



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



In Re:)
)
) ISCR Case No. 21-00084
)
Applicant for Security Clearance)

Appearances

For Applicant: *Pro se*
For Government: Allison Marie, Esquire, Department Counsel

01/10/2023

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding foreign influence. Eligibility for a security clearance is granted.

Statement of the Case

On October 1, 2019, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On March 8, 2021, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to her under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016) (AG), effective June 8, 2017.

The SOR alleged security concerns under Guideline B (Foreign Influence) and detailed reasons why the DCSA adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn statement, dated March 16, 2021, Applicant responded to the SOR, and she requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on May 17, 2021. Because of the health protection protocols associated with COVID-19, hearings were essentially placed on hold. The case was assigned to me on March 7, 2022. A Notice of Microsoft TEAMS Video Teleconference Hearing was issued on August 1, 2022, and I convened the hearing as scheduled on August 24, 2022.

During the hearing, Government Exhibits (GE) 1 and 2 were marked and admitted into evidence without objection. Applicant testified, but did not submit any documentation. The transcript (Tr.) of the hearing was received on September 1, 2022. I kept the record open to enable Applicant to supplement it, something that she claimed she intended to do, but she failed to submit any of the documentation that was discussed during the hearing. (Tr. at 82-85) The record closed on September 14, 2022.

Rulings on Procedure

Department Counsel requested that I take Administrative Notice of certain enumerated facts pertaining to the Republic of the Philippines (Philippines), appearing in extracts of nine written submissions issued by various U.S. Government sources. Facts are proper for Administrative Notice when they are easily verifiable by an authorized source and relevant and material to the case. In this instance, the Government relied on source information regarding the Philippines in publications of the Department of State, the Department of Justice, and the Department of Defense.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 16-02522 at 2-3 (App. Bd. July 12, 2017); ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings, is to notice facts that are either well known or from government reports. See Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Requests for administrative notice may utilize authoritative information or sources from the internet. See, e.g. *Hamdan v. Rumsfeld*, 126 S.Ct. 2749 (2006) (citing internet sources for numerous documents).

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts, as set forth below under the Foreign Influence Section, found in the Philippines subsection. However, while I do not reject the facts set forth in the press releases issued by the U.S. Department of Justice, any inference that Applicant or her family participated in criminal activity was not argued by the Government and is specifically rejected.

Findings of Fact

In her Answer to the SOR, Applicant admitted, with comments, nearly all of the allegations pertaining to foreign influence (SOR ¶¶ 1.a. through 1.n.). The information in her Answer to the SOR is incorporated herein. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Background

Applicant is a 53-year-old Philippine-born naturalized U.S. citizen. She became a U.S. citizen in August 1995 and relinquished her Philippine citizenship. She is a 1986 high school graduate with some college credits but no degree. From 1994 until 1998, she resided with her husband – a native-born U.S. citizen then employed by the U.S. Government – in Singapore, where she also worked in an unspecified position with the U.S. Air Force. She has been employed as a payroll support analyst by a government contractor and was initially assigned to a U.S. Government facility in the Philippines from December 1998 until late in 2019. In early 2020, her position moved to the United States, and she has served in identical positions for the U.S. Government handling the portfolios first for Afghanistan and then for Iraq. She has never served in the U.S. military. She has never held a security clearance. She was married in 1991 and widowed in 2014. She has two adopted adult children, both of whom were born biologically to her brother.

Foreign Influence

As noted above, Applicant was born and raised in the Philippines. Her parents, both now deceased (her mother died in 2019 and her father died in 2022), were Philippine citizen-residents. (GE 1 at 16; GE 2 at 3; Tr. at 44) Her two children are Philippine citizen-residents where they are both graduate students. (Tr. at 37-39) She generally checks on them almost daily by either phone or text. Three of her four brothers are Philippine citizen-residents: one was a merchant marine/assistant chef on a cruise ship before the pandemic who became a construction worker; one, the biological father of her children, is a computer technician; one is an engine mechanic for a subcontractor with the Philippine Navy who also is a public tricycle operator. She rarely communicates with her brothers except when she visits the Philippines. (Tr. at 44-48) She also has a brother who is a Canadian citizen-resident who was previously working on the Philippine National Police bomb squad before approximately 2005-2007, when he immigrated to Canada and now works in private security. (Tr. at 53-55) Two of her three sisters are Philippine citizen-residents: one is a human resources specialist with a fashion house; one is a physical therapist; and the third sister is a Philippine citizen residing and working in Hong Kong in a management position with a technical company. She periodically communicates with her sisters. (Tr. at 49-51) Applicant also has two half-siblings – a teen-aged brother and an adult sister, both of whom are Philippine citizen-residents. She has not spoken with her half-sister since 2019. (Tr. at 51-53)

