



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



In the matter of: )  
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----- ) ISCR Case No. 14-01394  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Fahryn Hoffman, Esq., Department Counsel  
For Applicant: Braden M. Perry, Esq.

01/23/2015

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant is a citizen and resident of United States. He has stronger connections to the United States than to Belarus. Applicant’s statement of reasons (SOR) alleges six delinquent debts totaling \$134,578. He did not make sufficient progress resolving his SOR debts. Foreign influence concerns are mitigated; however, financial considerations concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 25, 2012, and September 17, 2013, Applicant signed Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86) (Government Exhibit (GE) 1, 8). On August 18, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to him, alleging security concerns under Guidelines B (foreign influence) and F (financial considerations). (Hearing Exhibit (HE) 2) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) as revised by the Under Secretary of Defense for Intelligence on August 30, 2006, which became effective on September 1, 2006.

Based on information available to the Government, DOD adjudicators could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue Applicant's security clearance, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted, continued, denied, or revoked. (HE 2)

On September 19, 2014, Applicant responded to the SOR. (HE 3) On October 21, 2014, Department Counsel was prepared to proceed. On October 27, 2014, DOHA assigned the case to me. On December 11, 2014, DOHA issued a hearing notice, setting the hearing for December 15, 2014. (HE 1) The hearing was held as scheduled. Applicant waived his right to 15 days of notice of the date, time, and place of the hearing. (Tr. 8-9) I received the transcript of the hearing on January 5, 2015.

### **Procedural Rulings**

At the hearing, Department Counsel offered 11 exhibits. (Tr. 15; GE 1-11) Applicant did not offer any exhibits. There were no objections, and I admitted all proffered exhibits into evidence. (Tr. 15-16; GE 1-11)

Department Counsel requested administrative notice (AN) of facts in ten documents concerning Belarus. (Tr. 16; HE 4 with Attachments I-X) Applicant did not object to the AN request. (Tr. 16) I granted the AN request. (Tr. 16)

Administrative or official notice is 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) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to 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).

### **Findings of Fact<sup>1</sup>**

Applicant's SOR response admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.d, 1.e, 1.f, 2.a, and 2.b. and he provided mitigating information. (HE 3) He denied the remaining SOR allegation. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 40-year-old network specialist, who seeks a security clearance to facilitate his work with a DOD contractor. (Tr. 32) In 1984, he graduated from high school. (Tr. 6) In 2013, he was awarded a bachelor's degree in information technology. (Tr. 33-34) Seven days before his hearing, Applicant and the woman, who was cohabiting with him since 2006, were married. (Tr. 32, 44) He does not have any

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<sup>1</sup>To protect Applicant and his family's privacy, the facts in this decision do not specifically describe employment, names of witnesses, and names of other groups or locations. The cited sources contain more specific information.

children. (Tr. 33) He has worked for the same employer for 30 months. (Tr. 34) Applicant believed he needed a clearance for either secret or possibly sensitive information so that he could occupy a public trust position. (Tr. 35-38)

## **Financial Considerations**

In 2006, Applicant fractured his foot, resulting in \$22,000 in medical bills, and he was unable to work for three months. (Tr. 44) Applicant had a profitable business that purchased and refurbished equipment that companies deemed obsolete, and then he would resell the equipment for a profit. (Tr. 22) In 2007, his business began to decline. (Tr. 22) Applicant sought advice from a bankruptcy attorney, who advised him not to file for bankruptcy and not to address his delinquent debts unless the creditors were harassing him or garnishing his pay. (Tr. 21, 25, 40) Applicant elected to comply with this advice, and he intends to continue to comply with this advice. (Tr. 21-22, 42) Although he pays some of his debts, he did not make any payments to the SOR creditors. (Tr. 26) His attorney said "in seven years it will all go away." (Tr. 41-43)

Applicant's SOR alleges six delinquent debts totaling \$134,578. A discussion of each SOR debt follows.

The collections debt in SOR ¶¶ 1.a for \$872 and 1.d for \$885 originated with the same telecommunications carrier. Applicant admitted that he had an account with the telecommunications carrier. (Tr. 19, SOR response) About ten years ago, he decided he was being overcharged, or the quality of the service he received was poor. (Tr. 19, 24-25, 39) He told the telecommunications carrier he would not pay the bill, and he has not. (Tr. 19-20, 24) Applicant is credited with mitigating the debt in SOR ¶ 1.d as a duplication of the debt in SOR ¶ 1.a. (Tr. 24, 51-52; SOR response) He did not make a written dispute of the debt. (Tr. 39)

Applicant admitted responsibility for the charged-off collections debt in SOR ¶ 1.b for \$20,049. (SOR response) In 2007, Applicant used personal credit cards in SOR ¶¶ 1.b and 1.f for \$13,252, and the second mortgage in SOR ¶ 1.e for \$82,500 to fund his business. (Tr. 20, 23, 25) In late 2007, his residence was foreclosed. (Tr. 46)

Applicant denied any knowledge of the debt in SOR ¶ 1.c for \$17,020. (Tr. 24, 47) The debt appeared on his June 9, 2012 credit report. (Tr. 47-51; GE 9 at 5) However, the debt did not appear on his October 3, 2013 and June 9, 2014 credit reports. (Tr. 67; GE 6, 7)

Applicant believed the \$82,500 debt in SOR ¶ 1.e resulted from his failure to pay the second mortgage on his residence. (Tr. 25) In December 2006, he opened the second mortgage account, and in 2007, he stopped making payments on it. (Tr. 53)

After paying all expenses, Applicant has about \$200 left at the end of each month. (Tr. 55-56) Applicant has not had financial counseling, and he does not have a budget. (Tr. 57) He was willing to complete financial counseling in the future. (Tr. 67)

His spouse's mortgage on the residence they occupy together, his non-SOR credit cards, and his student loans are either current or in deferred status. (Tr. 55-59)

### **Foreign Influence**

Applicant was born in the United States, and his spouse was born in Belarus. (Tr. 27) She earned her master's degree in Belarus, and then she came to the United States in 2002 or 2003. (Tr. 63-64) Her master's degree was not recognized in the United States, and she returned to college and obtained her bachelor's degree in accounting in the United States. (Tr. 63-65). Her parents and sister are citizens and residents of Belarus. (Tr. 27, 59) His spouse came to the United States when she was 18 or 19 years old, and she became a U.S. citizen in 2010. (Tr. 27, 63) She communicates with her family in Belarus about every two weeks. (Tr. 80)

Applicant's spouse travels to Belarus at least once a year, and usually Applicant accompanies her on her visits to Belarus. (Tr. 27, 59) Applicant and his spouse traveled to Belarus in 2014. (Tr. 59) Her parents do not have any political connections in Belarus. (Tr. 28) Her sister and father own businesses in Belarus. (Tr. 28, 61-62) Her parents have only been to the United States once. (Tr. 29) Applicant's sister comes to the United States to visit Applicant's wife about every other year. (Tr. 28) Around 2003, Applicant's spouse received ownership of a condominium valued at \$70,000 in Belarus from her mother. (Tr. 29, 62-63, 65, 80) In 2005, Applicant's spouse gave a power of attorney to her mother, and her mother has control of the condominium. (Tr. 29-30)

### **Connections to the United States**

Applicant was born in the United States, and he resides in the United States. (SF 86) His father was born in the United States, and his mother was born in South Korea. (Tr. 68) His parents live in the United States. (Tr. 68) His father served in the Army for 22 years, and he retired at the grade of chief warrant officer three. (Tr. 68-69) His two brothers, four nieces, two nephews, uncles, and cousins are U.S. citizens and live in the United States. (Tr. 69-70) His spouse owns their residence. (Tr. 33) She has been employed as a U.S. federal employee with access to financial information for seven years. (Tr. 71-72)

### **Belarus**

Belarus declared its sovereignty in July 1990 and its independence from the Soviet Union in August 1991. The United States recognized Belarus as an independent state in December 1991. It is nominally a democratic republic, but it is actually an autocratic regime that has been ruled by President Alexander Lukashenko since 1994. President Lukashenko has systematically undermined Belarus' democratic institutions and concentrated power in the executive branch of government by flawed referenda, manipulated elections, and arbitrary decrees. Belarusian authorities have severely restricted the constitutional rights of its citizens. There have been sweeping violations of human rights during elections, including disregard for freedom of assembly, association, and expression. Elections have been conducted in a climate of insecurity, fear, and

problematic vote counts. Belarusian officials may monitor foreigners and search their hotel rooms. Foreign nationals may face arrest, beatings, and detentions. Belarus exports significant quantities of defense materials, dual-use items, weapons, and weapons-related technology to countries of concern to the U.S., including state sponsors of terrorism. On January 3, 2012, President Obama signed into law the Belarus Democracy and Human Rights Act of 2011. This law calls for targeted sanctions against Belarusian officials and continuing assistance for democracy building activities. Belarus has attempted to expand relations to countries of concern, including Iran, North Korea, and Syria. Naturalized U.S. citizens from Belarus do not automatically lose Belarusian citizenship. See AN Materials on page 2, *supra*.

Department Counsel's request to take administrative notice did not address economic or military espionage. No evidence was presented that Belarus actively collects economic or military intelligence.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines 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 overarching 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.

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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism.

It is merely an indication the applicant 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 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein 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 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**

### **Financial Considerations**

AG ¶ 18 articulates the security concern relating to financial problems:

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 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.” Applicant’s SOR alleges six delinquent debts totaling \$134,578. Applicant admitted his responsibility for all of the SOR debts, except for the debt in SOR ¶ 1.c. His admissions are corroborated by his credit reports. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

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

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, 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;<sup>2</sup> 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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for

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<sup>2</sup>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)).

access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

None of the mitigating conditions fully apply to all of his SOR debts. Nevertheless, there is some mitigating financial information. Applicant’s delinquent debt resulted from the business downturn and an injury he sustained. These are circumstances beyond his control under AG ¶ 20(b). He maintained most of his credit cards and other debts in current status.

The debt in SOR ¶ 1.c is not established. It does not appear in his 2013 and 2014 credit reports. The debt in SOR ¶ 1.d is mitigated as a duplication of the debt in SOR ¶ 1.a. AG ¶ 20(e) does not apply to any of his debts because he did not provide “documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.”

Applicant admitted responsibility for four SOR debts totaling \$116,673. He did not take reasonable and responsible actions to resolve these four debts. He is waiting for them to drop off of his credit report or become uncollectible due to the passage of time. He is not making any effort to pay anything to these four creditors. There are not clear indications the problem is being resolved and is under control. He did not create a budget, receive financial counseling, or establish that he was unable to make some payments to the four creditors. His efforts are insufficient to fully mitigate financial considerations security concerns.

## **Foreign Influence**

AG ¶ 6 explains the security 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 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 indicates four conditions that could raise a security concern and may be disqualifying in this case:

(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;

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; 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.

Applicant's spouse was born in Belarus. She earned her master's degree in Belarus, and then she came to the United States in 2002 or 2003. Her parents and sister are citizens and residents of Belarus. His spouse came to the United States when she was 18 or 19 years old, and she became a U.S. citizen in 2010. She communicates with her family in Belarus about every two weeks. She travels to Belarus at least once a year, and usually Applicant accompanies her on her visits to Belarus. Applicant and his spouse traveled to Belarus in 2014. Her parents have only been to the United States once. Applicant's sister comes to the United States to visit Applicant's wife about every other year. Around 2003, Applicant's spouse received ownership of a condominium valued at \$70,000 in Belarus from her mother. In 2005, Applicant's spouse gave a power of attorney to her mother, and her mother has control of the condominium.

AG ¶ 7(d) applies because Applicant lives with his spouse, and she is a citizen and former resident of Belarus. His spouse is close to her family living in Belarus. There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at \*8 (App. Bd. Feb. 20, 2002). Applicant has ties of affection and obligation to his spouse. "[A]s a matter of common sense and human experience, there is [also] a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 07-17673 at 3 (App. Bd. Apr. 2, 2009) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). This concept is the basis of AG ¶ 7(d).

Applicant's spouse's communications with her family, who are citizens and residents of Belarus, establish a security concern because of his spouse's relationships with her family living in Belarus. Applicant's possession of close family ties with his spouse, and her ties to her parents and sibling living in Belarus, are not, as a matter of law, disqualifying under Guideline B. However, if an applicant or their spouse has a close relationship with even one relative, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the

compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government or the country is known to conduct intelligence collection operations against the United States. His spouse's relatives and their relationships with the Belarus Government do not have any of these attributes. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist his spouse's family living in Belarus, or to himself or his spouse when they are visiting Belarus.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives or terrorists seek or have sought classified or economic information from or through Applicant, his spouse, or his spouse's family living in Belarus, nevertheless, it is not possible to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services. Applicant's relationship with his spouse and her relationships with family members living in Belarus create a potential conflict of interest because these relationships are sufficiently close to raise a security concern about his desire to assist his spouse's family members in Belarus by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant's spouse's contacts with her family living in Belarus. Department Counsel has raised the issue of potential foreign pressure or attempted exploitation, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

- (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign

individual, group, organization, or government and the interests of the 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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; 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.

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant has frequent contact with his spouse, and she has frequent contact with her parents and sibling, who are living in Belarus. Her loyalty and connections to her family living in Belarus are positive character traits. However, for security clearance purposes, those same connections negate the possibility of mitigation under AG ¶ 8(a), and Applicant failed to fully meet his burden of showing there is "little likelihood that [his relationships with his spouse, and her relationships with her relatives who are Belarus citizens] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) fully applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has strong connections to the United States. He was born in the United States, and he has always resided in the United States. He is loyal to the United States, and he said he would conscientiously comply with the requirements for access to classified information. His father was born in the United States. His parents live in the United States. His father served in the Army for 22 years. His two brothers, four nieces, two nephews, uncles, and cousins are U.S. citizens and live in the United States. His spouse owns their residence. She has been employed as a U.S. federal employee with access to financial information for seven years. She earned her bachelor's degree in accounting in the United States.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his close relationships with his spouse and her

relationships with her family living in Belarus. There is no evidence, however, that terrorists, criminals, the Belarus Government, or those conducting espionage have approached or threatened Applicant, his spouse, or her family to coerce Applicant for classified or sensitive information.<sup>3</sup> As such, there is a low possibility that Applicant or his spouse or her family living in Belarus would be specifically selected as targets for improper coercion or exploitation. While the U.S. Government does not have any burden to prove the presence of such evidence, if such record evidence were present, Applicant would have a heavier evidentiary burden to mitigate foreign influence security concerns.

AG ¶¶ 8(d) and 8(e) do not apply. The U.S. Government has not encouraged Applicant or his spouse's involvement with citizens and residents of Belarus. Applicant is not required to report his contacts with citizens or residents of Belarus. AG ¶ 8(f) applies to his spouse's ownership interest in a condominium in Belarus, which is valued at about \$70,000. Applicant and his spouse have more substantial investments in the United States.

In sum, Applicant's close connections to his spouse and her connections to her family living in Belarus are significant. Although Applicant has some connections to Belarus, they are insufficient to outweigh his connections to the United States. These U.S. connections mitigate foreign influence security concerns under Guideline B.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at 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 have incorporated my comments under Guidelines F and B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

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<sup>3</sup>There would be little reason for U.S. enemies or others seeking classified information to seek such information from an applicant before that applicant has access to such information or before they learn of such access.

The factors weighing towards approval of Applicant's security clearance are less substantial than the factors weighing against its approval. There is no evidence that Applicant has engaged committed any security violations. He was born in the United States and resided in the United States all his life. His employer is a DOD contractor. His spouse is a federal employee, who has been granted access to financial information. There is no evidence that terrorists or other foreign elements have specifically targeted Applicant since a U.S. Government contractor began employing him.

A Guideline B decision concerning Belarus must take into consideration the geopolitical situation and dangers there.<sup>4</sup> Belarusian authorities have severely restricted the constitutional rights of its citizens and violated human rights especially during elections, including disregard for freedom of assembly, association, and expression. Elections have been conducted in a climate of insecurity, fear, and problematic vote counts. Belarusian officials may monitor foreigners and search their hotel rooms. Foreign nationals may face arrest, beatings, and detentions. Belarus exports weapons to countries of concern to the U.S., including state sponsors of terrorism. Belarus has attempted to expand relations to Iran, North Korea, and Syria. Naturalized U.S. citizens from Belarus do not automatically lose Belarusian citizenship. Despite these significant concerns about dangers in Belarus, foreign influence concerns are mitigated because of Applicant's strong connections to the United States. He was born and raised in the United States, and he has numerous relatives who live in the United States.

The economic downturn in 2006 to 2007 and Applicant's injuries hurt Applicant's finances. These are circumstances beyond his control that contributed to his financial problems. However, the financial evidence against approval of Applicant's clearance is more substantial at this time. Applicant has a history of financial problems. He admitted responsibility for four SOR debts totaling \$116,673. He did not take reasonable and responsible actions to resolve these four debts. He is waiting for them to drop off of his credit report or become uncollectible due to the passage of time. He is not making any effort to pay anything to these four creditors. There are not clear indications the problem is being resolved and is under control. He did not create a budget, receive financial counseling, or establish that he was unable to make some payments to the four creditors. His efforts are insufficient to fully mitigate financial considerations security concerns. His failure to make more progress resolving these four debts shows lack of financial responsibility and lack of judgment and raises unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect sensitive information. See AG ¶ 18. More information about inability to pay debts or documented financial progress is necessary to mitigate security concerns.

It is well settled that once a concern arises regarding an applicant's eligibility for a security clearance, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a

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<sup>4</sup> See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

determination that Applicant cannot or will not attain the state of reform necessary to justify the award of a security clearance in the future. With more effort towards resolving his past-due debts, and a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his worthiness for a security clearance.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Although foreign influence concerns are mitigated, I conclude Applicant has not carried his burden and financial considerations concerns are not mitigated. Eligibility for access to classified information is denied.

### **Formal Findings**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraphs 1.c and 1.d:	For Applicant
Subparagraphs 1.e and 1.f:	Against Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a and 2.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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Mark Harvey  
Administrative Judge