



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



In the matter of:)
)
-----) ISCR Case: 21-01837
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esquire, Department Counsel
For Applicant: *Pro se*

August 2, 2022

Decision

ROSS, Wilford H., Administrative Judge:

Applicant has filed all of his Federal income tax returns for tax years 2015, 2017, and 2019. Applicant’s dilatoriness was due to conditions related to his working overseas, rather than an intent to avoid taxes. Resulting security concerns were mitigated. Applicant has also mitigated the security concerns related to his now wife (Ms. A), formerly fiancée, who is from the Philippines. Based upon a review of the pleadings, Applicant’s Answer, and the record evidence, national security eligibility for access to classified information is granted.

Statement of Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on June 6, 2021. (Item 3.) On October 25, 2021, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines F (Financial Considerations) and B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of

Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective within the Department of Defense on June 8, 2017.

Applicant answered the SOR in writing with attachments (Answer) on December 27, 2021, and requested his case be decided on the written record in lieu of a hearing. (Item 2.) In his Answer Applicant admitted both allegations in the SOR with explanations. On March 11, 2022, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 5, was provided to Applicant, who received the file on March 28, 2022. Items 1 through 5 are hereby entered into evidence.

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant elected not to submit any additional information. The case was assigned to me on June 21, 2022. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is granted.

Procedural Rulings

The Government requested I take administrative notice of certain facts relating to the Republic of the Philippines (the Philippines). Department Counsel provided a five-page summary of the facts, supported by excerpts from five Government documents pertaining to the Philippines, identified as Administrative Notice - I (AN - I). The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant is 41 years old, a native-born American citizen, and recently married to Ms. A. At the time the SOR was issued Applicant was engaged to Ms. A. He has a high school education and has been employed by a defense contractor since 2007. (Answer; Item 3 at Sections 1-4, 12 and 13A.)

Paragraph 1 (Guideline F - Financial Considerations)

The Government alleged in this paragraph that Applicant is ineligible for clearance because he has failed to meet his financial obligations and is therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

Specifically, the Government alleged that Applicant had not filed his 2015, 2017, or 2019 Federal tax returns as required. Applicant admitted the sole allegation under this guideline. He also submitted additional information to support the granting of national security eligibility.

Applicant answered DOHA interrogatories on May 25, 2021. With regard to his tax situation he stated:

For the years that I didn't file my taxes (2015, 2017, 2019) I was working overseas in [Country One] (2015), [Country Two] and [Country Three] (2017), and [Country Four] (2019). I had difficulty with obtaining my W2s overseas and in the case of 2017, when I was living on . . . Island off of the coast of Country Three, I had actually filled out my return but wasn't able to e-file it and I wasn't aware of any reliable way of mailing it from the village there. I pre-paid \$1,200 on my 2015 tax return because I knew I might have difficulty getting taxes filed on time. For 2019 we had just merged with another company and my W2, which was no longer available online, was not sent to me in [Country Four]. I had planned to get all of my back taxes taken care of when I returned to the States in 2020 but I just got so busy with setting up two new . . . Training Centers and then getting Covid that it kind of got put on the back burner. On January 31, 2021 I got in contact with a tax accountant from . . . Tax Services to get myself caught up. I am now all caught up on my tax returns through 2020. As an overseas worker I qualified for the Foreign Earned Income Exclusion during 2014, 2015, 2017, 2019 and 2020. I knew that I would be getting a refund so there were never any financial concerns about my ability to pay my taxes. For tax years 2016 and 2018 I was back in the USA at tax time and I was able to file my returns on time. (Item 5 at 2-3.) (See Item 3 at Section 11.)

Turning to the specific tax years at issue:

2015 - IRS records dated May 25, 2021, show that Applicant made an estimated tax payment of \$1,200 on April 14, 2015, for the 2015 tax year. (Item 4 at 5.)

2015 - IRS records dated December 27, 2021, show that Applicant's 2015 Federal tax return was received on June 9, 2021. Those records further show that after applying various credits Applicant had no balance owed for that year. (Answer at 40.)

2017 - Applicant submitted a letter dated May 19, 2021, from his tax accountant with attached tax documents. Those documents, Applicant's Form 1040 and schedules, show that after applying various credits Applicant was due to receive a substantial refund from the IRS. (Answer at 4-34.)

2019 - IRS records dated December 27, 2021, show that Applicant's 2019 Federal tax return was received on May 19, 2021. Those records further show that after applying

various credits Applicant was due to receive a substantial refund from the IRS. (Answer at 35-39.)

Paragraph 2 (Guideline B - Foreign Influence)

The Government alleges in this paragraph that Applicant is ineligible for national security eligibility because he has foreign contacts that may 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.

The SOR alleged that Applicant's fiancée (Ms. A) is a citizen the Philippines. She and Applicant are now married. He admitted this allegation in his Answer stating, "My fiancée and now wife, is from the Philippines but she does not ask me about the nature of my work and I don't discuss it."

Applicant first reported contact with Ms. A on his 2020 e-QIP under Section 19, "Foreign Contacts." At the time they met, in August 2019, Ms. A was living in Country Four, as was Applicant. He reported daily contact with her to his security officer at that time. (Item 3 at Section 19.)

Applicant was subsequently interviewed by an investigator from the Office of Personnel Management (OPM) on August 10, 2020. Applicant informed the investigator that he was now engaged to Ms. A and intended to sponsor her entry into the United States. Applicant further stated that he had reported his Ms. A to his security office. (Item 4 at 3.)

The Philippines

Applicant's wife is from the Philippines. Therefore, it is appropriate to examine the situation with regard to the Philippines. The Philippines is a multiparty, constitutional republic. There are serious issues with terrorism in certain parts of the Philippines, and the State Department recommends that American citizens not travel to those areas. Department Counsel submitted evidence that certain individuals were criminally convicted for violating United States laws regarding exports of munitions. There are reports of human rights violations by parts of the Philippines government.

The Philippines has been a United States ally for many years, dating back to the signing of the Mutual Defense Treaty on August 30, 1951. Most recently, an article from the Defense Department website dated April 18, 2022, stated, "Secretary of Defense Lloyd J. Austin III and Philippine Defense Secretary Delfin N. Lorenzana met today at the Pentagon to strengthen the deep alliance between the two countries." (Jim Garamone, *U.S., Philippines Look at Ways to Strengthen Alliance*, <https://www.defense.gov/News/News-Stories/Article/Article/3002700/us-philippines-look-at-ways-to-strengthen-alliance/> (accessed July 10, 2022)).

The United States/Philippines alliance was also the subject of the 9th United States-Philippines Bilateral Strategic Dialogue. The Department of Defense was represented by Assistant Secretary of Defense Ely S. Ratner. The State Department subsequently issued a statement that begins:

The United States and the Philippines reaffirm our commitment to a partnership of sovereign equals. We resolve to uphold and reinforce our special relationship by holding steadfast to our shared democratic values, enhancing our mutual security and defense capabilities, and working together to meet the common challenges that we will face in the future. We resolve to further fortify our mutual trust and respect, ensuring that the relationship remains relevant and mutually beneficial in the face of the changing geopolitical landscape and the emergence of new challenges and opportunities, especially those brought about by the COVID-19 pandemic. (Office of the Spokesperson, Department of State, *Joint Vision for a 21st Century United States-Philippines Partnership*, <https://www.state.gov/joint-vision-for-a-21st-century-united-states-philippines-partnership/> (November 16, 2021) (accessed July 10, 2022).

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing 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 applicable guidelines in the context of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires, "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

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

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. The Government reposes a high degree of trust and confidence in individuals to whom it grants national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline F - Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes one condition that could raise security concerns and may be disqualifying in this case:

(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay Federal, state, or local income tax as required.

Applicant failed to timely file Federal income tax returns, as required, for tax years 2015, 2017, and 2019. These facts establish *prima facie* support for the foregoing disqualifying condition and shift the burden to Applicant to mitigate those concerns.

The guideline includes one condition in AG ¶ 20 that could mitigate the security concerns arising from Applicant's failure to timely file tax returns:

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant had been delinquent in filing his tax returns due to the fact that he was living overseas during tax filing season for those years and had difficulties filing the tax returns. He did file his taxes in the intervening years because he was in the United States at tax time. The facts show that Applicant had prepared or filed all of his tax returns months before the date of the SOR, and had taken responsible steps to ensure that he paid more than sufficient funds to the IRS in advance of each of the pertinent filing deadlines. Applicant fully mitigated the concerns over his income tax return issues. Paragraph 1 is found for Applicant.

Paragraph 2 (Guideline B – Foreign Influence)

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

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

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Three are arguably applicable in this case:

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

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and

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

Applicant's wife, formerly his fiancée, is a citizen of the Philippines. The above disqualifying conditions apply and shift the burden to Applicant to mitigate them.

The Philippines has internal issues that may be of concern to the United States. Accordingly, Applicant's family connections to that country have the potential to generate a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a). The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. (See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).)

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

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

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

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

Applicant's wife is from the Philippines, which is a major and long-standing United States ally. While there is some concern over terrorism, Department Counsel has not

submitted any evidence that the government of the Philippines has attempted to influence or coerce Americans. Indeed, as recently as April of this year the Secretary of Defense has reiterated the desire of the United States to improve relations with the Philippines. Also of note is the fact that Applicant consistently and timely reported his growing relationship with Ms. A while preparing his e-QIP, during an interview with OPM, to his security office, and in his Answer to the SOR. Based on the available evidence the possibility of foreign influence in this case is minimal to none. Applicant has completely mitigated the security significance of his connections to the Philippines. Paragraph 2 is found for Applicant.

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 relevant 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant provided sufficient evidence to show that he has resolved his tax issues, and that they will not recur in the future, and that they were under circumstances that negate resulting security concerns. He has also mitigated any possible adverse foreign influence of his Filipino-born wife. The potential for pressure, exploitation, or duress has been resolved. Overall, the evidence does not create substantial doubt as to Applicant's judgment, eligibility, and suitability for a national security eligibility. Applicant has met his burden to mitigate the security concerns arising under the guidelines for Financial Considerations and Foreign Influence.

Formal Findings

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

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

Conclusion

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

Wilford H. Ross
Administrative Judge