In addition to family members, since 2018, Applicant has had a boyfriend who is a Philippine citizen-resident. He is an attorney in private practice who, before they met, served as a city fiscal or prosecutor – much like a district attorney. They last saw each

other in person earlier in 2022, but generally communicate by telephone or text on a daily basis. (Tr. at 40-43) Applicant has four friends in the Philippines who are Philippine citizen-residents. She remains close to her best friend and one other of the four – communicating with them once or twice a month – but rarely communicates with the other two (former high school classmates) now that she resides in the United States. Her best friend is in sales. (Tr. at 55-56)

Other than one brother's subcontractor-relationship with the Philippine Navy; one brother's former relationship with the Philippine National Police bomb squad; and her boyfriend's former position as a city fiscal or prosecutor, no member of Applicant's family or friends has a past or current relationship with the Philippine government, military, security, defense industry, foreign movement, or intelligence services.

Applicant supports her son by periodically sending him money, paying his school tuition in full, and paying for his housing. (Tr. at 52-53) She also maintains financial interests in the Philippines. She and her late husband purchased land and built a house on the property. Her daughter currently resides in the house. She refinanced the property and it is now under contract to sell or was already sold for about \$490,196. She intends to use the proceeds to pay off her late mother's medical debts, pay off her children's school expenses, purchase land for a retirement home, and use \$10,000 in the United States. She intended to keep any remaining funds in a local bank as a source for the purchase of her future retirement home. (Tr. at 59, 60-63, 66-67; GE 2 at 7-8) She did not submit any documentation to support her contention that the property either is under contract or has been sold.

In 2016, she purchased a condominium in which her son now resides. She intends to pay off the remaining mortgage once the sale of the house is completed. The condominium is now worth about \$119,584. (Tr. at 59-61; GE 2 at 7) She and her late husband purchased land with a small house where her father resided with her half-brother. The house is now unoccupied. The house and property are now worth somewhere between \$35,000 and \$78,000. (Tr. at 61, 64; GE 2 at 7)

Applicant previously had various bank accounts in the Philippines, but now all but one of those accounts appear to have been closed. (Tr. at 65-67) Applicant owns a townhouse in the United States and maintains one credit union account. (Tr. at 33-34) Her late husband's DOD retirement benefits go directly to her credit union in the United States. (Tr. at 68)

Philippines

The U.S. and the Philippines maintain a close relationship stemming from the U.S. colonial period (1898-1946), the bilateral security alliance bound by the Mutual Defense Treaty of 1951, and common strategic and economic interests. Relations are based on strong historical and cultural links and a shared commitment to democracy and human rights. In 1946, the United States recognized the Philippines as an independent state and established diplomatic relations. The U.S. has since designated the Philippines as a Major Non-NATO Ally. Former U.S. President Barack Obama visited the Philippines in 2014 to reaffirm the United States' commitment to the security alliance, and to discuss the United

States' strategic vision for the bilateral relationship. President Obama noted the two nations' strong people-to-people ties, commitment to peace and stability in the Asia-Pacific region, and commitment to build prosperity for our people and the global economy.

Although the U.S. closed its military bases in the Philippines in 1992, the two nations have maintained security cooperation ever since. The Manila Declaration, signed in 2011, reaffirmed the 1951 U.S.-Philippines Mutual Defense Treaty as the foundation for a robust, balanced, and responsive security partnership. Since 2012, the Philippines has played a key role in the U.S. goal of rebalancing foreign policy priorities to Asia, particularly as maritime territorial disputes between China and other claimants in the South China Sea have intensified.

In 2014, the two countries confirmed agreement of an Enhanced Defense Cooperation Agreement (EDCA), which helps promote the peace and stability that has underpinned Asia's remarkable economic growth over the past six decades. The EDCA allows for the increased presence of U.S. military forces, ships, aircraft, and equipment in the Philippines on a nonpermanent basis and greater U.S. access to Philippine military bases. As part of the security alliance, Members of the U.S. Navy and Marine Corps have conducted Cooperation Afloat Readiness and Training (CARAT) exercises with the Armed Forces of the Philippines (AFP) since 1995. The training exercises develop strong partnerships that contribute to the greater peace and stability of the region and allow both nations to gain valuable experience and increase our interoperability. The U.S. and the Philippines have the same mission, that is, to further strengthen the Philippines' security operations and maritime domain awareness capabilities. The U.S. has begun to provide \$40 million in technical expertise, training, and equipment through the Global Security Contingency Fund. The U.S. is also helping to construct a Philippine National Coast Watch Center in Manila.

In the past decade, the Philippines has been one of the largest recipients of U.S. foreign assistance in Southeast Asia, including over \$143 million following Typhoon Yolanda (Haiyan) in 2013. U.S. assistance in the Philippines fosters broad-based economic growth; improves the health and education of Filipinos; promotes peace and security; advances democratic values, good governance, and human rights; and strengthens regional and global partnerships. The U.S. and the Philippines have a strong trade and investment relationship, with over \$25 billion in goods and services traded. As the Philippine's third-largest trading partner, the U.S. is one of the nation's largest foreign investors. The Philippines has been among the largest beneficiaries of the Generalized System of Preferences program for developing countries, which provides preferential duty-free access to the U.S. market. In 1989, the two countries signed a bilateral Trade and Investment Framework Agreement and a tax treaty.

An enhanced engagement of 15 U.S. government agencies is aiming to address the most significant constraints to growth in the Philippines and to stimulate inclusive economic expansion through a Partnership for Growth (PFG). USAID and the Millennium Challenge Corporation account for the majority of PFG financial resources amounting to more than \$750 million. The two countries have made enormous strides in deepening the economic linkages between them, including: Removal of the Philippines from the Special 301 Watch List, based on significant advances in the protection and enforcement of

intellectual property rights and considerable progress on worker rights issues in the Philippines, which will allow the U.S. government to close a Generalized System of Preferences (GSP) review of worker rights in the Philippines without any change to the Philippines' GSP trade benefits.

The Philippines and the U.S. share extensive people-to-people ties. About 350,000 Americans reside in the Philippines, and approximately 600,000 U.S. citizens visit the country each year. There are approximately four million people of Philippine descent in the U.S. The Philippines has the world's oldest continuous operating Fulbright program: the Philippine-American Educational Foundation, established in 1948. The U.S. has had a Peace Corps program in the Philippines for over 50 years.

The Philippines is a multiparty, constitutional republic with a bicameral legislature. Former President Rodrigo Roa Duterte, elected in May 2016, began his constitutionally limited six-year term in June 2016. In May 2022, he was succeeded by President Ferdinand Romualdez Marcos, Jr. (Bongbong), son of Former President Ferdinand Marcos Sr. His newly-elected Vice President is Sara Vicenta Zimmerman Duterte-Carpio (Inday Sara), daughter of Former President Duterte.

A number of Americans, including Leandro Aragoncillo, a former intelligence analyst with the Federal Bureau of Investigation (FBI) who also served as a staff assistant in the Office of the Vice President, have been convicted of espionage, or espionage-related crimes, involving transmission of information to the Philippines. According to the U.S. Department of Justice, there have been numerous criminal cases concerning export enforcement related to the Philippines. However, the most significant focus is on terrorism and human rights issues in the Philippines.

As of February 2021, the U.S. Department of State travel advisory for the Philippines is Level 3: Reconsider Travel Due to COVID-19. Additionally, Exercise Increased Caution due to crime, terrorism, civil unrest, and kidnapping. It directed Americans: Do Not Travel to the Sulu Archipelago, including the southern Sulu Sea, due to crime, terrorism, civil unrest, and kidnapping and to Marawi City in Mindanao due to terrorism and civil unrest. It noted that the Philippine government has declared a State of National Emergency on Account of Lawless Violence in Mindanao.

