

DATE: November 20, 2006

In re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 05-08783

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 25 years old, married to a Uruguayan citizen with a U.S. green card, and has two minor children. She works for a defense contractor as a claims processor in the health care business. Applicant has seven delinquent debts which she has not paid over the past four years. She deliberately falsified her trustworthiness application. Her husband's citizenship and her declaration that they will move to Uruguay raises a foreign influence concern. Applicant did not mitigate the financial considerations, personal conduct concerns, nor the foreign influence concern. Her eligibility for assignment to sensitive positions is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue an application for a position of trust for Applicant⁽¹⁾. On November 8, 2005, DOHA issued a Statement of Reasons⁽²⁾ (SOR) detailing the basis for its decision-trustworthiness concerns raised under Guideline F (Financial Considerations), Guideline E (Personal Conduct), and Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on March 19, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on April 20, 2006. On June 19, 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a trustworthiness determination for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on July 17, 2006.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 25 years old, married to a Uruguayan citizen, and has two children. The children are three and one years

old, respectively. She married her husband on January 31, 2003. He came to the U.S. in 2001 to visit other family members, and overstayed his visa. His sister also overstayed her visa. I take administrative notice of the fact the U.S. and Uruguay had an arrangement from 1999 through early 2003 that visas were not necessary for Uruguayan citizens to travel to the U.S. However, the arrangement ended when many Uruguayans were overstaying their visas. Applicant and her husband did not have enough money to obtain his green card until 2006. She expects him to apply for U.S. citizenship in 2007. Applicant earns \$21,000 annually from her employment at a defense contractor at the rate of \$1,450 monthly. Her husband works seasonally as a landscaper. He brings home \$1,800 monthly when he works from March to November each year. He was paid unemployment compensation in the winter of 2005/2006 at the rate of \$1,000 monthly. (Tr. 36, 80; Exhibits 1, 2, 4)

Applicant's husband has a sister in the U.S. without a green card or U.S. citizenship. He has cousins and parents in Uruguay, and a brother to whom he never speaks. Applicant's husband telephones his sister every two or three days, and his parents weekly. Applicant intends to petition for her sister-in-law to obtain a green card after she helps her husband obtain his U.S. citizenship. He intends to return to Uruguay when his parents die to handle their estates. Applicant and her husband send his parents about \$250 each year for various purposes. Her father-in-law is a janitor, and her mother-in-law is disabled. Her husband's family members are not employees of the Uruguayan government. Applicant gave conflicting statements to the Government investigator and at the hearing about her dual citizenship intentions for her children, her husband, and his intentions to return to Uruguay after his parents die. Her written statement on May 10, 2005, declared her family will move to Uruguay when her husband's parents die, and he will be the family leader. She previously wanted her children to have dual citizenship. Her husband wants to keep his Uruguayan citizenship after he gets U.S. citizenship so he can travel easily back and forth between the two countries. She also claimed her husband would renounce his Uruguayan citizenship, if necessary. At the hearing she testified she changed her mind about moving to Uruguay to live because everyone there will think they have money having come from America. Her husband has not returned to Uruguay since he came to the U.S. in 2001. (Tr. 36-45; Exhibits 2, 3)

Uruguay is a South American country with a democratic government. It has been independent since 1825. Its land size is slightly smaller than the state of Oklahoma. The population is 3.2 million people, about the population of Chicago, Illinois. It has a bicameral legislature and an elected president. Its armed forces total 23,500 persons. It exports various products to the U.S. and is considered a friendly country to the U.S. Uruguay is a strong advocate of constitutional democracy, political pluralism, and individual liberties. Uruguay does not engage in industrial, economic, or military espionage against the U.S. (Exhibit 5)

