DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
XXXXXXXXXX, XXXXX	)	ISCR Case No. 06-19474
SSN: XXX-XX-XXXX	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: Christopher K. Brenner, Esq.

December 14, 2010

Decision

TUIDER, Robert J., Administrative Judge:

Applicant mitigated security concerns under Guidelines B (foreign influence) and F (financial considerations), but failed to mitigate security concerns under Guideline E (personal conduct). Eligibility for access to classified information is denied.

Decision Drafting

As noted in *fn* 1, *infra,* the Applicants are husband and wife and requested a joint hearing having been issued nearly identical SORs. They appeared at their joint hearing ably represented by their counsel, Mr. Brennan. Given the similarity of their respective cases, I have written a separate yet identical decision for the Applicants. To assist the reader in following a rather complicated fact pattern and to comply with the Privacy Act, I have taken the liberty of identifying the Applicants and key individuals with pseudo names. They are:

1. Male Applicant is identified as "John."

2. Female Applicant is identified as "Mary."

3. Business associate and friend of John and Mary, who is a dual citizen of the UNITED STATES and Columbia and resides in Columbia, is identified as "Pablo."

4. Midwestern lawyer involved in securities fraud with Pablo is identified as "Fabian."

5. Major Japanese banking instrument is identified as "Foreign Certificate."

Statement of the Case

On May 17, 2002 and on May 20, 2002, respectively, John and Mary submitted their security clearance applications (SF-86). On November 25, 2009, the Defense Office of Hearings and Appeals (DOHA) issued John and Mary separate Statements of Reasons (SORs) detailing security concerns under Guidelines B (foreign influence), E (personal conduct), and F (financial considerations).[1] 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 adjudicative guidelines (AG) effective within the Department of Defense for SORs after September 1, 2006.

John and Mary answered their respective SORs on December 19, 2009. Department Counsel was prepared to proceed for both their cases on February 25, 2010. These cases were previously assigned to two other administrative judges on March 4, 2010 and April 19, 2010, respectively, until they were reassigned to me on May 25, 2010. DOHA issued a notice of hearing on June 2, 2010, scheduling their joint hearing for June 24, 2010. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1(c) through 18(c) for John, which were received without objection. The Government offered GE 1(m) through 13(m) for Mary, which were received without objection. John and Mary offered Applicant Exhibits (AE) 1 through 15, which were received without objection, and they testified on their own behalf. At the conclusion of the hearing, I requested each party submit written closing arguments. Department Counsel's closing argument was marked as Ex. III and Counsel for the Applicant's closing argument was marked as Ex. IV. DOHA received the hearing transcripts (Tr.) on July 2, 2010. (Tr. 18-22.)

Procedural Rulings

Request for Administrative Notice

Department Counsel submitted two separate Requests for Administrative Notice for John and Mary, (Exhibits (Exs.)) I and II, requesting that I take administrative notice of the summary of facts contained in Exs. I and II, as well as those facts contained in the attachments to Exs. I and II. Without objection from the Applicants, I took

[1] On March 1, 2010, the Applicants requested to have a joint hearing, which I granted.

administrative notice of the documents offered by Department Counsel, which pertained to Columbia. (Tr. 11-13.)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. *See* 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)); *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). Various facts pertaining to Columbia were derived from Exs. I and II as contained *infra* under the subheading "Columbia" of this decision.

Findings of Fact

John admitted SOR ¶¶ 1.a. through 1.i., 2.a., 3.a. and 3.b.; and denied 2.b. Mary admitted SOR ¶¶ 1.a. through 1.j., 2.a., 3.a. and 3.b.; and denied 2.b. Their admissions and denials were accompanied with explanations. Their admissions are accepted as findings of fact.

As a starting off point, I find John and Mary to be credible witnesses. Furthermore, they are decent and honorable, hard working, productive members of society, responsible parents, and loyal U.S. citizens. Nothing that follows is meant to detract from those findings.

Background Information

John is the 60-year-old founder and president of a company specializing in computer and network security. He has held that position since December 1985. (GE 1(c), Tr. 23-25.) John graduated from college with a Bachelor of Science Degree in computer science and three minors in math, chemistry, and physics in November 1973. (GE 1(c), SOR Response, Tr. 26.) John's company works on Government-related classified projects. He seeks to retain his top secret clearance, which is required for him to continue participating in classified Government contracts. John has successfully held a clearance since 1997. (GE1(c), Tr. 25-26, 29, 180, 251, 255.)

Mary is the 62-year-old corporate secretary of the company her husband, John, founded. She has held that position since December 1985. (GE 1(m), Tr. 283-284.) At present, her position with their company does not involve any significant duties. Rather, for the past two and one-half years, she has been employed full-time by an interdenominational Bible study group. (Tr. 283-284.) Mary graduated from the same college as her husband with a Bachelor of Science Degree in chemistry in November 1971. (GE 1(m), Tr. 284.) Like her husband, she seeks to retain her top secret clearance, which is required for her to continue participating in classified Government contracts. Mary has successfully held a clearance since "the 90s." (GE 1(m), Tr. 285, 298.)

John and Mary married in June 1971. (GE 1(c), GE 1(m).) They had three sons. Their oldest son is 32, their second son is 27, and their third son died in a rock climbing accident when he was 19. Their oldest son is married and has a young child. (Tr. 176-177, 251-252.)

The rather complex and purported facts that precipitated SORs being issued against John and Mary began in approximately 1996. At that time, John and Mary's company was doing quite well. They were well established and respected members of their community and active in their local church. It was through their church that they met Pablo. At the time, Pablo, his mother and sister were living in the same community as John and Mary. Pablo held dual citizenship with the United States and Columbia and had two names – his Columbian name and his Israeli name. Pablo claimed to be an heir to a very wealthy banking family and that he was 109th in the lineage to be the King of Israel. He further claimed that he was linked to the Rothschild family fortune and that he would inherit billions of dollars upon his grandfather's death. Pablo also claimed that his family disinherited him because he converted to Christianity, but believed that he would still receive his grandfather's inheritance. When Pablo's grandfather died in the 1990's, he did not receive his anticipated inheritance, and Pablo later claimed he would receive the inheritance when he turned 40. (GE 3(c), Tr. 181-182, 190.)

Pablo also told John that his grandfather served as an ambassador for a South American country to several nations and died in the 1990s. Pablo's grandfather had purportedly left him codes to banks at different locations around the world. Pablo claimed to have "cracked" one bank code and retrieved "a bevy of documents . . . like the documents that talked about the family funding the Marshall Plan." (Tr. 183-185.)

In addition to befriending John and Mary, Pablo also befriended a number of wealthy church members. Having gained their trust and confidence, Pablo convinced them to invest in the Foreign Certificate. The Foreign Certificate was purportedly connected to Pablo's family wealth. John and Mary did not invest in the Foreign Certificate. Pablo's purpose in seeking money from investors was to cover the fees associated with acquiring the Foreign Certificate. Once acquired, Pablo represented to the investors that he would sell the Foreign Certificate to his family for a big pay-off. The collective amount of money the church members invested with Pablo was approximately $1 million. All of the church members lost all of the money they invested with Pablo. (GE 3(c), Tr. 186-187.)

Pablo was associated with Fabian, an attorney in the Midwest, and several other individuals to sell the Foreign Certificate. In June 1998, the Securities and Exchange Commission (SEC) filed a complaint and obtained emergency injunction relief in the offer and attempt to sell forged and fictitious securities, *i.e.* the Foreign Certificate. The SEC alleged in its complaint that since at least March 1997, the defendants (Fabian and Pablo, *et* al) had been engaging in a scheme to obtain money through the offer of fraudulent securities. The purported issuing bank for the Foreign Certificate, as well as the FBI and the Federal Reserve, among others, confirmed that the certificate is a worthless, sham document. The named defendants were alleged to have been part of a fraudulent scheme to use the Foreign Certificate to obtain millions of dollars in

payments for themselves, while invoking both humanitarian goals and the names of official entities, ranging from the Federal Reserve to the United Nations Security Council, in an effort to make their scheme appear legitimate. (AE 4(c), AE 6(c).)

In October 1998, the presiding judge (PJ) entered a default judgment against Pablo in an SEC action involving the offer and attempt to sell the Foreign Certificate. The final judgment ordered Pablo to pay a $75,000 penalty, and permanently enjoined him from violating Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 and Section 17(a) of the Securities Act of 1933. The PJ noted that Pablo had previously consented to the entry of a preliminary injunction against him in June 1998. (AE 5(c), AE 6(c).) The PJ described the Foreign Papers utilizing Fabian's testimony:

> [Fabian] has described the [Foreign Certificate] in various ways at various times. [Fabian] told officials of the Bureau of Public Debt that the Japanese government had given the Certificate to [a former president of a Latin American country] for "good services rendered." (citations omitted.) During initial testimony before the SEC, Fabian stated that the Certificate was "part of the debt settlement of the de[b]t Japan owed after World War II." (citations omitted.) According to a so-called "Confidential Review," seemingly written and in any event expressly adopted by [Fabian], the Certificate was "for the purpose of Economic Aid, Economic Stabilization and Economic Development around the Globe." (citations omitted.) At his deposition, [Fabian] testified that the aid, stabilization and development plan was developed by an entity known as the "International Defense Association" ("IDA"), which [Fabian] described as a cooperative effort of United States and Soviet intelligence agencies facilitated by the Catholic Church and conceived by extraterrestrials from planet XV-9 which, [Fabian] states, is also known as "Atlantis." (citations omitted.) (GE 7(c), p. 3.)

In February 2000, the same PJ entered summary judgment against Fabian, *et al.* Fabian was ordered to pay a $200,000 penalty, the maximum penalty allowed, and permanently enjoined from future violations of the federal securities laws. The PJ described the purported holding history of the Foreign Certificate as claimed by Fabian and his wife:

> The Holding History is a long, rambling, often incoherent statement that discusses, among others, Napoleon Bonaparte, Adolf Hitler, Senator Edward Kennedy, and former President Richard Nixon. The Holding History purports to provide "certain Classified data which is essential" for understanding "the history as it relates to the Certificate and Account and its relation to how financial markets were/are created, maintained and controlled." (GE 7(c), p. 6.)

One of the most significant findings the PJ made in his decision was, "The [Foreign Certificate is a forgery." (GE 7(c), p. 3.) He added, "The [Fabians] know the Certificate is a forgery." (GE 7(c), p. 4.)

Pablo had told John that the Foreign Certificate had to go through a "validation process" to determine that it was "valid or not, whether [it was] fraudulent." (Tr. 52.) Pablo was insistent that the Foreign Certificate go through the validation process at which time Fabian "decided on his own to circumvent [Pablo], to forge his signature, to take the document out of safekeeping, and to try to pursue it on his own." (Tr. 52.) According to Pablo, ". . . [Fabian] threatened [Pablo's] life, to the extent that [Pablo] who had been staying with [Fabian] left without even gathering his belongings and eventually left the country, because he felt his life (was) threatened." (Tr. 52.)

Pablo fled to England and hired a solicitor, who according to Pablo, did not represent him well and he and the solicitor "parted." (Tr. 53.) The solicitor purportedly "stole" $20,000 from Pablo. (John's SOR Response.) During his purported representation by the solicitor, the SEC had served notice on the solicitor that Pablo was to appear at a hearing in the United States. Pablo claims he did not receive notice of the hearing and a default judgment was entered against him, discussed *supra.* (Tr. 54.)

While Pablo was in England, John visited him two times to make his own independent inquiries about Pablo and his involvement with the Foreign Certificate. John met Pablo's solicitor and "got to interview with the CIA person that he was working with." (Tr. 56.) This former CIA operative purportedly had access to large bearer bonds that could be used for a transaction. Pablo investigated these bonds and determined they were valid. The bonds later "became invalid." One of the bonds was used by the CIA operative to secure an apartment shared by Pablo and the CIA operative. This led to Pablo and the CIA operative's arrest by the London police and confiscation of their bonds. After one week in jail, they were released and Pablo returned to the United States in November 1998. (John's SOR Response, Tr. 196-197.)

In spite of all that had transpired with Pablo, John concluded that Pablo was the "victim" in the Foreign Certificate transaction, that Pablo was trying to pay investors back, that he was not a "crook," and that he never got his day in court with the SEC. (Tr. 56.) At this time, John considers Pablo to be "both a friend and a business person dealing with him." (Tr. 57.) Pablo convinced John to loan him "some money" to retain counsel to "clear up the (SEC) matter." (Tr. 54.) John did loan Pablo money to retain counsel, but Pablo did not clear up the SEC matter. (Tr. 54, 193-196.)

In July 2002, John discovered Pablo held dual citizenship with the United States and Columbia and held passports with both countries. (Tr. 57-58.) Having discovered Pablo's dual citizenship, he disclosed this to a Defense Security Service (DSS) representative. After extensive consultations with the DSS representative, they concluded there was no foreign influence concern. (Tr. 58-59.) After 2002, John did not see Pablo again until 2006. He does communicate frequently with him by telephone, however. (Tr. 59-60.)

John and Mary frequently see their two sons, daughter-in-law, and granddaughter, all who live in the local area. John has two sisters residing in the United States and has frequent contact with them. John and Mary also remain in frequent

contact with Mary's parents. (Tr. 252-254.) John has lived in the same community since 1983, exercises his right to vote, is current on all of his taxes, and is involved in his church as an elder. (Tr. 255-256.)

Pablo became "desperate to obtain some of the money his grandfather had promised him. He knew of 100 million that had been deposited with his supposed illegitimate uncle and aunt in Yugoslavia." (John's SOR Response.) Pablo was unable to conduct business in the United States after the October 1998 SEC default judgment against him. Taking into account where he purportedly had family contacts and where he might be able to conduct business, he left the United States in approximately 1998 to go to Lichtenstein. Pablo claimed his family was friends with a member of the royal family and "well connected there." (GE 3(c), Tr. 54.) During this time, he had come up with an idea "to produce the security system that would be applicable to banking, and he had great banking contacts, ... " (Tr. 55.)

Over John's objections, Pablo left the United States bound for Yugoslavia in "early '99" to locate his uncle. John did not expect to hear from him again, but in early 2000 Pablo asked him for help with his aunt who purportedly was seeking asylum from the Yugoslavian government. In March 2000, John and Mary flew to Vienna to meet Pablo and drove to Budapest, Hungary, to meet and assist his aunt. While at the United States Embassy in Budapest, John and Mary were informed by Embassy personnel that Pablo's aunt was a "con artist," who ran a banking scheme to lure investors and steal their money. During this trip, John, Mary, and Pablo discussed setting up a secure banking system program. (John's SOR Response.) John, Mary, and Pablo then drove to Lichtenstein. (Tr. 62.) Through his "connections," Pablo arranged a meeting for John with the board of directors at a prominent bank for the purpose of pitching his secure banking system program. (Tr. 62-74, 201-203.)

In about 2000, John began loaning Pablo significant amounts of money. John testified the cumulative amounts he loaned Pablo were approximately $410,000. (Tr. 65.) John's SOR ¶ 1.d. alleges that he provided personal loans totaling approximately $25,000 to establish a non-profit organization, and for Pablo's legal defense against the 1998 SEC judgment against him. John admits providing approximately $5,000 each to two friends, who were associated with the non-profit organization for earnest money to purchase homes, but he did not provide money to the non-profit organization as alleged. John acknowledges that he did provide $10,000 to assist Pablo with his SEC legal defense fees. (Tr.199-200, 215-216.)

SOR ¶ 1.f. alleges that in about 2002, John made two separate low interest loans of $200,000 each, for a total of $400,000, to Pablo. John made these loans being fully aware of the 1998 SEC judgment against Pablo, a judgment John believes is "without merit." These funds were loaned to Pablo "to assist in doing the fund-raising for [the secure banking system program]." John loaned these amounts to Pablo knowing that his parent company had only earned about $14,000 in gross income that year. (John's SOR Response, Tr. 67.) SOR ¶ 1.g. alleges that John transferred about $408,000 from 2000 to 2006 to Pablo, knowing that his parent company had only earned about $148,282 in gross income from 2002 to 2006. Applicant testified that this allegation was

not a separate sum from the $400,000 alleged in SOR ¶ 1.f., but rather referred to the same $400,000. (Tr. 67-68.) In June or July 2002, John travelled to Germany to meet with Pablo and provide him with the first $200,000 loan. In order to provide Pablo with the second $200,000 loan, John had to secure the funds by borrowing the money on his life insurance policy. (AE 3(c), Tr. 213-214.) All told, John loaned money to Pablo money 39 separate times. The first loan was for $9,000 on March 20, 2000 and the 39th and last loan was for $4,600 on December 6, 2006, for a grand total of $408,700.

Pablo executed two separate promissory notes for $200,000 in which he promised to pay John back. (GE 2(c), GE 13(c), Tr. 219-221.) To date, Pablo has not paid John or Mary any of the money loaned to him. Because Pablo lives in Columbia, John cannot sue him for any funds owed him. John has not had any successful ventures with Pablo during the 12 years he has known him. (Tr. 222.) In addition to various church members losing approximately $1,000,000 dollars through their investments with Pablo in the Foreign Certificate, there were two investors in Liechtenstein that lost "about 300,000" in another venture. As far as John is aware, Pablo's "debt would be contained within $3 million." (Tr. 265.)

John testified Pablo used these funds to live on, to make brochures, to travel and set up meetings, and basic business expenses. (Tr. 68.) Pablo was in Liechtenstein because his grandfather was "a very close friend of [a royal family member]." The royal family member "was ready to fund [the secure banking system program], up until the fact he found the SEC judgment. Once he found the SEC judgment, the deal fell apart." (Tr. 69.) The SEC judgment against Pablo "drove the Liechtenstein contacts away and Pablo concluded his efforts in Liechtenstein were a failure. (Tr. 69.) At that point, Pablo decided to move to Columbia in 2002 where his family was "well-known" and where he has remained ever since. (Tr. 69-70.)

John's SOR ¶ 1.h. alleged that he formed a Liechtenstein registered trust in 2000 for the purpose of holding intellectual property rights to certain technologies he was developing and that, as of August 22, 2009, the registered trust held intellectual property rights to his technologies. Applicant advised that the registered trust was formed by others with "some minor assistance from me." John, aware of foreign influence concerns, ensured that he would have no foreign signature authority over the registered trust. (John's SOR Response.) John disclosed this situation to a DSS representative as it occurred. (Tr. 81.)

John's SOR ¶ 1.i. alleged that his parent company, where he serves as president with a 77% interest, had a business relationship with a Liechtenstein company formed by the Liechtenstein registered trust referred to above to promote and sell his banking security software. The SOR further alleged that this company was formed by the registered trust by Pablo under the laws of Liechtenstein in the 2000 to 2001 timeframe. Applicant advised that the business relationship with the company formed by Pablo was conducted by a separate subsidiary company, not previously discussed, which provided an indirect tie to his parent company. Other companies were also tied to the company to promote and sell John's banking security software while waiting for funding. (John's SOR Response.) John did not have any ownership or financial interests in the

Liechtenstein registered trust. He did not receive any form of compensation from the trust, nor did he have any management authority over the registered trust. (Tr. 81-82.) The success of the Liechtenstein registered trust was "very much dependent upon the [royal family member's] goodwill and the relationship Pablo's family had with him, so that was very key, the reasons why Liechtenstein was chosen." (Tr. 83.)

The last time John saw Pablo was for two days on October 31 and November 1, 2006 when he travelled to Columbia to see him. John testified that Pablo has not returned to the United States since he left the United States in 1998. Pablo did not invite John to his home because he lived in an "unsafe" neighborhood. Rather they met at a location near the airport. (Tr. 69, 224-226, 264.) John believes that he "has some roommates" and is friends with the President of Columbia. (Tr. 71-73, 240-241.) As far as John knows, Pablo works at a "minor job (such) as selling real estate and his major job is still trying to work with these large antique financial instruments." At present, Pablo's mother and sister live in the same community as John and Mary in a "very modest" residence. (Tr. 259.)

John explained that after the car accident in Columbia where Pablo's father, sister, and two brothers were killed, Pablo's family tried to kill his mother so they could have young Pablo for themselves and raise him. After a foiled attempt by the family to kill her with "bad drugs," she fled Columbia and moved to the United States. (Tr. 260.) As Pablo grew up, he spent time living with his grandfather "in luxury" and alternatively with his mother "in poverty." (Tr. 260.) John testified that Pablo is not affiliated with nor does he work for the Columbian government. John is aware of his obligation to report any unauthorized contact by a foreign national and of his responsibilities to safeguard classified information. (Tr. 73-74.)

John explained why he continued to have faith in Pablo:

> Well, you know, as a Christian man, I try to discern how the Spirit is directing me, and in particular with [Pablo], I've asked often whether this association should continue, and as far as I can discern, as I've tested the Spirit, that I'm not allowed to leave him. I've tried, but it's – I cannot leave him without a friend. I mean, most of his friends have deserted him, and it's tough for him. It's not easy living in poverty in Columbia.
>
> So even though I would explore possibilities of, you know, disassociating myself with him, I was never allowed to do that in the Spirit. There was always a check in my spirit. (Tr. 88.)

The following is a colloquy between Department Counsel and John regarding his ongoing relationship with Pablo:

> Q. Now, I think you said earlier that you've considered severing your ties with [Pablo] but you're not able to do that?

A. Well, you know, I try to pray and, you know, seek God's direction in all aspects of my life. And every time I would try to move away from my association with him (Pablo) I would (get) slapped down, you know, like, No, you don't do that sort of thing. So, you know, even though I've tried and, you know, I've been very frustrated with him, you know, after July of 2002, for example, I haven't felt like I've been allowed to sever connections.

Q. Does your wife want you to sever connections with him?

A. She would prefer me to sever connections with him.

Q. Do you maintain your relationship with him because he owes you money at all or is it not based on that reason?

A. Well, obviously, there's some incentive to help him pay back and to pay others back. But I would like to think it was more than that. You know, he's – last Sunday represented the 44th anniversary of his father, his sister and two brothers who were killed in an assassination as a truck forced their car off of a mountain road in Columbia. And since then it's been he and his mother. And it's been a tough life for him.

And especially after he became a Christian and having all of those relationships severed he's kind of an orphan out there. And so I have some compassion for him on that standpoint. And if I can help him recover I would like to. (Tr. 241-242.)

Mary, like John, continues to believe in Pablo; however, she does not support John pursuing further business interests with Pablo. She acknowledged "sign[ing] off" on all of John's transactions with Pablo. Additionally, Mary testified at a federal grand jury in 2002 that was investigating Pablo "to track that money." To the best of Mary's knowledge, nothing came of the grand jury investigation. (Tr. 294-297.)

John's SOR ¶ 2.b. alleged that John falsified his May 2002 SF-86 by failing to list that he formed a Liechtenstein registered trust for the purpose of holding intellectual property rights to certain technologies when asked whether he had any foreign property, business connections, or financial interests. John discussed the situation with a DSS representative and the representative determined that it was not necessary for John to list the Liechtenstein registered trust on his SF-86. John further credibly testified that he did not form the trust, that he never transferred any property to the trust, that he never had any ownership interest in the Liechtenstein registered trust, that he had no control over the business affairs of the trust at any point, and that he never had signature authority on any of the trust's accounts. (Tr. 93-94, 96-100, 228-232.)

Mary's SOR ¶ 2.b. alleged that she falsified her May 2002 SF-86 rights by failing to list that she and John formed a Liechtenstein registered trust in 2000 for the purpose of holding intellectual property rights and that she served as corporate secretary in

John's business and owns 14% of that business; and had a business relationship with a subordinate company to fund and market secure banking system technologies. Mary credibly testified and corroborated her SOR Response that she had no foreign properties, that their subordinate company had pending relationships waiting for funding, and that no intellectual property rights have been transferred. In short, she has no interest of any sort in the trust, and that she had no business connections with their subordinate company. Her only involvement in the Liechtenstein registered trust was the potential transfer of intellectual property to the trust at some point. She did not participate in the forming of the trust, is not a trustee, nor has she ever held a position of authority or responsibility within the registered trust. (Mary's SOR Response, Tr. 286-289.)

On October 8, 2005, John and Mary filed for Chapter 7 bankruptcy. On October 12, 2005, they notified the Defense Industrial Security Clearance Office (DISCO) by letter of their bankruptcy filing. (AE 8(c), Tr. 101-102.) John's business and personal income dropped considerably from 2000 to 2005. As a result of expenses and business dropping off, John and Mary's cash flow was reduced to the point that they took out a home equity line of credit, borrowed against a life insurance policy, borrowed approximately $120,000 from Mary's parents, and live an austere lifestyle as compared to their previous lifestyle. (AE 9-15, Tr. 102-122.)

Their credit reports and financial records over those years show a steady decline in their financial situation. John and Mary's Chapter 7 Summary of Schedules reflected total assets of $291,781.22 and total liabilities of $380,497.07. They were awarded a discharge in January 2006. (GE 9(c) – GE 12(c), GE 14(c) – GE 15(c), GE 16(c).) At present, John and Mary do not have any credit cards and pay cash for everything. They are able to meet their monthly expenses through Mary's salary, and cash gifts from their youngest son and Mary's parents. John and Mary live a modest lifestyle and are current on all of their monthly expenses. Taking into account their collective income sources, John and Mary's annual income is approximately $68,000. (Tr. 123, 235-237.) John testified that Pablo's failure to pay back the $400,000 loan was a contributing factor to his filing bankruptcy. (Tr. 228.)

John has never owned any real estate in a foreign country nor has he ever had an interest in a foreign bank or investment account. He has no plans to move or retire to Liechtenstein or to Columbia. (Tr. 100-101.) Like John, Mary has never owned any real estate in a foreign country nor has she ever had an interest in a foreign bank or investment account. (Tr. 289-290.)

John testified that Pablo was aware that John and Mary were at a DOHA hearing and that their problems with DOHA were caused in large part by their association and dealings with him. Pablo's reaction to the fallout he caused John and Mary is, "[h]e and his family are not happy about that." To the best of John's knowledge, none of the investors to include John and Mary who lost money through their investments with Pablo has ever been paid back. (Tr. 266-267.) John later discovered that after the SEC found Fabian guilty of securities fraud and fined and issued a permanent injunction

against him, his state bar disbarred him. Fabian then killed his wife and two teenage children and committed suicide in June 1991. (Tr. 267-268.)

Character Evidence

Three character witnesses testified on John and Mary's behalf: (1) a personal reference who is a retired Air Force Major General and is now working as an aerospace engineer for a defense contractor; (2) a personal reference they met through their church who retired as the head of an major insurance company's internal audit department and is now working as a maintenance man for the local housing authority; and (3) a personal reference they met through their church who is the owner of a small research and development business. In addition to being personal friends, all three witnesses have been involved in a business relationship with John and Mary in varying degrees. The second witness invested $310,000 from his retirement account in the Foreign Certificate and lost the entire amount. The collective testimony of these witnesses supports the notion that John and Mary are trustworthy and responsible individuals. (Tr. 34-50, 127-176.)

John and Mary also submitted letters from a DSS representative that documented a seven-year track record from 2001 to 2008 of their company's compliance with DoD security procedures. Their company earned consistent grades of "Satisfactory" during this period. (AE 1-8.) They also submitted a letter dated June 8, 2000 from the U.S. Department of Commerce that granted them a license to export certain technology to Liechtenstein. (AE 9.) Lastly, they submitted company profit and loss statements from 2000 to 2006 that reflected a steady decline in business revenues. (AE 9-15.)

Columbia[2]

Colombia is a constitutional, multiparty democracy with a population of approximately 44.8 million. Colombia is the second most populous country in South America. Any person born in Colombia is considered a Colombian citizen.

The Department of State warns U.S. citizens of the dangers of travel to Colombia. Violence by narco-terrorist groups continues to affect some rural areas and cities. The potential for violence by terrorists and other criminal elements exists in all parts of the country. Terrorists and other criminal organizations continue to kidnap and hold persons of all nationalities and occupations for use as bargaining chips. No one is immune from kidnapping on the basis of occupation, nationality or other factors. U.S. Government officials and their families have strict limitations on travel to and within Colombia due to these dangers. Kidnap or murder victims in Colombia have included journalists, missionaries, scientists, human rights workers, and business people, as well as tourists and even small children. Approximately 298 kidnappings committed by terrorist groups and for-profit kidnap gangs were reported to authorities in 2007.

[2] The contents of this section are taken in whole or in part from Exs. I and II, which are duplicate documents.

Robbery and other violent crimes are common in major cities while small towns and rural areas can be extremely dangerous due to the presence of narco-terrorists.

The Secretary of State has designated three Colombian groups – the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia (AUC) – as Foreign Terrorist Organizations. These groups have carried out bombings and other attacks in and around major urban areas, including against civilian targets. Terrorist groups have also targeted critical infrastructure (*e.g.,* water, oil, gas, and electricity), public recreational areas, and modes of transportation. The FARC has targeted civilians, government representatives and politicians, soldiers, and the civilian infrastructure. Three Irish Republican Army members assisted in training the FARC on IRA bomb tactics in Colombia. FARC held three U.S. government contractors -- all U.S. citizens -- hostage for five years, until they were rescued on July 2, 2008 by the Colombian military. Some border areas have become terrorist safe havens.

Although the government's respect for human rights continued to improve, serious problems remain. Unlawful and extrajudicial killings, forced disappearances, insubordinate military personnel who collaborate with criminal groups, torture and mistreatment of detainees, overcrowded and insecure prisons, and other serious human rights abuses were reported during 2007. Illegal armed groups and terrorist groups committed the majority of human rights violations–including political killings and kidnappings, forced disappearances, torture, and other serious human rights abuses.

Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The UNITED STATES Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable to reach his decision.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See* Exec. Or. 10865 § 7. *See also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *See Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

Guideline B, Foreign Influence

AG ¶ 6 explains the Government's concern about "foreign contacts and interests" stating:

> [I]f the individual has divided loyalties or foreign financial interests, [he or she] may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in UNITED STATES 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 indicates three conditions that could raise a security concern and may be disqualifying in this case, including:

> (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;
>
> (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; and
>
> (e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

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 or friend lives in a foreign country and an applicant has contacts with that relative or friend, 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. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Although Pablo is not a relative, there is no question that he is a person with whom John, and to a lesser extent Mary, maintain a close personal and business relationship. Pablo is a dual citizen of the U.S. and Columbia and a resident of Columbia. Pablo owes John and Mary over $400,000, an amount they hope to recover from him. John maintains frequent e-mail and telephone contact with Pablo and has visited him in Columbia. This close relationship creates a potential risk of foreign exploitation, inducement, manipulation, pressure, or coercion meriting a close examination of all circumstances. The Government produced substantial evidence of the three disqualifying conditions under AGs ¶¶ 7(a), (b), and 7(e). Although the Government alleged that John and Mary traveled to Liechtenstein in 2001 for the purpose of conducting business, there is no evidence that the business was of consequence. Furthermore, the Government did not present evidence at the hearing demonstrating or suggesting that John and Mary's involvement in Liechtenstein was a concern.

The burden shifted to John and Mary to produce evidence and prove mitigating condition(s). The burden of disproving a mitigating condition never shifts to the Government.

Three Foreign Influence Mitigating Conditions under Guideline ¶ 8 are potentially applicable to these disqualifying conditions:

> (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 U.S.;
>
> (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 interest in favor of the U.S. interest; 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.

John and Mary are not bound to Pablo as a blood relative or through marriage, but rather through years of friendship and a series of adverse financial dealings. John has demonstrated his close ties with Pablo by frequent contact, his visit to Columbia in 2006, and professed friendship. Pablo purportedly makes his living selling real estate and dealing in financial instruments. From the evidence presented, Pablo is not affiliated with the Columbian government save for his claim to be a friend of the Columbian President. The record does not identify what influence, if any, the Columbian government could exert on Pablo as a result of being a resident citizen of Columbia. However, Pablo's presence in Columbia, and John's foreign travel, professed friendship, and financial dealings creates concerns under this Guideline. As such, the burden shifted to John and Mary to show Pablo's living in Columbia and travel there does not create security risks.

"[T]he nature of the foreign government involved in the case, and the intelligence-gathering history of that government are important evidence that provides context for all the other evidence of the record . . ." *See, e.g.,* ISCR Case No. 04-0776 at 3 (App. Bd. Sept. 26, 2006); *see also* ISCR Case No. 02-07772 at 7 (App. Bd. Aug. 28, 2003). As noted *supra* under the subheading "Columbia," the U.S. Secretary of State has designated three Columbian groups -- FARC, ELN, and AUC as Foreign Terrorist Organizations. Although the Columbian government's respect for human rights continues to improve, terrorist groups operating within Columbia have committed the majority of human rights violations to include political killings and kidnapping, forced disappearances, torture, and other serious human rights abuses.

John denies having "divided loyalties" between the United States and any foreign country. It should be noted Applicant's allegiance to the United States was not challenged in this proceeding. The issue is rather a positional one.

> [Guideline B] hinges not on what choice Applicant might make if he is forced to choose between his loyalty to his family and the United States, but rather hinges on the concept that Applicant should not be placed in a position where he is forced to make such a choice. ISCR Case No. 03-15205 at 3-4 (App. Bd. Jan. 21, 2005).

On balance, John has not met his burden of showing there is "little likelihood that [his relationship with Pablo in Columbia] could create a risk for foreign influence or exploitation." John's continued and ongoing relationship with his friend, Pablo, and the nature of unlawful activities in Columbia by terrorist organizations places Applicant in just this position, given his close relationship with Pablo and Pablo's continued presence and connection with Columbia.

However, John and Mary are able to receive partial credit under AG ¶ 8(a). Pablo purportedly maintains a non-political low key position in Columbia. Full application of AG ¶ 8(a) is also precluded given his past SEC judgment and inability to find employment in his profession not to mention the numerous investors, to include John and Mary, who placed their trust and confidence in Pablo and suffered financially. John and Mary's loss in excess of $400,000 directly contributed to their 2005 bankruptcy.

John and Mary are able to receive full credit under AG ¶ 8(b). Their relationship with Pablo in Columbia is minimal when compared and contrasted with their immediate relatives in the United States John and Mary have "such deep and longstanding relationships and loyalties in the United States, [they] can be expected to resolve any conflict of interest in favor of the United States interest." Their two living sons and immediate relatives are U.S.-born citizens and reside in the United States, and they are fully inculcated with U.S. values. John and Mary were born, raised, and educated in the United States. John and Mary have worked with the U.S. Government as a defense contractor with dedication and distinction for years. John and Mary's property and investments are in the United States, and they have no property or investments in Columbia or in any other foreign country. They have many friends and colleagues in the United States. They are loyal, dedicated U.S. citizens, who exercise their rights of U.S. citizenship. John and Mary provided three reputable witnesses, to corroborate their loyalty and trustworthiness.

John and Mary are also able to receive full credit under AG ¶ 8(e) as a result of their keeping the DSS fully apprised of their association with Pablo and travel to Columbia. They have been completely open and forthright with Government officials from the onset of this affair. John and Mary have no assets in Columbia except two virtually uncollectable promissory notes as opposed to all of their assets being in the United States. A thorough comparison of their relationship to the United States as compared to their relationship with Columbia is further discussed under the Whole-Person Concept, *infra.*

Guideline E, Personal Conduct

AG ¶ 15 explains the Government's concern under this Guideline:

> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes three conditions that could raise a security concern and may be disqualifying in this case:

> (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;
>
> (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative; and
>
> (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 person may not properly safeguard protected information.

A statement is false when it is made deliberately, *i.e.* knowingly and willfully. An omission of relevant and material information is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or genuinely thought the information did not need to be reported. [3]

[3] The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

> (a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

The issue here is the truthfulness of John and Mary's respective statements regarding their foreign holdings. AG ¶ 17(f)*, infra,* provides a condition that could mitigate security concerns in this case, stating, "the information was unsubstantiated or from a source of questionable reliability." AG ¶ 17(f) fully applies.

Having had the opportunity to listen to their testimony and observe their demeanor, their explanations as set forth in the findings of fact are accepted as credible. John and Mary took the extra step of informing a DSS representative regarding the registered trust and after a meaningful discussion concluded that it was not necessary to list foreign holdings as alleged. Furthermore, and based on the evidence, John and Mary answered the question regarding their foreign holdings truthfully. Admittedly, the relationship that existed between the parties and their respective level of involvement could understandably lead to confusion.

Having dealt with falsification concerns, I now move on to what I view as the crux of this case and that is John and Mary's ongoing relationship with Pablo. This relationship began at John and Mary's church in approximately 1996. From the onset, Pablo made some rather extraordinary claims about his very wealthy background, being linked to the Rothschild family fortune, and being in the lineage to the King of Israel. Pablo, who was born into a Jewish family, claimed that his family disowned him because he had converted to Christianity, but his grandfather, a former Columbian ambassador, left him a substantial fortune worth millions. Pablo related that his grandfather had put monies away at various sites.

Record evidence identified at least four schemes associated with Pablo. First, around 1977 Pablo was involved with the Foreign Certificate, discussed at length, *supra.* John and Mary did not invest in this particular venture, but fellow church members did and paid dearly for placing their trust in Pablo. Collectively, they lost approximately $1 million. One member, who was the second witness to testify at John and Mary's hearing, lost $310,000 from his retirement account. In June 1998, the SEC filed a complaint against Fabian, Pablo, *et al,* alleging that the Foreign Certificate was a sham document and that Pablo and others were part of a fraudulent scheme to use the Certificate to obtain millions of dollars for themselves. The SEC entered a default judgment against Pablo ordering him to pay a $75,000 fine and permanently enjoined him from future trading or investing in the United States.

Second, in 1998 Pablo was arrested in London along with a "former CIA operative" and placed in jail for one week based on their involvement with fraudulent bearer bonds. Third, in 2000 Pablo requested that John and Mary assist him in getting his purported aunt asylum from the Yugoslavian government. After traveling to Europe, John and Mary were informed at the U.S. Embassy in Budapest, Hungary that the "aunt" was a con artist involved in fraudulent banking transactions. Fourth, in 2002, Pablo told John and Mary that he had $40 million in a security house in Amsterdam. He asked to borrow $200,000 from John and Mary to pay a storage fee to the security

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ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

house so that he could access the $40 million. John and Mary loaned Pablo the $200,000, but there was no money in the storage house.

Despite their knowledge of Pablo's involvement in these scams, their knowledge of the SEC judgment, and their knowledge of an FBI investigation involving Pablo, John and Mary refuse to believe that Pablo is culpable in any of these instances. Instead, they view him as a victim and continue to place their faith in him. In spite of Pablo's track record of divesting substantial amounts of money from numerous investors, John and Mary decided to go into a business venture with him in 2000. John and Mary believed that Pablo could help them acquire funding for a secure banking system invented by John. Over the years, John and Mary made 39 separate loans, the first in 2000 and the last in 2006 for a total of $408,700. Pablo has not repaid one cent of the money that John and Mary loaned him, nor have they ever had a successful business venture with him. The record is void of anyone ever having had a successful business venture with Pablo. The record further demonstrates that Pablo has associated with questionable and unsavory characters involved in fraudulent schemes such as his "aunt" in Yugoslavia and Fabian.

Before John and Mary met Pablo, they were financially secure. In 2005, having depleted their savings, they were forced to file for Chapter 7 bankruptcy. Their numerous loans to Pablo over time placed them in financial jeopardy and directly contributed to their financial instability. Their total liabilities on their Summary of Schedules are $380,497.07. It is quite clear that they would not be in their predicament had they not loaned Pablo $408,700. Furthermore, this was not an isolated loan, but 39 separate loans over time. Everyone who invested with Pablo lost all of their investment. Pablo's abysmal track record should have served as a red flag. In order to remain solvent today, John and Mary have had to rely on the generosity of their son and Mary's parents. In spite of all this, John and Mary continue to have faith in Pablo and refuse to sever their ties with him. They refuse to see him for what he is – a con artist. This severe error in judgment raises grave concerns about John and Mary's suitability to hold security clearances.

AG ¶ 17 provides seven conditions that could potentially mitigate security concerns about his personal conduct:

> (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
>
> (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
>
> (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 caused 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;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity 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.

For reasons discussed *supra,* I find none of the mitigating conditions under this concern applicable to mitigate concerns arising under disqualifying condition ¶ 16(c).

Financial Considerations

AG ¶ 18 explains the Government's concern under this Guideline:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides two financial considerations disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts," and "(c) a history of not meeting financial obligations." John and Mary's history of delinquent debt is established by their admissions and the evidence presented. As noted *supra,* they filed for Chapter 7 bankruptcy in October 2005 and listed $380,497.07 worth of liabilities. Their unsecured nonpriority debts were discharged in January 2006. And, Pablo's numerous unpaid loans directly contributed to their filing bankruptcy. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five financial considerations mitigating conditions under AG ¶¶ 20(a) through(e) are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

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

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

AG ¶ 20(a) is partially applicable. Until John and Mary filed for bankruptcy in 2005, they had maintained financial responsibility. Their credit worthiness and ability to pay their bills was never an issue. They were making a comfortable living and ran a successful business. However, I am unable to give them full credit under this condition because of the ongoing questionable judgment they exercise *vis-à-vis* Pablo, discussed *supra,* and which played a significant role in their filing for bankruptcy. Concerns remain regarding John and Mary's continued misplaced trust and faith in Pablo.

Under AG ¶ 20(b), John and Mary receive partial credit because the business downturn they experienced was largely beyond their control and they acted responsibly under the circumstances. However, their providing numerous loans to Pablo over time led to their adverse financial situation and does not demonstrate they acted responsibly under the circumstances.[4]

AG ¶ 20(c) is partially applicable because John and Mary underwent financial counseling in order to complete the bankruptcy process. AG ¶ 20(d) is partially applicable because John and Mary's debt was discharged following bankruptcy.[5] AG ¶

[4] "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

20(e) is not applicable because John and Mary did not dispute the legitimacy of their debts.

Financial considerations have a judgment component in the concern that continues even though John and Mary have no delinquent debts. This judgment component is best addressed under Guideline E, *supra.* I further note that John and Mary have been and are current on their monthly bills since they were awarded a bankruptcy discharge in 2006. Accordingly, I find for John and Mary under Guideline F because the same conduct is duplicated under both guidelines.

Whole-Person Concept

In addition to the enumerated disqualifying and mitigating conditions as discussed previously, I have considered the general adjudicative guidelines related to the whole person concept under Directive ¶ E2.2.1. "Under the whole person concept, the Administrative Judge must not consider and weigh incidents in an applicant's life separately, in a piecemeal manner. Rather, the Judge must evaluate an applicant's security eligibility by considering the totality of an applicant's conduct and circumstances."[6] The directive lists nine adjudicative process factors (APF) which are used for "whole person" analysis.

Because foreign influence does not involve misconduct, voluntariness of participation, rehabilitation and behavior changes, etc., the eighth APF, "the potential for pressure, coercion, exploitation, or duress," Directive ¶ E2.2.1.8, is the most relevant of the nine APFs to this adjudication.[7] In addition to the eighth APF, other "[a]vailable,

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[5] The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

> In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

[6] ISCR Case No. 03-04147 at 3 (App. Bd. Nov. 4, 2005) (quoting ISCR Case No. 02-01093 at 4 (App. Bd. Dec. 11, 2003)); ISCR Case No. 05-02833 at 2 (App. Bd. Mar. 19, 2007) (citing *Raffone v. Adams*, 468 F.2d 860 (2nd Cir. 1972) (taken together, separate events may have a significance that is missing when each event is viewed in isolation).

[7] *See* ISCR Case No. 02-24566 at 3 (App. Bd. July 17, 2006) (stating that an analysis under the eighth APF apparently without discussion of the other APFs was sustainable); ISCR Case No. 03-10954 at 5 (App. Bd. Mar. 8, 2006) (sole APF mentioned is eighth APF); ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006) (remanding grant of clearance because Judge did not assess "the realistic potential for exploitation"), *but see* ISCR Case No. 04-00540 at 6 (App. Bd. Jan. 5, 2007) (rejecting contention that eighth APF is exclusive circumstance in whole person analysis in foreign influence cases).

reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination." Directive ¶ E2.2.1. Ultimately, the clearance decision is "an overall common sense determination." Directive ¶ E2.2.3.

The Appeal Board requires the whole person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family's ties to the U.S. relative to his [or her] ties to a foreign country; his or her ties social ties within the U.S.; and many others raised by the facts of a given case." ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I have carefully considered Applicant's family connections and personal connections to Columbia. Several circumstances weigh against Applicant in the whole person analysis. First, three foreign terrorist organizations have been identified by the U.S. Secretary of State that are operating within Columbia. Illegal armed terrorist groups committed human rights violations to include political killings and kidnappings, forced disappearances, torture, and other serious human rights abuses. Although Columbia and the United States enjoy a cordial relationship, the existence these terrorist groups and their concomitant internal problems within Columbia remain a concern. Second, John and Mary's close friend Pablo lives in Columbia. Pablo has an outstanding SEC judgment against him among other concerns. Third, John visited Pablo at least one time in Columbia in 2006 and remains in frequent contact with him by e-mail and telephone. These contacts and visit are collective manifestations of strong affection and the regard John and or Mary have for their friend, Pablo.

There is significant mitigating evidence that weighs towards finding in John and Mary's favor with regard to this concern. They were born, raised, and educated in the United States. They raised their children in the United States. All of their immediate family members are in the United States. They own real property in the United States, are involved in their community, and exercise all rights of U.S. citizenship. Their association with Columbia begins and ends with their one close friend, Pablo, who lives and resides in Columbia.

John and Mary maintain much more frequent contact with their U.S.-based family and friends than they do with their friend, Pablo, residing in Columbia. Their ties to the United States are stronger than their ties to Pablo in Columbia. There is no evidence that John and Mary have ever taken any action which could cause potential harm to the United States.[8] They take their loyalty to the United States very seriously, and they have worked diligently for many years as a Government contractor/employer. The record contains no evidence that John and Mary have conflicted loyalties.

I considered the totality of John and Mary's ties to Columbia. Columbia and the United States enjoy a friendly relationship. Apart from the internal problems within Columbia, which are not endorsed by the Columbian government, Columbia is a multiparty democracy, whose government's respect for human rights continues to

[8] The Government does not have the burden of providing such evidence.

improve. There is no evidence in the record to support the notion that the Columbian government engages in an adversarial relationship with the United States.

In the unlikely event that John and Mary's friend, Pablo, in Columbia was subjected to coercion or duress from a terrorist group within Columbia, I find that because of their deep and longstanding relationships and loyalties in the United States, that they would resolve any attempt to exert pressure, coercion, exploitation, or duress in favor of the United States. Noteworthy and given great weight are John and Mary's lifetime of being loyal U.S. citizens. Lastly, their witnesses provided compelling endorsements on their behalf.

This case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. This analysis must answer the question whether there is a legitimate concern under the facts presented that John and Mary may have divided loyalties or act in a way adverse to U.S. interests or some attempt may be made to exploit Pablo in such a way that these U.S. citizens would have to choose between their pledged loyalty to the United States and their friend. After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude John and Mary have mitigated the security concerns pertaining to foreign influence.

While I am able to reach a favorable conclusion with respect to foreign influence and financial considerations concerns, I am unable to reach the same conclusion with respect to personal conduct concerns. As I mentioned at the outset, I consider John and Mary to be decent, honorable, hard working, responsible parents, and loyal U.S. citizens. I cannot, however, overcome the concerns I have regarding the judgment they exercised and continue to exercise by their misplaced trust and confidence in their friend, Pablo.

I take this position based on the law, as set forth in *Department of Navy v. Egan,* 484 U.S. 518 (1988), my "careful consideration of the whole person factors"[9] and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. John and Mary have not completely mitigated or overcome the Government's case. For the reasons stated, I conclude they are not eligible for access to classified information.

[9]*See* ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

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 B:	FOR APPLICANT
Subparagraphs 1.a. - 1.i.:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant, except for SOR ¶¶ 1.d., 1.f., and 1.h.
Subparagraph 2.b.:	For Applicant
Paragraph 3, Guide line F:	FOR APPLICANT
Subparagraphs 3.a. – 3.b.:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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ROBERT J. TUIDER
Administrative Judge