



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



In the matter of:)
)
) ISCR Case No. 19-02096
)
Applicant for Security Clearance)

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: Lawrence Berger, Esq.

11/01/2023

Decision

Curry, Marc E., Administrative Judge:

Applicant mitigated the financial considerations security concerns but failed to mitigate the personal conduct and foreign influence security concerns. Clearance is denied.

Statement of the Case

On December 20, 2021, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudications Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline E, personal conduct, B, foreign influence, and F, financial considerations, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DCSA CAS took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. On February 20, 2022, Applicant answered the SOR admitting all of the allegations except SOR subparagraph 3.b, and requested a hearing, whereupon the case was assigned to me on March 9, 2023. On April 28, 2023, DOHA issued a notice of video teleconference hearing, scheduling the hearing for May 16, 2023. On May 11, 2023, upon the agreement of the parties, the case was rescheduled for May 25, 2023. The hearing was held as rescheduled. At the hearing, I

considered the testimony of Applicant and his professional tax preparer, together with 12 Government Exhibits (GE), marked and incorporated into the record as GE 1 through GE 12, and seven Applicant exhibits, marked and incorporated into the record as Applicant Exhibits (AE) A through AE G. At Department Counsel's request, I took administrative notice of a U.S. Department of State document entitled "U.S. Relations with Kuwait," and marked it as Hearing Exhibit (HE) I. At the close of the hearing, I left the record open to allow the parties to submit additional exhibits. Within the time allotted, the Government submitted three exhibits (GE 13 – GE 15), and Applicant's counsel submitted six exhibits (AE H, Attachments (Att.) A – E) I admitted all of them. The transcript (Tr.) was received on June 5, 2023.

Preliminary Issues

I. Department Counsel's Motion to Amend the Statement of Reasons

On May 24, 2023, Department Counsel emailed me a motion to amend the SOR. (HE II) At the hearing the next day, Applicant's counsel informed me that he had no objection to the proposed amendments, and I then granted the motion. (Tr. 5-6) I wrote the revisions on the file copy of the SOR.

II. Applicant's Security Clearance Status

A. Background

Counsel for Applicant contends that Applicant was granted a clearance after a favorable adjudication on November 3, 2020, and another favorable determination on September 17, 2023. In support, he provided a copy of a memo from Applicant's sponsor. (AE G) Department Counsel argued that Applicant had not been granted a clearance since 2009. I extended the record for resolution of this issue.

Department Counsel provided printouts of the Defense Information System for Security (DISS) electronic case notes regarding Applicant. (GE 13-15) These notes establish that Applicant's last grant of a clearance after a completed investigation was 2009. (GE 13 at 1) In 2017, Applicant underwent a periodic reinvestigation, which was closed after he was defaulted for not cooperating. (GE 3) In 2019, DOHA contacted Applicant and gave him an opportunity to reassess his previous decision not to cooperate. (GE 3) After Applicant agreed to cooperate, DOHA re-opened the investigation in November 2020. The re-opened investigation appeared in the database as a security clearance grant. (GE 13 at 2) Similarly, after his investigation was closed for loss of jurisdiction when his employer stopped sponsoring him, and picked up again after another employer sponsored him, the database noted his clearance status as granted again as of 2020. (GE 14 at 1)

Attorney for Applicant contended there were inconsistencies and mistakes in the portion of DISS' file, as included in GE 13 to GE 15, and requested that I "compel disclosure of the relevant portion of DISS which materially supports Applicant's belief that

he has been adjudicated favorably for a clearance.” (AE H) Although DOHA lacks subpoena power, administrative judges can at their discretion order DOHA to obtain documents subject to its control. (E3.1.10; E3.1.11) As Department Counsel supplemented the record with documents obtained from DISS, such records are clearly subject to DOHA’s control. However, requesting DOHA to obtain a portion of a record from DISS that possibly may support a position asserted by Applicant is irrelevant due to the current posture of the case because even if he was granted a security clearance previously, DCIS CAS and DOHA have jurisdiction to consider or reconsider his security clearance now. Consequently, I deny Applicant’s motion to compel production of additional records from DISS, and I conclude based upon the record, as supplemented by Department Counsel, that I have jurisdiction to adjudicate this case.

Findings of Fact

Applicant is a 55-year-old married man with two adult children. He has been married to his current wife since 2015. A previous marriage ended in divorce in 2013. (GE 1 at 43-44) Applicant earned a high school diploma in 1986 and an associate degree in 2006. (GE 1 at 15)

Applicant is a veteran of the U.S. Marine Corps, serving from 1986 to 1990. (Tr. 27) He was discharged honorably. After leaving the Marines, he joined the U.S. State Department as a security officer until 1992. (Tr. 28) That year, he joined the U.S. Border Patrol where he worked until his retirement in 2019. (Tr. 33) While with the Border Patrol, he spearheaded an interrogation technique which over the years has become a national model. (Tr. 30) Since retiring, Applicant has been working abroad for a contractor performing technical service work on non-intrusive inspection systems. (Tr. 53) Since working at his current job, he has received excellent performance ratings. (GE 8 at 11)

In 2006, Applicant, while not on duty or in his work uniform, entered a grocery in a rural part of the country to buy beer. Although Applicant had no hard evidence of any wrongdoing, he began questioning the grocery store clerk about his immigration status, his foreign accent, and why he was living in that part of the country. (GE 8 at 21) These questions angered the clerk, prompting him to ask Applicant to leave the store. While this exchange was occurring, another store patron called the police. (GE 8 at 22) During the tense exchange of words, Applicant followed the clerk behind the counter and put his hands on him. The clerk then fell down, whereupon Applicant pulled his service weapon and pointed it at the clerk, claiming that the clerk had lunged for one of the knives on the counter. (GE 8 at 22) One of the store patrons then stepped between Applicant and the clerk, prompting Applicant to place his weapon back in the holster. (GE 14 at 23)

This episode led to an agency investigation. The investigation revealed that after the episode Applicant had run queries on himself and the grocery store clerk in the Border Patrol database without authorization. (GE 8 at 14, 23) When confronted about the misuse of the database, Applicant offered conflicting stories. (GE 8 at 23)

When the investigation was concluded, its findings were submitted to the agency's disciplinary review board. It charged Applicant with conduct unbecoming a border patrol agent, lack of candor, and misuse of the database system, and it recommended his termination. (GE 8 at 15)

The first-level reviewing authority sustained the recommendation for termination. (GE 8 at 15) On appeal, an arbitrator sustained the charges of conduct unbecoming a border patrol agent and misuse of the database, and lack of candor with respect to questions about the database. In doing so, the hearing officer concluded that Applicant "had no operational reason [for initiating] a volatile and dangerous altercation." (GE 6 at 14) However, he concluded that removal was not a reasonable remedy. (GE 8 at 24) Instead, the reviewing authority reduced the punishment to suspension of 180 days with restoration of payment that had been stopped after the termination. (GE 8 at 25-27)

In March 2010, Applicant while driving his marked Border Patrol vehicle, called local police to ask if they had a unit in his location because the motorist behind him was riding his bumper while traveling 80 miles per hour. (GE 8 at 31) He told the police dispatcher that he wanted to pull the driver over and "chew her tail out," and the dispatcher approved. (GE 8 at 32) He then pulled the driver over. Immediately after the stop, the driver called Border Patrol and reported that Applicant was rude, irate, and made her fear for her safety. (GE 8 at 32) Later that month, Applicant pulled over a Latino motorist whom he suspected was an illegal alien. (GE 8 at 34) After questioning him, Applicant released him, concluding that he had no authority to interrogate him further. (GE 8 at 30) Applicant's employer, however, reprimanded him for not making a warrantless arrest, not asking the man for his name or driver's license, and not promptly reporting the investigative stop to Applicant's chain of command. (GE 8 at 30)

