



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



In the matter of: )  
)  
) ISCR Case No. 06-06496  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Francisco Mendez, Esq., Department Counsel  
For Applicant: Eric Eisen, Esq. and Claire Shapiro, Esq.

March 31, 2009

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the government’s security concerns under Guidelines J, Criminal Conduct and D, Sexual Behavior. He mitigated the security concerns under Guideline B, Foreign Influence. Applicant’s eligibility for a security clearance is denied.

On April 22, 2008 and January 6, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines J, D, and B. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on June 6, 2008 and January 30, 2009, and requested a hearing before an administrative judge.<sup>1</sup> The case was assigned to me on January 22, 2009. DOHA issued a notice of hearing on February 10, 2009, and I convened the hearing as scheduled on March 9, 2009. The Government offered Exhibits (GE) 1 through 6. Applicant's attorney had no objections to GE 1, 3, 4, 5, and 6, but objected to GE 2. I overruled the objection and all of the Government's exhibits were admitted.<sup>2</sup> The Government also requested administrative notice be taken of exhibits marked as Hearing Exhibits (HE) I through VI, which was granted. Applicant testified and offered Exhibits (AE) A through F. Department Counsel did not object and they were admitted. DOHA received the transcript of the hearing (Tr.) on March 17, 2009.

### **Findings of Fact**

Applicant denied the allegations in 1.a and 2.a of the SOR and admitted the allegations in 3.a and 3.b of the amended SOR. Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 43-year-old network engineer who has worked for a defense contractor since 2000. He has resided in Korea since 1993, where he worked for a different defense contractor before changing jobs to work for his present employer. Applicant explained that his job required him to work very long hours every day, six and sometimes seven days a week. He would normally work 10-12 hours each day.<sup>3</sup>

Applicant met his wife, who was from the Philippines, through a coworker, who was married to her sister. Applicant and his wife dated for four months before being married in the Philippines in 1995. He testified that his new brother-in-law warned him that when he married a Filipina woman he essentially married the whole family and he would be expected to provide financial support to her extended family in the Philippines. He and his wife would return periodically to visit her family in the Philippines. He estimated that over a seven-year period he provided his wife's family approximately \$200,000.<sup>4</sup> Applicant stated that after he and his wife were married for about six months her personality changed and she became angry about nothing.<sup>5</sup>

Applicant stated his wife would return to the Philippines with her sister for months at a time to visit her family. He would visit periodically. He estimated that in the seven

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<sup>1</sup> I have received letters that contain briefs and attached exhibits from Applicant's counsel dated February 6, 2009, September 18, 2008 and June 18, 2008. I have considered all of these documents.

<sup>2</sup> Tr. 28-38.

<sup>3</sup> Tr. 75-81, 87, 89.

<sup>4</sup> AE B consists of two money orders, the amounts on them are illegible.

<sup>5</sup> Tr. 81-89, 112-113.

years they were married she spent about half of the time in the Philippines with her family.<sup>6</sup>

In 1998 Applicant and his wife had a daughter. His wife gave birth in the Philippines. He was present at the birth, but returned to his job in the Korea shortly thereafter and she remained in the Philippines for three months with their newborn baby. When she returned back to Korea he continued to work long hours. He estimated he only saw the baby about 30 minutes in the evening when he came home from work. He spent time with her watching television, playing games, going to church and going to the base.<sup>7</sup>

Applicant testified that after the baby was born his relationship with his wife changed. He stated she wanted more money, so he gave her more money. He testified she had access to his accounts. He paid all of the bills and gave her spending money. She did not like to write checks or use the ATM so he gave her cash. The money he gave her was in addition to the money he stated he provided for her family. He purchased all of the "big ticket" items they needed. He stated, "I purchased all of the food." He believed their main "issue" was financial. She would complain that he was not providing enough support for her family. He stated "I would give her money, but it wasn't enough." He stated "I would work too late, she would call my boss and she'd say 'well, you know, when is he coming home.'"<sup>8</sup> He stated she would hit him, be violent towards him, and leave scratch marks on his face.<sup>9</sup>

Applicant testified he and his family went to the Philippines in 2000 to visit her family. He stayed for two to three weeks. They also visited Applicant's family in the U.S. with their daughter when she was two.

In December 2002, Applicant, his wife and their daughter traveled to the U.S. to visit his parents. He stated his wife insisted they rent a car, even though his parents had vehicles, so she could travel to [State B]. He and his wife went to a local resort for a week. They left their daughter with her grandparents before returning to his family's residence. While at the resort Applicant stated they were approached about purchasing a time share. He stated "we went there and we did and I actually ended up purchasing the time share."<sup>10</sup> He stated it was for him and his wife. Applicant provided the contract he signed on December 19, 2002. It lists only Applicant as the holder of property and not his wife as a joint owner.<sup>11</sup> Applicant stated his wife was always on the phone with

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<sup>6</sup> Tr. 87-88, 103.

<sup>7</sup> Tr. 90-95.

<sup>8</sup> Tr. 118.

<sup>9</sup> Tr. 96-100, 118.

<sup>10</sup> Tr. 116.

<sup>11</sup> AE D.

her sister. He stated his daughter was happy spending time with her grandparents. Applicant testified that he thought his wife was concerned about his daughter spending too much time with her grandparents. On December 29, 2002, Applicant's wife would not let his mother take their daughter to church. When he came home from church he found his wife had packed their belongings and wanted to go to a hotel. Applicant obliged. He stated his wife was angry with him and had a violent demeanor.<sup>12</sup>

Applicant checked his family into a hotel on the night of December 29, 2002, but he returned to his parents' residence. He denies he locked his wife in the room or prevented her from making phone calls, or restricted her freedom in anyway. He returned to the hotel the next morning, December 30, 2002, and brought them breakfast. He stated his wife was upset with him and told him "they were not compatible". She wanted money so he gave her about \$20 and told her he would go to the bank. He left to go to the bank and stated he said "I love you, [daughter]." He returned 30-40 minutes later and his wife and daughter were gone. The person at the hotel front desk told him they had checked out and he had Applicant's possessions. Applicant paid the hotel bill and returned to his parents.<sup>13</sup>

Applicant testified that the first thing he did when he returned to his parents' residence was to contact the police department.<sup>14</sup> He was advised because it was less than 24 hours he could not file a missing persons report. He testified that he received a call from the police sometime later while at his parents that the police had received an anonymous call explaining his wife and daughter were safe.<sup>15</sup> Applicant stated "I had no clue where they were."<sup>16</sup> He left the next day, December 31, 2002, to return to Korea. He had been on leave for 30 days and was required to report back to work.<sup>17</sup>

In January 2003, weeks after he stated his wife and daughter left and he had no idea where they were, he filed an abandonment petition, the first step in the process to file for divorce, in the state where his parents resided. He hired an attorney from the state who advised him that he had to be separated from his wife for a year before they could divorce. Applicant stated the divorce was uncontested and became final on April 28, 2004. The notice of divorce was completed by publication. Applicant testified "I am not a person that wants divorce. I did not want a divorce." He went on to say "I don't

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<sup>12</sup> Tr. 114-123.

<sup>13</sup> Tr. 123-127.

<sup>14</sup> Tr. 127.

<sup>15</sup> Applicant's testimony is somewhat inconsistent with his sworn statement (GE 5) of December 11, 2007. In the statement he indicated that he returned to Korea not knowing of his family's location. Upon his return he had a phone message from his brother-in-law advising him that his wife and daughter were "okay."

<sup>16</sup> Tr. 127.

<sup>17</sup> Tr. 128-129.

believe in divorce. I was devastated that I had to do that. That I was forced into a divorce because she abandoned me.”<sup>18</sup>

Applicant’s provided a sworn statement in December 2007. He stated the following:

There was never any contact between myself, wife or daughter. There was never any child custody hearing or any discussion or settlement on financial matters. I was never obligated by the court to pay spousal or child support nor was it ever demanded from me by my ex-wife. To my knowledge a child support complaint was never filed against me. After we separated, I never paid spousal support or child support, primarily because I have not since December 2002 heard or seen my ex-wife or daughter and have no knowledge as to where they currently reside.<sup>19</sup>

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About a week after I filed for divorce in January [20]03, I was informed by the Legal Office/JAG at [base] that my ex-wife had made allegations against me of sexual assault, molestation and rape. I later understood that the [base] investigated these allegations. However, I was never arrested or criminally charged as a result of these allegations.

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I believe that [my brother-in-law] had coordinated and orchestrated these allegations against me by way of military channels, which is the reason [the base] became involved. [My brother-in-law] was not only my ex-wife’s brother-in-law, but he was a former work associate and friend.

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The last time I spoke to [brother-in-law] was by way of telephone in Nov[ember] [20]02 and the conversation was pleasant. [My brother-in-law] never inferred to me or accused me directly of inappropriately touching or instructing his son of anything of a sexual nature, or having raped his sister-in-law or having molested my daughter. I am not sure why [brother-in-law] became involved in this matter other than having thought or believed that he was assisting his wife and sister-in-law of doing the right thing. I need to emphasize that the investigation pertaining to these allegations at some point stopped, especially after [brother-in-law] was supposed to have passed away in a hotel room in the Philippines in Jul[y] [20]03 due to a heart attack. However, I believe for whatever reason, that

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<sup>18</sup> Tr. 135-138, 152-156, 202-207.

<sup>19</sup> GE 5 page 6.

[brother-in-law] may have staged his own death. I understand that [brother-in-law] had accumulated a great deal of debt and was experiencing financial problems. I think it's possible that [brother-in-law] is still alive, living in the Philippines, but it's strictly speculation on my part.

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Regarding my daughter, about the time she had turned three years old, I had suspicions about whether I was her biological father. I had suggested to my ex-wife about taking a paternity test but my ex-wife would not permit it. I felt that my ex-wife acted in such a way to lead me to think that [child] was not my daughter. She made me feel that she did not want me to be involved in our daughter's life.<sup>20</sup>

Applicant testified that the JAG office notified him of the molestation charges and advised him he had to appear in court in February 2002 in State A. Applicant stated he hired a lawyer in that state to represent him. He never personally appeared. He stated the charges were dropped and nothing became of that particular proceeding. Applicant later testified that these matters have never been addressed in a criminal court.<sup>21</sup>

On January 11, 2003, Applicant's wife reported to a mental health professional in State A for treatment. Her daughter disclosed that Applicant had spanked her repeatedly on numerous occasions and had demanded that she take her pants down whenever she was going to receive a spanking. This was confirmed by her mother. Applicant's wife provided a photograph of one of the more severe beatings endured by her daughter. Based on this information a report was made to the state's abuse hotline. A child protective investigator and sheriff went to the wife's home and interviewed the child alone. The child disclosed her father had also been sexually inappropriate with her on numerous occasions.<sup>22</sup>

The child attended sexual abuse therapy that also addressed the issues concerning the physical violence. The child disclosed during the sessions that her father did more than physically abuse her he also would touch her inappropriately with her pants down. During each session the child would refer to her father as "mean or angry." It was determined by the mental health professional that the child had been physically and sexually abused.<sup>23</sup>

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<sup>20</sup> Tr. 131-148; GE 5.

<sup>21</sup> Tr. 133-134, 171.

<sup>22</sup> GE 2 exhibit 13. The specifics of the nature and extent of the inappropriate sexual contact and behavior are included in this report. It is unnecessary to describe in detail the sexual conduct, other than to find the conduct was inappropriate and would constitute physical and sexual assaults and indecent acts with a child.

<sup>23</sup> *Id.*

A report from the [State] Protective Services System noted where Applicant's wife was living and that she is "terrified of the father" and "the father is not aware of the mother's current location." It noted that Applicant's wife alleged she was being physically abused. Applicant's wife made a sworn statement on May 19, 2003, which alleged Applicant physically and sexually abused her. She stated:

Since we have been married, [Applicant] had always been very controlling over our finances and day to day routines. I could not buy anything or do anything without his approval. Not very often and I can not tell you the exact dates, but occasionally, [Applicant] would twist my arm behind my back , push me against the wall or on the [couch], and on one specific time, about year 2000, he hit me on my back with his fist. During this same incident, he choked me and pushed me on the [couch]. He was very angry and he never told me why he assaulted me and the reason why. I told [Applicant] that I wanted to call my sister [MM], who also lived in Korea, and ask for help. [Applicant] unplugged the phone and refused to allow me to talk with anyone. I never received any medical treatment because I did not know how to contact the U.S. authorities on the military reservations. The night that [Applicant] was choking me and hit me on the back, my sister had come to our house and she can witnessed that I had marks on my neck. My sister asked if I had notified the Military Police and I stated that I could not leave the house because he was prevented me from leaving and he had unplugged the telephone denying me to make telephone calls. [Applicant] got down on his knees and begged my sister to not notify the authorities because he stated he did harm me. My sister stated she could see his hand impressions on my neck and he could not deny that he had hurt me. He continued to beg my sister and she sat down and talked with [Applicant] about the abuse. My sister never reported the incident to authorities. That night I slept in my daughter's bedroom to allow [Applicant] to cool off. I then begin to sleep with [Applicant] the following day.

From that day when he choked me, [Applicant] would mentally abuse my daughter and me. For example, when my daughter and I wanted something, [Applicant] would intentionally not buy the item. I had no access to the bank account or funds, and he was always the approving authority for anything. Another example would be that [Applicant] would be allowed to eat steak at dinner and my daughter and I would only be allowed to eat rice. [Applicant] would also never allow me to have friends that had an income from employment. I was only allowed to have acquaintances that were home moms only. I was also never allowed to get a driver's license or drive, I was not permitted by [Applicant]. More importantly, I was not allowed to work.

[Applicant] started physically abusing my daughter [name], when she was about 2 1/2 or 3 years of age until he abandoned us in December [2000].

He would pull her hair, choke her, and hit her with an open hand reason for unknown. He left marks and bruises on my daughter, but he refused her medical attention. All the physical abuse of my daughter and I were at our only residence in Korea.

About 5 Dec 03, [Applicant] told me that if I did not accompany him to the U.S. that I would never see my parents again nor see my daughter. My daughter and I went to [State C] with [Applicant] to visit his family. About 29 Dec 02, we were staying at the [hotel], [Applicant] looked at me and stated we are no longer compatible and abandoned my daughter and I at the hotel with no money and no access to money. He also coordinated with the hotel and ensured that I could not make any outside telephone calls. I had no money for food for my daughter. I was so scared and I didn't know what to do. I went to a local telephone booth and called a friend for help who lived in State B. She called my sister in Korea and my sister then called me at the front desk at the hotel. My sister paid the bill at the hotel and also sent me some money for food. My sister then called my niece in [State A] and she drove to [State C] and brought my daughter and I to [State A].

Since I arrived to [State A] I have been severely depressed and my niece's husband contacted his insurance company who referred me for treatment to Mrs. G. I started receiving therapy from Mrs. G and disclosed that my daughter was being physically abused by [Applicant]. My daughter was then evaluated by Mrs. G and disclosed that she was physically and sexually abused by [Applicant]. I had no knowledge or did not notice any sign[s] was being sexually abused by [Applicant]. I have no details of the sexual abuse as my daughter disclosed this abuse to Mrs. G. I then disclosed that I had been sexually assaulted by [Applicant] at our home in Korea from an unknown date in 1999 until we were abandoned in [State C].<sup>24</sup>

Applicant's wife then explained she was raped by her husband approximately six times. She told him no and he grabbed her and threw her on the bed, forcefully removed her clothes and then raped her. She never reported the rapes or physical abuse to law enforcement nor sought medical attention. She was scared for her daughter's safety if she told anyone about any of the abuse. She alleged that it was Applicant who abandoned her and their daughter at the hotel and returned to his overseas job without notifying her.<sup>25</sup>

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<sup>24</sup> GE 2 at exhibit 10.

<sup>25</sup> *Id.*



A Sexual Assault Medical Report from the County Child Protection Team concluded the physical findings from their examination “neither support or refute allegations of sexual abuse.”<sup>26</sup>

Applicant provided a paid invoice showing that he paid for the hotel from December 29 to December 30, 2002. He also provided a statement from his mother. His mother’s statement said that Applicant’s daughter told her that she was supposed to stay with her mother. She also said that her uncle (Applicant’s brother-in-law) told her the child to tell everyone that Applicant was a bad man and he mentioned the word “divorce” to her. Applicant’s mother confronted Applicant’s wife and she denied that her brother-in-law said anything and that the child was manipulating her grandmother. Applicant’s daughter is the only grandchild of his parents. The remainder of the statement was consistent with Applicant’s story. Applicant denies he physically or sexually assaulted his wife and daughter.

In March 2003, Applicant’s wife filed for sole custody of their daughter in State F, alleging Applicant abandoned them and physically and sexually abused their daughter and physically abused her. Applicant’s wife is not a U.S. citizen, but has a green card.<sup>27</sup> Applicant testified the petition was denied. No supporting documentation was provided to substantiate the ruling. When asked why he did not appear in court to gain access to his daughter, he stated he could not get off from work. He stated he was not granted custody of his daughter. When asked who was granted custody, he stated “I have no clue, sir.” He has not filed an appeal in any court for custody of his child. Applicant stated he last contacted his attorney regarding the petition from his wife in State A in 2003. He stated he wanted to see his daughter, but does not know where she is. When asked why he did not go back to the same Court in State A, he stated “I haven’t had the opportunity to go there.”<sup>28</sup>

Some of Applicant’s testimony was troubling. Applicant has not seen his ex-wife or daughter since December 30, 2002. He has not taken any action to visit or obtain custody of his daughter. He stated he does not know where his ex-wife and child are living. He hired a private investigator in May 2003 to look for his wife and child. The documents he provided reflect some type of surveillance was conducted by a private investigator. The case was opened on May 13, 2003, and no other entries were noted after June 3, 2003. He admitted he has done nothing else to find his ex-wife and daughter. All of his court proceedings have been through an attorney. Applicant did not appear in court for his divorce or for the custody petition. He stated he could not take time off from work to confront the issues against him in person.<sup>29</sup>

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<sup>26</sup> GE 2 at exhibit 11.

<sup>27</sup> AE C.

<sup>28</sup> Tr. 149-151.172-175, 234-236.

<sup>29</sup> Tr. 194

Applicant testified he misses his daughter but does not know where she is located. However, he also admitted he has not looked for her at all. He has not contacted his wife's attorney, or contacted her sister or made any other inquiries. Applicant's ex-wife has never requested or petitioned for spousal support or child support. She filed for divorce in 2008, unaware that Applicant's previous divorce petition was granted in 2004. When asked why he did not go through the state where she filed for divorce to attempt to find his child he stated: "I have not had the opportunity." He admitted that his ex-wife's divorce petition did not request spousal support, child support, or a division of property. When asked if he had saved any money for child support, Applicant stated he had saved \$100,000 for his daughter's support and if he could find her he would give it to her. He went on to say "I am saddened by the fact that I cannot spend any time with her and be with her."<sup>30</sup> He later stated that he had called the phone number on the divorce papers from his ex-wife.<sup>31</sup> I did not find Applicant's statements credible.

Applicant admitted he spanked his daughter, but not on her bare buttocks. He stated he worked very long hours, between 10 and 12 hours a day, six and seven days a week. Applicant stated he never was alone with his daughter during her entire life. He stated he never changed one of her diapers. He stated he and his wife potty trained their daughter, but he was never alone with her.<sup>32</sup>

Applicant was investigated and questioned by military authorities in Korea, beginning in 2003. He denied he abused his wife and daughter. He refused to take a polygraph on the advice of his lawyer. Applicant was never charged with a criminal offense.<sup>33</sup>

At his hearing Applicant suggested an explanation for his daughter's allegations. He was made aware by his brother-in-law sometime between 2000 and 2002, when Applicant's daughter was visiting with her mother's relatives in the Philippines, that there was a domestic worker who had a brother in the area. Applicant learned that this brother had molested an eight-year-old female relative of his wife's family. Applicant could not clearly remember when he was told about this person nor could he remember when the alleged abuse by this brother took place, but believed it was around 2000 when he learned of it. Applicant stated "it is very possible that this boy did the molesting" of his daughter. Applicant admitted he never mentioned this "potential suspect" to any of the investigators during the course of the investigation. He stated

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<sup>30</sup> Tr. 244.

<sup>31</sup> Tr. 160, 196, 242.

<sup>32</sup> Tr. 134-135, 156.

<sup>33</sup> Tr. 43-71. There are many reasons why some cases are not criminally prosecuted. In this case I do not have any statement or document as to why these alleged offenses were not pursued. The Korean authorities declined to prosecute. At the time of the allegations, the wife and child were no longer living in Korea. There are likely concerns about difficult international jurisdictional issues and the potential additional trauma to an alleged child victim.

“that’s something I left out.”<sup>34</sup> It is unclear how Applicant’s daughter, at the age of two would confuse this boy with her father or could articulate how she was molested. This was the first time Applicant mentioned this “potential suspect.” I did not find Applicant’s theory credible.<sup>35</sup>

Applicant believes his wife’s motivation for making these accusations is because she told him she would ruin his life if he did not do everything she wanted and this is a way to ruin him. This appears inconsistent with Applicant’s “potential suspect” theory.<sup>36</sup>

Applicant’s supervisor testified on his behalf. He stated Applicant’s wife would call where they worked, sometimes multiple times during a day. He observed Applicant had scratches on his face. He did not socialize with Applicant. He stated Applicant discussed that his wife was always demanding money and spending it on her extended family. The witness stated “no other man was more devoted to his family, but he had to provide the highest standard of living.” He confirmed that he would have approved Applicant’s leave request to go look for his daughter. Such a request was never made.<sup>37</sup>

Applicant met a woman over the internet from the Philippines in approximately April 2005. She is now his girlfriend. He visits her over long weekends when possible. They speak on the phone or text message daily. He has been sending her approximately \$150 a month since January 2006. When visiting her in the Philippines they meet at a hotel. He does not know her home address because she has moved. He does not pay for her living arrangements. He is aware that she has two brothers and a sister, but has never been introduced to them and he does not know how they are employed. She is employed as a seamstress at a factory. He previously had planned to marry her, but has since changed his mind and is not sure. He last visited her for a week over the holidays in December 2008. She is aware that Applicant works in Korea, but does not know the nature of his job. Applicant stated that if his girlfriend made inquiries about his job he would leave her.<sup>38</sup>

I have considered all of the testimony and all of the documentary evidence from both parties, including the character letters provided.

## **Philippines**

The Philippines has a representative democracy modeled on the U.S. System. The 1987 constitution reestablished a presidential system of government with a bicameral legislature and an independent judiciary. The government continues to face

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<sup>34</sup> Tr. 167.

<sup>35</sup> Tr. 105-111, 157-158, 165-168, 222.

<sup>36</sup> Tr. 241.

<sup>37</sup> Tr. 269-308.

<sup>38</sup> Tr. 180 188, 190-192, 241.

threats from terrorist groups. The terrorist groups have gained international notoriety with their kidnapping of foreign tourists in the southern islands. This remains a major problem of the government. U.S. troops advise, assist and train Philippine soldiers in counterterrorism. In 2006, the armed forces of the Philippines began a major offensive against these terrorist groups which was remarkably successful.

“The U.S. and Philippine relations are based on shared history and commitment to democratic principles, as well as on economic ties. The historical and cultural links between the Philippines and the U.S. remain strong. The Philippines modeled its government institutions on those of the U.S. and continues to share a commitment to democracy and human rights. At the most fundamental level of bilateral relations, human links continue to form a strong bridge between the two countries. There are an estimated four million Americans of Philippine ancestry in the United States, and more than 250,000 American citizens in the Philippines.”<sup>39</sup>

Since 1992, U.S. and Philippine relations have improved and broadened, with a prominent focus on economic and commercial ties while maintaining the importance of the security dimension. U.S. investment continues to play an important role in the Philippine economy, with a strong security relationship.<sup>40</sup>

“Nearly 400,000 Americans visit the Philippines each year. Providing government services to U.S. and other citizens, therefore, constitutes an important aspect of the bilateral relationship. Those services include veterans’ affairs, social security, and consular operations. Benefits to Filipinos from the U.S. Department of Veterans Affairs and the Social Security Administration totaled approximately \$330 million dollars in 2007. Many people-to-people programs exist between the U.S. and the Philippines, including Fulbright, International Visitors, and Aquino Fellowship exchange programs, as well as the U.S. Peace Corps.”<sup>41</sup>

## **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching

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<sup>39</sup> HE I through VI.

<sup>40</sup> *Id.*

<sup>41</sup> U.S. State Department Background Note: Philippines, October 2008.

adjudicative goal is a fair, impartial and common sense 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 access to classified information will be resolved in favor of 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. 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 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 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 classified information.

Section 7 of Executive Order 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 D, Sexual Behavior**

AG ¶ 12 expresses the security concern pertaining to sexual behavior:

Sexual Behavior that involves a criminal offense indicates a personality or emotional disorder, reflects lack of judgment or discretion, or which may subject the individual to undue influence or coercion, exploitation, or duress can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.

I have considered the disqualifying conditions under AG ¶13 that could raise a security concern including the following:

- (a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted;
- (b) a pattern of compulsive, self-destructive, or high risk sexual behavior that the person is unable to stop or that may be symptomatic of a personality disorder;
- (c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress; and
- (d) sexual behavior of a public nature and/or that reflects lack of discretion or judgment.

There is evidence to support that Applicant's ex-wife and daughter were physically and sexually abused by Applicant. A child protective investigator interviewed Applicant's daughter alone and she disclosed her father had been sexually inappropriate with her on numerous occasions. It was also disclosed that he had spanked her on her bare buttocks. A mental health professional employed by State A concluded Applicant's child had been physically and sexually abused. I find all of the disqualifying conditions apply.

I have considered all of the mitigating conditions under AG ¶ 14 to include the following:

- (a) the behavior occurred prior to or during adolescence and there is no evidence of subsequent conduct of a similar nature;
- (b) the sexual behavior happened so long ago, so infrequently, or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (c) the behavior no longer serves as a basis for coercion, exploitation, or duress, and
- (d) the sexual behavior is strictly private, consensual, and discreet.

Many of Applicant's explanations and theories I did not find credible. Applicant has the ultimate burden of persuasion and he failed to provide persuasive evidence to conclude any of the above mitigating conditions apply. There is documentary evidence based on interviews with the child and sworn statements from Applicant's ex-wife that substantiate physical and sexual abuse were perpetrated on them by Applicant. His theory about a "potential suspect" was not raised until his hearing which raises

questions about his credibility. There clearly are discrepancies between Applicant's story and his ex-wife's. Applicant claimed his ex-wife always wanted more money and was never satisfied. He believed his ex-wife was out to ruin him. Beyond her initial complaint to state authorities there is no other evidence she pursued these allegations against him through the legal system to ruin him. If she was dissatisfied with their financial situation and always wanted more money as alleged by Applicant, it is unclear why she did not pursue any spousal and child support. This is inconsistent with Applicant's theory she wanted more money and was attempting to ruin him. Applicant admittedly has not pursued any type of visitation with his daughter. He has made a nominal effort to find them. He began the divorce process weeks after he stated they abandoned him and he had no idea where they were located.

### **Guideline J, Criminal Conduct**

AG ¶ 30 expresses the security concern regarding criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability to willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and especially considered the following:

- (a) a single serious crime or multiple lesser offenses; and
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

There is sufficient evidence to conclude that Applicant physically and sexually assaulted his wife and daughter. The specific information is the same as was discussed under Guideline D, Sexual Behavior. I find disqualifying conditions (a) and (c) apply.

AG ¶ 32 describes conditions that may mitigate the security concerns. I have considered them all and especially considered the following:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the person was pressured or coerced into committing the act and those pressures are not longer present in the person's life;
- (c) evidence that the person did not commit the offense; and

(d) there is evidence of successful rehabilitation, including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

I have considered all of the mitigating conditions and conclude none apply. The discussion addressed under Guideline D, Sexual Behavior, is applicable under the Criminal Conduct allegations. I conclude there is sufficient evidence to find Applicant committed the offenses alleged and he failed to meet his burden of persuasion in mitigation.

### **Guideline B, Foreign Influence**

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and especially considered the following:

(a) contact 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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Applicant has a girlfriend in the Philippines. He has regular contact with her. She is a factory worker. He visits her during vacations and long weekends when he can. His contact with her does not create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. There is a strong U.S. presence in the Philippines. Although there are terrorist threats in the Philippines, the U.S. has long been an ally. Applicant's relationship with his girlfriend does not create a potential conflict of interest



between his obligation to protect sensitive information and his desire to help his girlfriend. I have considered all of the disqualifying conditions and conclude none apply.

In an abundance of caution, I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8 and especially considered the following:

(a) the nature of the relationship 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 and interests of the U.S.; and

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

Applicant has a girlfriend in the Philippines. He visits her when he has the time. She is a factory worker. The U.S. and the Philippines are allies and have had strong international ties for decades. Applicant has worked as a U.S. contractor overseas since 1993. His relationship with his girlfriend is more than casual, but there is nothing to suggest that Applicant could be placed in a position of having to choose between his girlfriend and the interests of the U.S. This is equally true for any conflict of interest that may arise. Applicant's sense of loyalty and obligation would clearly outweigh any conflict and he would clearly be expected to resolve such in favor of the U.S. I find under the facts of this case, if a disqualifying condition did apply it would be mitigated under both (a) and (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 AG ¶ 2(a):

(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 common sense 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. Applicant has worked for a defense contractor overseas for many years. He has a good work record. The allegations of sexual and physical abuse to both his ex-wife and daughter are substantiated by the documentary evidence. Applicant failed to meet his burden of persuasion to refute the allegations. The allegations are of a serious nature. The nature of the allegations clearly could create the potential for pressure, coercion, exploitation, and duress. Applicant's theories did not rise to the level of refuting the allegations. I found much of his testimony not credible or believable. I have considered all of the evidence for both sides and conclude Applicant did not meet his heavy burden.

With regard to the allegations under Guideline B, Foreign Influence, I considered Applicant's relationship with his girlfriend in the Philippines and the United State's relationship with the Philippines. There is nothing to lead me to believe that Applicant would resolve any conflict of interest in any way other than for the U.S. The mere fact that he has a girlfriend in the Philippines does not create a heightened risk for foreign exploitation, manipulation, pressure or coercion.

Overall, the record evidence leaves me with serious 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 arising under the sexual behavior and criminal conduct guidelines. Applicant has met his burden regarding the security concerns arising under the foreign influence guideline.

### **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 J:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline D:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Paragraph 3, Guideline B:

FOR APPLICANT

Subparagraphs 3.a-b:

For Applicant

**Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly in 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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Carol G. Ricciardello  
Administrative Judge