



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



In the matter of:)
)
) ADP Case No. 20-02075
)
Applicant for Public Trust Position)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

05/03/2023

Decision on Remand

MURPHY, Braden M., Administrative Judge:

This case involves trustworthiness concerns raised under Guidelines B (foreign influence) and F (financial considerations). Eligibility for assignment to a public trust position is granted.

Procedural History

On October 10, 2019, Applicant submitted an electronic Questionnaire for Investigations Processing (e-QIP) in connection with his application for a position of public trust. (Item 3) On October 13, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline B (foreign influence) and Guideline F (financial considerations). The CAF issued the SOR under Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the National Security Adjudicative Guidelines (AG), which became effective within DOD on June 8, 2017.

On November 13, 2021, Applicant responded to the SOR and elected a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) based on the administrative (written) record. Department Counsel provided Applicant a copy of the Government’s File of Relevant Material (FORM) on February 9, 2022.

Applicant responded on April 5, 2022. (FORM Response 1) The supporting documents submitted by each party are discussed below.

On September 23, 2022, DOHA Administrative Judge Noreen Lynch issued a decision in which she denied Applicant eligibility for a position of public trust. Applicant appealed, and on December 6, 2022, the DOHA Appeal Board issued a decision remanding the case to a different DOHA administrative judge for reprocessing. (ADP Case No. 20-02075, (App. Bd. Dec. 6, 2022)) (Appeal Board Decision)

The final paragraph of the Appeal Board's decision included the following instructions:

Applicant should be provided the opportunity to request a hearing. Under Directive ¶ E3.1.35, the Judge assigned the case is required to issue a new clearance decision. (Appeal Board Decision at 7)

On January 6, 2023, the case was assigned to me. On January 11, 2023, I held a conference call with the parties, which I summarized in an e-mail. During the call, as required by the Appeal Board, I gave Applicant the opportunity to elect a hearing, and he did so (confirming it later by e-mail). Applicant, who at the time lived in California, also advised that he was soon to take a new job in the Persian Gulf region. A hearing date of February 22, 2023, was tentatively arranged, pending confirmation of specifics after he moved. (Hearing Exhibit (HE) I)

On January 31, 2023, having arrived in the Persian Gulf, Applicant advised that he no longer worked for an employer requiring him to have either a security clearance or a trustworthiness determination. He therefore sought to withdraw his request for a determination of his eligibility, since the unfavorable determination (by Judge Lynch) had been vacated. In response, Department Counsel asserted that DOHA retained jurisdiction, relying on ¶¶ 4.4 and 4.4.2 of the Directive, since a clearance decision had been issued. (E-mail correspondence, HE II)

After considering the matter, I issued an Order on February 6, 2023, confirming that DOHA retained jurisdiction, due to the issuance of the Appeal Board's clearance decision, which vacated Judge Lynch's decision, and the Appeal Board's instruction quoted above. I also vacated the tentative February 22, 2023 hearing date, and gave Applicant another opportunity to clarify his choice of forum. (Feb. 6, 2023 Order, HE III)

On February 14, 2023, Applicant elected to revert to his choice of a decision on the administrative (written) record, without a hearing. (HE IV). Department Counsel then sought and received permission to submit an updated FORM (with, at my request, an updated Administrative Notice regarding Tunisia, and an updated credit report). (HE V)

Department Counsel submitted the updated FORM on February 27, 2023. (FORM 2) Applicant received FORM 2 on March 9, 2023. Once he received it, I called his attention to certain matters addressed in the FORM that he was directed to answer, among them an Amendment to the SOR, and a question as to the admissibility of the

summary of his background interview. I also noted that he had an opportunity to object to the Government's new documents, and to submit additional evidence. (HE VI)

Applicant responded on April 10, 2023, with a narrative statement (FORM Response 2) and three additional documents that he submitted on April 10 and April 14, 2023. He also raised some evidentiary matters that I addressed in an April 13, 2023 e-mail, discussed below. (HE VII) I closed the record on April 18, 2023. (HE VIII)

Additional Procedural Rulings

The Government's original FORM included documents marked as Items 1 through 6. Items 1 and 2 are the original SOR and Applicant's original Answer. They are the pleadings in the case and are not evidentiary exhibits. Item 3 is his e-QIP application for a position of public trust. Items 4 and 5 are Applicant's credit bureau reports (CBRs) dated December 2021 and January 2020, respectively. Item 6 is the summary of his February 24, 2020 background interview. The Government's updated FORM included a February 27, 2023 CBR, which I have marked as Item 7.

