



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



In the matter of:)
)
) ISCR Case No. 23-02077
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro Se*

07/22/2024

Decision

GALES, Robert Robinson., Administrative Judge

Applicant mitigated the security concerns regarding foreign influence but failed to mitigate the security concerns pertaining to personal conduct. Eligibility for a security clearance is denied.

Statement of the Case

On January 31, 2023, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On June 1, 2023, he was interviewed by an investigator from the U.S. Office of Personnel Management (OPM). On December 14, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Services (CAS) issued a Statement of Reasons (SOR) to him under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense (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 E (Personal Conduct) and 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.

On December 20, 2023, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM), including proposed evidentiary documents, was mailed to Applicant by the Defense Office of Hearings and Appeals (DOHA) on February 22, 2024, and he was afforded an opportunity after receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to his case. Applicant received the FORM on March 27, 2024. His response was due on April 25, 2024. Applicant timely responded to the FORM with brief comments. The government's proposed exhibits and Appellant's response to the FORM were admitted into evidence without objection. The case was assigned to me on June 21, 2024.

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 seven written submissions issued by various U.S. Government sources. Facts are proper for Administrative Notice when they are 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 and the Office of the Director of National Intelligence.

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.

Findings of Fact

In his Answer to the SOR, Applicant admitted, with extensive comments, all the allegations pertaining to personal conduct (SOR ¶ 1.a.) and foreign influence (SOR ¶¶ 2.a. and 2.b.). The information in his 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 40-year-old native-born U.S. citizen who is an employee of a defense contractor for whom he has been serving as a senior material applicator since January 2023. He was previously employed by other employers as a low observable applicator (September 2006 - August 2022), aircraft surface preparer (August 2005 - September 2006), industrial maintenance helper (August 2004 - March 2005), and janitor (January 2003 - March 2004). He is a 2002 high school graduate. He has never served in the U.S. military. He was granted a top-secret clearance in 2012. He has been married since 2002. He has no children.

Personal Conduct

In June 2022, Applicant sought to take advantage of a week of paid leave by submitting false medical documentation to his employer indicating that he had tested positive for COVID-19. The falsified documentation not only enabled him to receive 40 hours of time off but also payment for that period under state law. He learned of the idea from an ex-girlfriend whose sister was a nurse and who could furnish him with the false positive documentation. He justified his actions by believing that others were doing the same thing and getting away with it. Someone reported him anonymously, and upon being questioned by his employer, Applicant admitted submitting the false documentation. As a result of his "dishonest behavior and violation of time recording practices (mischarging)" as outlined in the Employee Conduct and Discipline Manual, he was terminated from employment, effective August 12, 2022. (Memorandum, dated August 9, 2022; Item 3; Item 5)

Applicant noted that he went through 15 years of service with the company without any record of complaints on his work, personality, or attitude. He contends that he learned his lessons from what he did, and he does not believe the action should cast doubt on his reliability, trustworthiness, or good judgement, as the one mistake does not define who he is. He reported that he had cut all ties and communication with his ex-girlfriend and her sister. (Item 3; Item 5)

Foreign Influence

Applicant's wife, whom he met in 2020, was born and raised in the Philippines. She came to the United States on a tourist visa, that was later changed to a Non-Immigrant F-1 visa. After their marriage, Applicant sponsored her for permanent residency, and the application was granted in August 2003. She anticipates becoming a naturalized U.S. citizen in 2025. Her parents are both citizens and residents of the Philippines. They do not reside in an area of significant concern for their safety as described below under a U.S. Department of State Travel Advisory. Her father is retired from a Philippine construction company and her mother is retired from a German airline. They, as well as Applicant's wife, have been involved in charitable works with various outreach programs in the Philippines that help abandoned children and elders. Applicant and his wife routinely

communicate with her parents by phone weekly. Neither Applicant's wife nor either of her parents has a past or current relationship with the Philippine government, military, security, defense industry, foreign movement, or intelligence services. (Item 3; Item 4; Item 5)

It is anticipated that in 2040, Applicant's wife will be entitled to a Philippine retirement pension or social security of about \$100 per month. (Item 4)

Character References

Three former coworkers in the aerospace industry speak very highly of Applicant's professionalism, expertise, dedication, precision and strong attention to detail, positive attitude, and his ability to train others. (Item 3)

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 Philippines'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.

As of July 2023, the U.S. Department of State travel advisory for the Philippines is Level 2: 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. A variety of terrorist groups operate in the Philippines. Terrorist violence continues to affect primarily the Mindanao region, in the country's south.

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. The deadliest attack involved a bombing of a Mass at the Jolo Cathedral in Sulu province killing more than a dozen people and wounding 70 others in twin bombings. Multiple suicide bombings in the Philippines were a new phenomenon for the region.

The U.S. Department of State 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 U.S. Department of State 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 several 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 DCSA CAS case file, and those submitted by Applicant, 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 E, Personal Conduct

¶ 15: The security concern relating to the guideline for Personal Conduct is set out in AG

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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(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.

The guideline also includes some conditions that could raise security concerns under AG ¶ 16:

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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;

(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. This includes, but is not limited to, consideration of ...

(4) evidence of significant misuse of Government or other employer's time or resources;

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing; ...

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment; and

(g) association with persons involved in criminal activity.

In June 2022, Applicant submitted false medical documentation to his employer indicating that he had tested positive for COVID-19 to take advantage of a week of paid leave. The falsified documentation not only enabled him to receive 40 hours of time off but also payment for that period under state law. An ex-girlfriend's sister - a nurse - furnished him with the false positive documentation. He took the action believing that others were doing the same thing and getting away with it. The true test of honesty, integrity, and trustworthiness comes when no-one is looking, and the individual adheres to the honorable straight path, something Applicant failed to do. Nevertheless, someone reported him anonymously. Upon being questioned by his employer, Applicant admitted submitting the false documentation. As a result of his "dishonest behavior and violation of time recording practices (mischarging)" as outlined in the Employee Conduct and Discipline Manual, he was terminated from employment. AG ¶¶ 16(b), 16(c), 16(d)(4), 16(e)(1), 16(f), and 16(9) have been established.

The guideline also includes some conditions that could mitigate security concerns under AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; ...

(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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; ... and;

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant followed through with his plan to defraud his employer of benefits and status by falsely claiming to be positive for COVID-19; by wrongfully receiving salary during his absence; and by violating his employer's Employee Conduct and Discipline Manual. The offense was not minor, and it did not occur under unique circumstances. He corrected the record after being confronted by his employer, and he acknowledged that the behavior was wrong. He cut ties with his ex-girlfriend and her sister, but he has not offered evidence of any counseling to change that behavior. His claim that other employees were doing the same thing is not a valid excuse for his behavior. It is noted that he had been an employee of the company for 15 years when he allowed his greed to overcome his honesty and integrity, but even that period of honorable service could not be overlooked by his employer, so he was terminated. Accordingly, none of the mitigating conditions have been established.

Guideline B, Foreign Influence

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

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.

¶ 7: The guideline notes three conditions that could raise security concerns under AG

(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.

Applicant's wife was born and raised in the Philippines. She came to the United States on a tourist visa, that was later changed to a Non-Immigrant F-1 visa. After their marriage, Applicant sponsored her for permanent residency, and the application was granted in August 2003. She anticipates becoming a naturalized U.S. citizen in 2025. Her parents are both citizens and residents of the Philippines. Her father is retired from a Philippine construction company and her mother is retired from a German airline. They, as well as Applicant's wife, have been involved in charitable works with various outreach programs in the Philippines that help abandoned children and elders. Applicant and his wife routinely communicate with her parents by phone weekly.

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 an applicant's father to Iran). Applicant's relationship with his wife and her parents 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 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 his relationships with any family member living in the Philippines does not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist relatives 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 his wife and in-laws. 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 in-laws 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, New York City, and Butler. 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 his wife's parents, 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 in-laws 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 him.

I am persuaded that Applicant's loyalty to the United States is steadfast and undivided, and that, as a native-born U.S. citizen, he has such deep and longstanding relationships and loyalties in the U.S., that he can be expected to resolve any potential conflict of interest in favor of the U.S. interest. 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 Applicant's in-laws in the Philippines, AG ¶¶ 7(a) and 7(b) have been established, but with respect to Applicant's wife, AG ¶ 7(e) has not 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;

(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; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

As indicated above, Applicant's mother-in-law and father-in-law are both citizens and residents of the Philippines. They do not reside in any of the concerned geographical areas specified in the Travel Advisory. His wife resides in the United States. Applicant and his wife routinely communicate with her parents by phone weekly. Neither Applicant's wife nor either of her parents has a past or current relationship with the Philippine government, military, security, defense industry, foreign movement, or intelligence services. While it is anticipated that in 2040, Applicant's wife will be entitled to a Philippine retirement pension or social security of about \$100 per month, that financial interest is of such a low magnitude it is insufficient to be an effective leverage to influence, manipulate, or pressure her.

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 wife's parents, and that she cares for them as well.

A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." He has significant connections to the United States. His wife resides here with him. Her parents are citizens and residents of 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 September 11, 2001. 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 his and her relationships with her parents who remain Philippine citizens and residents. True, they are at risk from criminals, terrorists, and human rights violations of the Philippines government. Applicant's and his wife's connections to her parents who are living in the Philippines are significant, but his 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 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), 8(b), and 8(f) 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))

I have incorporated my comments under Guideline E and Guideline B in my whole-person analysis, and I have considered the factors in SEAD 4, App. A ¶¶ 2(c) and 2(d). After weighing the disqualifying and mitigating conditions under those guidelines and evaluating all the evidence in the context of the whole person, I conclude that Applicant proffered substantial mitigating evidence, which was sufficient to overcome the disqualifying conditions established under Guideline B, but he failed to overcome the disqualifying conditions established under Guideline E.

Overall, the evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance, based solely on his personal conduct issues. For all these reasons, I conclude Applicant has successfully mitigated the security concerns arising from her foreign influence issues but has not done so arising from his personal conduct issues. See SEAD 4, App. A ¶¶ 2(d)(1) through 2(d)(9).

Formal Findings

Personal Conduct	Against Applicant
Foreign Influence	For Applicant

Conclusion

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

Robert Robinson Gales
Administrative Judge