR ¶¶ 1.a to 1.e. (HE 2) He also admitted the allegation in SOR ¶ 2.a that he had a friendship with AK, a Saudi citizen then serving as a Saudi enlisted man. He provided mitigating information and proof of some payments to his creditors. (HE 3) Applicant's admissions are accepted as findings of fact. Additional findings follow.

Applicant is a native-born U.S. citizen who is 45 years old. (GE 1) He has been employed since July 2020 as a maintenance controller working in the Middle East (not Saudi Arabia) for an ally of the United States on high-performance fighter aircraft sold to the Middle Eastern country by U.S. companies under the Foreign Military Sales program. (Tr. 31) He served on active duty in the Marine Corps from 1987 to 2007. (Tr. 7) He honorably retired as a staff sergeant (E-6). (Tr. 7) He did not receive any disciplinary actions in the Marine Corps such as nonjudicial punishment or written reprimands. (Tr. 7-8) He served two tours in Iraq. (Tr. 8) In 1987, he earned a high school diploma. (Tr. 7) He has two years of college; however, he does not have a degree. (Tr. 7) In 2013, he married his spouse in Saudi Arabia, and his children with his spouse are ages four, seven, and eight years old. (Tr. 10) His wife and children are living in Australia. (Tr. 10)

Financial Considerations

On January 16, 2003, the Department of the Navy Central Adjudication Facility issued Applicant a letter of intent (LOI) to revoke security clearance, which raised security concerns under Guidelines E (personal conduct) and F (financial considerations). (GE 5 at 3) The 2003 SOR alleged that Applicant failed to disclose any delinquent accounts on his October 11, 2000 SCA. (GE 5 at 5) His 2003 SOR also alleged his November 8, 2000 credit report indicated: he had two accounts that were previously at least 120 days past due; one paid judgment; two paid collection accounts; and three delinquent collection accounts for the following amounts: \$260; \$1,089; and \$679. (GE 5 at 5) Applicant did not respond to the 2003 LOI; and his security clearance was revoked on January 3, 2004. (GE 5 at 1) Applicant said he was deployed to Iraq when his clearance was revoked, and he was never informed that his security clearance was revoked. (GE 2 at 2)

In 2013, Applicant was injured in a traffic accident in Saudi Arabia. He incurred medical bills and lost part of his salary when he was unable to work. (Tr. 85-87) In 2015, he had back surgery, and he missed five months of work. (Tr. 89; SOR response) Applicant's father-in-law, who lives in Australia, had medical problems. Applicant funded his spouse and children's travel from Saudi Arabia to Australia four times to enable his spouse could care for her father. (Tr. 61, 76-79; SOR response) In 2016, he only received partial pay for six months because his employer was having difficulty with renewing a contract in Saudi Arabia. (Tr. 90-91; GE 2 at 2)

In August 2019, Applicant traveled to Australia for 21 to 30 days. (Tr. 72) It cost about \$2,800 for him to travel from Saudi Arabia to Australia and return to Saudi Arabia. (Tr. 79) In July 2019, Applicant returned to the United States for treatment of a heart ailment, and he missed work for 10 months. (Tr. 36, 88-90; GE 1; HE 2) He received the

medical treatments for his heart from the Department of Veterans Affairs (VA). (Tr. 36) His only source of income while unemployed was his Marine Corps retirement. (*Id.*)

In May 2020, Applicant started working with his creditors. (Tr. 66-67) In June 2020, he began working for a large U.S. contractor supporting a foreign air force at an overseas location. (GE 1 at 14; Tr. 38) In August 2020, he completed his SCA, and he indicated he planned to resolve his delinquent debts as soon as his employment became stable. (GE 1) In September 2020, he had his Office of Personnel Management (OPM) personal subject interview (PSI), and he related that he was using automatic payments to pay one large debt. (GE 2) He promised to establish payment arrangements with his other creditors. (*Id.*) Applicant's June 15, 2021 credit report shows eight accounts in paid status, and six accounts in collection or charged-off status. (GE 3) He has not taken any international travel away from his place of employment since July 2020. (Tr. 82)