Applicant's original FORM Response included three documents: Applicant's Exhibit (AE) A is a "Property Order Attachment to Judgment" relating to his divorce. AE B and AE C are Applicant's paystubs from his employer from April 8, 2022 and March 7, 2021, respectively.

With his updated FORM Response, Applicant provided three additional documents. AE D is a May 2021 letter to Applicant from the IRS regarding allocation of a portion of a federal tax refund to satisfy another federal debt. AE E is an e-mail from Applicant explaining AE F and AE G, which are screenshots regarding his 2022 state and federal tax refunds.

In FORM Response 2, Applicant objected to admission of Item 6, under ¶ E.3.1.20 of the Directive. Item 6 is therefore not admitted, and I will not consider it in making my decision. He objected to Items 4 and 5 on the grounds that the CBRs are outdated. That objection is overruled, and Items 4 and 5 are admitted, as set forth in HE VII. Items 3 and 7 are admitted without objection. All of Applicant's exhibits (AE A through AE G), along with his two FORM responses, are admitted without objection. (Applicant also objected to "admission of the updated FORM," but that is an argument by Department Counsel and not part of the record evidence).

Requests for Administrative Notice

With both FORMs, Department Counsel submitted written requests that I take administrative notice of certain facts about Tunisia. (Administrative Notice (AN) I and AN II). Without objection, I have taken administrative notice of certain facts contained in the requests that are supported by source documents from official U.S. Government publications. Where appropriate, I have taken notice of updated and current information from the State Department website, consistent with my obligation to make assessments based on timely information in cases involving foreign influence. ISCR Case No. 05-

11292 at 4 (App. Bd. Apr. 12, 2007) (“Decisions in Guideline B cases should be made to the greatest extent possible in the context of current political conditions in the country at issue.”) As appropriate, the administratively noticed facts are summarized in the Findings of Fact, below.

Motion to Amend the SOR

In FORM 2, pursuant to ¶¶ E3.1.13 and E3.1.17 of the Directive, Department Counsel moved to amend two SOR allegations. He moved to amend SOR ¶ 1.e, based on Applicant’s Answer, so that it now reads as follows:

- 1.e: You provide approximately \$500 per month to your mother-in-law, who is a citizen and resident of Tunisia, to pay your wife’s expenses so that the Tunisian government does not take legal action against her or her parents.

Department Counsel amended SOR ¶ 2.a, based on his Answer and on earlier record evidence, to read as follows:

- 2.a: You are indebted to [an auto financing creditor] on an account that has been charged off in the approximate amount of \$29,100. As of the date of this Statement of Reasons, the account remains delinquent.

Based on their support in the record evidence and since Applicant had an opportunity to answer both amended allegations, the amendments to the SOR are GRANTED. However, I read Applicant’s statements in FORM Response 2 as including denials to both allegations.

Findings of Fact

In his Answer to the original SOR, Applicant admitted the Guideline B allegations at SOR ¶¶ 1.a - 1.d and denied SOR ¶ 1.e, all with explanations. He denied all of the Guideline F allegations (SOR ¶¶ 2.a - 2.n, all with explanations. I construe his statements in FORM Response 2, to include denials of the amended allegations at SOR ¶¶ 1.e and 2.a. Applicant’s admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 43 years old. He married his first wife in 2002. They separated in 2014 and divorced in September 2019. (AE A) He has a son and a daughter, both teenagers, with his first wife. (Item 3) He states several times that he and his first wife had a difficult relationship. He asserts that she was addicted to drugs, that he had a restraining order against her, and that she impacted his finances negatively during their separation. Applicant remarried in October 2019. His two children live with him and his second wife. He currently works at an overseas location. (Items 2, 3; FORM Responses 1 and 2)

Applicant earned a bachelor's degree in April 2022. (FORM Responses 1 and 2) Between 1997 and 2014, he served in the Marine Corps on active duty, and in reserve status in the Air National Guard. He retired from the Marine Corps in 2014 and was discharged honorably. (Item 3) After leaving the military in September 2014, Applicant worked for several years in a variety of jobs in the defense industry, both in the United States and overseas. (Item 3; FORM Response 1) He resigned from his job with a defense contractor at a naval air station in the western United States in February 2023. (FORM Response).

As noted in the procedural history of this case, above, Applicant has now relocated to the Persian Gulf, where he has taken a job outside the defense industry, a job for which he needs neither access to classified nor sensitive information. Since this case was remanded by the Appeal Board for a new decision, however, DOHA retains jurisdiction over the case even if Applicant is no longer sponsored for classified or sensitive access, as also discussed above.

Few details about Applicant's current employment situation are known. He does not identify his employer, except to say that "I work overseas representing US interests." (FORM Response 2). He provided no details of his income or salary, or other terms of his new employment.

Guideline B

The foreign influence allegations under Guideline B concern Applicant's connections to Tunisia through his wife and her family.

Applicant's wife is a Tunisian citizen. (SOR ¶ 1.a) At the time he submitted his e-QIP (October 2019) she was applying for a U.S. immigrant visa. (Item 3 at 30) More recently, Applicant indicates in FORM Response 2 that she is a legal permanent resident of the United States, and she now qualifies for expedited citizenship through his status as a spouse regularly employed abroad. She has relocated to the United States, and he says she will join him in his overseas location once she obtains U.S. citizenship in an estimated 6-12 months. (FORM Response 2) He noted in FORM Response 1 that his wife operated a physical therapy clinic in Tunisia until 2016.

Applicant asserts that his wife's loyalty to Tunisia extends only to food and sports. She loves America and the American way of life and embodies the sacred national values of "life, liberty and the pursuit of freedom." She is willing to renounce her Tunisian citizenship once she obtains U.S. citizenship. Applicant himself has no allegiance or loyalty to Tunisia except for his wife's family, who are "would-be Americans" born with the wrong passports. He asserts, essentially, that Tunisia is not a security concern because it is a small country that does not often make world news and will never be able to recover economically from its historical status as a French colony. He notes that the murder rate in Tunisia is less than in the U.S., and much less than in Mexico (where he says, "no one is denied a clearance for having close ties.") (FORM Responses 1 and 2; Answer) (This last statement is not necessarily true, but since the

consideration of Applicant's eligibility here is not a comparative exercise, it is also not something that needs to be addressed further.)

Applicant's mother-in-law and father-in-law are citizens and residents of Tunisia. (SOR ¶ 1.b) He disclosed them both on his e-QIP and noted that he and his mother-in-law do not speak the same language, so communication was through his wife. (Item 3 at 37) He and his mother-in-law later had a falling out, and he says they no longer communicate. (Answer) He said his father-in-law is a "decent guy," but they do not understand each other, so communication is difficult. (Answer) He provides no indication in the FORM Responses about any more recent interactions.

Applicant's sister-in-law is a citizen and resident of Tunisia. (SOR ¶ 1.c) He says in his Answer that they met twice on vacations to Tunisia a number of years ago, and that "[I] don't much care for her." (Answer) He provides no indication in the FORM Responses about more recent interactions.

Applicant's brother-in-law is a Tunisian citizen, allegedly living in Kuwait. (SOR ¶ 1.d) On his e-QIP, Applicant reported that his brother-in-law lived there and worked for a commercial airliner. He said they were friends. (Item 3 at 39-40) In his Answer, Applicant said his brother-in-law had relocated to the United States. Applicant let his brother-in-law live with him (and his wife) but asked him to move out for being a "freeloader." The brother-in-law chose to remain in the United States rather than return to Tunisia, where he says job opportunities are few. Applicant does little more than exchange "pleasantries" with him. (Answer) He provides no indication in the FORM Responses about more recent interactions.