Philippine government law enforcement agencies are engaged in a nationwide counternarcotic campaign that has resulted in a sharp increase in violence between police and individuals suspected of involvement in the drug trade. As part of this campaign, law enforcement is engaged in aggressive search and buy-bust operations that could affect foreigners. The U.S. Department of State has assessed Manila as being a high-threat location for terrorism directed at or affecting official U.S. government interests. Terrorist violence continues to affect primarily the Mindanao region, in the country's south. In 2019, the Philippines made the lists of the top 10 countries with the most terrorist incidents (351) and the most terrorist casualties (1,192 which is 3 percent of the global total).

A variety of terrorist groups operate in the Philippines. For more than a decade, terrorists, insurgents, and criminal actors have carried out major attacks against civilians.

In 2019, the Philippines made the list of the top 10 countries with the most terrorist incidents and the most terrorist casualties. There were 351 incidents in the Philippines, with 1,192 casualties (3 percent of the global total of casualties). The most deadly attack involved a bombing of a Mass at the Jolo Cathedral in Sulu killing 23 people and wounding 102. Multiple suicide bombings in the Philippines were a new phenomenon for the region. On August 24, 2020, dual suicide bombings in Jolo, Sulu and Mindanao, killed 15 people and injured 77 others.

The State Department designated the Philippines a major money-laundering jurisdiction in 2019. The Philippines' growing economy and geographic location within key trafficking routes place it at elevated risk of money laundering and terrorism financing. Recent growth in the online gaming industry also presents increased risk. Corruption and human trafficking constitute some of the principal sources of criminal proceeds. Insurgent groups operating in the Philippines derive funding from kidnapping for ransom and narcotics and arms trafficking. Additionally, the large volume of remittances from Filipinos living abroad increases the monitoring burden on anti-money laundering authorities.

In its most recent annual human rights report, the State Department reported that significant human rights issues included: unlawful or arbitrary killings, including extrajudicial killings, by and on behalf of the government and non-state actors; reports of forced disappearance by and on behalf of the government and non-state actors; torture by and on behalf of the government and non-state actors; arbitrary detention by and on behalf of the government and non-state actors; harsh and life-threatening prison conditions; arbitrary and unlawful interference with privacy; significant problems with the independence of the judiciary; the worst forms of restrictions on free expression and the press, including violence, threats of violence, and unjustified arrests or prosecutions of journalists, censorship, and the existence of criminal libel laws; corruption; and unlawful recruitment or use of child soldiers by terrorists and groups in rebellion against the government.

Concerns about police impunity increased significantly following the sharp increase in killings by police in 2016. Significant concerns also persisted about impunity for the security forces, civilian national and local government officials, and powerful business and commercial figures. Slow judicial processes remained an obstacle to bringing government officials allegedly involved in human rights abuses to justice.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The standard that must be met is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that granting the person access to classified information is clearly consistent with the interests of national security.

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines in SEAD 4. 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.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of 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 meaningful decision. The concept recognizes that we should view a person by the totality of his or her acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information. Furthermore, security clearance determinations should err, if they must, on the side of denials. (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)). 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 avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Upon consideration of all the facts in evidence, including those in the DOD CAF case file, those submitted by Applicant, and his testimony, and the testimony of others, as well as an assessment of Applicant's demeanor and credibility, and after application of all appropriate legal precepts and factors, I conclude the following with respect to the allegations set forth in the SOR:

Guideline B, Foreign Influence

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

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

The guideline notes two conditions that could raise security concerns 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; 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.

Three of Applicant's four brothers, two of her three sisters, her two children, her boyfriend, and her four friends from high school are all citizen-residents of the Philippines. One brother is a Canadian citizen-resident, and one sister is a Philippine citizen working in Hong Kong. Her frequent contacts with some of them (as well as her not-so-frequent contacts with some of them) are manifestations of her care and concern for relatives and close friends residing in the Philippines.

