



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-01339
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jenny Bayer, Esq., Department Counsel  
For Applicant: *Pro se*

04/17/2024

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations and Guideline B, foreign influence. Eligibility for access to classified information is denied.

**Statement of the Case**

On September 7, 2023, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline B, foreign influence. The action was taken 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 adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on November 21, 2023, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on February 2,

2024. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 11 (Item 1 is the SOR). Applicant did not provide a response to the FORM; did not object to the Government's evidence; and did not submit documents. The Government's evidence is admitted. The case was assigned to me on April 1, 2024.

### **Administrative Matters**

Department Counsel requested that I take administrative notice of certain facts about the Democratic Republic of the Congo (DRC) (Administrative Notice Exhibits I through VII). Without objection, I have taken administrative notice of the facts contained in the request. The facts are summarized in the written request and will not be repeated verbatim in this decision.

Of particular note, are U.S. Department of State travel advisories to not travel or reconsider travel to certain areas of the DRC due to terrorism, crime, civil unrest, armed conflict, murder, rape, kidnapping and pillaging. There is a threat to humanitarian aid workers and other personnel. Terrorists and armed groups have attacked military and civilian targets. Terrorist groups are intent on attacking U.S. citizens. The DRC's instability continues to pose an unusual and extraordinary threat to the United States. The Islamic State of Iraq and Syria (ISIS) maintains links with local affiliates in the DRC. ISIS is designated as a foreign terrorist organization. ISIS has conducted a series of attacks in the DRC that killed, injured, or abducted thousands of people. There are significant human rights issues in the DRC which include unlawful and arbitrary killings, extrajudicial killings, arbitrary arrest or detention, political prisoners or detainees, serious problems with the independence of the judiciary, and punishment of family members for alleged offenses by a relative, along with many other abuses.

### **Findings of Fact**

Applicant admitted the SOR allegations in ¶¶ 1.a and 2.a through 2.e. He denied SOR allegations in ¶¶ 1.b and 1.c. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 47 years old. He immigrated to the United States from the DRC in 2009 and became a naturalized U.S. citizen in 2015. He earned a bachelor's degree in the DRC and an associate degree and another bachelor's degree in the United States. He married in 2016. His wife was a citizen of the DRC and became a permanent resident of the United States. In April 2023 she became a naturalized citizen. Applicant has worked for a federal contractor since June 2022.

In Applicant's August 2022 security clearance application (SCA), he disclosed he has two children ages 10 and 7. In his August 2023 interrogatories he again lists them as his children. However, in his answer to the SOR, he stated the older child is actually his

niece. She was born in the United States and resides in the DRC. His younger child is a citizen and resident of the United States. He did not elaborate on why he listed his niece as his child or whether he acts in a parental role regarding her care. Because he listed her on his SCA and has referred to her as his child, he likely has a close relationship with her. In his background interview from October 2022, he stated he provided her financial support. (Item 4, 6)

Applicant's mother is a citizen of the DRC and a permanent resident of the United States. She lives with Applicant in the United States. His father-in-law is a citizen and resident of the DRC. Applicant has eight siblings who are citizens and residents of the DRC. He provided a sister a total of about \$5,000 in support in the past. He said his gifts were "from time to time." He indicated in his background interview that he provided his sister support for the benefit of his child or niece in the DRC. (Items 4, 6)

Applicant completed government interrogatories in April and August 2023. He affirmed that the information included in his summary of personal interviews was accurate and correct except for a spelling correction, his new address, an update of his wife's citizenship status, and an update on the number of collections accounts he had and disputed. (Items 5, 6)

During his October 2022 interview with a government investigator, Applicant corrected previous information provided and advised he had worked for the DRC Health Department for one year. He said he was not involved in intelligence activity. He disclosed that he was unaware what one of his brothers' occupation was. Another brother is a police officer. His sisters are employed as a secretary and seamstress, and one is unemployed. His other brothers are an architect, a lawyer, and an IT professional. His father-in-law is unemployed, and Applicant did not know what his former occupation was. Applicant maintains monthly telephonic contact with two sisters and five brothers. He maintains quarterly telephonic contact with one brother. He did not provide any other information about his siblings. He notes on his SCA regarding his siblings that he does not know who their current employers are but then also says they are not affiliated with the DRC government, military, defense industry, foreign movement, or intelligence service. (Item 4, 6)

Applicant loaned a cousin, who is a citizen and resident of DRC, \$20,000 to start an IT training center in the DRC. It did not work out and the cousin returned the money to Applicant. (Item 4, 6)

Applicant disclosed in his SCA that he traveled to China for 11-20 days from March to April 2018 for tourism. He traveled to the DRC between June 2018 and March 2019 for more than 30 days to visit family and friends. He traveled again in October 2021 for 21-30 days to the DRC to visit family and friends. (Item 4)

The SOR alleges three delinquent debts totaling approximately \$30,614. Applicant did not disclose any delinquent debts on his August 2022 SCA. In October 2022, he told the government investigator that he experienced financial difficulties in 2019 because his

wife was sick and then the global pandemic made his finances worse. He said he contacted his creditors and then he worked with a debt consolidation company (DCC) for help.

Regarding the debt alleged in SOR ¶ 1.a (\$24,144), Applicant explained the debt was for a personal loan obtained in about 2016 or 2017 to help his cousin financially. His cousin returned the money. It is unknown when. Applicant used all of the returned money to pay for his daily living expenses. He could not afford to make loan payments. In his April 2023 response to interrogatories, he stated the debt was not paid and he was disputing it. He did not indicate the basis of his dispute. In a letter submitted on August 4, 2023, to Defense Office of Hearings and Appeals, he provided an update about his accounts and said several had been closed and others were being disputed. Regarding the loan in SOR ¶ 1.a, he stated, "\$24,000 owed, still dispute due Statute of Limitations." In his August 2023 response to interrogatories, he stated he was disputing two debts, presumably this was one of them. In his SOR answer, he stated this account was still in dispute and the original creditor no longer held the account. He said the collection agency also did not hold the account. He said he was advised by his financial agency that the account would be removed from his credit report. He expected it to be closed at the conclusion of the dispute. Applicant did not provide evidence as to what the specifics of his dispute entail and whether he made any payments towards the debt. This debt is unresolved. (Items 2,5, 7)

SOR ¶¶ 1.b (\$4,199) and 1.c (\$2,271) are judgments filed against Applicant in December 2020 and January 2021, respectively for credit card debts. After receipt of the SOR, Applicant settled the judgments for less than the full amount for both debts. (Items 2, 8, 9, 10, 11)

The SOR allegations are supported by Applicant's admissions in his SCA, answer to the SOR, statements in his interrogatories, court documents, and credit reports from May 2023 and December 2023. Any derogatory information that was not alleged in the SOR will not be considered for disqualifying purposes but may be considered in the application of mitigating conditions and in my whole-person analysis. (Items 2, 4, 5, 6, 8, 9, 10, 11)

## **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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(c),

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 avoided drawing 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. Directive ¶ E3.1.15 states 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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F: Financial Considerations**

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

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling mental

health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security 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).

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

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

The SOR alleged three delinquent debts totaling approximately \$30,614. There is sufficient evidence to support the application of the above disqualifying conditions.

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;
- (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;
- (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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant attributed his financial difficulties to his wife's health in 2019, unemployment due to the pandemic, and underemployment. These conditions were beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Two of the debts alleged had judgments entered against him in 2020 and 2021. He traveled to the DRC between June 2018 to March 2019 for more than 30 days to visit family and friends. He traveled again in October 2021 for 21-30 days to the DRC to visit family and friends. He did not settle these judgments until after he received the SOR. He obviously prioritized his trips before paying his delinquent debts. He admitted that the third and largest debt was for a loan that he used to pay his expenses, which he did not pay, and now disputes. It appears he is waiting for the statute of limitations to run on the debt and then it will be removed from his credit report. Although this may be a legitimate legal action, it does not constitute acting responsibly towards a legitimate loan he failed to repay or constitute a legitimate dispute. This debt is unresolved. AG ¶ 20(b) partially applies. AG ¶ 20(e) does not apply.

Applicant has not resolved his largest debt. His financial problems are ongoing and recent. AG ¶ 20(a) does not apply. It appears Applicant has worked with a DCC and has resolved other debts and settled the two judgments in the SOR. It is unclear if he received financial counseling through the DCC. AG ¶ 20(c) has minimal application because there are not clear indications that he is resolving his largest debt.

Applicant settled two of the SOR debts after judgments were entered against him and after his receipt of the SOR. Although they are now resolved, his actions do not constitute a good-faith effort to repay his creditors. AG ¶ 20(d) does not apply.

## **Guideline B, Foreign Influence**

The security concern for foreign influence is set out in AG ¶ 6:

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

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

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

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

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

There is a significant threat of terrorism and ongoing human rights problems in the DRC. I considered the totality of Applicant's ties to the DRC. 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. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant's mother is a citizen of the DRC and a permanent resident of the United States. It is unknown if she visits the DRC and her family there. Applicant has a child or niece who resides in the DRC. He has eight siblings and his father-in-law who are residents and citizens of the DRC. One brother is a police officer. He maintains regular contact with his family in the DRC. He has taken trips, as recently as 2021 and 2018 for extended periods to the DRC to visit family and friends. Because of the DRC's threat of terrorism and human rights issues, there is a heightened risk of foreign exploitation, manipulation, inducement, pressure, and coercion. AG ¶¶ 7(a), 7(b) and 7(e) apply.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following is potentially applicable:

(a) the nature of the relationships with foreign person, 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.

Applicant has strong family ties to the DRC, including a child or niece who is a resident and eight siblings and his father-in-law, who are citizens and residents. He travels to the DRC to visit family and friends. He maintains regular contact with these relatives. He provides some financial support. He provided very limited information about his relationships with his family in the DRC. Because Applicant requested a determination on the record without a hearing, I had no opportunity to question him about his foreign contacts, where they live in the DRC, who they are employed by, and more specifics about potential foreign influences. I was unable to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

I cannot find that Applicant's contact and communication with his relatives in the DRC is casual or infrequent. He maintains regular contact with his family in the DRC. AG ¶ 8(c) does not apply. The evidence is insufficient for me to make a determination that his relationships are such that it is unlikely Applicant would be placed in a position of having to choose between the foreign individuals and the interests of the United States. The fact he has a child or niece living there would make it very difficult to make such a choice. There is insufficient evidence to conclude that there is no conflict of interest because Applicant's sense of loyalty toward his relatives in the DRC is minimal or he has such longstanding relationships and loyalties in the United States that he can be expected to resolve any conflict in favor of the United States. AG ¶¶ 8(a) and 8(b) do 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 the 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 F and B in my whole-person analysis.

Applicant failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised under Guideline F, financial considerations, and Guideline B, foreign influence.

### **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 F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b-1.c:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 1a-1.e:	Against Applicant

### **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge