



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



In the matter of:)
)
) ISCR Case No. 13-01247
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

June 5, 2014

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Security concerns were raised under the Guidelines for Foreign Influence, Personal Conduct and Financial Considerations. Applicant’s brother and father-in-law are residents of Nigeria. Her father is a dual citizen of Nigeria and the United States. Her mother is a citizen of Nigeria. Her parents reside in the United States. Her cousin is a citizen of Nigeria residing in the United Kingdom. Applicant mitigated the Foreign Influence concerns related to her foreign relatives. However, she was unable to mitigate the Personal Conduct concerns arising from her falsification of her 2002 and 2013 security clearance applications and foreign travel using her Nigerian passport after being granted a security clearance. Further, Applicant had two delinquent mortgage debts totaling \$295,717 that remain unresolved. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted her electronic Security Clearance Application (e-QIP) on March 18, 2013. On December 30, 2013, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under the

guidelines for Foreign Influence, Personal Conduct, and Financial Considerations. The action was taken under Executive Order (EO) 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 after September 1, 2006.

Applicant answered the SOR (Answer) on February 13, 2014, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on April 15, 2014. A notice of hearing was issued to Applicant on April 21, 2014, scheduling a hearing for May 8, 2014. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 9, which were admitted without objection. Applicant testified on her own behalf, called five witnesses, and offered Applicant's Exhibits (AE) A through BB, which were admitted into the record without objection. Applicant requested that the record be left open to allow her to submit additional evidence and her request was granted. On May 16, 2014, Applicant presented additional exhibits, marked AE CC through AE GG. Department Counsel had no objections to AE CC through AE GG, and they were admitted into the record. The record then closed. DOHA received the transcript of the hearing (Tr.) on May 16, 2014.

Procedural Rulings

Request for Administrative Notice

Both Department Counsel and Applicant submitted formal requests that I take administrative notice of certain facts relating to Nigeria. The requests and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibits (HE) I and IV.¹ The facts administratively noticed are set out in the Findings of Fact.

Amendment to the SOR

Pursuant to Additional Procedural Guidance ¶ E3.1.17 of the Directive, I amended the case number on the SOR, 13-12407, to correct a typographical error and to accurately reflect the case number of 13-01247.

Findings of Fact

Applicant is a 37-year-old employee of a defense contractor. She has worked for her current employer since January 2006. She has had a security clearance in connection with her present and past employment since at least 2003. She is a college graduate and obtained a master's degree in 2002. She is married and has two children, ages 5 and 2. (AE G; AE H; AE N; Tr. 75-78.)

¹ HE II is a collection of DOHA hearing level decisions that Applicant argues should be persuasive if applied in the instant case. HE III is a letter Department Counsel sent Applicant forwarding the adjudicative guidelines (AG) effective after September 1, 2006.

Applicant is respected for her honesty, trustworthiness, and integrity by her family, friends, and professional contacts who testified and wrote letters of support on her behalf. Applicant is known for going “above and beyond what is required for every assignment” and is detail oriented. Her performance appraisals reflect she is a valued employee and exceeds expectations. She has received numerous cash awards, appreciation awards, and accomplishment awards from her employer in recognition of her exceptional performance. She has worked as a volunteer mentor to high school youth, completed a marathon and triathlon, and volunteered in various other organizations including her church. (AE I; AE J; AE K; AE N; AE O; AE U; AE Y; AE BB; Tr. 35-58, 79-80, 185-187.)

Guideline B

Applicant and two siblings were born in the United States. Her parents were both born in Nigeria. In the early 1980s, her family moved back to Nigeria. Applicant testified that her parent’s obtained a Nigerian passport for her when she was a minor. She attended secondary school in Nigeria, but returned to the United States with her sister in 1993, at the age of 16. Applicant has resided in the United States since then, though she frequently visits Nigeria. She worked full time at a fast-food restaurant to put herself through undergraduate school. Her sister continues to reside in the United States. (AE N; Tr. 70-73, 80-82.)

Applicant’s parents currently reside in the United States. Her father is a dual citizen of both the United States and Nigeria. Her mother is a citizen of Nigeria. Applicant’s father retired from his job in Nigeria in 1997 and moved to the United States. He works as a civilian for the U.S. Navy. He has never been affiliated with the Nigerian government. Applicant’s mother relocated from Nigeria to the United States in late March 2014, after she retired from her job in the private sector field of health and safety compliance in Nigeria. Applicant’s mother has never worked for the government of Nigeria. Her father and mother each maintain residences they inherited from their families in Nigeria. (Answer; GE 4; AE U; Tr. 82-83, 163-165.)

Applicant’s brother is a citizen of the United States and resides in Lagos, Nigeria. He is single and has no children. He lives in the home owned by their mother. He works as an accountant at the same private sector health and safety compliance office from which Applicant’s mother recently retired. Applicant testified that her brother plans to return to the United States eventually after obtaining international work experience, but that his return was not imminent. Applicant communicates with her brother by phone and email one-to-two times per week. She describes their relationship as “close.” She testified that he does not live in an area that the terrorists have been known to target and he is not affiliated with the government of Nigeria. (GE 4; Tr. 84-87, 178.)

Applicant’s father-in-law is a citizen and resident of Nigeria. Applicant has met him twice; on her wedding day in 2007, and after the birth of her son in 2009. Applicant communicates with her father-in-law quarterly. Applicant’s husband does not maintain relations with his father. Applicant’s mother-in-law is deceased. (Tr. 83-84, 166-167, 176.)

Applicant also has a cousin that is a citizen Nigeria but resides in the United Kingdom. Applicant visits him every two years. Applicant last saw her cousin in 2011. They have not spoken in “almost a year.” Her cousin was self-employed as a real estate agent but recently returned to school. (GE 4; Tr. 87.)

Nigeria is a federal republic that has faced intermittent periods of political turmoil and economic crisis. The U.S. Congress has expressed concerns with corruption, human rights abuses and the threat of violent extremism in Nigeria. Nigerian security forces, particularly the police, have been accused of serious human rights abuses. A travel warning issued by the U.S. Department of State on May 6, 2014, warned U.S. citizens of the risks of travel to Nigeria. It indicated that, “kidnappings of foreign nationals and attacks against Nigerian police forces in Lagos state and the Niger Delta region continue to affect personal security for those traveling in these areas.” The latest travel warning was issued after Boko Haram, an extremist group based in northeast Nigeria that is designated as a Foreign Terrorist Organization by the Department of State, targeted women and children for kidnapping (including more than 200 school girls that were taken from a private school). Boko Haram has also recently detonated vehicle-borne improvised explosive devices that resulted in approximately 100 deaths. Nigeria and the U.S. have joint operations and partnerships to increase the stability in the region and to combat extremists, including cooperating in efforts to aid the missing school girls. However, political tensions and violent internal conflict are likely to continue in the lead up to Nigeria’s 2015 elections. (HE I; HE IV; AE DD; Tr. 133-135.)

Guideline E

Applicant disclosed on her 2002 and her 2013 e-QIPs that she traveled to Nigeria in June to August 1996; December 2001 to January 2002; August 2007 to September 2007; May 2009; and June 2010 to July 2010 to visit her family in Nigeria. She testified that she also traveled to Nigeria in 2005. (GE 1; GE 2; GE 4; Tr. 99-100.)

The record contains contradictory evidence about when she possessed and used her valid Nigerian passport in connection with her travels. However, it is clear that she used her Nigerian passport to travel to Nigeria after being granted a secret clearance in November 2003. On her 2002 e-QIP, she indicated “no” to Question 15, which asked if she had an active passport that was issued by a foreign government. She also denied possessing dual citizenship in Question 3 on that e-QIP. However, on her 2013 e-QIP, while she denied possessing dual/multiple citizenships, she disclosed Nigeria issued her a passport on August 10, 2012, that would expire August 9, 2017, under Section 10. In the notes to Section 10, she explained the passport, “was intended to be used for travel in Dec[ember] 2012, but we ended up not going on the trip.” (GE 1; GE 2; AE L.)

During her April 8, 2013 interview with an authorized investigator for the Department of Defense, Applicant presented her Nigerian passport for review. She claimed that she did not hold citizenship with Nigeria, but was able to hold a Nigerian passport due to both of her parent’s Nigerian citizenship. Applicant testified that when she completed her 2002 and 2013 e-QIPs, she did not understand the definition of a dual citizen, and therefore, incorrectly indicated she did not possess dual and/or

multiple citizenships. She indicated that she previously thought a dual citizen was someone born in a foreign country and later naturalized as a U.S. citizen. Only after she discussed her status with the investigator, she learned she would be considered a dual citizen. Her explanations are not credible. (GE 4; Tr. 88-103.)

Applicant was also questioned by the investigator regarding her Nigerian passport. On November 22, 2013, Applicant adopted that investigator's summary and indicated the summary accurately reflected the information she provided when she was interviewed. Her only additional statement noted her Nigerian passport was "resigned" to her employer. The adopted summary indicated the passport Applicant presented during the interview was a "renewed passport, but subject reports that her original passport was originated possibly sometime in 1982 by her parents, at a time when subject was only a child." Applicant reported that "between the years 1993 to 2011, she has used this foreign passport 8-10 times to travel to and from Nigeria." She further reported, "that she has always used her foreign passport when traveling to Nigeria." (GE 4.)

However, in her Answer and in her testimony, Applicant asserted that her answers to the investigator were unintentionally incomplete because she did not have documentation of her travel to reference during the interview. She testified that her Nigerian passport expired in approximately 1987 or 1988. She claimed it had not been renewed at the time she completed her e-QIP in 2002. She testified that she first renewed the Nigerian passport for a trip she took in 2005. She used her U.S. passport to travel to Nigeria in 1996 and during her 2001 to 2002 visit. She used the Nigerian passport for her trips to Nigeria from 2005 until the passport was surrendered to her security office and subsequently destroyed in July 2013. She presented no documentation to support her new claims regarding the more limited use of her Nigerian passport. Her contradictory statements indicate that she has not been fully forthright with the government concerning her possession and use of her Nigerian passport. (GE 3; AE P; AE EE; Tr. 88-103, 167-174.)

Guideline F

Under the Financial Considerations guideline, the Government alleged that Applicant is ineligible for a clearance because she made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about her reliability, trustworthiness, and ability to protect classified information. The SOR identified two delinquent debts totaling \$295,717. Applicant's debts appear in credit reports entered into evidence. Applicant admitted all of the debts as alleged in subparagraphs 3.a and 3.b. (Answer; GE 7; GE 9; GE 12; GE 14.)

Applicant attributes her financial delinquencies to her investment in a rental property and the subsequent decline in the real estate market. Prior to the purchase of the rental property, she had excellent credit and had been successful in renting out another investment property. She purchased the property in question for approximately \$310,000 in 2006. She financed the purchase with a 30-year fixed interest rate primary

mortgage of \$230,000 and a 10-year home equity line of credit (HELOC) loan of \$80,000. Both loans were made by the same financial institution and were delinquent in the amounts of \$64,380 and \$57,717, as stated in SOR allegations 3.a and 3.b. She rented the property after approximately three months, during which she completed some upgrades in the house. For the first few months, she made a profit with the rental. However, due to maintenance issues and high utility costs, the rental income was insufficient to cover her costs associated with the property. Additionally, Applicant's tenants damaged the property and stopped paying rent. She testified that after the tenants finally vacated the home, approximately \$25,000 in repairs were required to make the home habitable again. She was unable to afford the repairs. As a result, the home sat vacant. (GE 4; GE 5; AE M; AE N; AE R; Tr. 73-74, 103-117, 136-150.)

Applicant stopped making payments on these mortgages in December 2010 after she decided that she had already spent approximately \$30,000 of her own money on maintaining the mortgage and the property. She continued making mortgage payments long after her tenants stopped paying rent, but eventually she made "a decision to say this is a loss, and I'm going to take my losses and walk away." She continued, "I had a debt that I was willing to satisfy according to my financial needs." However, she prioritized saving for her retirement and providing for her children. She documented that she tried to resolve the mortgages after she stopped making payments by listing the property with a real estate agent for sale, attempting to refinance the mortgage, and offering the bank a deed in lieu of foreclosure. Applicant presented documentation that showed she was in constant communication with financial institution that gave her the loans. (GE 5; GE 6; GE 7; GE 8; GE 9; AE A; AE B; AE C; AE Q; AE AA; Tr. 73-74, 103-117, 178.)

In 2013 Applicant received notice from the city where the home was located that it was a safety hazard. She claims she did not receive notice that the city planned to sell the property. However, on October 30, 2013, the city sold the property for \$20,000. On March 24, 2014, Applicant received a final accounting from the city documenting the sale. Applicant testified that her lending institution was not aware of the sale of the property until recently. At this time, Applicant does not know if her mortgage debts will be collected, cancelled, or forgiven. However, she plans to continue to stay in contact with the lender until they are resolved. (AE CC; AE FF; Tr. 110-117.)

Applicant's personal financial statement, completed February 13, 2014, shows her family's total net monthly income is \$9,183. She indicated she had a monthly remainder of \$206. A proposed budget analysis completed for Applicant on February 5, 2014, by a consumer credit counseling organization suggested she cut her monthly spending from her current level of \$8,674 per month to \$6,044 per month. It also showed that her expenses exceeded her income by \$1,374 per month. Applicant failed to explain this discrepancy, or whether she took action on the recommended spending cuts. (AE E; AE S; AE T; AE V; Tr. 118.)

Applicant's annual salary is \$109,500. Applicant's assets include two 401(k) savings plans that total \$230,000. Her other rental property is valued at \$278,000, but her outstanding balance on that mortgage is \$220,089. She had formal financial

counseling in February 2014. She was advised to discuss her options with a bankruptcy attorney if the bank did not accept a deed in lieu of foreclosure on her rental property that was subsequently ceased by the city.² (AE E; AE F; AE S; AE T; AE W; AE X; AE Z; Tr. 118-125, 152-154.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching the 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. The 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 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.

² Applicant lives in a home owned solely by her husband. She testified she had a prenuptial agreement with respect to his sole ownership of that property. (Tr.135.)

Section 7 of EO 10865 provides that adverse 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 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. The following conditions are potentially applicable.

(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's brother is a citizen of the United States and resides in Nigeria. Her father-in-law is a citizen and resident of Nigeria. Applicant's mother is a citizen of Nigeria and her father is a dual citizen of Nigeria and the United States. They now reside in the United States. Her cousin is a citizen of Nigeria residing in the United Kingdom. Applicant maintains contact and strong connections with all of her foreign relatives. Disqualifying conditions AG ¶¶ 7(a) and 7(b), require both the presence of foreign contacts and a heightened risk. I find there is sufficient evidence regarding terrorist activities in Nigeria and the Nigerian government's human rights abuses to establish a heightened risk. I find AG ¶¶ 7(a) and 7(b), apply.

AG ¶ 8 provides conditions that could mitigate security concerns. Four are potentially applicable.

(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

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant has lived in the U.S. for the majority of her life. Her limited assets are in the U.S. Her husband is a U.S. citizen. Her children were born in the U.S. and are U.S. citizens. She is actively involved in many volunteer organizations in her community. Her parents both reside in the United States. She has limited contact with her father-in-law. Her contact with her cousin that resides in the United Kingdom with Nigerian citizenship is also limited. She is close to her brother that resides in Nigeria, but it is unlikely the Applicant will be placed in a position of having to choose between the interests of her brother and the interests of the U.S., despite the fact that he lives in Lagos, because he is not involved with the Nigerian government and lives away from the area that the terrorists target. Further, if such conflict somehow did arise, Applicant has such deep and longstanding relationships and loyalties in the U.S., that any conflict would be resolved in favor of the U.S. interest. AG ¶¶ 8(a) and 8(b) apply to all of Applicant's foreign relatives. AG ¶ 8(c) applies to applicant's father-in-law only.

Guideline E, Personal Conduct

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

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 conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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; 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.

Applicant's false answers to Question 3 and Question 10 on her February 27, 2002 e-QIP, and to Section 10 on her March 18, 2013 e-QIP, raise security concerns. On both of these documents, she indicated she did not possess dual citizenship. On her February 2002 e-QIP, she failed to disclose she possessed an active Nigerian passport. She admitted to an investigator that she had been issued a Nigerian passport in 1982 and that she always used her Nigerian passport when traveling to Nigeria. Therefore, she presumably traveled to Nigeria in June to August 1996; December 2001 to January 2002; August 2007 to September 2007; May 2009; and June 2010 to July 2010 using her Nigerian passport. She did not retract her statement about always using her Nigerian passport until after receiving the SOR.

Applicant is a highly educated and articulate woman. She has a job that requires her to pay close attention to detail. Her contention that her omissions of her dual citizenship were due to a misunderstanding of the definition of dual or multiple citizenship is not persuasive, particularly after she obtained and used multiple Nigerian passports.

Further, she had possession of her Nigerian passport when she was interviewed by the Government investigator and referenced it as a resource during that interview. She later had the opportunity to review her statement and chose to adopt it without any changes. She failed to provide any documentary evidence to support her hearing testimony, in which she claimed that after receiving the SOR she reviewed unspecified records and found errors in her adopted statement concerning when she obtained the Nigerian passport. AG ¶ 16(a) is disqualifying.

AG ¶ 16(c) also applies. Despite the fact that Applicant was a U.S. citizen and possessed a security clearance granted by the Department of Defense, she used her Nigerian passport for travel to and from Nigeria in preference to her U.S. passport.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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; and

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

After considering the mitigating conditions outlined above in AG ¶ 17, none of them were fully established in this case. Applicant did not make prompt or good-faith efforts to correct her falsification or concealment. She provided no information that indicates she was ill-advised on the security clearance process. Falsifying material information is a serious offense and Applicant has done nothing to show that similar lapses in judgment are unlikely to recur. Further, she failed to take responsibility for her actions and continued to assert that her errors were inadvertent. Her Nigerian passport has been destroyed, which is a positive step toward mitigation. However, overall she has not provided sufficient evidence to meet her burden of proof to mitigate her personal conduct.

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

The SOR alleges that Applicant incurred two delinquent debts totaling \$295,717. The debts have been delinquent since 2010. The evidence shows Applicant's "inability or unwillingness to satisfy" her mortgages. She has a four-year "history of not meeting financial obligations."

Five Financial Considerations mitigating conditions under AG ¶ 20 were considered, but found inapplicable, including:

(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.

In this case, the economic downturn in the real estate market, high utilities, damages to her property, and the failure of her tenant to pay rent, were all events beyond Applicant's control, which contributed to her financial difficulties. However, she admits that she made a decision to take a loss and stopped paying her mortgages because she wanted to spend her funds on things she prioritized higher than her mortgage obligations. She has been in contact with the financial institution that holds both of her delinquent mortgages. She listed the property with a real estate agent for sale, attempted to refinance the mortgage, and offered the bank a deed in lieu of foreclosure. These actions show some responsibility in addressing her delinquencies. However, she failed to maintain the property in the meantime, and the city has sold the property. Her debts are now unsecured and she is unsure how they will be resolved. She has no concrete plan to address her delinquencies. Further, there is evidence that her current expenses exceed her income. Her financial problems are ongoing and there are no clear indications her problems are under control, despite her participation in

financial counseling. While Applicant receives some credit for the mitigating evidence in the record, it is not sufficient to overcome the concerns raised by her conduct.

The Appeal Board has held, “A security clearance adjudication is not a proceeding aimed at collecting an applicant’s personal debts. Rather, it is a proceeding aimed at evaluating an applicant’s judgment, reliability, and trustworthiness.”³ Security clearance adjudications regarding financial issues are not debt collection proceedings. Rather, the purpose is to make “an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk.”⁴ Applicant’s ongoing decision to “take [her] losses and walk away” reflects poorly on her current judgment, reliability, trustworthiness, and ability to protect classified information. I cannot find that financial problems are unlikely to recur. She has not established that the problem is being resolved or is under control, or that she made a good faith effort to repay her remaining delinquent accounts. None of the mitigating conditions were sufficiently established by the record evidence.

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 commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B, E, and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a hardworking and dedicated employee who performs well on the job. She has received recognition for her exceptional work through awards from her employer. She is active in her church and community. However, she has not been

³ ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003).

⁴ AG ¶ 2(a)

forthright with the Government concerning her Nigerian citizenship and passport. She also has not acted responsibly with respect to her delinquent mortgages. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Personal Conduct or Financial Considerations security concerns. I conclude she mitigated the Foreign Influence security concern.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	Against Applicant

Conclusion

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

Jennifer I. Goldstein
Administrative Judge