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

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an Applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the

compromise of classified information. See ISCR Case No. 08-02864 at 4-5 (App. Bd. December 29, 2009) (discussing problematic visits of applicant's father to Iran). Applicant's relationship with her siblings, children, and close friends, including her boyfriend, as well as her financial interests, are the current concerns for the Government. However, the security significance of these identified concerns requires further examination of those relationships and financial interests to determine the degree of "heightened risk" or potential conflict of interest.

In assessing whether there is a heightened risk because of an Applicant's relatives and close friends in a foreign country, it is necessary to consider all relevant factors, including the totality of an Applicant's conduct and circumstances, including the realistic potential for exploitation. One such factor is the potential for pressure, coercion, exploitation, or duress. In that regard, it is important to consider the character of the foreign power in question, including the government and entities controlled by the government, within the relevant foreign country. Nothing in Guideline B suggests it is limited to countries that are hostile to the United States. In fact, we must avoid reliance on overly simplistic distinctions between 'friendly' nations and 'hostile' nations when adjudicating cases under Guideline B.

The nature of the foreign government involved and the intelligence-gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the Judge's ultimate conclusions in the case. The country's human rights record is another important consideration. Another important consideration is the nature of a nation's government's relationship with the United States. These factors are relevant in assessing the likelihood that an Applicant's family members living in that country 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, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorists cause a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The relationship of the Philippines with the United States, the situation in the Philippines, including crime and terrorism, place a burden of persuasion on Applicant to demonstrate that her relationships with any family member or close friend living in the Philippines does not pose a security risk. Applicant should not be placed into a position where she might be forced to choose between loyalty to the United States and a desire to assist relatives or close friends living in the Philippines.

There are terrorist groups active in the Philippines; increased levels of terrorism, violence, and insurgency; and human rights problems in the Philippines that demonstrate that a heightened risk of exploitation, coercion or duress are present due to Applicant's ties to her family and close friends. However, that risk is not generated by the Philippine government, but by terrorists striking out against the central Philippine authorities and all foreigners. Applicant's family members and close friends residing in the Philippines are potential targets in this war on civilized humanity. The presence of terrorist groups and

increased levels of terrorism, violence, and insurgency in the Philippines have also been described for events occurring on September 11, 2001, and more recently in Fort Hood, Boston, Paris, Nice, Orlando, San Bernardino, and New York City. However, as noted above, based on their relationships, there is a potential, but greatly reduced, "heightened risk" of foreign exploitation, inducement, manipulation, pressure, or coercion to disqualify Applicant from holding a security clearance.

While there is no evidence that intelligence operatives, criminals, or terrorists from or in the Philippines seek or have sought classified or economic information from or through Applicant or her family members or close friends, nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and the Philippines has a significant problem with terrorism and crime. Applicant's family members and close friends in the Philippines could be a means through which Applicant comes to the attention of those who seek U.S. information or technology and who would potentially attempt to exert coercion upon her.

I am persuaded that Applicant's loyalty to the United States is steadfast and undivided, and that, after being employed directly and indirectly by the U.S. Government in overseas assignments for many years, as well as being the widow of a long-term former U.S. Government employee, she has such deep and longstanding relationships and loyalties in the U.S., that she can be expected to resolve any potential conflict of interest in favor of the U.S. interest. Americans, whether in uniform or under cover, in potential combat zones or areas where armies or terrorists roam freely, are not considered potential security risks. In this instance, the degree of "heightened risk" or potential conflict of interest is dramatically reduced to nearly zero. Nevertheless, because of the evidence related to her family and close friends in the Philippines, AG ¶¶ 7(a) and 7(b) have been established. Further inquiry is appropriate to determine potential application of any mitigating conditions.

AG ¶ 8 lists some 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 United States;

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

(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.

As indicated above, three of Applicant's four brothers, two of her three sisters, her two children, her boyfriend, and two of her close friends from high school are all citizen-residents of the Philippines. She is not close to one brother, the biological father of her two children, or two of her four high school friends. She periodically but rarely speaks with her one sister who is a Philippine citizen working in Hong Kong. Her primary method of communication remains telephone or text, except on the infrequent occasions when she returns to the Philippines to visit family and her boyfriend. Her frequent contacts with some of them reflect her care and concern for those relatives and close friends residing in the Philippines.

The Appeal Board has concluded that contact every two months or more frequently constitutes "frequent contact" under AG ¶¶ 7 and 8. ISCR Case No. 14-05986 at 3-4 (App. Bd. Oct. 14, 2016). See *also* ISCR Case No. 04-09541 at 2-3 (App. Bd. Sep. 26, 2006) (finding contacts with applicant's siblings once every four or five months not casual and infrequent.) Frequency of contact is not the sole determinant of foreign interest security concerns based on connections to family. "[I]nfrequency of contact is not necessarily enough to rebut the presumption an applicant has ties of affection for, or obligation to, his or her own immediate family as well as his or her spouse's immediate family." ISCR Case No. 17-01979 at 4 (App. Bd. July 31, 2019). It is clear that Applicant cares for her family simply by providing some of them places to reside or by paying her son's tuition.

A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." She has significant connections to the United States. Her late husband was a native-born United States citizen, serving with the U.S. Government in overseas locations. She too has been a U.S. direct or indirect employee in both overseas and domestic locations for many years, and she has been a naturalized U.S. citizen for nearly two and one-half decades. Her siblings, children, her boyfriend, and two very close friends are Philippine citizen-residents. She intends to continue to work in the United States. Her future intentions are either to have her boyfriend move here or she will eventually retire and permanently reside in the Philippines.

It is important to be mindful of the United States' relationship with and historical investment in the Philippines. The Philippines is a U.S. ally in combatting terrorism after 9/11. The Philippines and the United States are allies with the goal of maintaining the Philippines territory and freedom of the seas. Applicant's relationship with the United States must be weighed against the potential conflict of interest created by her relationships with her family and friends who remain Philippine citizen-residents. True, they are at risk from criminals, terrorists, and human rights violations of the Philippines government. Applicant's access to classified information could theoretically add risk to those loved-ones living in the Philippines. Applicant's connections to her relatives and friends who are living in the Philippines is significant, but her history and dedication to the United States is also significant. Likewise, the positions and activities of those persons in the Philippines are such that it is unlikely that the family members or good friends will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States. AG ¶¶ 8(a) and 8(b) have been established and they fully mitigate foreign influence security concerns under Guideline B.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at SEAD 4, App. A, ¶ 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 SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis. (See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966))

There is some evidence against mitigating Applicant's foreign influence. A variety of terrorist groups operate in the Philippines. For more than a decade, terrorists, insurgents, and criminal actors have carried out major attacks against civilians. In 2019, the Philippines made the list of the top 10 countries with the most terrorist incidents and the most terrorist casualties. There were 351 incidents in the Philippines, with 1,192 casualties - 3 percent of the global total of casualties. The State Department reported that there are significant human rights issues in the Philippines including unlawful or arbitrary killings; reports of forced; torture; arbitrary; harsh and life-threatening prison conditions; arbitrary and unlawful interference with privacy; significant problems with the independence of the judiciary; as well as the worst forms of restrictions on free expression and the press. It is in that environment that Applicant's family and close friends reside.

The mitigating evidence under the whole-person concept is simply more substantial. Applicant is a 53-year-old Philippine-born naturalized U.S. citizen. She became a U.S. citizen in August 1995 and relinquished her Philippine citizenship. She is a 1986 high school graduate with some college credits but no degree. From 1994 until 1998, she resided with her husband – a native-born U.S. citizen then employed by the U.S. Government – in Singapore, where she also worked in an unspecified position with the U.S. Air Force. She has been employed as a payroll support analyst by a government contractor and initially assigned to a U.S. Government facility in the Philippines from December 1998 until late in 2019. In early 2020, her position moved to the United States, and she has served in identical positions for the U.S. Government handling the portfolios first for Afghanistan and then for Iraq. She was married in 1991 and widowed in 2014. She has two adopted adult children.

Overall, the evidence leaves me without any questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has successfully mitigated the security concerns arising from her foreign influence issues. See SEAD 4, App. A, ¶¶ 2(d)(1) through 2(d)(9).

Formal Findings

Foreign Influence

For Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge