DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 21-02533
	)	
Applicant for Security Clearance	)	

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: Brittany Forrester, Esq.

09/22/2023

_____

Decision

_____

MURPHY, Braden M., Administrative Judge:

In January 2019, Applicant was arrested on multiple counts of credit card fraud, larceny, and conspiracy. She later pled guilty to two lesser offenses. In February 2019, she was charged in another state with felony theft and identity fraud. The February 2019 charges remain outstanding and unresolved, as does a related active bench warrant for Applicant's arrest, which remains outstanding as of the close of the record. Applicant's accomplices in these offenses are Cuban nationals. Applicant was also terminated from a job in 2016 after misusing a corporate credit card. Financial considerations security concerns relate not only to the above circumstances but also to delinquent debts, some of which have been paid but many of which are unresolved, including over $100,000 in federal student loans. Applicant's conduct is unmitigated and continues to cast doubt on her reliability, trustworthiness, and judgment. She did not provide sufficient information to mitigate security concerns relating to criminal conduct, foreign influence, or financial considerations. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 27, 2020, in connection with her employment in the defense industry. (GE 1) On February 1, 2022,

following a background investigation, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (CAS) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline J (criminal conduct), Guideline F (financial considerations), and Guideline B (foreign influence). The CAF issued the SOR under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Security Executive Agent Directive 4 (SEAD 4) *National Security Adjudicative Guidelines* (AG), which became effective on June 8, 2017.

Applicant received the SOR on February 4, 2022. (HE III) Through counsel, she answered the SOR on February 22, 2022, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on April 18, 2023. On May 18, 2023, DOHA issued a notice scheduling the hearing for June 14, 2023, with the hearing to occur via video-teleconference through an online platform.

The hearing convened as scheduled. Department Counsel submitted Government's Exhibits (GE) 1 through 21, along with three documents for administrative notice (AN) purposes (AN I and AN II) and three Hearing Exhibits (HE I, HE II, and HE III). (Tr. 13-21) Applicant testified and submitted 35 documents, marked as Applicant's Exhibits (AE) A through AE II. (Tr. 22-30) (AE A through AE X were submitted with her Answer to the SOR). All exhibits were admitted without objection. At the end of the hearing, I held the record open to enable Applicant the opportunity to submit additional information.

On July 6, 2023, Counsel subsequently submitted five new documents, marked as AE JJ through NN. AE KK, LL, MM, and NN are admitted without objection. AE JJ is a 2015 lease for the home where Applicant lived in Puerto Rico when she worked there. Department Counsel objected to AE JJ because it is in Spanish and not in English, and no translation was provided. (An addendum, regarding property remaining in the home when she left, is in English.) While this is correct, the objection is overruled, though I will consider AE JJ for the limited purpose of documenting the fact that Applicant lived in Puerto Rico for a period of time, as also established by other record evidence.

DOHA received the hearing transcript (Tr.) on June 27, 2023. The record closed on July 6, 2023, following receipt of Applicant's post-hearing submissions.

Administrative Notice

Department Counsel requested that I take administrative notice of certain facts about Cuba. The supporting documentation is marked as AN I. The relevant facts are addressed in the Findings of Fact, below. Department Counsel also requested that I take administrative notice of an IRS document about the U.S. territory of Puerto Rico. (AN II) (Tr. 13-14)

Motion to Amend the SOR

At the close of the evidence, Department Counsel moved to amend the SOR by adding an allegation under Guideline F as follows:

> 2.bb: You failed to file a federal income tax return for tax year 2015, as required. As of June 14, 2023, the return had not been filed.

The motion was largely based on Applicant's testimony at hearing. (Tr. 92-93, 117-118; GE 9 at 36, 39) Applicant did not object to the motion, but requested and received time after the hearing to submit mitigating information. (Tr. 124-129)

Findings of Fact

In her Answer to the SOR, Applicant denied SOR ¶¶ 1.a and admitted ¶ 1.b under Guideline J, with explanations. Under Guideline F, she partially admitted and partially denied the cross-allegation at SOR ¶¶ 2.a, she admitted the conduct at SOR ¶ 2.b, and she admitted all of the debts alleged, (SOR ¶¶ 2.c – 2.aa), all with explanations. Under Guideline B, she partially admitted and partially denied SOR ¶ 3.a, and she denied SOR ¶ 3.b, both with explanations. 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 40 years old. She married in 2013 and was divorced from her husband in April 2021. She has a 23-year-old son from a previous relationship. She earned a bachelor's degree in 2009 and a master's degree in 2013. (GE 1, GE 9 at 51; Tr. 31-33, 48-49)

Applicant has worked as a federal contractor since at least 2005. She worked for one company from 2005-2008 and with another contractor from 2008 until 2014, both in State 1. In mid-2014, she moved to Puerto Rico with her family, for a job there with federal contractor H. She held that job, in Puerto Rico, from mid-2014 until March 2016, when she was fired for misusing a corporate credit card, as discussed below. (GE 1 at 20-22, 55-56, Tr. 32-33)

After losing her job, Applicant returned to the mainland United States, moving to State 2. (Tr. 84-85) She was briefly unemployed, until May 2016. She then worked for contractor C for several months, until she was hired by contractor R as a direct employee in November 2016. She worked there for about a year, until moving to contractor L in November 2017. She remains with contractor L, her current clearance sponsor, as a senior systems engineer. (GE 1 at 14-20; Tr. 31-33) She has held a clearance since at least 2008 or earlier. (Tr. 31, 69-70)

In March 2016, Applicant was terminated from company H for misusing a corporate credit card. (SOR ¶ 2.b) She explained in her background interview and in her Answer that she used her corporate card at a local grocery store to buy food for a

barbeque with other company employees. She said each employee's purchases were within the company's daily limit for credit card use. When she was questioned later, she said she used the card to buy herself food for a barbeque. She was accused of buying food for others, which was against company policy. She was later terminated. (GE 9 at 4; Answer;) Applicant said she never received a termination letter from company H. (GE 9 at 52)

Government Exhibit 8 is a February 8, 2022 e-mail from a security manager at company H to Department Counsel. It likely responds to an inquiry for additional information and company documents about the matter. The security manager's e-mail references information "that I was provided by our legal department." This information includes "admissions" from Applicant that she a) charged over $4,100 in personal expenses on her company H corporate card; b) gave her corporate card to her husband "to charge personal expenses in her absence;" and c) "misled her manager regarding her physical location during work hours." (GE 8) However, there are no supporting documents provided in the record from the company to corroborate any of these "admissions."

Applicant said she received an e-mail alert from the credit card company about possibly fraudulent charges. She then reported the matter to her employer. She said, "once I found out it was my husband who did it, I paid it all off." (Tr. 45) She was still fired from her position, and she said it was because she used the company card for buying people food, in preparation for a company barbeque, as she said in her Answer. She said other company H employees were terminated for similar conduct. (Tr. 44-47) She has not had similar allegations of credit card misuse with other employers. (Tr. 47)

On her SCA, Applicant disclosed that she had a roommate, Mr. H, a Cuban citizen with U.S. residency. (GE 1 at 34-35) Mr. H's status as a Cuban citizen is alleged under Guideline B. (SOR ¶ 3.a). His associate, Mr. B, is also a Cuban national. (SOR. ¶ 3.b) (Tr. 73-74)

Guideline J:

In February 2019, Applicant was charged in State 3 with one count of felony theft and three counts of felony identity theft. (GE 2, GE 4) (SOR ¶¶ 1.a, 2.a) The offenses allegedly occurred in September 2018. According to the criminal information filed by the prosecutor in a State 3 court, Applicant and two male accomplices:

> used the financial information of at least 15 people and used that financial information to move money from the victim's savings accounts into their checking accounts and then withdraw from ATMs, make purchases. and obtain money orders over the course of 61 transactions removing a total of $40,419.78 in funds." (GE 2 at 4, Motion for Arrest/Detention (Probable Cause))

Applicant travelled to State 3 by plane in September 2018 and rented a car. Using available information such as her driver's license and images from her social media accounts, local police identified Applicant on video at multiple area grocery stores making money orders using cards containing the names of the alleged victims, and on video at a local hotel. (GE 2 at 4; GE 3, police records)

It was noted that there was reasonable cause to believe that Applicant would not appear in response to a summons, so a warrant was issued for her arrest, on $50,000 bail. (GE 2 at 6; GE 19) A January 2022 fax to DOHA from a State 3 police department providing the police records for the case included an "arrest date" of April 2, 2019, but also that there was a "Felony warrant active/associated with this case." (GE 3 at 2) SOR ¶ 1.a alleges both the outstanding arrest warrant and the underlying felony charges. (Tr. 12-13)

The warrant first came to light through the DOD's Continuous Evaluation Program, which noted the charges and the February 2019 warrant. The report also noted that extradition was limited to five states in the Western United States. (GE 4; Tr. 111-112) Applicant lives in State 2, in the Eastern time zone. She has not returned to State 3 since 2018. (Tr. 70)

Applicant did not disclose the matter on her March 2020 SCA, and it was not raised or discussed during her December 2020 background interview. (GE 1, GE 9) She denied SOR ¶ 1.a in her Answer, asserting that she knew nothing about it until she learned of it in about December 2021 or January 2022 after she received interrogatories from DOHA. (GE 9) She said she informed her facility security officer (FSO) a few days later. She has pursued legal counsel in State 3 to resolve the matter. (Answer) However, she testified that she has taken no further action to resolve the matter, noting that she was told that retaining local counsel in State 3 would cost between $25,000 and $60,000. The bond is also about $50,000. She has about $5,000 saved for this purpose. But the bench warrant remains outstanding. (Tr. 33-39, 70-72, 105-112; AE A) She testified that she was told that she must retain counsel in State W because that is where the bench warrant was issued. She understands that an active bench warrant is an ongoing security concern. (Tr. 130-131)

As for the underlying criminal charges, Applicant testified that she went to State W with Mr. H in 2018, when she was considering moving there for a job. She said they were at a restaurant and they "ran into" an associate" of his who asked her to buy money orders for him. They went to a store and Mr. B asked her to buy a money order. They went to several stores to do so. Mr. B had a card with his name on it and he gave her the PIN number. She "never expected it to be fraudulent." (Tr. 33-39, 72-76, 99-100, 121) She also purchased a laptop and a book bag for Mr. B. She denied purchasing money orders for him 12 times. (Tr. 75) Applicant had never met Mr. B before but "I trusted Mr. H., so I assumed everything was good." (Tr. 100) She asserted that she cooperated with federal law enforcement officials when they asked her about the money orders in State W. (Tr. 38-39, 107-108) The state elected not to file charges against Mr. H, who was also implicated by the police's evidence. (GE 3 at 12

Applicant explained that she went with Mr. H to State 4 for vacation to visit family in 2018. While there, she said, they "ran into" Mr. B at a supermarket unexpectedly. She said that "the same thing happened" as in State 3: "He gave me some credit cards with his name on it, [and] the PIN numbers, and asked me to do money orders." She said Mr. B told her it was for his family in another state. She did not know they were fake. (Tr. 39, 76-77, 99-102, 121; Answer)

According to police records. the conduct allegedly occurred on numerous occasions in October 2018. Police in State 4 had access to the records from the offense in State 3, and, from those records, it was "immediately apparent" that Applicant and Mr. H were seen on multiple security videos in connection with the case in State 4. Felony warrants for both Applicant and Mr. H were then obtained, in about November 2018. (GE 7 at 9; GE 6)

Applicant first learned of the charges when "[Mr. H] came back from Cuba and was arrested, in 2019. She went to State 4 to get him out of jail and was herself arrested. At the time Applicant and Mr. H were living together. She reported her arrest to her employer's FSO when she returned to work. (Tr. 39-40, 102-105)

In January 2019, Applicant was charged in State 4 on six felony counts, including credit card fraud (over $500), receiving goods fraudulently (over $500), obtaining a credit card number [for] larceny, and related conspiracy charges. She pled guilty to two misdemeanor counts of credit card fraud (under $500). She received a 90-day suspended jail term on each count and paid $9,000 in restitution. (SOR ¶ 1.b) She completed the one-year probation term successfully. (Answer; AE B, AE C; Tr. 41-42, 102-103 110-111).