In SOR ¶ 1.e, the Government alleges that Applicant sends \$500 a month to support his mother-in-law in Tunisia. As amended, SOR ¶ 1.e now includes the allegation that this money is "to pay your wife's expenses so that the Tunisian government does not take legal action against her or her parents." This is based on Applicant's Answer, in which he explained that the money concerns a car loan that his wife took out in Tunisia before they met, as well as "back taxes" on her failed physical therapy business that she closed in 2016. (Answer) He explained further that he made the payments on his wife's behalf essentially to avoid legal trouble that might result if they did not pay the debt. He asserted in FORM Response 1 that he would no longer send money to Tunisia since it suggested a security concern. (FORM Response 1) Applicant reaffirmed in FORM Response to that his wife no longer has debt in Tunisia and that he no longer sends money there. (FORM Response 2)

Applicant gives no indication in FORM Response 2 of any recent travel to Tunisia by either himself or his wife. He asserts that if he were the subject of coercion or threats by his Tunisian family (or, one presumes, someone else), he would "break contact and alert authorities." He took the job overseas to provide for his family. He loves his country and is proud of his Marine Corps service. He loves God, his mother and family, and American values, and would never betray the country. (FORM Response 2)

Guideline F

The financial portion of the SOR concerns 13 delinquent debts, initially totaling about \$65,000 (SOR ¶¶ 2.a-2.m), plus a wage garnishment (SOR ¶ 2.n). Applicant denied all of the debts in the original SOR, with brief explanations. (Items 1, 2) He provided some documents with his two FORM Responses, to be addressed below.

The existence of the SOR debts is established by the credit reports in the record, from January 2020 (Item 5) and December 2021. (Item 4) The Government included a current credit report, from February 2023, with FORM 2. (Item 7) The specific SOR debts are addressed below.

SOR ¶ 2.a is a debt that has been charged off by auto financing creditor C. The Government amended the amount owed from \$46,000 to \$29,100. (FORM Response 2) The account is listed as charged off (for \$29,186) in October 2014 on the January 2020 credit report. (Item 5 at 8) Applicant denied the debt, asserting that it was the responsibility of his former wife through their divorce settlement. (Item 2)

On his 2019, e-QIP, Applicant disclosed two repossessed autos, both financed by creditor C. One was his car, a 2014 leased German auto. It was repossessed after the separation because he could not afford to support two households. Another was his ex-wife's 2014 sport utility vehicle (SUV) that was in his name but which was assigned to her in the divorce. (Item 3 at 64-65)

AE A is a "Property Order Attachment to Judgment" relating to Applicant's divorce. It notes that he and his first wife married in May 2002 and separated in February 2014. AE A references a sport utility vehicle (SUV), the debt for which is fully assigned to the respondent (his ex-wife). The "Judgment" to which AE A refers as an "Attachment" is likely the Judgment of Divorce (from 2019), but it is not included in the record here. No other related documents are included. It is not entirely clear that this is the same debt referenced in the SOR, but it is likely so, since Applicant's other 2014 car was a leased vehicle.

SOR ¶ 2.b (\$1,961) is a debt owed to an unidentified medical creditor, a debt listed as past due as of January 2020. The date of last activity is June 2014, and it was assigned to collections in August 2015. (Item 5) Applicant denied the debt, asserting that no member of his family had incurred a \$1,900 medical debt.

SOR ¶¶ 2.g (\$322) and 2.j (\$160) are medical accounts placed for collection. (Item 5) The (same) collection agency is identified, but in each case the medical creditor is not. Applicant asserted that his ex-wife had incurred the debts in his name, without his knowledge or approval after they divorced, in violation of an order relating to the divorce settlement.