Later that year, the agency considered the motorist's complaint, and the unrelated incident involving his release of the Latino driver without more intensive interrogation, and charged Applicant with unprofessional conduct, consequently removing him from employment, effective March 2011. (GE 8 at 28) On appeal, the Merit Systems Protection Board (MSPB) , in April 2012, sustained the charge of unprofessional conduct, with respect to the episode with the female driver, but characterized it as "a relatively minor infraction," and reduced the punishment from termination to a 14-day suspension without pay, credited from the pay he did not receive while the appeal was pending. (GE 8 at 33-34) In addition, the MSPB concluded the charge involving the Latino motorist was not sustained. (GE 8 at 31)

On November 2, 2012, Applicant was charged with failure to exercise due caution in the operation of a government-owned vehicle after accidentally backing his assigned vehicle into a tree while exiting a parking lot. (GE 8 at 91) On November 29, 2012, Applicant while on duty and in uniform went into a gun shop for personal reasons, and while inside the store questioned a customer, an Asian-American, about his immigration status. (GE 8 at 91) He allegedly followed the person around the store for a half an hour. (GE 8 at 91) Subsequently on December 26, 2013, the agency charged him with failure to exercise due caution for the car incident, conduct unbecoming an officer for the gun store

incident, as well as lack of candor, and misuse of information systems for two related matters, and fired him. (GE 8 at 91)

Applicant subsequently filed a grievance. (GE 4 at 6) At arbitration, Applicant's attorney characterized the proceedings as a witch hunt. The arbitrator agreed, emphatically rejecting the agency's case, noting in his decision that Applicant's employer was "out to get [him] no matter what." (GE 8 at 123) Moreover, the arbitrator concluded that the agency's incident report of the gun shop episode was exaggerated, admonishing Applicant's employer that "hyperboles, particularly when not verified, do nothing more than present a tainted picture of the event and inflame management's perception." (GE 3 at 118) Ultimately on June 12, 2015, the arbitrator dismissed all the charges other than the one involving the accident with the government-owned vehicle and reduced the penalty from removal to a 30-day suspension. (GE 8 at 125). Applicant was on paid administrative leave for six months while this case was being adjudicated. (GE 4 at 6)

In 2011, Applicant was selected to work as a lead advisor on border patrol control issues in a combat zone abroad. (Tr. 35) He worked at this assignment through 2012. In 2016, Applicant was promoted to the position of temporary supervisor. (Tr. 59) His duties included training other agents on how to properly conduct investigations. (Tr. 31) He retired in 2018. (Tr. 31) Between 1996 to 2005, all of Applicant's performance ratings were outstanding. (GE 8 at 101) In 2006, the Border Patrol agency's evaluation system changed to "Pass/Fail." From 2006 to 2018 when Applicant retired, he received passing evaluations.

According to Applicant's current team leader for the past year, he is "a vital part of [their] day-to-day operation," and he has never had any reason to question his integrity or work ethic since Applicant has been working for him. (AE D)

During the beginning of a security clearance interview in July 2017, Applicant refused to provide full and frank answers to questions. Instead, he referred the agent to his attorney and repeatedly interrupted her. (Tr. 45-46) He did not want to talk about the issues involving past termination decisions because each decision had been reversed. (GE 4 at 6) On July 12, 2017, he sent 16 unsolicited text messages to the investigator, contending that the investigation had "crossed the civil liability line," and threatening litigation. (Answer at 2) Applicant contends that he sent these texts out of frustration with the process. (Answer at 2)

In July 2019, the DCSA CAS contacted Applicant, explained the information requested was relevant and material to his security clearance determination, and gave him another opportunity to cooperate with the investigation, warning that continued failure would result in discontinuation of his case. (GE 3 at 1) On December 2019, Applicant completed an affidavit setting forth his intention to fully discuss the relevant information with the investigator. On January 2020, he again contacted DCSA CAS, apologized for the lengthy delay in responding and explained that he did not think there was any just cause to discuss his past terminations since he had been reinstated after each termination. (GE 4 at 8) In February 2021, Applicant answered another set of interrogatories. He provided comprehensive interrogatory responses with multiple documents attached. (GE 8)

During a personal subject interview in 2002, Applicant refused to answer questions about an alleged adverse incident and acknowledged the potential harm his refusal to offer details would have on the maintenance of his security clearance. (GE 12)

In 2005, Applicant's employer transferred him to another part of the country. His wife stayed in their home with the children, refusing to move. For the next eight years, Applicant supported two households. (Tr. 120) As the only breadwinner, Applicant's finances became strained, and he gradually became reliant upon credit cards to pay bills. (Tr. 59) In addition, Applicant's marriage deteriorated, leading to a divorce in 2013. (Tr. 59)

In February 2018, Applicant filed for Chapter 13 bankruptcy. (GE 9) He converted this bankruptcy to a Chapter 7 bankruptcy in September 2018. The amount discharged is unclear from the record.

Applicant did not file his federal income tax returns for 2018 and 2019 until August 2022. (AE C at 3) According to a certified tax preparer whom he retained in 2019, and who testified, the delay occurred because of the length of time that it took to obtain an individual tax identification number (ITIN) for his current wife, a citizen and resident of Kuwait who was in the process of becoming a naturalized U.S. citizen during this time. (See foreign influence section of Decision, *infra*). (Tr. 133, 135) Applicant has filed his 2018 tax return, and is due a refund of \$3,102 and he filed his 2019 federal tax bill and paid the amount due, totaling \$459. (GE C at 2; Tr. 70)

Applicant owes tax delinquencies for tax year 2014 and tax year 2015. (AE A at 2-4; GE 7 at 3) These debts were triggered after an audit of these tax years concluded that he erroneously claimed the foreign income exemption on his tax returns. (Tr. 90) When the IRS initially recalculated the tax debt, it concluded that Applicant owed an additional \$40,000 for tax years 2014 and 2015. (Tr. 90) Applicant appealed this decision to a tax court, arguing that the foreign earned income exclusion applied because he worked abroad for both of those tax years. (Tr. 89; GE 1 at 19) Although he lost the appeal, he successfully negotiated a reduction in the balance. (AE A at 2-4) Currently, he owes \$4,529 for tax year 2014 and \$15,924 for tax year 2015. (AE A at 2-4)

Three weeks before the hearing, Applicant made two payments totaling \$500 towards the reduction of the tax delinquency. (Tr. 90; AE B at 1) In 2020, Applicant retained his current tax preparer. (AE H, Attachment (Att.) B at 3) With the tax preparer's help, he amended the 2014 and 2015 tax return, Also, the tax preparer helped him with his 2018 and 2019 tax returns to account the ITIN request for Applicant's spouse. (AE H, Att. B at 3) The tax preparer attributes the delays in resolving the tax issues to incorrect information regarding Applicant's employment and income, and correspondence delays that were exacerbated by the pandemic. (Tr. 111) With the tax preparer's assistance, Applicant requested and was approved for the IRS Combat Zone exemption, which was extended to civilians working in combat zones as part of the Bipartisan Budget Act of 2018 (the Act). (AE H, Att. B at 3) Per the tax preparer Applicant's tax liabilities will be stayed so long as he

remains employed in this combat zone, and he will get 180 days to resolve his income tax problems once he leaves the combat zone. (AE H Att. B at 3)

Recently, Applicant received a \$20,000 refund for an overpayment on his 2022 tax return. (Tr. 119) Currently, Applicant earns \$140,000 per year, he saves \$500 monthly; he has a savings account balance of between \$5,000 and \$6,000; and he receives retirement pension payments. (Tr. 102)

Applicant's current wife is a citizen and resident of Kuwait. She spent the majority of her childhood living in the United Kingdom. (Tr. 18) Applicant met her through an online dating app in 2014, and they married in 2015. (GE 4 at 8) She is the head of the department for the Kuwait Ministry of Health. (Answer at 2) Applicant's wife has been a naturalized U.S. citizen since August 2022. (Tr. 47; AE E at 2) Applicant is living in Kuwait with his wife. His goal is to move back to the U.S. with his wife in the next two to three years. (Tr. 112)

Applicant's father-in-law is deceased. His mother-in-law, a citizen and resident of Kuwait, is a homemaker. (Tr. 115; GE 4 at 9) Applicant sees her approximately once per week.

Applicant is not particularly fond of his siblings-in-law, characterizing them as "limp wristed, sheltered, and entitled." (Tr. 117) Applicant's brother-in-law is a citizen and resident of Kuwait. He is a retired oil company executive. Applicant does not interact with him. (Tr. 116) Applicant has three sisters-in-law. (Tr. 116) Two of them work for government ministries. (Tr. 116) Applicant talks with the two who work for government ministries approximately once per week. (Tr. 115; Answer at 3) He does not interact with his third sister-in-law. (Tr. 116)

Kuwait and the United States have enjoyed a long history of friendship and cooperation, "rooted in shared values, democratic traditions, and institutional relationships." (HE I at 1) Kuwait is an important partner in U.S. counterterrorism efforts. The United States is one of Kuwait's largest suppliers of goods and services, and Kuwait is one of the United States' largest markets in the Middle East. (HE I at 2)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (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 required to be considered 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 overall 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 ¶ 1(d) 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. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline E: Personal Conduct

Under this guideline, "conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information." (AG ¶ 15)

Applicant's refusal to cooperate with the investigative agent triggers the application of the following disqualifying condition under AG ¶ 15:

- (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including, but not limited to meeting with a security

investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation or polygraph examination, if authorized and required, and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

In addition, Applicant's history of work-related misconduct generates the following disqualifying condition:

AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information [including]

(1) untrustworthy or unreliability behavior . . . [and]

(3) a pattern of dishonesty or rule violations

Applicant's most serious episode of workplace misconduct, as set forth in subparagraph 1.a(1), occurred more than 15 years ago. As for the pulling over the motorist and "chewing her tail out," as set forth in subparagraph 1.a(2), I agree with the MSPB's conclusion that it was a minor infraction. Moreover, Applicant's decision not to detain a driver based on his belief that he could not do so solely because of his ethnicity, not only did not constitute unprofessional conduct, as the MSPB concluded; it reflected favorably upon his judgment with respect to the ISCR analysis. Lastly, the reprimand for backing his car into a tree, as alleged in subparagraph 1.a(3), was minor and occurred nearly ten years ago.

In 2016, approximately three years after the most recent allegation of workplace misconduct, Applicant was promoted. His duties included training other border patrol agents how to properly conduct investigations. He worked in this position through his retirement in 2018. Currently, Applicant's work performance is good.

In sum, I conclude that AG ¶ 17(c), "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," applies. I resolve SOR subparagraph 1.a in favor of Applicant.

Cooperation with the investigative process is so important that the consequences for failure to cooperate are set forth in ¶ 6.2 of the Directive and reiterated in the introductory

section of the personal conduct adjudicative guideline. (AG ¶¶ 15(a) and 15(b)) Neither Applicant's frustration with the investigative process nor his belief that OPM was estopped from asking about past derogatory employment information that had been resolved in his favor justified his failure to answer questions about these issues in 2017. Moreover, this was not the first time he had refused to answer questions from an investigator, as he had done so during an earlier investigation in 2002. Applicants cannot decide with impunity what questions they will or will not answer. Applicant deserves credit for eventually cooperating when admonished about the consequences of his continued refusal. However, given the recurrent nature of this behavior, I conclude that none of the mitigating conditions apply, and that his refusal to cooperate continues to pose a security concern.

Guideline F: Financial Considerations

Under this concern, "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." (AG ¶ 18)

Applicant filed his 2018 federal tax return and is owed a refund. I conclude that his late filing does not generate a security concern. I resolve SOR subparagraph 3.b in his favor.