Applicant's petition to have the police and court records for the dismissed charges expunged was granted in March 2022. (AE D, AE BB) She has not had any other arrests. (Tr. 42-43, 112)

Guideline B:

Applicant said Mr. H moved to the United States from Cuba in 2016. They became roommates in December 2017 and lived together until about October 2020. She denied any romantic involvement. He now lives about 15 minutes away. They remain friends. She last saw Mr. two weeks before the hearing, and they spoke two days before the hearing. They speak about once a week. He is a Cuban national and permanent U.S. resident. (SOR ¶ 3.a) He will be eligible to apply for U.S. citizenship in 2024. She believes he renounced his Cuban citizenship. (Tr. 35, 42-43, 66-67, 77-78, 97-99, 118-119) Applicant and Mr. H were once both registered as co-owners of a motorcycle. The motorcycle is no longer in her name. (Tr. 78-80, 96-97; AE II)

Applicant said Mr. H once owned a "pizza store" in Cuba. He served a mandatory year in the Cuban military. His mother remains there as do two brothers and two sisters. She has no contact with them, and she has never been to Cuba. His father is recently

deceased. Mr. H has returned to Cuba three or four times since coming to the United States. (Tr. 80-82) After the hearing, Applicant provided a letter from Mr. H in which he says he has been living in the U.S. for the last seven years, intends to apply for U.S. citizenship in 2024, and does not intend to return to Cuba. (AE NN)

Applicant believes Mr. B is also a Cuban national and permanent U.S. resident. (SOR ¶ 3.b) They met with Mr. H at a club in State 3. They met in passing and she never wants to see him again. She believes Mr. H and Mr. B were associates and friends in Cuba. She knows little of his background in Cuba and does not know what he does in the U.S for work. She last saw him in State 4 in about 2018. She has been told by law enforcement authorities that Mr. B returned to Cuba after she and Mr. H were arrested. Applicant and Mr. B have no current interaction. (Tr. 66-67, 82-84, 119)

Guideline F:

On her March 2020 SCA, Applicant disclosed her 2016 termination for credit card misuse. She also disclosed federal tax debt to the IRS, credit card debts, a repossession, and federal student loan debts. GE 1 at 55-64)

Under Guideline F, the SOR concerns Applicant's 2016 termination for credit card misuse (SOR ¶ 2.b), both of her 2019 arrests (cross-alleged together under SOR ¶ 2.a), and numerous delinquent debts (SOR ¶¶ 2.c – 2.aa) The debts are largely established by several credit reports in the record, from between July 2020 and June 2023. (GE 12-14, 15a, 15b, 15c, and 21)

Some of Applicant's SOR debts have been paid. After the hearing, she provided an agreement with a credit counseling service that she retained in May 2023 to address her remaining debts. She is to pay $409 a month into the plan, according to the worksheet. (AE CC at 8)

SOR ¶¶ 2.c ($5,121), 2.d ($5,636), and 2.e ($15,255) are all debts that have been charged off by the same credit union. SOR ¶¶ 2.c and 2.d are two credit card accounts Applicant opened with her former husband to build credit history. When the family moved to Puerto Rico in 2015, her husband refused to find a job, so Applicant was responsible for everything for about three years, until 2018, and they fell behind on their payments. (Tr. 48-50) Since February 2022, she has been paying $100 a month towards debts 2.c and 2.d. (Answer; Tr. 48-51; AE E, DD) She was unclear how much she still owes and there is no current credit report in the record to clarify this. AE CC shows she still owes both debts in full. (AE CC at 7)

SOR ¶ 2.e ($15,255) is an auto loan taken out jointly with her ex-husband. It concerns a vehicle, now repossessed. Her ex-husband was making payments, but the account went into default. She must get his permission to be removed from the joint account, and they have no contact. The amount owed is what remains after the auto was sold at auction. (Tr. 51-53) The debt remains outstanding and she has made no payments. (Tr. 86)

SOR ¶ 2.f ($2,515) is a judgment obtained against Applicant by Bank A in 2019. (GE 1 at 64) This debt (actually for $2,535 – see GE 11) has been paid. (Tr. 53-54; AE F, AA)

SOR ¶¶ 2.g through 2.t are 14 federal student loan debts placed for collection by the U.S. Department of Education. As alleged, these debts total about $131,000. (Answer; AE G, FF) A June 2023 CBR shows 14 federal student loan accounts, all listed as "pays account as agreed." The combined total owed is about $131,000. (GE 21) This debt is not addressed in the credit counseling plan. (AE CC)

Applicant said she learned in 2017 that the forbearance period was ending. She had not been notified earlier since she had moved. She contacted the collection agency and began a payment plan. The accounts are now with a new collector, N. She is waiting to make payments since the debts were still under the COVID forbearance program at the time of the hearing. She has a repayment plan in place of about $10 a month for when the plan ends in the fall and can afford to do so, though she believes the amount will change after the forbearance period ends. (Tr. 54-56, 86-87, 112-113)

SOR ¶ 2.u ($1,726) is an account that has been charged off. This was a furniture purchase. It became delinquent in 2019, after Applicant had to pay the $9,000 in restitution for the criminal case in State 4. (SOR ¶ 1.b). Debt 1.u has been paid. (Tr. 56-57; AE H)

SOR ¶ 2.v ($2,995) is a credit card account that has been charged off by a bank. Applicant said it was opened by her ex-husband in her married name and the address for the account is that of her former mother-in-law. (Tr. 57-58) Applicant paid the account in full as of July 2022. (AE I, Z, and EE)

SOR ¶ 2.w ($87) is an account that has been charged off by a credit union. SOR ¶ 2.x ($94) is an account that has been charged off. Applicant opened account 2.w but never used it. Account 2.x was opened by her ex-husband in Puerto Rico. These accounts have been paid. (Tr. 59, AE J)

SOR ¶¶ 2.y ($261) and 2.z ($828) are past-due debts owed to unidentified medical creditors. Both have been paid. (Tr. 59-61; AE K, L)

SOR ¶ 2.aa alleges both $8,432 in past-due state income taxes for tax year (TY) 2014 and a 2017 state income tax lien for $7,586, both owed to State 1. The 2017 tax lien is established by GE 10, but the tax year at issue is unclear. The $8,432 figure is taken from a May 2018 letter to Applicant from a tax collection firm. (GE 16)

Applicant lived and worked in State 1 for part of TY 2014, before moving to Puerto Rico for her job with contractor H. She believed she did not have to pay federal taxes (or file federal returns) as a resident of Puerto Rico. Further, she asserts that company H erred in reporting that her income was earned "outside of Puerto Rico,"

which, she believes, impacted what she owed in State 1 taxes as well. (GE 9 at 5-6, 53; Tr. 113-114) The state tax debt and tax lien in State 1 (SOR ¶ 2.aa) ultimately resulted.

Applicant testified that when she learned of the state tax lien, she contacted the state comptroller's office. She said she was told to work through the IRS to resolve her federal income and the state taxes would be revised accordingly. (Tr. 62, 114-116) She included several documents relating to her efforts to resolve her federal tax debts. This includes her Form W-2 from contractor H for TY 2014 (AE N), correspondence with the IRS regarding TY 2014 (AE O), her 2014 and 2015 federal tax transcripts (AE P), and a letter from contractor H to the IRS (AE Y).

Applicant believes that once her federal income for the years in question are clarified and corrected, she will not owe anything to past-due state income taxes to State 1. The state lien, however, remains outstanding, due to the discrepancy related to her income at company H. She said she remains in communication with State 1 but has not paid anything of what she currently owes. (Tr. 61-62, 87-8) AE Y is an April 2022 letter from Company H to U.S. Social Security, in their attempts to clarify the matter. (AE Y) Applicant acknowledged that she still owes about $8,000 in state taxes for TY 2014, and the lien remains in effect. (Tr. 114-115)

Applicant acknowledged that she did not include her income earned from company H in Puerto Rico on her 2014 federal tax return because she believed she was entitled to a special tax status for Puerto Rico residents. (Tr. 87-92) Similarly, she did not file a federal tax return for TY 2015 when she lived there and believes she did not have to do so. (Tr. 92-93, 117-118) (SOR ¶ 2.bb) She did file a federal tax return for TY 2014, since she lived part of the year in State 1. (AE P) She does not believe she owes any past-due federal taxes. GE 17 is a 2016 IRS bill for $7,251 for TY 2014. Since returning from Puerto Rico, she has lived in a state with no state income tax. (Tr. 93)

AN II is an IRS publication (Pub. 1321) regarding "Special Instructions for Bona Fide Residents of Puerto Rico." It states, in part, that

> In general, section 933 of the U.S. Internal Revenue Code requires that U.S. citizens who are bona fide residents of Puerto Rico during the entire taxable year, but who receive income from sources outside of Puerto Rico, and/or receive income as a civilian or military employee of the U.S. Government in Puerto Rico, must file a U.S. Federal income tax return. The income you received from Puerto Rico sources is not subject to U.S. income tax. (AN I; *see also* AE LL)

Applicant lived in Puerto Rico for all of 2015 but did not establish that all of her income that year came from Puerto Rico sources.

Applicant submitted a May 2023 credit counseling and budget plan. (AE Q, AE CC). It shows a monthly surplus of about $2,000 to $3,000. She has annual income of $139,000. Through her credit counselor, she has payment plans in place for all the

remaining debts under the credit counseling plan, and has continued to make payments, but for SOR ¶ 1.e for $15,000 and the state tax debt for $8,000, (Tr. 64-65, 119-120)

Applicant provided performance evaluations and awards from her job. She is a "top performer" at work. (Tr. 67-68; AE V, AE HH) She also provided a reference letter from her former husband's son, who has known her for many years. (AE X)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has noted, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant's suitability for a security clearance, 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 classified 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 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 access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline J: Criminal Conduct:

AG ¶ 30 expresses the security concern for criminal conduct:

> Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

> (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness;
>
> (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant has engaged in multiple criminal schemes to engage in credit card fraud and conspiracy, in two different states (where she has little to no other contact), along with Mr. H, her roommate at the time, and his accomplice Mr. B, who purportedly appeared without notice seeking assistance in acquiring money orders. The schemes were similar in nature, as Applicant acknowledged when she said “the same thing happened” in State 4 as it had in State 3, when Mr. B appeared and said he needed help. Applicant was arrested in State 4 for the charges at SOR ¶ 2.b. The charges in State 3 (SOR ¶ 2.a) remain outstanding and unresolved, as does the related bench warrant. AG ¶¶ 31(a) and 31(b) both apply.

AG ¶ 31(c) (individual is currently on parole or probation) does not technically apply, though the outstanding bench warrant puts Applicant’s liberty at risk on an ongoing basis until it is resolved.

AG ¶ 32 sets forth the potentially applicable mitigating conditions:

> (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
>
> (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant receives some credit for complying with the requirements of probation for the offense in State 3, but this credit is minimal, given the troubling pattern and similar nature of her conduct established by both offenses alleged. There is also the matter of the bench warrant. Applicant has taken minimal efforts to resolve the bench warrant since she learned of it from DOHA during the interrogatory process in early 2022. She has approached local counsel in State 3 but retaining the attorney is cost prohibitive for her. (See Guideline F discussion, below). It matters little in this forum that she may not face extradition from State 2 (in the eastern U.S.) to address a bench warrant issued many states away in State 3 a western state. Applicant seeks a security clearance from the federal government. “It should be obvious, but it is nonetheless stated here that any applicant who has an outstanding bench warrant is not a good candidate for a security clearance.” (ISCR Case No. 14-00383 at 6, A.J. Leonard, Sept. 23, 2014). (DOHA Hearing cases have no precedential value, but clearance applicants with outstanding bench warrants who have not taken sufficient steps to resolve them are rare, and the same principle is applicable here). Applicant did not show that her conduct occurred under such unusual circumstances, that it is unlikely to recur and does not cast doubt on her reliability, trustworthiness, or good judgment. Applicant did not mitigate security concerns about her established pattern of serious criminal conduct.

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

The 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 Cuba in the record, due to human rights issues and Cuba's relationship with the United States. (AN I) AG ¶¶ 7(a) and 7(b) are established. Mr. H and Mr. B are both understood to be Cuban citizens. Mr. H remains in the United States as a permanent U.S. resident. Mr. B's whereabouts are unknown, but he is an associate of Mr. H, and both are accomplices in the schemes to commit credit card fraud in both State 3 and State 4, with Applicant's assistance. At best, Applicant was unquestionably induced, pressured, or coerced to go along with their plans. At worst, she was a wholly willing participant. Even if only the former is established, that satisfies AG ¶¶ 7(a) and 7(b).

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 remains in contact with Mr. H, her former roommate. They remain friends who speak frequently. Mr. B is established as Mr. H's accomplice, and as someone for whom Applicant has a track record of assisting in the commission of serious crimes (along with Mr. B). The foreign influence concern with these two foreign (non-U.S. citizen) individuals is less about their connections to Cuba, per se; rather, it is their established influence over Applicant and her willingness to engage in serious criminal conduct (and at best, repeated instances of extremely poor judgment) at their behest. No foreign influence mitigating conditions apply.

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is detailed in AG ¶ 18:

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

This concern is broader than the possibility that an individual might knowingly compromise classified 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 information. *See* ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

> (a) inability to satisfy debts;
>
> (c) a history of not meeting financial obligations;
>
> (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust; and
>
> (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

The delinquent debts established in the SOR are established by the credit reports in the record and by Applicant's admissions. AG ¶¶ 19(a) and 19(c) apply.

Applicant's two sets of criminal charges (SOR ¶¶ 1.a and 1.b) are cross-alleged as a financial security concern under SOR ¶ 2.a. Applicant was also terminated from company H in 2016 after she misused a company credit card. (SOR ¶ 2.b) Both SOR ¶¶ 2.a and 2.b constitute intentional financial breaches of trust, and AG ¶ 19(d) applies to both.

As to her criminal conduct (SOR ¶ 2.a), "[a]n individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds," quoted from the general financial concern of Guideline F (AG ¶ 15), also applies.

Applicant had a responsibility to file a 2015 federal income tax return, absent a showing that her unique circumstances meant she did not have to do so. Even though she lived in Puerto Rico for all of 2015, she did not establish that she did not have a duty to file a 2015 federal income tax return (even if Puerto Rico income was exempt from federal taxes). SOR ¶ 2.bb is established, and AG ¶ 19(f) applies.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

> (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;

(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

(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's various debts arose because she became financially overextended. In no small part, this was because (or was made worse by) the money she had to pay in restitution for the offense at SOR ¶ 1.b, in State 3. The total financial implications of SOR ¶ 1.a, her ongoing offense with the outstanding bench warrant, are unknown. Applicant has paid or is paying many of the debts alleged in the SOR, so some credit is due under AG ¶ 20(d). However, she began paying many of the debts after receiving the SOR in early 2022. (HE III) This lessens the mitigating effect of her efforts. Her student loans are in good standing according to credit reports in the record, but she has not established a reasonable payment plan to address them. AG ¶ 20(d) does not fully apply to mitigate her debts.

AG ¶ 20(a) does not apply. It does not apply to the cross-alleged criminal offenses for the same reason that they are not mitigated under Guideline J above. The same is true for her 2016 termination, which followed misuse of a corporate credit card. She did not show that her conduct occurred under such unusual circumstances, that it is unlikely to recur and does not cast doubt on her reliability, trustworthiness, or good judgment. It also does not apply to her debts, or to her unresolved tax debt and unfiled tax return, which are ongoing.

AG ¶ 20(c) has some application, since Applicant has retained a credit counseling service to address her remaining debts, but she has yet to put the payment plan into effect. But she has not shown that her debts are being resolved and are under control.

Applicant did not provide enough evidence to establish that her tax debts and unfiled tax returns are being resolved. She has contacted appropriate tax authorities and is seeking belated assistance to address the matter but has no arrangements in place to do so. AG ¶ 20(g) does not apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's

conduct and all 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 security clearance 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 J, F, and B in my whole-person analysis.

Applicant has engaged in a pattern of troubling criminal conduct with her former roommate Mr. H and his associate Mr. B. They have been involved in a scheme to steal other people's money through credit card fraud. The nature of their conduct would cause a reasonable person to pause before rendering assistance. Applicant did not do that. She willingly assisted in the scheme. A bench warrant for the State 3 felony charges remains outstanding. Further, many applicants are denied access to classified information because they have incurred delinquent debts – thereby putting themselves in position where they may commit illegal financial acts. Applicant has already committed illegal acts and has done so on several occasions. That conduct, along with the debts and of course the bench warrant, all mean she does not qualify for eligibility for a security clearance.

Applicant has not met her burden to establish that it is clearly consistent with the national interest to grant her continued eligibility for access to classified information. Overall, the record evidence leaves me with significant unresolved questions and doubts as to Applicant's eligibility for access to classified information.

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 J:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant

Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against Applicant
Subparagraphs 2.c-2.d:	For Applicant
Subparagraph 2.e:	Against Applicant
Subparagraph 2.f:	For Applicant
Subparagraphs 2.g-2.t:	Against Applicant
Subparagraph 2.u-2.z:	For Applicant
Subparagraph 2.aa-2.bb:	Against Applicant
Paragraph 3: Guideline B:	AGAINST APPLICANT
Subparagraphs 3.a-3.b:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant access to classified information. Eligibility for access to classified information is denied.

_____
Braden M. Murphy
Administrative Judge