SOR ¶ 2.c (\$1,635) is an account placed for collection by a military retailer or creditor. It was assigned in May 2011 and reported for collection in December 2019

(Item 5) Applicant asserts in his answer that he paid it in full in May 2021, though this is not documented. It is not listed on his most recent CBR. (Item 7)

SOR ¶ 2.d (\$931) is an account placed for collection by an apartment complex, probably for unpaid rent or other related fees. It was placed for collection in January 2020. (Item 5) Applicant asserted in his Answer that he disputed the debt and said it was removed from his credit report. It is not listed on later CBRs.

SOR ¶ 2.e (\$550) is an account placed for collection by a cable or internet company. (Items 4, 5) Applicant asserted in his Answer that he disputed the debt, and it was removed from his credit report. It is not listed on his most recent CBR. (Item 7)

SOR ¶ 2.f (\$484) is an account placed for collection by a phone company. (Item 5) Applicant asserted in his Answer that he disputed the debt, and it was removed from his credit report. It is not listed on his most recent CBR. (Item 7)

SOR ¶ 2.h (\$241) is an account placed for collection by a cable company. (Item 5) Applicant denied the debt, and said he had never heard of the company. It is not listed on his most recent CBR. (Item 7)

SOR ¶ 2.i (\$191) is an account placed for collection in 2019 by a school district. (Item 5) Applicant asserted that this debt is his ex-wife's responsibility, as it relates to school supplies for their children, supplies that she lost. It is not listed on his most recent CBR. (Item 7)

SOR ¶ 2.k (\$117) is an account placed for collection by a phone company. (Item 5) Applicant denied this debt, asserting that he has never had an account with this phone company. It is not listed on his most recent CBR. (Item 7)

SOR ¶ 2.l (\$7,000) concerns delinquent federal income taxes for tax years (TY) 2017 and 2018. Applicant denied owing any past-due federal taxes for TY 2018. He acknowledged in his Answer that his 2017 federal income tax return remained unfiled because his ex-wife "won't disclose her earnings in the hopes of getting me in trouble with the IRS." (Item 2)

Applicant disclosed on his 2019 e-QIP that he had failed to file his 2017 state and federal tax returns, and he reported that he owed about \$7,000 or \$8,000 combined. He asserted that he was having issues with his ex-wife (they were still married in TY 2017) because she "was refusing to let me claim both of my kids" as dependents. He said he worked in a tax-free zone at the time and did not expect to have to pay taxes. He filed his taxes and began a payment plan of about \$1,000 a month for eight months to resolve the debt. He also said he had gained full custody of his children. (Item 3 at 61-63)

In FORM Response 1, Applicant says "I still owe back taxes for 2017 but I'm waiting for a total and a settlement agreement." He has hired a "tax defense" firm to assist him. He says again that he worked in a tax-free zone in the Persian Gulf region

during all of 2017 as a defense contractor. He asserts ignorance with the process of fixing this problem, which is why he sought professional assistance. He notes that his wages are no longer being garnished. (FORM Response 1; AE B, AE C)

With FORM Response 2, Applicant provides a May 2021 letter from the U.S. Treasury Department. It appears to concern a payment made (or owed) by the IRS to Applicant and his wife on May 19, 2021. It is probably a tax refund. The amount of the payment is \$4,360. The letter also says that “we applied your payment to debt that you owe to the following agency . . .” The “agency” listed is a military exchange service. The debt owed is unclear, but \$2,014 (of Applicant’s tax payment, or refund) was applied to it, as a “Non-Tax Federal Debt.” (AE D) (This “Non-Tax Federal Debt” is not discussed elsewhere in the record, and it is not alleged in the SOR.). Further, AE D does not indicate that any portion of the \$4,360 payment was redirected to pay any other federal debt, such as past-due taxes from a prior tax year (such as 2017 or 2018, as alleged).

Applicant also attached to FORM Response 2 a screen shot to show a \$3,065 refund on his 2022 federal taxes. (AE E) A subsequent deposit into his bank account is not reflected.