The SOR alleges Applicant has five delinquent accounts totaling \$61,148, as follows:

SOR ¶ 1.a is a charged-off credit union debt for \$19,375. Applicant's credit reports indicate the account was opened in October 2015 (account ending in 89). (Tr. 52-53; GE 3 at 7; GE 4 at 2) He started to miss payments in May 2018. (Tr. 53; GE 4) Applicant's Marine Corps retirement check is deposited into the credit union identified in SOR ¶ 1.a, and the credit union uses the funds to make payments to address the two credit union debts in SOR ¶¶ 1.a and 1.c. (Tr. 62, 67)

On July 31, 2021, the creditor offered to settle the \$13,765 balance for a single payment of \$3,441; however, Applicant did not pay the settlement amount. (AE C at 3) Applicant provided receipts showing the following payments to address the account in SOR ¶ 1.a.

Date of Payment	Amount of Payment	Balance	Exhibit
October 2, 2020	\$683	\$18,693	SOR response at 7-8
November 4, 2020	\$330	\$18,363	SOR response at 10, 12
December 2, 2020	\$512	\$17,851	SOR response at 13
January 8, 2021	\$463	\$17,131	SOR response at 14
February 27, 2021	\$372	\$16,469	SOR response at 16, 17
May 29, 2021	\$989	\$14,115	AE C at 1
June 5, 2021	\$350	\$13,765	AE C at 2
August 3, 2021	\$350	\$13,415	AE C at 3-5
September 1, 2021	\$775	\$12,640	AE C at 6-7
October 13, 2021	\$452	\$12,187	AE C at 8-9
October 30, 2021	\$589	\$11,599	AE C at 10
November 16, 2021	\$279	\$11,320	Tr. 56; AE C at 11-12; GE 7 at 3

SOR ¶ 1.b is a charged-off credit card debt for \$19,323. (Tr. 57-59; AE A; GE 7 at 4) On April 6, 2021, the creditor offered to settle the debt for a single payment of \$1,932,

or two \$966 payments which were required to be made on May 5, 2021, and on June 4, 2021. (AE A at 1) On May 18, 2021, the creditor offered to settle the debt for a single payment of \$2,898, or two \$1,449 payments which were required to be made on June 16, 2021, and on July 16, 2021. (AE A at 2) On June 28, 2021, the creditor wrote that Applicant authorized a \$1,449 payment by phone on June 28, 2021. (AE A at 3) The creditor said a check would be sent to Applicant for the second \$1,449 payment. (*Id.*) It is unclear why the creditor would send a check to Applicant unless there was another account with the creditor. (AE A at 3) On June 29, 2021, the creditor offered to settle the debt for a single payment of \$2,898, or two \$1,449 payments which were required to be made on July 28, 2021, and on August 27, 2021. (AE A at 4) The June 29, 2021 letter indicated the amount of the debt was reduced to \$17,874. (*Id.*) On June 29, 2021, and July 5, 2021, the creditor wrote that one payment of \$1,449 was due on July 16, 2021, to resolve the debt, and the payment would be made using a credit card. (AE A at 5-6) On July 27, 2021, the creditor wrote the final payment was received in accordance with the settlement agreement; however, if the payment was returned for any reason the account would go into default. (AE A at 7)

On July 29, 2021, the creditor wrote the settlement agreement was cancelled “because of missed or returned payments,” and the debt would be turned over to a collection agency. (AE A at 8) Applicant provided a spreadsheet showing two payments to the creditor: on June 28, 2021, he paid \$1,449; and on January 9, 2022, he paid \$894. (AE F) All of the letters from the creditor cite the same account number. Applicant said he made both of the payments to settle the debt. (Tr. 57-59, 100-101) I requested that Applicant provide documentation showing the second payment to the creditor. (Tr. 91-93) He provided a spreadsheet which shows the \$1,449 payment and the \$894 payment; however, the spreadsheet does not show the balance or available funds on August 27, 2021, when the final payment was due. (AE F) He did not provide proof of a payment in August 2021. Applicant’s failure to make the second payment may have been due, at least in part, to having his mail sent to his mother’s residence in the United States, and she only sent his mail to the Middle East once a month. (GE 2 at 2; AE A, address on correspondence from creditor is his mother’s address) The balance owed as of January 9, 2022, is \$16,980. (GE 7 at 4)

SOR ¶ 1.c is a charged-off credit union debt for \$14,545. The debt originated from a vehicle loan (the account number ends in 05). (Tr. 65-66) The following table shows the payments and balance on the SOR ¶ 1.c account.

Date of Payment	Amount of Payment	Balance	Exhibit
July 3, 2020	\$650	\$15,240	SOR response at 6
October 31, 2020	\$164	\$13,818	SOR response at 9
November 7, 2020	\$164	\$13,818	SOR response at 11
February 8, 2021	\$250	\$13,118	SOR response at 15
May 29, 2021	\$100	\$11,036	AE D at 1
July 1, 2021	\$399	\$10,637	AE D at 2
July 9, 2021	\$777	\$9,860	AE D at 3
July 31, 2021	\$589	\$9,271	AE D at 4; GE 7 at 4
December 8, 2021	\$748	\$8,523	Tr. 59; AE G

SOR ¶ 1.d is bank debt placed for collection for \$5,823. On June 3, 2021, Applicant and the creditor agreed that he would pay \$400 monthly from June 2021 to April 2022, to resolve the \$5,823 debt. (Tr. 55; AE B at 1) He provided seven receipts and showed that as of October 2021, he had reduced the balance owed to \$3,823. (AE B at 2-8) According to his most recent credit report, his balance is \$3,023. (Tr. 63; GE 7 at 1-2)

SOR ¶ 1.e is a collection debt for \$2,082. Applicant provided a spreadsheet showing nine \$200 payments made on a monthly basis from April 15, 2021, to December 15, 2021. (Tr. 63; AE F) The balance of the debt on December 15, 2021, is \$282.

Through payments, Applicant reduced the balances on his five SOR debts by a total of \$21,020. The most recent balances of the five debts are indicated in the following table.

SOR ¶¶	Month of Most Recent Balance	SOR Balance	Current Balance
1.a	November 2021	\$19,375	\$11,320
1.b	January 2022	\$19,323	\$16,980
1.c	December 2021	\$14,545	\$8,523
1.d	October 2021	\$5,823	\$3,023
1.e	December 2021	\$2,082	\$282
Total		\$61,148	\$40,128

Foreign Influence

SOR ¶ 2.a alleges Applicant has a friend, AK, who is a citizen and resident of Saudi Arabia who serves or served in the Royal Saudi Air Force.

From 2009 to 2018, Applicant worked in Saudi Arabia for several U.S. contractors in support of the Saudi Air Force. (Tr. 35; GE 1) From 2012 to 2016, he worked closely with AK, who was Applicant's supervisor when he worked at an air base in Saudi Arabia. (Tr. 17, 39; GE 1 at 23-24) AK was enlisted in the Saudi Air Force. (GE 1) Applicant enjoyed recreational activities with AK and others in the mountains or deserts during off-duty time. (Tr. 40, 49) After leaving the employment where he worked closely with AK, Applicant and his family continued to live in Saudi Arabia, and they socialized with AK and his family. (Tr. 41-42) For example, they went shopping and had dinner together in restaurants. (Tr. 41-42)

In 2017, Applicant moved his family from Saudi Arabia to Australia because he was concerned about the conflict between Saudi Arabia and the Houthis in Yemen. (Tr. 75-77; SOR response) See Administrative Notice. His spouse is a citizen of Australia, and she is not a citizen of the United States. (Tr. 75-77) In 2017, his spouse was unable to obtain a Visa to the United States in a timely manner. (Tr. 75) She did not return to Saudi Arabia after 2017. (Tr. 77) She has never traveled to the United States. (Tr. 97-98) Applicant, his spouse, and children intend to eventually move to the United States. (Tr. 98)

The last time Applicant physically met AK was in 2018. (Tr. 42) The last time he received a communication from AK was in October 2021 on social media. (Tr. 43, 46-47) There were about 15 Saudis in the same social media group. (Tr. 47)

AK left the Saudi Air Force, and he currently works for a U.S.-owned company that does work for the Saudi Arabian Air Force providing maintenance support on U.S.-manufactured aircraft in Saudi Arabia. (Tr. 44-45) AK was trained in the United States by a large defense aerospace contractor. (Tr. 45) Applicant does not believe that AK had any connections to intelligence entities. (Tr. 45-46) No Saudi ever asked Applicant to do anything inappropriate or to provide any sensitive information. (Tr. 48) He does not have any property or bank accounts in Saudi Arabia. (Tr. 49) He does not owe any money to anyone in Saudi Arabia. (Tr. 50)

Saudi Arabia

The Kingdom of Saudi Arabia is a monarchy ruled by King Salman bin Abdulaziz Al Saud, who is both head of state and head of government. The 1992 Basic Law sets out the system of governance, rights of citizens, and powers and duties of the government, and it provides that the Quran and Sunna (the traditions of the Prophet Muhammad) serve as the country's constitution. It specifies that the rulers of the country shall be male descendants of the founder, King Abdulaziz (Ibn Saud).

The U.S. Department of State has issued a Level 4 Travel Advisory regarding Saudi Arabia, advising U.S. travelers not to travel to Saudi Arabia due to COVID-19 ... reconsider travel to Saudi Arabia due to the threat of missile and drone attacks on civilian facilities, and exercise increased caution in Saudi Arabia due to terrorism. The U.S. Department of State advises not to travel within 50 miles of miles of the Saudi-Yemen border, as well as to the cities of Abha, Jizan, Najran, and Khamis Mushayt; the Abha airport; and Qatif in the Eastern Province and its suburbs, including Awamiyah due to missile and drone attacks and terrorism.

Missile and drone attacks perpetrated by Iran and Iran-supported militant groups represent a significant threat. The Islamic Republic of Iran has supplied Yemen-based Houthis and other regional proxy groups with weapons to conduct destructive and sometimes lethal attacks using drones, missiles, and rockets against a variety of Saudi sites, including critical infrastructure, civilian airports, military bases, and energy facilities throughout the country, as well as vessels in Red Sea shipping lanes. Recent attacks were aimed at targets throughout Saudi Arabia, including Riyadh, Jeddah, Dhahran, Jizan, Khamis Mushayt, the civilian airport in Abha, Al Kharj, military installations in the south, as well as oil and gas facilities. U.S. citizens living and working near military bases and critical civilian infrastructure, particularly near the border with Yemen, are at heightened risk of missile, drone, and rocket attacks.

Terrorist groups continue plotting possible attacks in Saudi Arabia. Terrorists may attack with little or no warning, targeting tourist locations, transportation hubs, markets/shopping malls, and local government facilities. Terrorists have targeted both

Saudi and Western government interests, mosques and other religious sites (both Sunni and Shia), and places frequented by U.S. citizens and other Westerners.

Militant groups in Yemen have attacked Saudi border towns and other sites in Saudi Arabia with armed drones, missiles, and rockets. Civilians that are near the border with Yemen are especially at risk. Terrorist groups continue plotting possible attacks in Saudi Arabia including in Qatif.

Saudi Arabia suffered from numerous terrorist incidents in 2019 (the most recent year for which the U.S. State Department's report was published). Terrorist incidents included both external attacks by Iranian and Houthi actors and small-scale attacks, largely perpetrated by lone offender actors including, ISIS sympathizers. Militants instigated violence using IEDs, gunfire, and UAS. [Several representative attacks in 2019 in Saudi Arabia were omitted.]

On December 6, 2019, a member of the Royal Saudi Air Force opened fire in a classroom at Naval Air Station Pensacola in Florida, killing three and wounding eight. The gunman, 2nd Lt Mohammed Saeed Alshamrani, was a student who was receiving training at the base. The FBI later noted that Alshamrani had coordinated with al-Qaeda in the Arabian Peninsula (AQAP) before the terrorist attack, for which the latter claimed credit.

In an August 31, 2021 press statement, the U.S. Department of State condemned a recent Houthi attack against Saudi Arabia that struck the civilian airport in Abha, wounding eight civilians and damaging a commercial airliner. The statement noted that since the beginning of the year, Saudi Arabia has endured more than 240 attacks from the Houthis, who have endangered the Saudi people alongside more than 70,000 U.S. citizens residing in Saudi Arabia.

Significant human rights issues in Saudi Arabia in 2020 included: unlawful killings; executions for nonviolent offenses; forced disappearances; torture and cases of cruel, inhuman, or degrading treatment of prisoners and detainees by government agents; harsh and life threatening prison conditions; arbitrary arrest and detention; political prisoners or detainees; serious restrictions on free expression, the press, and the internet, including threats of violence or unjustified arrests or prosecutions against journalists, censorship, site blocking, and engaging in harassment and intimidation against Saudi dissidents living abroad; substantial interference with the freedom of peaceful assembly and freedom of association; severe restrictions of religious freedom; restrictions on freedom of movement; inability of citizens to choose their government peacefully through free and fair elections; violence and discrimination against women, although new women's rights initiatives were implemented; trafficking in persons; criminalization of consensual same-sex sexual activity; and restrictions on workers' freedom of association, including prohibition of trade unions and collective bargaining.

On February 11, 2021, the U.S. Office of the Director of National Intelligence assessed that Saudi Arabia's Crown Prince Muhammad bin Salman approved an operation to capture or kill journalist Jamal Khashoggi. The report noted the Crown Prince's support for using violent measures to silence dissidents abroad. It also stated

that the Crown Prince had absolute control of the Kingdom's security and intelligence operations.

On February 26, 2021, the U.S. Department of State announced "Khashoggi Ban," a new visa restriction policy pursuant to section 212(a)(3)(C) of the Immigration and Nationality Act. It further announced that it was imposing visa restrictions on 76 Saudi individuals believed to have been engaged in threatening dissidents overseas, including but not limited to the Khashoggi killing.

Character Evidence

Applicant received the following Marine Corps awards: Navy and Marine Corps Commendation Medal; Combat Action Ribbon (Operation Iraqi Freedom); Joint Meritorious Unit Award; Navy Unit Commendation (3); Navy Meritorious Unit Commendation; Marine Corps Good Conduct Medal (6); National Defense Service Medal (2); Armed Forces Expeditionary Medal (East Timor); Southwest Asia Service Medal (2); Global War on Terrorism Expeditionary Medal (Operation Iraqi Freedom); Global War on Terrorism Service Medal; Korean Defense Service Medal; Sea Service Deployment Ribbon (10); Kuwait Liberation Medal (Kuwait); Kuwait Liberation Medal (Saudi Arabia); Meritorious Mast (5); Letter of Commendation; and Letter of Appreciation (2). (AE E) He received two marksmanship badges and completed numerous training courses. (AE E)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified

information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. 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.

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

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

AG ¶ 19 includes disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; and "(c) a history of not meeting financial obligations."

In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions. Discussion of the disqualifying conditions is contained in the mitigation section, *infra*.

The relevant financial considerations mitigating conditions to this case under AG ¶ 20 are as follows:

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

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

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit

counseling service, and there are clear indications that the problem is being resolved or is under control;

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

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

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

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

Applicant described several circumstances beyond his control, which adversely affected his finances. He had multiple medical problems which caused periods of unemployment and resulted in some medical bills. His father-in-law had medical problems, and Applicant's spouse traveled to Australia several times to care for her father. Applicant sent his family to Australia in 2017 because of the conflict between Saudi Arabia and Yemen's Houthi rebels. He flew to Australia several times to be with his family.

In June 2020, Applicant was re-employed as a maintenance controller working in the Middle East (not Saudi Arabia). The record shows that he began payments to some of the SOR creditors in October 2020. On March 12, 2021, the SOR was issued. His Marine Corps retirement pay went to the credit union holding the two largest SOR debts. He reduced the balances of his five SOR debts from \$61,148 to \$40,128.

In ISCR Case No. 06-14521 at 2 (App. Bd. Oct. 15, 2007) the Appeal Board noted "Applicant's only voluntary efforts at debt repayment occurred close to the date of the hearing;" nevertheless, the Appeal Board affirmed the grant of security clearance because of that applicant's good faith efforts to establish payment arrangements or pay delinquent debts. The Appeal Board based their decision on application of AG ¶ 20(d), and 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) in order to claim the benefit of [the “good faith” mitigating condition].

ISCR Case No. 06-14521 at 2 (App. Bd. Oct. 15, 2007) (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)).

More recently, the Appeal Board has said, “an applicant who resolves financial problems after being placed on notice his or her security clearance may be in jeopardy may lack the judgment and self discipline to follow rules and regulations over time or when there is no immediate threat to his own interests.” ISCR Case No. 17-01213 at 5 (App. Bd. June 29, 2018) (citing ISCR Case No. 14-05476 at 4 (App. Bd. Mar. 25, 2016)). See *also* ISCR Case No. 20-01510 at 4 (App. Bd. July 14, 2021) (reversing grant of security clearance where Applicant used debt consolidation loan to pay several debts after SOR was issued). This notice could be in the form of completion of an SCA, OPM PSI, or SOR. Applicant had multiple reasons for his failure to keep five accounts in current status. In June 2020, he obtained his current employment, and he started working with his creditors.

In sum, AG ¶¶ 20(b) and 20(d) apply. Applicant started working on establishing payment plans as soon as he became re-employed in June 2020, well before he received the SOR, and he is progressing toward resolution of the five SOR debts. His actions show sufficient effort, reasonableness, good judgment, trustworthiness, reliability, and good faith. Applicant mitigated financial considerations security concerns.

Foreign Influence

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

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

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

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

Applicant's contacts with AK create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion" and "a potential conflict of interest between [his] obligation to protect classified or sensitive information or technology and [his] desire to help a foreign person, group, or country by providing that information or technology." When Applicant first met AK, he was an enlisted person in the Saudi military. Saudi Arabia has a significant problem with terrorism and violations of civil rights.

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

For Guideline B cases, "the nature of the foreign government involved and the intelligence-gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the [Administrative] 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 (App. Bd. 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 relationships with anyone living in that country are vulnerable to foreign 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, terrorism causes a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The relationship of Saudi Arabia with the United States and the situations in that country involving terrorists and criminals place a significant burden of persuasion on Applicant to demonstrate that his contacts with AK do not pose a security risk because of the risks of attempts to influence him emanating from Saudi Arabia. Applicant should

not be placed into a position where he might be forced to choose between loyalty to the United States and concerns from entities in Saudi Arabia.

The issue in this case is whether Applicant's ties and contacts with foreign officials or residents create a potential vulnerability that a foreign entity could seek to exploit in an effort to get unauthorized access to U.S. classified information. Guideline B security or trustworthiness concerns are not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

While there is no evidence that intelligence operatives or terrorists from or in Saudi Arabia or have sought classified or economic information from or through Applicant, nevertheless, it is not prudent to rule out such a possibility in the future. Applicant's contacts with a resident in that country "could be a means through which [an a]pplicant comes to the attention of those who seek U.S. information or technology and who would attempt to exert coercion upon him." ADP Case No. 14-01655 at 3 (App. Bd. Dec. 9, 2015) (citing ISCR Case No. 14-02950 at 3 (App. Bd. May 14, 2015)).

Applicant's contacts with AK and through him to foreign government officials or terrorists in Saudi Arabia create a potential conflict of interest because those officials could place pressure on Applicant in an effort to cause Applicant to compromise classified information. Those relationships create "a heightened risk of foreign inducement, manipulation, pressure, or coercion" under AG ¶ 7(a). Department Counsel produced substantial evidence of Applicant's relationship with AK, a former Saudi enlisted person, which raises the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns in 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;

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

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

As indicated in the disqualifying conditions Foreign Influence section, *supra*, Applicant had multiple contacts with AK, a former Saudi enlisted man currently residing in Saudi Arabia. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has significant connections to the United States. He is a native-born U.S. citizen. He served in the U.S. Marine Corps for 20 years. He honorably retired as a staff sergeant. His spouse and children live in Australia, not Saudi Arabia. Applicant no longer works in Saudi Arabia. He has not had any in-person contact with AK since 2018, and his last social media contact was in October 2021. AK works for a U.S. subsidiary in Saudi Arabia. AK was trained in the U.S. by a U.S. aerospace company. He has been entrusted with working on U.S. manufactured aircraft.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationship with AK, a former Saudi Arabian enlisted man. According to the Government's Administrative Notice regarding Saudi Arabia, in 2019, there were 70,000 U.S. citizens living or working in Saudi Arabia. Like Applicant when he worked in Saudi Arabia, many of them work for U.S. companies providing military support to the Saudi military. Many of them have daily contact with Saudi military personnel in the course of their employment. Applicant lived in Saudi Arabia from 2009 to 2018, and he worked with, formed a friendship with, and socialized with AK. He continued to communicate with AK after leaving Saudi Arabia. However, he had no in-person contact with AK after 2018, and his last communication from AK was via social media in October 2021, before he received the Supplemental SOR on December 20, 2021. Applicant's connections to AK are much less significant than his strong connections to the United States. Foreign influence security concerns under Guideline B are mitigated.

Whole-Person Concept

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

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

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

Applicant is 45 years old, and he has been employed since July 2020 as a maintenance controller working in the Middle East (not Saudi Arabia) for an ally of the United States on high-performance fighter aircraft sold to the Middle Eastern country under the Foreign Military Sales program. He served on active duty in the Marine Corps from 1987 to 2007. He honorably retired as a staff sergeant. While in the Marine Corps, he served two tours in Iraq.

Applicant had multiple contacts with AK, a former military enlisted person in the Saudi Arabian military. These actions raise significant foreign influence security concerns. A Guideline B decision concerning Saudi Arabia must take into consideration the geopolitical situation and dangers in that country. See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion). Saudi Arabia is a dangerous place because of violence from terrorists and criminals, and Saudi Arabia does not respect the full spectrum of human rights. Terrorists have the ability to aggressively target the United States to obtain an advantage over the United States.

Applicant's years of Marine Corps service, including the dangers that service entailed, weigh towards mitigating security concerns. He has shown his patriotism, loyalty, and fidelity to the United States during his 20 years of Marine Corps service and post-Marine Corps retirement support to a DOD contractor. He served two tours in Iraq and received a Combat Action Badge as well as numerous other Marine Corps awards and ribbons.

In ISCR Case No. 17-00629 at 4 (App. Bd. May 24, 2018), the Appeal Board cogently explained the relevance of service in a combat or hostile fire zone on behalf of the United States:

Such evidence demonstrates that Applicant has repeatedly been willing to assume a high level of risk on behalf of the U.S. and shows his [or her] ties and sense of obligation to the U.S. could be sufficiently strong enough to support a favorable application of mitigating condition 8(b). See ISCR Case

No. 05-03846 at 6 (App. Bd. Nov 14, 2006). . . . See *also* ISCR Case No. 04-12363 at 2 (App. Bd. Jul. 14, 2006); ISCR Case No. 07-00034 at 2-3 (App. Bd. Feb. 5, 2008); and ISCR Case No. 10-02803 at 6 (App. Bd. Mar. 19, 2012).

Applicant has a documented history of service in a combat zone. His 20 years of Marine Corps service increase the probability that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit him. See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008). I have no doubt that Applicant would not succumb to any pressure or coercion to compromise classified information, and he would report any such attempts.

Applicant had a period of unemployment that ended in June 2020. He started making payments to his creditors in July 2020. Through payments to the five SOR creditors after July 2020, he reduced the balances of his five SOR debts from \$61,148 to \$40,128. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

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

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted).

Applicant understands what he needs to do to maintain his financial responsibility. His efforts at debt resolution have established a "meaningful track record" of debt repayment. I am confident he will maintain his financial responsibility.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude financial considerations and foreign influence security concerns are mitigated, and eligibility for access to classified information is granted.

Formal Findings

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

Paragraph 1, Guideline F:	For APPLICANT
Subparagraphs 1.a through 1.e:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances in this case, it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Mark Harvey
Administrative Judge