

KEYWORD: Financial; Foreign Influence; Personal Conduct

DIGEST: Applicant had four delinquent debts totaling about \$32,255 when he was laid off from his job in October 2001. He remained unemployed until November 2002, and by that time he had nine delinquent debts totaling more than \$70,000. He settled two debts after learning his finances raised a security concern, but he has taken no action to resolve the remaining debts. His parents and six siblings are citizens and residents of Vietnam. He refuted an allegation of falsifying his answer to a question on his security clearance application (SF 86) about his finances, but he has not mitigated security concerns based on financial considerations and foreign influence. Clearance is denied.

CASE NO: 04-07533.h1

DATE: 04/28/2006

DATE: April 28, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-07533

**DECISION OF ADMINISTRATIVE JUDGE**

**LEROY F. FOREMAN**

**APPEARANCES**

**FOR GOVERNMENT**

John Glendon, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant had four delinquent debts totaling about \$32,255 when he was laid off from his job in October 2001. He remained unemployed until November 2002, and by that time he had nine delinquent debts totaling more than \$70,000. He settled two debts after learning his finances raised a security concern, but he has taken no action to resolve the remaining debts. His parents and six siblings are citizens and residents of Vietnam. He refuted an allegation of falsifying his answer to a question on his security clearance application (SF 86) about his finances, but he has not mitigated security concerns based on financial considerations and foreign influence. Clearance is denied.

**STATEMENT OF THE CASE**

On September 28, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance.<sup>(1)</sup> The SOR alleges security concerns under Guidelines F (Financial Considerations), B (Foreign Influence), and E (Personal Conduct). Under Guideline F, it alleges ten delinquent debts totaling \$70,947 (¶¶ 1.a.-1.j.). Under Guideline B, it alleges Applicant's spouse is a citizen of Vietnam residing in the U.S. (¶ 2.a.), his parents are citizens and residents of Vietnam (¶ 2.b.), and his four brothers and two sisters are citizens and residents of Vietnam (¶ 2.c.). Under Guideline C, it alleges Applicant falsified his security clearance application by deliberately failing to disclose the debts in ¶¶ 1.b.-1.j.

Applicant answered the SOR in writing on October 18, 2005, admitted all the allegations under Guidelines F and B, denied the allegation under Guideline C, and requested a hearing. The case was assigned to me on February 14, 2006, and heard as scheduled on March 16, 2006. DOHA received the transcript (Tr.) on March 24, 2006.

**FINDINGS OF FACT**

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant has worked as an information technology analyst for a defense contractor since October 2002. He has never held a security clearance. [\(2\)](#)

Applicant is a 31-year-old native of Vietnam who became a naturalized U.S. citizen in August 1993. His parents, four brothers, and two sisters are citizens and residents of Vietnam. His father is a farmer and his mother is a homemaker. His older sister and her husband are farmers. His oldest brother is a lawyer, and his next younger brother works in a restaurant. His remaining siblings are students. He writes to his father about twice a year and to his mother about once a year, [\(3\)](#) and has e-mail contact with his siblings two or three times a year. [\(4\)](#) None of his immediate family members are connected to the Vietnamese government or are members of the Communist Party of Vietnam (CPV). [\(5\)](#)

Applicant was married in April 2001. His spouse is a native of Vietnam residing apart from him in another state in the U.S. where she attended college. She graduated in June 2005 and is now applying for admission to law school. [\(6\)](#) She became a U.S. citizen in December 2005, after the SOR was issued. [\(7\)](#)

Applicant's mother-in-law, brother-in-law, and sister-in-law are citizens and residents of Vietnam. Applicant has virtually no contact with his in-laws and knows very little about them. [\(8\)](#)

Vietnam is an authoritarian state, controlled by the CPV. Of the Vietnamese population of about 83.5 million, only about two million are CPV members. Vietnam has an agrarian economy. [\(9\)](#) It has a poor human rights record. Political dissent is repressed, police and prison abuses are common, religious freedom is restricted, and privacy rights are limited and often violated. Courts are subject to control by CPV and government officials, judges are selected for their political reliability, and corruption within the judicial system is endemic. [\(10\)](#)

Applicant enrolled in a credit counseling service in August 2001. At that time, he had debts of more than \$32,000, and he adopted a plan to pay \$645 per month on his debts. [\(11\)](#) His gross annual income was about \$48,000 at that time. [\(12\)](#) He was laid off from his job in October 2001 and remained unemployed until November 2002. He stopped making payments on his debt repayment plan when he was laid off.

In November 2001, shortly after being laid off, Applicant took a vacation to Australia. He did not cancel the trip because the airline ticket was already paid for, and his other travel expenses were nominal because he stayed with relatives in Australia. [\(13\)](#)

Applicant took a second trip to Australia about six months later, using frequent flier miles to pay for his airline ticket. He stayed in Australia for about a month, during which he did not search for employment. [\(14\)](#)

Applicant obtained his current job with the assistance of an aunt who knew one of the company officers. During his first seven months with his current employer, he worked part-time. [\(15\)](#) His starting annual pay in his current job was about \$36,000. [\(16\)](#) As of August 2004, his gross annual pay was about \$41,500, and his annual take-home pay was about \$32,800. [\(17\)](#)

The evidence regarding the debts alleged in the SOR is summarized in the table below.

SOR	Debt	Date Delinquent	Amount	Status at Hearing	Record
1.a.	Credit Card	May 2002 <a href="#">(18)</a>	\$3,721	Unpaid	Tr. 58-59
1.b.	Credit Card	May 2001	\$313	Settled on Nov. 15, 2005.	AX D
1.c.	Credit Card	July 2001	\$5,570	Unpaid.	Tr. 61
1.d.	Credit Card	Oct. 2001	\$14,208	Unpaid.	Tr. 62-63
1.e.	Credit Card	Nov. 2001	\$21,598 <a href="#">(19)</a>	Unpaid.	Tr. 62, 68
1.f.	Credit Card	Dec. 2001	\$5,796	Unpaid.	Tr. 69
1.g.	Charge Account	Feb. 2002	\$254	Same as SOR ¶ 1.b.	Tr. 69, 77
1.h.	Credit Card	May 2002	\$1,856	Unpaid.	Tr. 70
1.i.	Credit Card	June 2002	\$9,265	Unpaid.	Tr. 70
1.j.	Judgment	Dec. 2003	\$5,279	Satisfied on Jan. 4, 2005.	AX B

Applicant executed a SF 86 on March 13, 2003. He disclosed the delinquent debt in SOR ¶ 1.a., but he did not disclose the delinquent debts in SOR ¶¶ 1.b. through 1.j. In his answer to the SOR and at the hearing, he denied intentionally omitting relevant and material facts from his SF 86. He testified he answered "yes" to the question about debts more than 180 days delinquent, but he only listed one debt because he did not have the information about the others. [\(20\)](#)

## POLICIES

"[N]o 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 occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants 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 and modified. Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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 Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1. through 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (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 applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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. Directive ¶¶ E2.2.1.1. through E2.2.1.9.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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 which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3; *see* 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). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

## **CONCLUSIONS**

### **Guideline F (Financial Considerations)**

Under this guideline, "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive ¶ E2.A6.1.1. A person who fails or refuses to pay long-standing debts or is financially irresponsible may also be irresponsible or careless in his or her duty to protect classified information. Two disqualifying conditions (DC) under Guideline F could raise a security concern and may be disqualifying in this case. DC 1 applies where an applicant has a history of not meeting his or her financial obligations. Directive ¶ E2.A6.1.2.1. DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3. Applicant's history of delinquent debts establishes DC 1 and DC 3.

Since the government produced substantial evidence to establish DC 1 and DC 3, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. Applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

A security concern based on financial problems can be mitigated by showing the delinquent debts were not recent (MC 1) or an isolated incident (MC 2). Directive ¶¶ E2.A6.1.3.1., E2.A6.1.3.2. Applicant has multiple delinquent debts that are not yet resolved. I conclude MC 1 and MC 2 are not established.

Security concerns arising from financial problems can be mitigated by showing they are the result of conditions beyond the person's control (MC 3). Directive ¶ E2.A6.1.3.3. Even if Applicant's financial difficulties initially arose due to circumstances outside his control, it is appropriate to consider whether Applicant acted in a reasonable manner when dealing with his financial difficulties. ISCR Case No. 02-02116 at 4 (App. Bd. Sep. 25, 2003).

I conclude MC 3 is not established. Applicant's loss of employment was a circumstance outside his control. However, he was already in financial distress when he was laid off. His response to his loss of employment was to take two back-to-back vacations. After he found another job with the assistance of an aunt, he did virtually nothing to resolve his outstanding debts. He compromised one small debt (SOR ¶ 1.b.) and satisfied an unpaid judgment (SOR ¶ 1.j.) after he learned his finances raised a security concern. He has no specific plan to resolve his remaining debts.

A mitigating condition (MC 4) applies when an applicant "has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control." Directive ¶ E2.A6.1.3.4. Applicant sought financial counseling in August 2001. However, MC 4 is not established because Applicant did not carry out his debt repayment plan, has not sought financial counseling since starting his new job in October 2002, and has made little progress in resolving the problem.

A security concern arising from financial problems can be mitigated by showing a good-faith effort to resolve debts (MC 6). Directive ¶ E2.A6.1.3.6. 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." ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance.

MC 6 is not established. Although Applicant has been employed since November 2002, he took no action to resolve his delinquent debts until he learned they were impediments to obtaining a security clearance. He resolved the debt in SOR 1.b. in November 2005, after answering the financial interrogatories, and he paid the judgment in SOR 1.j., after receiving the SOR.

After weighing the disqualifying and mitigating conditions and evaluating the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concern based on financial considerations.

### **Guideline B (Foreign Influence)**

A security risk may exist when an applicant's immediate family, or other persons to whom he or she may be bound by affection, influence, or obligation, are not citizens of the U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Directive ¶ E2.A2.1.1. A disqualifying condition (DC 1) may arise when "[a]n immediate family member [spouse, father, mother, sons, daughters, brothers, sisters], or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country." Directive ¶ E2.A2.1.2.1.

Applicant's spouse became a U.S. citizen after the SOR was issued, and she resides in the U.S. Accordingly, I conclude Applicant has refuted the allegation in SOR ¶ 2.a., and I resolve that allegation in his favor. However, I conclude DC 1 is established because Applicant's parents and siblings are citizens and residents of Vietnam.

Since the government produced substantial evidence to establish DC 1, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. In cases where an applicant has immediate family members who are citizens or residents of a foreign country or who are connected with a foreign government, a mitigating condition (MC 1) may apply if "the immediate family members, cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States." Directive ¶ E2.A2.1.3.1. Notwithstanding the facially disjunctive language of MC 1 ("agents of a foreign power **or** in a position to be exploited"), it requires proof "that an applicant's family members, cohabitant, or associates in question are (a) not agents of a foreign power, **and** (b) not in a position to be exploited by a foreign power in a way that could force the applicant to choose between the person(s) involved and the United States." ISCR Case No. 02-14995 at 5 (App. Bd. Jul. 26, 2004). The totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

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). The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly.

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). Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. 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 operations against the U.S.

Applicant's parents and siblings are not agents of a foreign power. They are not members of the CPV and thus not members of the ruling elite. Two of his siblings are employed and the others are still in school. He provided sparse information about his parents' and older siblings' economic status, relationships with government or business entities, or political views. In light of the nature of the Vietnamese government and its poor human rights record, the risk of attempted coercion or duress on his parents and siblings cannot be ruled out as unlikely. Applicant's precarious financial situation makes him vulnerable to direct or indirect pressure through his immediate family. I conclude he has not carried his burden of establishing MC 1.



"[T]here is 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. 01-03120, 2002 DOHA LEXIS 94 at \* 8 (App. Bd. Feb. 20, 2002). Applicant and his spouse have lived apart since their marriage. Applicant has no contact with his in-laws and knows little about them. I conclude he has rebutted the presumption.

A mitigating condition (MC 3) may apply if "[c]ontact and correspondence with foreign citizens are casual and infrequent." Directive ¶ E2.A2.1.3.3. There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). Applicant has established that his family contacts are infrequent, but he has not rebutted the presumption that they are not casual. I conclude MC 3 is not established.

After evaluating each family member's individual circumstances as well as the totality of Applicant's family ties to Vietnam, weighing the disqualifying and mitigating conditions, and evaluating the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concern based on foreign influence.

### **Guideline E (Personal Conduct)**

Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1. A disqualifying condition (DC 2) under this guideline may be established by "deliberate omission, concealment, or falsification of relevant and material 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." Directive ¶ E2.A5.1.2.2.

When a falsification allegation is controverted, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

Applicant denied intentional falsification, explaining he listed only one delinquent debt because he did not have the information about the others. Although that information was readily available, he apparently did not consider it sufficiently important to make the effort. His explanation is plausible because it is consistent with the diffident and unconcerned attitude he has demonstrated toward his financial situation. It is clear to me he did not appreciate the gravity of his financial situation or the importance of fully disclosing his financial situation. Although I find his conduct

grossly negligent, I am satisfied he did not intend to conceal relevant and material information. I conclude DC 2 is not established, and I resolve SOR ¶ 3.a. in his favor.

### **FORMAL FINDINGS**

The following are my findings as to each allegation in the SOR:

Paragraph 1. Guideline F (Financial): AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: For Applicant

Paragraph 2. Guideline B (Foreign Influence): AGAINST APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Paragraph 3. Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 3.a.: For Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

LeRoy F. Foreman

Administrative Judge

1. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).
2. Government Exhibit (GX) 1 at 1, 2, 7.
3. GX 1 at 1, 3, 4, 9-11; GX 3 at 4..
4. Tr. 114.
5. Tr. 119-21.
6. Tr. 82-83.
7. Applicant's Exhibit (AX) A.

8. Tr. 122-23.

9. Hearing Exhibit (HX) I at 1; HX II at 1; HX III at 1.

10. HX II at 1, 3, 5-8, 10-13, 16.

11. AX C.

12. Tr. 80.

13. Tr. 93-96.

14. Tr. 96-97.

15. GX 2 at 2.

16. Tr. 104.

17. GX 3 at 6.

18. Department Counsel's motion to amend the SOR by conforming the charge-off date to the evidence was granted. Tr. 59.

19. Department Counsel's motion to amend the amount alleged in the SOR to conform to the evidence was granted. Tr. 71-72.

20. Tr. 46.