SOR ¶ 2.m (\$5,500) concerns delinquent state income taxes for the same years. Applicant denied owing state income taxes to his home state, both in his Answer and in FORM Response 1. He says he was mistaken about owing state income taxes. The support for the \$5,500 figure alleged in SOR ¶ 2.m is not clearly established. Applicant disclosed owing state and federal taxes on his e-QIP of a combined total of about \$7,000 or \$8,000. (Item 3) He now asserts that he does not owe anything to the state. While it is possible that he owes state taxes for 2017 (since his federal return is unfiled) this is not clearly established.

Further, with FORM Response 2, Applicant provided a screenshot from his phone reflecting that a 2022 state tax refund of \$1,435, had been deposited into his bank account. From this, it can be inferred that he does not owe (or no longer owes) any past-due state tax debt, since if he did, the refund would have been captured to address it. (AE F)

SOR ¶ 2.n alleges that Applicant’s wages at his employer, company A, at the naval air station “were garnished in about November 2019, in the approximate amount of \$600, bi-weekly. As of the date of this Statement of Reasons, the garnishment has not been completed.” (Item 1) The creditor related to the garnishment is not identified in the record. In his Answer, Applicant denies SOR ¶ 2.n, noting that “I neither work for [company A] nor have any wages garnished.” (Item 2) AE B and AE C are Applicant’s paystubs from a subsequent employer, Company P, from April 8, 2022 and March 2021, respectively. No garnishment is indicated. This allegation is not established in the record evidence before me, and even if so, the garnishment is resolved.

Applicant’s most recent credit report in the record is from late February 2023. (Item 7) It shows one credit account that has been charged off in the amount of \$1,168. The account was opened in May 2021, last payment in September 2021, and reported

in February 2023. (Item 7 at 4) Another account was charged off for \$679 in February 2023. (Item 7 at 5) The other 10 accounts listed are all in “pays as agreed” status. (Item 7)

In FORM Response 2, Applicant addresses the question, “Can you explain your debt and unpaid taxes?” He was employed from 2019 to 2022, but also attending school. Some months he earned about \$8,000, others about \$5,000, with impacts of school, illness, injury, and quarantining for COVID (three times, for two weeks each time. His injuries resulted from his Marine Corps service or his later job as a mechanic at the naval air station. (FORM Response 2)

Applicant acknowledged that he “racked up debt on multiple credit cards.” He was making only minimum payments on one account. He could not afford to pay the others (about \$1,600). He hoped to build his credit but got behind and could not afford to pay them. He used one card (about \$5,000) for utilities and living expenses and could not afford to pay the minimum balance. He ran out of GI Bill money. His income was also cut in half, making it difficult to feed and shelter his family. (FORM Response 2)

Applicant’s finances have improved now that he has begun his job overseas. He says he earns about \$5,000 every two weeks (about \$10,000 per month). His rent for the home where his wife and children live in the U.S. is \$1,925 per month. He has \$640 a month in car payments. He is beginning to get caught up on addressing his debt. He still is settling his federal tax debt with the IRS, and he does not intend to contest what he is told he owes. (FORM Response)

Tunisia is a constitutional republic with a multiparty, unicameral parliamentary system and a democratically elected president. Tunisia held its first democratic elections in 2014, and in October 2019, the country held parliamentary and presidential elections resulting in the first democratic transition of power. Kais Saied, an independent candidate without a political party, was elected president.

The Government’s Administrative Notice materials from the State Department detail several terrorist attacks in 2020. The risk of terrorist activity remained high, exacerbated by sustained instability in Libya. Counterterrorism and border security continued to be top priorities of the Government of Tunisia in 2021. Tunisia works to professionalize its security apparatus in partnership with the United States. The State Department’s 2021 Country Reports on Terrorism for Tunisia, available at <https://www.state.gov/reports/country-reports-on-terrorism-2021/tunisia>, contains substantially similar information, while noting a decline in terrorist activity.

Significant human rights issues reported in 2021 included: reports of unlawful or arbitrary killings by security forces; allegations of torture by government agents; arbitrary arrests and detentions of suspects under antiterrorism or emergency laws; undue restrictions on freedom of expression and the press, including criminalization of libel; widespread corruption, although the government took steps to combat it; societal violence and threats of violence targeting lesbian, gay, bisexual, transgender, and intersex persons; criminalization of consensual same-sex sexual conduct that resulted

in arrests and abuse by security forces; and the worst forms of child labor. The State Department's 2022 Human Rights Report for Tunisia, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/tunisia>, detailed substantially similar information.

In October 2022, the U.S. Department of State issued a Level 2 travel advisory for Tunisia, advising U.S. nationals exercise increased caution when travelling to Tunisia due to terrorism.

Policies

It is well established that no one has a right to a security clearance, or, as here, to a determination of public trust. As the Supreme Court held in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), “the clearly consistent standard indicates that [trustworthiness] determinations should err, if they must, on the side of denials.”

When evaluating an applicant's eligibility for a public trust position, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to sensitive information.

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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

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

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

A person who seeks access to sensitive 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 access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Guideline B, Foreign Influence

AG ¶ 6 details the security concern about “foreign contacts and interests” as follows:

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 indicates conditions that could raise a security concern and may be disqualifying in this case:

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

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

(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; and

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

The nature of a nation's government, its relationship with the United States, and its human-rights record are relevant in assessing the likelihood that an applicant's family members 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, a family member or friend is associated with or dependent upon the government, the country is known to conduct intelligence collection operations against the United States, or if the foreign country is associated with a risk of terrorism.

A heightened security risk is established by the administratively noticed facts about Tunisia in the record, due to human rights issues and the risk of terrorism.

Applicant's wife (SOR ¶ 1.a) remains a Tunisian citizen, though she now lives in the United States, and she intends to continue pursuing U.S. citizenship. She lives with her husband and his children (even though he has taken a job overseas, he remains financially responsible for the household). AG ¶ 7(e) applies to her.

Applicant's mother-in-law, father-in-law, and sister-in-law are citizens and residents of Tunisia. (SOR ¶¶ 2.b, 2.c) His brother-in-law now lives in the United States (and not in Kuwait) but remains a Tunisian citizen. (SOR ¶ 2.d) His brother-in-law's U.S. immigration status is unclear, but he no longer lives under Applicant's roof. AG ¶¶ 7(a) and 7(b) apply to them, as well as to Applicant's wife.

AG ¶ 7(f) is not established. Applicant reaffirmed in FORM Response 2 that his wife no longer has debt in Tunisia and that he no longer sends money there. SOR ¶ 2.e is found for Applicant.

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

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

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

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

Applicant's wife remains a Tunisian citizen, but she now lives with Applicant in the U.S. Her parents remain in Tunisia, as does her sister, but Applicant has little interaction with them, and a limited relationship. He took in her brother to help him out, but the brother overstayed his welcome and now lives elsewhere (still in the U.S). Applicant seems to have little current contact with him. There is no indication that Applicant or his wife have recently returned to Tunisia.

There is some evidence of a heightened risk trustworthiness concern with Tunisia, given terrorism and human rights issues, but that concern is rather generalized. It is also lessened here by Applicant's limited contacts with Tunisia, despite family relationships there. Even so, he is not close to them. His wife presumably is closed to her family, which is understandable.

Applicant is a retired Marine and longtime U.S. Government contractor. His life is here and his assertions of his love for his country and family are doubtlessly genuine. It is unlikely that Applicant would be placed in a position of having to choose between his family and the interests of the United States. I have no concerns that he would put the country at risk if family pressures were brought upon him. AG ¶¶ 8(a), 8(b), and 8(c) apply, and foreign influence trustworthiness concerns about his family connections with Tunisia are mitigated.

Guideline F, Financial Considerations

The trustworthiness 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 [trustworthiness] concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that an individual might knowingly compromise classified (or sensitive) information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified (or sensitive) information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise financial trustworthiness concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file . . . annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant denied all of the debts alleged in the SOR. He thereby put the burden on the Government to establish them. The Government did that and met its burden for most of the debts alleged, since most of them were either listed on the CBRs from 2020 or 2021. AG ¶¶ 19(a) and 19(c) apply to SOR debts ¶¶ 2.a through 2.k.

Applicant also disclosed state and federal income tax debt on his e-QIP. Those references establish at least a prima facie case that those tax debts occurred. As to SOR ¶¶ 2.l and 2.m, AG ¶¶ 19(a), 19(c), and 19(f) apply.

SOR ¶ 2.n concerns an unidentified wage garnishment. Applicant denied the allegation and later provided pay stubs with his FORM Response to establish that his wages were not being garnished. It is not established by the record evidence before me that his wages were ever garnished, and even if so, that is no longer the case. SOR ¶ 2.n is found for Applicant.

The mitigating conditions for the financial considerations guideline are set forth in AG ¶ 20. The following mitigating conditions potentially apply:

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

(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 attributes several of the debts to his first wife, who he says incurred expenses during their several years of separation and attributed them to him. He denied all of the debts in the SOR on that and other grounds.

Applicant asserts that two of the medical debts (SOR ¶¶ 2.g, and 2.i) are his ex-wife's responsibility. The largest medical debt (SOR ¶¶ 2.b, for \$1,961), which Applicant denied, is not sufficiently identified to enable him to research it.

Applicant said he paid debt SOR ¶ 2.c in May 2021. This is not documented, but the debt is also not listed on his most recent CBR.

Applicant disputes many of the other SOR debts, including SOR ¶¶ 2.d, 2.e, 2.f. He does not recognize others (SOR ¶¶ 2.h and 2.k) or believes his ex-wife is responsible (SOR ¶ 2.i) There is no documentation to support his assertions, so AG ¶ 20(e) does not fully apply, because an applicant who disputes debts is expected to document the dispute and provide evidence of his efforts to resolve it. However, none of the disputed debts are listed on a current credit report.

The auto debt at SOR ¶ 2.a (now for \$29,100) is documented as being assigned to Applicant's ex-wife in the divorce settlement. It is not Applicant's debt. AG ¶ 20(e) fully applies to that debt, the largest in the SOR by far.

Applicant no longer owes any past-due state income taxes. He received a refund for 2022, and he documented that it was accepted and deposited into his account. SOR ¶ 1.m is resolved. SOR ¶ 1.l concerns \$7,000 in past-due federal taxes for 2017 and 2018. The figure comes from what Applicant self-reported on his e-QIP and is not otherwise clearly documented. He says he is settling his federal tax debt with the IRS, and he does not intend to contest what he is told he owes. He provided documentation suggesting that he no longer owes any past-due federal income tax debt from TY 2017 or 2018. (He also asserts that his 2017 federal tax return remains unfiled, due to an ongoing dispute with his ex-wife, probably over claiming their children as dependents. This is not alleged in the SOR, but it weighs against mitigation as an ongoing, unresolved tax issue). I nonetheless conclude that Applicant's tax issues are related to his contentious divorce and that he is addressing them. AG ¶ 20(g) applies.

The debts and taxes in the SOR, all of which Applicant denies, are largely attributable to his period of separation and divorce, at the end of what appears to be a difficult marriage. Applicant also acknowledges subsequent problems with his finances, in that he used credit cards to pay expenses. By his own admission, he is still digging out, and hopes to use his current job overseas to continue his path towards financial stability. Importantly, his current credit report shows few delinquencies. This tends to support his assertions that his financial issues are largely in the past. I conclude that AG ¶¶ 20(a), 20(b), and 20(d) all apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance or position of public trust 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a position of public trust must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and F in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility for access to sensitive information. Applicant has established that he is a suitable candidate for access to sensitive information and a position of public trust.

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

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant's access to sensitive information. Eligibility for access to sensitive information and for a position of public trust is granted.

Braden M. Murphy
Administrative Judge