Applicant's total household income is about \$35,000 annually. She has monthly expenses of about \$2,200, and income of about \$3,200 monthly when her husband works. When he does not work, they subsist on her \$1,450 monthly income. When paying her expenses and bills, Applicant takes care of her house, cars, and children first. If she does not have enough money for past due bills, she does not pay them. She claims her net disposable income is about \$132 monthly. She owns a home for which she and her husband owe \$105,000 that is valued at \$139,000. They did not make a down payment on that house. They have a first mortgage for \$653 monthly, and a second mortgage with a payment of \$200 monthly. In 2004 she bought a new minivan for at least \$15,000, but Applicant is not certain what she paid for it. Her husband has a 2005 used Dodge Neon. They spend \$120 weekly on gasoline for their car use. Their total monthly car payments are \$650. She owes \$21,000 to one lender for the minivan and a previous car whose loan from a credit union for \$11,000 she rolled into the minivan loan when she traded that car in on the minivan. Applicant has no savings account, nor does she have any credit cards. (Tr. 25-31, 57-59, 68; Exhibits 2-4)

Applicant owes about \$6,400 on seven delinquent debts. She owes \$1,174 to a hospital from 2001. She owes \$170 to the same hospital from 2002. She owes two other debts to the same hospital from October 2004, the first being \$116 and the second \$86. She owes \$511 on a cell phone bill from March 2003. She owes \$178 to a physician service from June 2003 when her first child was born. She also owes \$4,164 on a telephone bill dating back to 2001. Applicant lived with her mother at the time, and was attending college for which she needed the internet. Her mother used the phone line and internet to correspond with men in other areas, one of whom called her collect repeatedly from Australia. Her mother hid the phone bill from Applicant, and it was never paid. Her mother refused to give Applicant any money to pay her portion of the bill. Applicant set up a \$50 monthly payment plan in 2004 with the phone company, but she only made one payment when other expenses interfered with her payments. She refuses to pay this bill now because she does not like the attitude of the bill collector assigned to her account. She wants to arrange installment payments, but he wants a

lump sum paid up front first. Her attitude is that it has been on her credit report for such a long time that being there a while longer will not damage her credit. She intends to include it in her Chapter 7 bankruptcy filing. The medical bills were the co-pays and deductible from her kidney problems and the birth of her first child. (Tr. 22-26, 35, 49-56; Exhibits 2-4)

Applicant will file Chapter 7 bankruptcy in December 2006 after she has paid the attorney his fees of \$1,496. That amount of money would pay off all delinquent debts listed in the SOR except the \$4,164 telephone bill. Applicant was advised by attorneys that filing bankruptcy on less than \$8,000 would not be economical. Applicant has about \$6,400 in delinquent debts. She added her \$1,400 home heating bill into the bankruptcy. She did not pay that bill because she did not have the \$328 level payment plan amount each month. That large heating bill arose because her brother and pregnant sister-in-law lived with her last winter as they had no place to live. Applicant did not receive any rent, grocery, or heating money from her unemployed brother who kept Applicant's house at 90 degrees each day, running up the heating bill. (Tr. 46-50, 63, 66; Exhibit 4)

Applicant completed a Questionnaire for Public Trust Position, a SF-85P form (85P), on March 24, 2004. She updated it and resubmitted it on February 16, 2005. In answer to Question 21.b. (Are you now over 180 days delinquent on any loan or financial obligation?), Applicant wrote "no" and "n/a" in the "Month/Year" column of that question. In fact, Applicant had the seven delinquent debts listed in the SOR more than 180 days overdue. By that time she had spoken with the telephone company about the \$4,164 overdue bill. The other delinquent debts were incurred at least 180 days prior to the completion of her 85P, yet she did not list them.

(Tr. 31-35; Exhibits 1, 2, 4)

Applicant's employee evaluations report she is competent and hard-working. Her supervisors submitted letters attesting to her competency, and their desire to keep her experience working for them. They seek favorable consideration of her request for trustworthiness approval. (Exhibits A-E, and G)

POLICIES

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). 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 the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry* § 2 (Feb. 20, 1960). By direction of the Under Secretary of Defense for Counterintelligence and Security, adjudications of cases forwarded to DOHA by the Defense Security Service or the Office of Personnel Management (OPM) for a trustworthiness determination shall be conducted under the provisions of the Directive. Eligibility for a position of trust is predicated upon the applicant meeting the guidelines contained in the Directive and a finding it is clearly consistent with the national interest to do so. See Directive ¶ 2.3. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his trustworthiness determination." See Directive ¶ E3.1.15

The adjudication process is based on the whole person concept. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required. The decision to deny an individual eligibility to occupy a position of trust is not necessarily a determination as to the loyalty of the applicant. See Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a such a determination.

In evaluating the trustworthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual'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 (See Directive, Section E2.2.1. of Enclosure 2). Because each case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible to occupy a position of trust. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's trustworthiness suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his trustworthiness determination. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline F: Financial Considerations: *The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.* E2.A6.1.1

Guideline E: Personal Conduct: *The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.* E2.A5.1.1

Guideline B: Foreign Influence: *The Concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries are relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.* E2.A2.1.1

CONCLUSIONS

Guideline F: Applicant's financial problems arise from trying to establish a middle-class life style on a \$31,000 annual income with two young children and a husband who only works eight months of the year. Her testimony made it clear that she has no intention of paying the seven delinquent bills listed in the SOR because she does not have the money. She does not have that money to pay her debts because she bought a house, and two cars she cannot afford on the family income. While owing the \$6,400 that concerns the Government, she borrowed about \$130,000 for the house and the cars. Now she wants to file Chapter 7 bankruptcy to rid herself of these debts without fully understanding what a bankruptcy record will do to her credit rating.

Applicant does not display any basic understanding of her finances, both the income and expense sides of the ledger. She does not know what interest rate she pays on all her loans, and she does not realize the six months of payments to the bankruptcy attorney would pay six of the delinquent debts in the SOR, relieving the Government of its concerns about them. Five of the seven debts listed in the SOR are less than \$1,000, yet Applicant never could repay them even over the past four years they have been due. The telephone bill and the gas bill (not listed in the SOR but revealed at the hearing) were caused by her mother and brother, taking advantage of her. They should pay these bills, but Applicant cannot get the money from them, and she did not provide any information that her husband was helping her in that

effort.

The old rule of thumb was that a person should not buy a house that cost more than 2.5 times their gross annual income. Applicant would need a household income of \$55,000 or greater to afford the house and cars she has. Yet Applicant's annual household income is about \$35,000. Applicant and her husband have two children, a house with a first and second mortgage, and two relatively new cars with large loans on them to pay, with no increased income to ease their financial burden. Applicant supplies the steady family income, but her house and car payments total nearly \$1400 monthly, which is about her net monthly income. In the winter months when her husband does not work their total income can only pay for the house and cars, nothing else. So bills go unpaid, and those paid are according to Applicant's priority list for her house, cars, and children. Her financial position will never improve without a larger income or reduced expenses.

Applicant has had at least since May 2005 to pay some or all of her delinquent debts, but she chose not to do so. For example, she arranged to pay \$50 monthly on the telephone bill, but other expenses arose and she could not maintain the payment schedule. Now Chapter 7 bankruptcy interests her as a solution for her financial problems, which may cause more financial problems than solves for her.

Under the Guideline F, Disqualifying Conditions (DC) 1 (A history of not meeting financial obligations E2.A6.1.2.1), and DC 3 (Inability or unwillingness to satisfy debts E2.A6.1.2.3) apply for the reasons stated above. Applicant spent more than she can afford to repay in a regular manner. Her house and car expenses, and her husband's lack of year-round employment make it unlikely she can pay her delinquent debts, or avoid incurring other delinquencies because of her income.

There are no Mitigating Conditions (MC) that apply to this Applicant's financial situation. She had ample time to repay five of the seven delinquent debts that were less than \$1,000. Instead, she did nothing to resolve them.

Guideline E: Applicant completed her 85P twice, the last time in February 2005. She did not list any delinquent debts, and she knew she had several that were unpaid. DC 2 (The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, or similar form used to determine security clearance eligibility or trustworthiness E2.A5.1.2.2) applies.

No MC apply here either. Applicant's explanation that she needed a credit report or could not remember what her delinquent debts were is not believable or persuasive. She incurred the debts, and knew what she owed. She admitted she tried to arrange a payment plan for the \$4,164 telephone bill her mother incurred, but could not keep up the payments.

Guideline B: Applicant's husband is a citizen of Uruguay, and only this year applied for a green card to be a resident alien in the U.S., even though he came here in 2001 and overstayed his visa. His sister lives in the U.S., but she also overstayed her visa and Applicant intends to help her get her green card after her husband obtains his U.S. citizenship. One conclusion from that statement of Applicant (Tr. 38) is that her sister-in-law is an illegal alien. Her husband's parents and other family members live in Uruguay. Applicant declared in writing an intention to obtain dual citizenship for her children, and move with her husband to Uruguay when his parents die so he will be the family leader. Then, at the hearing, 13 months after her first statement, she recants this declaration.

DC 1 (An immediate family member, 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. E2.A2.1.2.1), DC 2 (Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists. E2.1.2.2) apply. Her statements about moving from the U.S. show a potential for adverse foreign influence from her husband. Her first statement is more believable because she has had a year to think about what the effect of that first statement means in the context of her trustworthiness process, and it is more likely she changed it at the hearing to put herself and her husband in a better light. Her husband got his green card this year although he has been in the U.S. for five years.

Uruguay is a friendly country towards the U.S. Its liberal democracy does not engage in espionage against the U.S. Applicant's husband's family members are not agents of the Uruguayan government, nor can they be exploited by that government to force Applicant to choose between loyalty to the U.S. and to her husband and his family in Uruguay. MC

1 (A determination that the immediate family members (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate 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 persons involved and the United States. E2.A2.1.3.1) applies. But Applicant's inconsistent statements about their possible move to Uruguay, her husband's foreign citizenship, her sister-in-law's immigration status, the money they send to her husband's parents show they care about them and Applicant could be vulnerable and influenced because of that situation, are all concerns under the guideline.

Whole Person Analysis

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a" trustworthiness decision. Directive E2.2.1. "Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination." *Id.* In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive ¶ E2.2.1.

Under this concept as applied to the financial considerations concern, an examination of Applicant's finances disclose they are serious and continuous, and she knowingly incurred the debts and has not paid them while taking out large loans for a house and two cars. She has not paid seven delinquent loans for three years or more, and the small amount of five of them would have allowed her to repay them over the same time period. Without the changes in her financial condition I discussed previously, the conduct will recur. I conclude Guideline F against Applicant.

Under the same criteria applied to the personal conduct concern, she was old enough to know what a falsification was on her 85P, knew her debts were delinquent, and the failure to pay delinquent debts created a situation from which she could be pressured or coerced about her debts, and she knew such falsification was serious. I conclude Guideline E against Applicant primarily because I do not find her explanations of why she failed to disclose her debts to be credible or persuasive.

Under the foreign influence concern, Applicant is a claims processor for a defense contractor. Her husband is a landscaper who stayed in the U.S. after his visa expired in 2001 and only recently sought and obtained his green card. Furthermore, his sister also overstayed her visa, so the pattern of misconduct and violation of U.S. laws by him is a concern. Applicant is facilitating her sister-in-law's questionable immigrant status in the U.S., as she did her husband's until he obtained his green card. Applicant's disregard of the law shows she is influenced by her husband and has not reported associations with foreign nationals. Moreover, there is potential for influence upon Applicant by her husband and Uruguay because of his desire to return to Uruguay and become the family leader. Applicant has the burden to mitigate these foreign influence concerns, and has failed to do so. Accordingly, I conclude this trustworthiness concern against Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Paragraph 3. Guideline B: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: Against Applicant

DECISION

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 trustworthiness determination and assignment to sensitive duties. Her application for eligibility is denied.

Philip S. Howe

Administrative Judge

1. Adjudication of trustworthiness cases for ADP I, II, and III positions are resolved using the provisions of DoD Directive 5220.6 (Directive), pursuant to the memorandum from Carol A. Haave, Deputy Under Secretary of Defense for Counterintelligence and Security to DOHA Director, *Adjudication of Trustworthiness Cases* (Nov. 19, 2004).
2. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and the Directive.