



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



In the matter of: )  
)  
) ISCR Case No. 22-02476  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Cynthia Ruckno, Esq., Department Counsel  
For Applicant: *Pro se*

10/25/2024

**Decision**

Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the security concerns generated by his relatives who are Colombian citizens and by his financial delinquencies. Clearance is denied.

**Statement of the Case**

On December 21, 2022, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and Guideline B, foreign influence, 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 March 13, 2023, Applicant answered the SOR, admitting all the allegations except subparagraph 1.g, and requested a hearing, whereupon the case was assigned to

another administrative judge on October 16, 2023. On October 20, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a notice of video teleconference hearing, scheduling the hearing on December 7, 2023. That day, Department Counsel moved for a continuance after receiving a document one week before the hearing from Applicant's employer. Applicant did not object, whereupon, the judge continued the case, rescheduling it for February 13, 2024.

On February 7, 2024, Department Counsel moved to amend the SOR adding subparagraph 2.d, cross-alleged under an additional paragraph (Guideline E, personal conduct) as subparagraph 3.a, as follows:

You failed to report or fully disclose, when required as an employee of [Company X], your foreign activities and associations with foreign persons.

On February 12, 2024, while the motion was pending, the hearing was rescheduled for May 2, 2024. Later it was re-assigned to me. I held the hearing, as rescheduled. At the hearing, I granted the motion, and Applicant denied the additional allegation. I then considered seven Government exhibits (Government's Exhibit (GE) 1 – GE 7), and took administrative notice of the facts encapsulated within one exhibit with seven attachments, marked as Hearing Exhibit (HE) I, Attachment (Att.) 1 through Att. 7.

### **Findings of Fact**

Applicant is a 67-year-old married man with six children. Three of the children are adults and three are ages fourteen, seven, and three. (Tr. 50) Applicant has been married twice previously. He has been married to his current spouse since 2018. (GE 1 at 33) The youngest two children are from his current marriage.

Applicant graduated from college in 1982, majoring in chemistry. (Tr. 82) He is a veteran of the Air Force National Guard, serving from 1980 to 2010. (Item 1 at 28) In 1990, he completed officer candidate school and spent the remainder of his career serving as an officer. He retired honorably. (Tr. 15, 82) Applicant has spent most of his civilian career working for defense contractors. (Tr. 16) He has been working for his current employer in the field of flight operations since 2021. (Tr. 15, 23)

Applicant has approximately \$81,000 of delinquent debt, as alleged in the SOR. The debt alleged in subparagraph 1.a, totaling \$25,074, is a delinquent personal loan. Applicant borrowed this money to help him sustain his living expenses while he was unemployed in 2016. (GE 2 at 3) It remains outstanding. The debts alleged in subparagraphs 1.b through 1.d, and 1.f, are delinquent credit card accounts that are owed to the same lender, totaling approximately \$35,000. They have been charged off. There is no record evidence that Applicant has made any efforts to satisfy them.

The debts alleged in subparagraphs 1.e and 1.h, totaling approximately \$11,000, are owed to the same creditor. Applicant contends that he has been satisfying these debts with \$120 monthly payments since 2020. (Tr. 45) He provided no substantiating evidence.

The debt in subparagraph 1.g totals \$4,554. Applicant contends that he was making payments towards the satisfaction of this debt until he lost his job in 2021. (GE 2 at 9-10) He provided no substantiating evidence.

Applicant owes the debt alleged in subparagraph 1.i, totaling \$254, to a credit union. His contention that he paid it is unsupported by record evidence.

Applicant's spouse is a citizen of Colombia. (Tr. 64) She has been living with Applicant in the United States since relocating from Colombia in late 2016. (Tr. 49) She is a permanent U.S. resident and is in the process of becoming a U.S. citizen. (GE 2 at 6; Tr. 65) She is currently a homemaker and is studying to obtain a real estate license. (Tr. 75)

Applicant and his current wife met in October 2015 and began dating shortly thereafter. (GE 2 at 5) When they met, he was still married to his second wife, but was estranged. He reported his relationship with his then-girlfriend to his employer in December 2015 once it became serious. (GE 7 at 2) They later married.

Applicant lived in Colombia when he was not performing a deployment rotation with his company. (GE 6 at 3) He held a security clearance. (GE 7 at 1)

Applicant's then-girlfriend owned an event planning business in Colombia. In early 2016, Applicant borrowed \$45,000, as referenced in subparagraph 1.a, to help her keep the business afloat after a client failed to pay a bill. (Tr. 71) Applicant's efforts to help were ultimately unsuccessful, as the business failed, prompting Applicant's then-girlfriend to immigrate to the United States to live with Applicant. (Tr. 71)

Before the company failed, Applicant, in February 2016, emailed the chief financial officer (CFO) of his employer, asking him to consider investing between \$700,000 and \$1,000,000 in his then-girlfriend's company to help her satisfy debt, modernize, and expand. (GE 6 at 3) In the email, he also noted that he had invested all the money that he had available to help his then-girlfriend's company. (AE 7 at 7) Applicant also requested a deployment to Colombia, stating that he needed the corresponding 15 percent pay increase because the divorce process was beginning with his second wife, and he needed as much cash as possible. (GE 7 at 6) At or about that time, Applicant also told another executive-level employee of the company that he was going to take a stakeholder position in a foreign company either as a chief executive officer or a board member, and he asked various other team members to invest in his foreign venture. (GE 7 at 4)

Subsequently, Applicant was terminated from employment in May 2016. (GE 2 at 3) Applicant remained unemployed for the next eight months through January 2017. This compounded his financial problems, as discussed above.

Applicant contends that his financial problems are under control. He keeps a budget. He earns \$220,000 annually. His contention that he has approximately \$6,480 of monthly discretionary income is unsubstantiated. (Tr. 47)

Applicant's mother-in-law is a citizen and resident of Colombia. She works at a private school. (Tr. 66) Applicant communicates with her through his wife, or when she comes to the U.S. to visit his children. (Tr. 66)

Applicant's brother-in-law is a citizen and resident of Colombia. He is a motivational coach. (Tr. 67) Applicant speaks with him by phone approximately once per month. (GE 2 at 7) Applicant has not visited him since returning to the United States.

### **Administrative Notice**

Colombia is a constitutional, multiparty republic. The law provides citizens the ability to choose their government through free and fair periodic elections held by secret ballot and based on nearly universal suffrage. (HE I, Att. 1 at 23) Colombia has close security ties with the United States, including joint training, military assistance, and designation in 2022 as a Major Non-NATO Ally. (He I Att. 2 at 20) Significant human rights abuses remain pervasive, particularly with respect to indigenous people, Afro-Columbians, and lesbian, gay, and transgender people. (HE I, Att. 1 at 1)

### **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 deciding.

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 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's history of financial problems triggers the application of AG ¶ 19(a), "inability to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations."

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

Although Applicant's financial problems were caused by a failed business venture rather than overspending, the nature of the investment was troubling, as he exhausted all his credit helping his then-girlfriend, a foreign national whom he had just met two months previously, mitigate a significant loss that her business incurred. He compounded this bad decision by soliciting money from coworkers, including the company CFO, to invest in the business. Under these circumstances, AG ¶ 20(b) does not apply.

Notwithstanding how Applicant incurred these delinquencies, he contends that he has arranged payment plans, and that he has been resolving them through monthly payments. He provided scant supporting evidence. Similarly, he provided no evidence supporting his contention that he has a comfortable amount of monthly discretionary income after his bills have been paid. Under these circumstances, none of the remaining mitigating conditions apply. I conclude that Applicant has failed to mitigate the financial considerations security concerns.

### **Guideline B: Foreign Influence**

This guideline sets for the foreign influence security concern, as follows:

Foreign contacts and interests, including, but not limited to, business, financial and property interest, 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. (AG ¶ 6)

Applicant reported his relationship with his then-girlfriend in December 2015. Although he did not report this relationship until two months after he met her, he reported it nonetheless. As for his business association with her, the company was placed on notice of it when he attempted to solicit investments from the CFO and various coworkers. Consequently, I resolve subparagraph 2.d in Applicant's favor.

Applicant's relationship with his wife, and his in-laws triggers the following disqualifying conditions:

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;

AG ¶ 7(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

AG ¶ 7(c) 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.

The following mitigating conditions are potentially applicable to Applicant's relationships with his wife and in-laws:

(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 of foreign influence or exploitation.

When faced with the financial strain of an expensive divorce, Applicant leveraged his connection with Colombia by touting a business opportunity to his coworkers involving his then-girlfriend's business. Although Applicant's then-girlfriend (current wife) now lives in the United States and no longer owns the business, the egregiousness of Applicant's conduct heightens the risk of coercion posed by both his wife and his remaining relatives in Colombia, regardless of how often he stays in touch with them, and regardless of Colombia's status as a strong U.S. ally. Under these circumstances, none of the mitigating conditions apply.

In sum, Applicant has failed to mitigate the foreign influence security concern.

### **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) The allegation set forth in subparagraph 3.a is the same one cross-alleged in subparagraph 2.a. I resolve it in Applicant's favor for the same reason as set forth in my discussion of subparagraph 2.d, above.

## **Whole-Person Concept**

In reaching my conclusion, I considered the whole-person concept factors and they do not warrant a favorable conclusion.

## **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
Subparagraphs 1.a – 1.i:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a. – 2.c:	Against Applicant
Subparagraph 2.d:	For Applicant
Paragraph 3: Guideline E:	FOR APPLICANT
Subparagraph 3:a	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.

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Marc E. Curry  
Administrative Judge