Applicant's 2018 Chapter 7 bankruptcy discharge and his outstanding, delinquent federal income tax debts trigger the application of AG ¶ 19(a), "inability to satisfy debts," AG ¶ 19(c), "a history of not meeting financial obligations," and AG ¶ 19(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 following mitigating conditions under AG ¶ 20 are potentially applicable:

(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; 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 financial problems were unrelated to any foolish or profligate spending. Instead, they were caused by a 2013 divorce, and the years of separation preceding the divorce when Applicant was supporting two households. In addition, Applicant's tax debt

was the result of an incorrect, good-faith belief that the foreign income exclusion applied to tax years 2014 and 2015, the years he worked abroad. Applicant successfully obtained a bankruptcy discharge in 2018 and he has been working with a certified tax preparer who helped him amend his 2014 and 2015 tax returns. Under these circumstances, AG ¶ 20(b) applies.

Applicant is not currently making payments to resolve his IRS tax delinquency. AG ¶ 20(d) and AG ¶ 20(g) do not apply. Conversely, according to Applicant's tax preparer, he does not have to make any payments at this time because he successfully applied for the IRS combat zone exemption. (AE H Att. B at 2) Given the applicability of this exemption, all of Applicant's tax liabilities, fees, and interest are suspended so long as he remains in the combat zone, and Applicant will have 180 days to settle all outstanding tax issues after he leaves the combat zone. (AE H Att. B at 2)

Applicant incurred the 2014 and 2015 tax delinquencies because of a good-faith misinterpretation of the tax code regarding the applicability of the foreign income exclusion. After the audit revealed his mistake and that he owed \$40,000, he appealed the decision to the tax court and obtained a reduction in the debt to approximately \$20,000. He has been working with a certified tax preparer for the past three years to help him resolve the tax controversy. Applicant certainly could have made more progress in paying down the tax delinquency over the years. Currently, however, he is clearly engaged in the process of addressing them. I conclude Applicant has mitigated the financial considerations security concerns.

Foreign Influence

Under this guideline, "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." Applicant does not interact with his brother-in-law and one of his sisters-in-law. Under these circumstances, these relationships do not pose a security concern. I resolve SOR subparagraph 2.c in Applicant's favor.

Kuwait is an ally of the United States and is a critical partner in counterterrorism efforts. None of the administrative notice documents contained any derogatory information about Kuwait's relationship with the United States. Conversely, whether a country is friendly with the United States is noteworthy but is not dispositive as to whether there is any vulnerability to coercion, as friendly countries have been known to conduct economic espionage. Moreover, Applicant's vulnerability to coercion is heightened because he lives in Kuwait, and his wife is a senior official of a Kuwaiti government agency. Under these circumstances, under AG ¶ 7(a), "contact, regardless of method, with a foreign family member, business, or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion" applies to Applicant's relationship to his wife and two of his sister in-laws, and AG ¶ 7(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,” applies to his relationship with his wife.

Of the two sisters with whom Applicant is in touch, he is in contact with them, but he does not like them. Under these circumstances, the frequency of the contact renders AG ¶ 8(c), contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation,” inapplicable, but the lack of feelings or affection for these in-laws mitigates the security concern.

The job position of Applicant’s wife, together with the fact they reside in Kuwait generates a security concern too significant to overcome. Because there is a rebuttable presumption that he has close ties of affection to his mother-in-law through his wife. (ISCR Case No. 07-06030 at 3 (App. Bd. June 3, 2008)), I conclude that this relationship remains a security concern, as well. In reaching this conclusion, I did not apply AG ¶ 8(b), “there is no conflict of interest, either because the individual’ 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,” because I could not resolve doubt about his decision-making generated by his temperament and his recurrent history of refusing to cooperate with investigative authorities.

Whole-Person Concept

Upon considering this case in the context of the whole-person concept, I conclude Applicant has failed to mitigate the security concerns.

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 E:	AGAINST APPLICANT
Subparagraphs 1.a(1)- 1.a(3):	For Applicant
Subparagraphs 1.b – 1.d:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a – 2.b:	Against Applicant
Subparagraphs 2.c – 2.d:	For Applicant
Paragraph 3, Financial Considerations:	FOR APPLICANT

Subparagraphs 3.a – 3.c:

For Applicant

Conclusion

Considering the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge