



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-06916
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro Se*

May 29, 2009

Decision

GALES, Robert Robinson, Chief Administrative Judge:

Applicant mitigated the security concerns regarding foreign influence and financial considerations. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On December 2, 2007, Applicant applied for a security clearance and submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a Security Clearance Application. On November 3, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). The SOR alleged security concerns under Guidelines B (Foreign Influence) and F (Financial Considerations), and detailed reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for

Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

It should be noted that on December 29, 2005, the President promulgated revised *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information*, and on August 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing implementation of those revised Adjudicative Guidelines (hereinafter AG) for all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended and modified (Regulation), in which the SOR was issued on or after September 1, 2006. The AG are applicable to Applicant's case because his SOR was issued after September 1, 2006.

It is unclear when Applicant received the SOR. However, in a sworn, written statement, dated November 26, 2008, Applicant responded to the SOR allegations and requested a hearing before an Administrative Judge. Department Counsel indicated the Government was prepared to proceed on February 5, 2009, and the case was assigned to me on February 6, 2009. A Notice of Hearing was issued on March 5, 2009, and I convened the hearing, as scheduled, on March 24, 2009.

During the hearing, five Government exhibits and two Applicant exhibits were received without objection. Applicant testified. The transcript of the hearing (Tr.) was received on April 1, 2009.

The record was kept open until March 31, 2009, to enable Applicant to supplement the record. Applicant took advantage of that opportunity and, on that date, he submitted both a facsimile of documents and an e-mail with attached documents (marked as Applicant Exhibits C and D, respectively) which were admitted without objection.

Rulings on Procedure

At the commencement of the hearing, Department Counsel requested that I take Administrative Notice of certain enumerated facts pertaining to the People's Republic of China (hereinafter PRC), appearing in a written submission of the request. Facts are proper for Administrative Notice when they are verifiable by an authorized source and relevant and material to the case. In this instance, the source information relied upon by the Government was publications of the Department of State;¹ the Centre for Counterintelligence and Security Studies;² the National Counterintelligence Center, now

¹ U.S. Department of State, Bureau of East Asian and Pacific Affairs, *Background Note: China*, dated October 2008; U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *China (includes Tibet, Hong Kong, and Macau) Country Reports on Human Rights Practices – 2007*, dated March 11, 2008; and U.S. Department of State, *Consular Information Sheet: China – Country Specific Information*, dated November 26, 2008.

² Interagency OPSEC Support Staff, Centre for Counterintelligence and Security Studies, *Intelligence Threat Handbook*, excerpts, dated June 2004.

known as the Office of the National Counterintelligence Executive;³ and the U.S.-China Economic and Security Review Commission.⁴ In addition, there were five press releases from the U.S. Department of Justice.⁵

The five press releases were presented apparently to substantiate that PRC actively pursues collection of U.S. economic and propriety information, and therefore, Applicant's relationship with his wife and her family members in PRC raises suspicion of him. None of the cases cited involves Applicant personally or involved espionage through any familial relationship. Likewise, none of the cases involves a native-born U.S. citizen merely married to a Chinese national. The criminal wrongdoing of other U.S. citizens is of decreased relevance to an assessment of Applicant's security suitability, especially where there is no evidence that Applicant, nor any member of his family, was ever involved in any aspect of the cited cases or ever targeted by any Chinese intelligence official. Furthermore, these press releases are little more than self-congratulatory public relations products issued by public relations offices, with the collateral effect of scaring and deterring other criminals contemplating possible attacks on our national security.

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, I take administrative notice of the facts and events described in the various reports and U.S. Department of State publications. However, I reject any facts set forth in the press releases.⁶ Also, the inference that somehow Applicant and/or his family participated in criminal activity was not argued during the hearing and is specifically rejected. Pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts, as set forth below under the China subsection.

Findings of Fact

In his Answer to the SOR, Applicant admitted the following factual allegations in ¶¶ 1.a. through 1.d., 2.a., and 2.c. through 2.g. of the SOR. He subsequently amended

³ National Counterintelligence Center, *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, FY 07*, dated September 10, 2008.

⁴ U.S.-China Economic and Security Review Commission, *2007 Report to Congress of the U.S.-China Economic and Security Review Commission*, dated November 2007.

⁵ U.S. Department of Justice, U.S. Attorney, Central District of California, Press Release: *Chinese Resident Pleads Guilty to Having Export Controlled Thermal-Imaging Cameras Sent to China* (Re: United States v. Tah Wei Chao), dated July 16, 2008; U.S. Department of Justice, Press Release: *Former Chinese National Convicted of Economic Espionage to Benefit China Navy Research Center* (Re: Xiaodong Sheldon Meng), dated August 2, 2007; U.S. Department of Justice, U.S. Attorney, Northern District of California, Press Release: *Chinese National Sentenced for Committing Economic Espionage to Benefit China Navy Research Center* (Re: Xiaodong Sheldon Meng), dated June 18, 2008; U.S. Department of Justice, Press Release: *Third Defendant Pleads Guilty in China Espionage Case* (Re: Yu Xin Kang), dated May 28, 2008; U.S. Department of Justice, Press Release: *Chinese Agent Sentenced to Over 24 Years in Prison for Exporting United States Defense Articles to China* (Re: Chi Mak), dated March 24, 2008.

⁶ Tr. at 25-26.

his response pertaining to ¶ 2.a. of the SOR. His admissions are incorporated herein as findings of fact.

Applicant is a 33-year-old employee of a defense contractor, and he is seeking to retain a SECRET security clearance. With the exception of one brief period in 2003, when his security clearance was suspended for reasons set forth below, he has held a security clearance since 1993.⁷ He served on active duty with the U.S. Marine Corps from June 1993 until March 1997, and with the U.S. Army from January 1998 until October 2003.⁸ He has been employed as an instructor, site lead, or task lead by the same government contractor, or successor company, since October 2006.⁹ He was unemployed from July 2006 until October 2006.¹⁰

Foreign Influence

Applicant was born in the United States in 1975,¹¹ of native-born U.S. citizens who are non-Asians.¹² In 2002,¹³ rather than 2003, as stated in his e-QIP,¹⁴ Applicant married a woman, now 31 years old, who was a citizen and resident of PRC.¹⁵ They met in PRC while he was employed there in an official U.S. Government capacity.¹⁶ She moved to the U.S. in September 2003, and currently has the status of legal resident alien, awaiting eligibility for U.S. citizenship.¹⁷ While residing in PRC, his wife was employed as an accountant by a foreign (non-Chinese) company for about three years, and before that she was an actress.¹⁸

Applicant's 61-year-old father-in-law and 59-year-old mother-in-law are both Chinese citizens and residents of PRC.¹⁹ They previously worked in retail clothing

⁷ Government Exhibit 1 (e-QIP, dated December 2, 2007), at 37.

⁸ *Id.* at 26-27.

⁹ *Id.* at 13-14; Tr. at 33-34.

¹⁰ *Id.* Government Exhibit 1, *supra* note 7, at 14-15.

¹¹ *Id.* at 6.

¹² *Id.* at 22-23.

¹³ Tr. at 34.

¹⁴ Government Exhibit 1, *supra* note 7, at 20.

¹⁵ *Id.*

¹⁶ Tr. at 35.

¹⁷ Government Exhibit 1, *supra* note 7, at 21; Tr. at 36-37.

¹⁸ Tr. at 38.

¹⁹ Government Exhibit 1, *supra* note 7, at 24-25.

sales, but are now retired, and living on pensions.²⁰ Neither of them ever worked for the PRC Government.²¹ They have never visited the United States.²² Applicant's wife has daily contact with her parents using internet telephone communications between their respective computers, but Applicant has no contacts with them except indirectly only through his wife.²³ Neither Applicant nor his wife sends money to her parents.²⁴

His wife has a 29-year-old cousin who was also born in PRC.²⁵ The relationship between that cousin, believed to be about 30 years old, and Applicant's wife, was previously very close,²⁶ but since his marriage to another Chinese woman, with whom Applicant's wife does not get along, her relationship with her cousin has become strained.²⁷ About two years ago, the cousin immigrated to Canada with the intention of becoming a Canadian citizen, but his current citizenship status is unknown.²⁸ The two cousins used to have contact several times per week, also by internet telephone communications, but their contact has been reduced to monthly.²⁹ Applicant has no relationship with him. While in PRC, the cousin worked briefly as a janitor, but since his arrival in Canada, he is a waiter in a restaurant.³⁰ He has never been employed by the Chinese Government.³¹

Applicant has been to PRC on four occasions, including the period when he was there in an official U.S. Government capacity. All of his visits were in accordance with applicable military regulations, and with the appropriate required permission of U.S. authorities.³² In March-April 2002, he spent 14 days in PRC for his wedding and honeymoon.³³ His next visit occurred in December 2002-January 2003, when he went to see his wife, who was still waiting for her visa, and they spent their time

²⁰ Tr. at 41-42.

²¹ *Id.* at 42.

²² *Id.* at 40.

²³ *Id.*

²⁴ *Id.* at 43.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 44.

²⁸ *Id.* at 43.

²⁹ *Id.* at 46.

³⁰ *Id.* at 47.

³¹ *Id.*

³² Applicant's Response to SOR, dated November 26, 2008, at 4.

³³ Tr. at 49.

sightseeing.³⁴ His last visit was in September 2003, when he spent about seven days before accompanying his wife to the U.S.³⁵ While he has no current plans of returning to PRC for a visit, he would like to eventually do so.³⁶

At the commencement of his relationship with the woman who eventually became his wife, Applicant reported her name to the Regional Security Officer (RSO) responsible for the safety and security of those individuals assigned to his U.S. Government Office.³⁷ Because of Applicant's marriage to a citizen of PRC, in April 2002, his command filed a Report of Unfavorable Information for Security Determination (DA Form 5248-R), and his collateral access (SECRET security clearance) was suspended, "pending further investigation of spouse."³⁸ On January 22, 2003, his command recommended Applicant's security clearance be reinstated as soon as possible, citing AR 380-67, *Personnel Security Program*, ch. 8-102, para. b, subpara. (1).³⁹

If the commander determines that the person has been cleared of all charges and that the alleged offense or disqualifying information has been disproved or found groundless, and the commander is completely convinced that no element of risk remains, the commander may restore interim access in the name of the Commander, CCF.

On February 25, 2003, Applicant's security clearance was granted by the U.S. Army Central Personnel Security Clearance Facility (DA CCF).⁴⁰

Applicant's blood relations and heritage, as well as his wife, and all financial interests are in the U.S. He has no financial interests in PRC, and owns no property there. Furthermore, he has no blood relations in PRC, and his only continuing relationships with any person in PRC are the infrequent, indirect relationships he has through his wife.⁴¹

People's Republic of China

PRC has an authoritarian, Communist government, with powerful military forces, including strategic nuclear weapons and missiles. It is geographically vast, and has a

³⁴ *Id.* at 49-50.

³⁵ *Id.* at 51.

³⁶ *Id.* at 52.

³⁷ Applicant's Response to SOR, *supra* note 32, at 3.

³⁸ Government Exhibit 5 (DA Form 5248-R, dated April 16, 2002).

³⁹ Government Exhibit 5 (DA Form 5248-R, dated January 22, 2003).

⁴⁰ Government Exhibit 5 (Memorandum from DA CCF, dated February 25, 2003).

⁴¹ Applicant's Response to SOR, *supra* note 32, at 4.

population of over a billion people. It has significant resources, and an economy that in recent years has expanded about 10% per year. In PRC, reported human rights problems include suppression of political dissent, arbitrary arrest and detention, forced confessions, torture and mistreatment of prisoners. The PRC also monitors telephone conversations, facsimile transmissions, e-mail, text messaging, and internet communications, and sometimes nonconsensual monitoring with listening devices and surreptitious searching of hotel guestrooms.

PRC aggressively competes with the United States in many areas. It actively collects military, economic and proprietary, industrial information about the United States because of the following circumstances: (1) its position as a global power; (2) its military, political, and economic investments in the Pacific Rim and Asia; and (3) its leading role in development of advanced technology that PRC desires for economic growth. Americans of Chinese ancestry are considered prime intelligence targets by the PRC. Active intelligence gathering programs focus on sensitive and protected U.S. technologies. U.S. Immigration and Customs Enforcement officials have characterized PRC's espionage and industrial theft activities as the leading threat to the security of U.S. technology.

Nevertheless, total two-way trade between PRC and the U.S. reached \$386 billion in 2007, with PRC becoming the third-largest trading partner for the U.S. While there have been a number of incidents involving individuals, companies, and PRC intelligence officers improperly acquiring U.S. economic intelligence and proprietary information, there is no direct or indirect connection to, or involvement with, Applicant, his wife, or his wife's family.

Financial Considerations

Applicant's finances were generally unremarkable until about 2006. His employer at that time initially asked him to relocate to the opposite coast for business-related reasons, and he did so. Shortly thereafter, and after Applicant had purchased a residence, he was asked to relocate once again back to the original location. When he indicated his unwillingness to relocate again, Applicant's employment was terminated.⁴² Prior to his termination, Applicant's Fair Isaac Corporation (FICO) score was 762,⁴³ and he was earning \$68,000 per year with an annual bonus of \$35,000, or a total amount of \$103,000.⁴⁴ He and two other individuals joined together to start their own company, but at that time, it did not generate any income for him.⁴⁵

⁴² Tr. at 71-72.

⁴³ *Id.* at 59.

⁴⁴ *Id.* at 72.

⁴⁵ *Id.* at 73.

With no income from July 2006 until October 2006, and with no savings, Applicant was forced to rely on his credit cards for necessary expenses.⁴⁶ He contacted each of his creditors to alert them of his status, but most of them declined to assist him because he had failed to take their respective “credit insurance.”⁴⁷ His lack of income made it difficult for him to remain current with his normal monthly payments, and some of those accounts became delinquent. Some were sent to collection, and some were “charged off.” While his house never entered foreclosure, his payments were in arrears, but he eventually entered into a repayment plan with his mortgage holder, and by the time of the hearing, he was only one month behind on his payments.⁴⁸ He currently has a tenant who rents the residence through a rental management company and that situation generates about 50% of the actual monthly mortgage payment.⁴⁹ He set up a payment plan by prioritizing his debts and discussing the implementation of payment plans with certain creditors with the ultimate goal of satisfying each creditor.⁵⁰

The SOR identified eight purportedly continuing outstanding financial obligations. Those allegations listed in the SOR, and their respective purported current status, according to the credit reports, financial records and correspondence, as well as Applicant’s comments regarding same, are described below:

SOR ¶ 2.a.: In October 2007, Applicant notified the Veterans Administration (VA) of his intention to enroll in courses from an online university, and he obtained a letter of eligibility. He submitted the appropriate paperwork to the school for reimbursement coverage under the Montgomery GI Bill, but unfortunately for Applicant, the school failed to properly process the paperwork.⁵¹ At the same time, he also applied for a loan directly from the school. The unpaid tuition debt, totaling \$2,955, was sent to collection.⁵² Applicant never received any calls from the creditor, and while he was aware the account was delinquent,⁵³ he was unaware it was in collection until he received the SOR in November 2008.⁵⁴ He immediately contacted the school and urged them to rectify the situation by properly filing the paperwork and asked them to remove the derogatory information from his credit report.⁵⁵ Applicant has not yet received any payments from the VA and has received no further status information from the school.

⁴⁶ *Id.* at 74.

⁴⁷ Government Exhibit 1, *supra* note 7, at 42; *Id.* at 67-68.

⁴⁸ *Id.* at 75.

⁴⁹ *Id.*

⁵⁰ Government Exhibit 1, *supra* note 7, at 42.

⁵¹ Tr. at 53-56.

⁵² Government Exhibit 4 (Combined Credit Report, dated December 14, 2007), at 10.

⁵³ Government Exhibit 1, *supra* note 7, at 39.

⁵⁴ Tr. at 55.

⁵⁵ *Id.* at 54-55.

SOR ¶ 2.b.: In about May 2006, when Applicant relocated his residence to the other coast, he notified the pet hospital to cancel his pet insurance.⁵⁶ Unbeknownst to him, instead of cancelling the insurance, the creditor either erroneously set it up to not renew,⁵⁷ or caused it to automatically renew.⁵⁸ The creditor was unable to contact Applicant at his old address,⁵⁹ and the account, with an unpaid balance of \$168, became delinquent, and was sent to collection.⁶⁰ When Applicant became aware of the delinquency, he contacted the creditor who corrected the account. On November 20, 2008, Applicant satisfied the account with a payment of \$139.75.⁶¹

SOR ¶ 2.c.: Because of his unemployment status in 2006, Applicant found it increasingly difficult to remain current on his monthly payments for his American Express Credit Card. As a result, the account was eventually closed by the creditor and sent to collection⁶² with an unpaid balance of over \$5,000.⁶³ On July 17, 2007, well before the issuance of the SOR, Applicant and the creditor agreed to a payment plan under which Applicant would make \$200 monthly payments until the account is satisfied.⁶⁴ He has complied with that agreement since that time,⁶⁵ and the account is nearly paid off.⁶⁶

SOR ¶ 2.d.: Applicant also found it increasingly difficult to remain current on his monthly payments for his Chase Credit Card. As a result, the account was eventually closed by the creditor, charged off, and sent to collection⁶⁷ with an unpaid balance of \$5,396.⁶⁸ Although Applicant indicated during the hearing that he was currently paying

⁵⁶ *Id.* at 58.

⁵⁷ Applicant's Response to SOR, *supra* note 32, at 5.

⁵⁸ Tr. at 58.

⁵⁹ *Id.*

⁶⁰ Government Exhibit 4, *supra* note 52, at 9.

⁶¹ Applicant's Response to SOR, *supra* note 32, at atch. E (Credit Card Receipt, dated November 20, 2008).

⁶² Government Exhibit 4, *supra* note 52, at 5.

⁶³ Government Exhibit 1, *supra* note 7, at 40-41.

⁶⁴ Applicant's Response to SOR, *supra* note 32, at atch. B (Letter from Creditor, dated July 17, 2007).

⁶⁵ Applicant Exhibit C (Photocopies of Cancelled Checks to creditor, various dates); Applicant Exhibit D (Photocopies of Cancelled Checks to creditor, various dates).

⁶⁶ Tr. at 61.

⁶⁷ Government Exhibit 4, *supra* note 52, at 8.

⁶⁸ Government Exhibit 1, *supra* note 7, at 40; *Id.*

the creditor under a payment agreement,⁶⁹ he was mistaken and subsequently corrected the record.⁷⁰ In fact, he recently spoke with the creditor and they are in discussions regarding the establishment of a repayment plan.⁷¹

SOR ¶ 2.e.: Applicant's financial status also impacted his ability to remain current on his monthly payments for one of his Capital One Credit Cards. As a result, the account was eventually closed by the creditor, charged off, and sent to collection⁷² with an unpaid balance of \$5,337.⁷³ The balance has since increased to \$6,520,⁷⁴ and the account has been transferred to another collection agency.⁷⁵ Applicant has been attempting to contact the new collection agency in an effort to set up repayment arrangements.⁷⁶

SOR ¶ 2.f.: Applicant's financial status also impacted his ability to remain current on his monthly payments for his other Capital One Credit Card. As a result, the account was eventually closed by the creditor, charged off, and sent to collection⁷⁷ with an unpaid balance of \$1,118.⁷⁸ As of October 3, 2008, the balance had purportedly increased to \$1,399,⁷⁹ the amount set forth in the SOR. On November 18, 2008, Applicant entered into a repayment agreement with the creditor under which he was to make monthly payments of \$200 until the debt is satisfied.⁸⁰ He has complied with that agreement since that time,⁸¹ and the account is nearly paid off.⁸²

SOR ¶ 2.g.: Applicant's financial status also impacted his ability to remain current on his monthly payments for his Bank of America Credit Card. As a result, the

⁶⁹ Tr. at 63.

⁷⁰ Applicant Exhibit D, *supra* note 65, at 1.

⁷¹ *Id.*

⁷² Government Exhibit 4, *supra* note 52, at 8.

⁷³ Government Exhibit 1, *supra* note 7, at 40; *Id.*

⁷⁴ *Id.* Government Exhibit 4, at 8.

⁷⁵ Applicant's Response to SOR, *supra* note 32, at 5.

⁷⁶ *Id.*

⁷⁷ Government Exhibit 4, *supra* note 52, at 8.

⁷⁸ *Id.*

⁷⁹ Government Exhibit 3 (Equifax Credit Report, dated October 3, 2008) at 2.

⁸⁰ Applicant's Response to SOR, *supra* note 32, at atch. C (Letter from Creditor, dated November 18, 2008); Tr. at 65-66.

⁸¹ Applicant Exhibit C, *supra* note 65; Applicant Exhibit D, *supra* note 65.

⁸² Tr. at 61.

account was eventually closed by the creditor, charged off, and sent to collection⁸³ with an unpaid balance of \$7,741.⁸⁴ He has been in touch with the creditor and anticipates shortly entering into a repayment agreement.⁸⁵

SOR ¶ 2.h.: Applicant also found it increasingly difficult to remain current on his monthly payments for his Washington Mutual/Providian Credit Card. As a result, the account was eventually closed by the creditor, charged off, and sent to collection⁸⁶ with an unpaid balance of over \$3,686.⁸⁷ On some unspecified date, Applicant and the creditor agreed to a payment plan. Applicant complied with that agreement, and as a result, on July 10, 2007, also well before the SOR was issued, the account was paid off.⁸⁸

Applicant currently has a monthly net remainder of about \$1,212 to apply towards his remaining delinquent debt, but he only uses about \$800 for that purpose, with about \$400 going into savings in the event of emergency.⁸⁹ He has about \$3,400 in savings.⁹⁰ He attempts to live frugally, drives a 1994 automobile, and possesses two credit cards which he refrains from using.⁹¹

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.”⁹² 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. The President has authorized the Secretary of Defense or his

⁸³ Government Exhibit 4, *supra* note 52, at 7.

⁸⁴ *Id.*

⁸⁵ Tr. at 68.

⁸⁶ Government Exhibit 4, *supra* note 52, at 10.

⁸⁷ Government Exhibit 1, *supra* note 7, at 40.

⁸⁸ Applicant's Response to SOR, *supra* note 32, at atch. A (Letter from Creditor, dated July 10, 2007); Tr. at 68-69. It should be noted that despite the account having been paid in full in July 2007, the Equifax Credit Report generated on October 3, 2008 (Government Exhibit 3) still erroneously reflects an open account with a substantial unpaid balance.

⁸⁹ Tr. at 79.

⁹⁰ *Id.* at 80.

⁹¹ *Id.* at 81.

⁹² *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

designee to grant an applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."⁹³

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

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."⁹⁴ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.⁹⁵

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."⁹⁶

⁹³ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁹⁴ "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁹⁵ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁹⁶ *Egan*, 484 U.S. at 531.

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.”⁹⁷ 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 as to 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. In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Reciprocity - National Industrial Security Program Operating Manual

The following reciprocity provisions are set forth under § 2-204, National Industrial Security Program Operating Manual (NISPOM), otherwise identified as Department of Defense Manual 5220.22-M, dated February 28, 2006:

Federal agencies that grant access to classified information to their employees or their contractor employees are responsible for determining whether such employees are responsible for determining whether such employees have been previously cleared or investigated by the Federal Government. Any previously granted PCL that is based upon a current investigation of a scope that meets or exceeds that necessary for the clearance required shall provide the basis for issuance of a new clearance without further investigation or adjudication unless significant derogatory information that was not previously adjudicated becomes known to the granting agency.

Furthermore, under the ch. 4, § C4.1.2., the Regulation, the following applies:

As long as there is no break in Military Service and/or Federal employment greater than 24 months, any previous personnel security investigation that essentially is equivalent in scope to an investigation required by this Regulation will be accepted without requesting additional investigation.

In this instance, while there was an ENAC conducted in 1998, upon which Applicant was initially granted a SECRET security clearance, and his security clearance was suspended in 2002, pending further investigation, due to his marriage to a citizen of PRC, that security clearance was subsequently reinstated by DA CCF in 2003, apparently based on the results of the investigation. But for those provisions in the

⁹⁷ See Exec. Or. 10865 § 7.

NISPOM and the Regulation, DOHA might have been bound to grant reciprocity to the DA CCF adjudication, pertaining to the Foreign Influence issue.

However, two factors have intervened. First, there was a break in Applicant's military service and or federal employment of greater than 24 months. He was employed by a company not a federal contractor from October 2003 until July 2006. Second, significant derogatory information pertaining to financial considerations that were not previously adjudicated became known to the granting agency. Thus, NISPOM's reciprocity provision does not preclude a reevaluation of Applicant's security eligibility.

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.⁹⁸

The guideline notes several conditions that could raise security concerns. Under AG ¶ 7(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" is potentially disqualifying. Similarly, under AG ¶ 7(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" may raise security concerns. Also, AG ¶ 7(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" may raise

⁹⁸ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 12 (App. Bd. Feb. 8, 2001).

security concerns as well. The evidence is sufficient to establish AG ¶¶ 7(a), 7(b), and 7(d). However, the security significance of these identified conditions requires further examination of Applicant's respective relationships with his wife's parents who are citizen-residents of PRC and her cousin who is a PRC-citizen/Canadian-resident, to determine the degree of "heightened risk" or potential conflict of interest.

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. 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 United States. The complicated, competitive relationship of PRC with the U.S. places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationship with his wife's parents in PRC, as well as her cousin in Canada, does not pose a security risk and he is not in a position to be forced to choose between loyalty to the United States and his wife's family members.⁹⁹

With its mixed human rights record, and other political, economic and military rivalry with the U.S., it is not inconceivable that PRC would target any citizen in an attempt to gather valuable information from the United States. On the other hand, there are some indications that the position of the U.S. is not as inflexible towards PRC as might be initially surmised. In 2000, despite the purported concerns over PRC's continuing intelligence gathering, the U.S. permanently extended the most-favored-nation status provision to PRC-U.S. commercial treaties binding the signatories to extend trading benefits equal to those accorded any third state. Furthermore, while

⁹⁹ The Appeal Board has articulated a "heightened risk" or "very heavy burden" because of the PRC's hostility to the United States. ISCR Case No. 06-24575 at 4 (App. Bd. Nov. 7, 2007) (articulating "very heavy burden" standard and reversing grant of clearance in case involving family members living in the PRC). For example in ISCR Case No. 07-02485 at 4-5 (App. Bd. May 9, 2008), the Appeal Board stated, "Given the PRC's interest in U.S. intelligence, Applicant's foreign relatives pose a real, rather than merely theoretical, risk that Applicant could be targeted for manipulation or induced into compromising classified information." In ISCR Case No. 07-02485 at 4-5 (App. Bd. May 9, 2008) the Appeal Board described what facts supported reversal of the Administrative Judge's decision to grant that Applicant with connections to PRC a clearance:

The fact that Applicant lives with a PRC citizen, her husband; that her husband maintains contact with his own father who is a citizen and resident of the PRC; that Applicant's brother is a citizen and resident of the PRC; that Applicant speaks with her brother over the telephone "several times a year;" that the PRC targets U.S. citizens of PRC ancestry for intelligence gathering purposes; and that the PRC monitors telephone and other communications of its citizens constitute significant record evidence of security significant foreign contacts and interest. As such, Applicant's evidence as to her good job performance and her ties to the U.S. are not sufficient to mitigate those concerns. It is not to question Applicant's patriotism to acknowledge that the record in her case raises the reasonable concern that she could be placed in a position of having to choose between her ties to the U.S. and her obligations to her foreign family members. The evidence which Applicant has provided is not sufficient to mitigate the Government's security concerns. The Board holds that the Judge's favorable decision is not sustainable on this record.

See *also* ADP Case No. 05-17812 (App. Bd. June 11, 2007); ISCR Case No. 05-10467 (App. Bd. May 8, 2007) (both reversing favorable clearance decisions for PRC-related Applicants); ISCR Case No. 06-23453 (App. Bd. Nov. 14, 2007); ISCR Case No. 06-21622 (App. Bd. Oct. 15, 2007) (both remanding favorable clearance decisions for PRC-related Applicants).

there is the “heightened risk” standard, the U.S. Government has not established a “*per se*” rule against granting a security clearance to an individual with family members who are PRC citizen/residents, and there is no general prohibition regarding casual or personal travel to the PRC by U.S. citizens who possess a security clearance.

There is evidence that PRC intelligence operatives seek classified or economic information from U.S. businesses and/or government agencies, Applicant’s very rare, indirect connections to his mother-in-law, his father-in-law and his wife’s cousin, as well as his wife’s frequent communications with her parents, create a potential conflict of interest because these relationships are conceivably close enough to raise a security concern about his desire to help his wife’s relatives living in the PRC and Canada by providing sensitive or classified information.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence. Under AG ¶ 8(a), the disqualifying condition may be mitigated where “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.” Similarly, AG ¶ 8(b) may apply where the evidence shows “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.” Also, AG ¶ 8(c) may apply where “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.” In addition, when “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,” AG ¶ 8(e) may apply.

Applicant’s relationship with his wife’s various family members is diverse. His wife’s parents, both PRC citizen-residents, require the most scrutiny. His relationship with them is, for the most part, non-existent, for aside from relatively brief visits to PRC, the last of which occurred six years ago when he accompanied his wife to the U.S., he has little if any direct contact with them. His only continuing contacts are rare and indirect, through his wife. While her relationship with her parents can be deemed close, that relationship still carries over to Applicant under AG ¶ 7(d). As far as Applicant is concerned, the contacts and relationships are casual and infrequent. The relationship he has with his wife’s cousin, a PRC citizen-Canadian resident, to the extent there is one, appears to be even more distant. While his wife and her cousin do continue to have diminishing periodic contact, even those activities do not demonstrate a really warm, close relationship.

There is no evidence that these relatives have been political activists, challenging the policies of the PRC Government. There is no evidence these relatives currently work for or have ever worked for the PRC Government, military, or intelligence service.

Likewise, there is no evidence that terrorists or the PRC Government have approached or threatened Applicant or his wife's relatives for any reason. And, there is no evidence that Applicant's wife's parents in PRC currently engage in activities which would bring attention to them or that they or other PRC elements are even aware of Applicant's work. As such, there is a reduced possibility that these relatives would be targets for coercion or exploitation.¹⁰⁰

In assessing whether there is a heightened risk because of an applicant's relatives or associates in a foreign country, it is necessary to consider all relevant factors, including the totality of an applicant's conduct and circumstances, including the realistic potential for exploitation. One such factor is the potential for pressure, coercion, exploitation, or duress. In that regard, it is important to consider the character of the foreign power in question, including the government and entities controlled by the government, within the relevant foreign country. Nothing in Guideline B suggests it is limited to countries that are hostile to the United States.¹⁰¹ In fact, the Appeal Board has cautioned against "reliance on overly simplistic distinctions between 'friendly' nations and 'hostile' nations when adjudicating cases under Guideline B."¹⁰² Nevertheless, the relationship between a foreign government and the U.S. may be relevant in determining whether a foreign government or an entity it controls is likely to attempt to exploit a resident or citizen to take action against the U.S. through the Applicant. It is reasonable to presume that a contentious relationship, or the absence of a democratic government, is not determinative, but it may make it more likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that foreign country.

Because of Applicant's extremely limited contacts with his wife's parents and cousin, it is unlikely he would be placed in a position of having to choose between their interests and the interests of the U.S. His infrequent, indirect contacts and rather distant relationship with these relatives have a low potential of forcing him to choose between the United States and the PRC. He met his burden of showing there is little likelihood that his relationships with these relatives could create a risk for foreign influence or

¹⁰⁰ The Appeal Board has ruled that in the analysis of countervailing evidence, it is legal error to give significant weight to any of the following facts or factors: applicant's ties to the United States (ISCR Case No. 02-13595 at 5 (App. Bd. May 10, 2005)); lack of prominence of relatives living in a foreign country (*Id.*); "family members' low-key and noncontroversial lifestyle, and the fact that the foreign government has not contacted them about Applicant" (ISCR Case No. 04-12500 at 4 (App. Bd. Oct. 26, 2006)); one relative living in a foreign country may be sufficient to negate FIMC 1 (ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006)); a foreign relative's fragile health (ISCR Case No. 02-29403 at 4 (App. Bd. Dec. 14, 2004)), advanced age (ISCR Case No. 02-00305 at 7 (App. Bd. Feb. 12, 2003)), financial independence (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)), or lack of financial dependency upon applicant (ISCR Case No. 03-15205 at 4 (App. Bd. Jan 21, 2005)); foreign relatives spend part of each year in the U.S. (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)); the lack of any connection between the foreign relative and the foreign government in question (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)); the absence of any attempt at exploitation in the past (ISCR Case No. 03-15205 at 4 (App. Bd. Jan. 21, 2005)); and a foreign country's friendly relationship with the U.S., its stable, democratic government, or its extensive foreign military agreements with the United States (ISCR Case No. 02-22461 at 5-6 (App. Bd. Oct. 27, 2005)). Notwithstanding the Appeal Board's position, I conclude that many of these factors are pertinent to the analysis in this case under the whole person concept.

¹⁰¹ See ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002); ISCR Case No. 00-0489 at 12 (App. Bd. Jan. 10, 2002).

¹⁰² ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002).

exploitation. His contacts and communications, to the extent there are any, with these relatives are so casual and infrequent as to not create a risk of foreign influence or exploitation. While there may be speculation as to “some risk” about his relationship with his in-laws living in the PRC, that speculation, in the abstract, does not, without substantially more, establish evidence of a “heightened risk” of foreign exploitation, inducement, manipulation, pressure, or coercion.

His relationship with his spouse, a PRC citizen-U.S. resident, is obviously much closer. Nevertheless, while she currently retains her PRC citizenship, she intends to renounce it in favor of U.S. citizenship when she is eligible. She does not hold a job outside the family home, but is a fulltime homemaker. Nevertheless, there is a heightened risk resulting from her relationship with her parents living in the PRC. For example, the PRC Government could take her parents’ pensions to attempt to coerce her to pressure Applicant.

Applicant’s deep relationship with the United States weighs against a security concern for these relationships. He is a native-born American, not of Asian ancestry, who simply fell in love and married a citizen of PRC. Applicant has such deep and longstanding family, military, financial, and employment relationships and loyalties in the U.S., he can be expected to resolve any conflict of interest in favor of the U.S. interest. His parents and blood-relatives are U.S. citizens, and all reside in the United States. His wife and he have resided together in the U.S. since 2003, and he has resided here his entire life, with the exception of the period during which he was serving with the U.S. Government in PRC. His values are U.S. values, and his wife is now in the process of making them her values as well as she approaches U.S. naturalization. He served honorably with the U.S. Army and the U.S. Marine Corps, and worked for government contractors, all the while holding a SECRET security clearance.

As noted above, at the commencement of his relationship with the woman who eventually became his wife, Applicant reported the relationship to the appropriate RSO. Following his wedding, his SECRET security clearance was suspended, “pending further investigation of spouse.” His command recommended the security clearance be reinstated as soon as possible, and on February 25, 2003, Applicant’s security clearance was granted by the DA CCF. In self-reporting his relationship, he promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country. In this instance, the issue was merely a contact, and nothing more sinister. There is no reason to speculate as to possible contrary actions in the future. I find AG ¶¶ 8(a), 8(c), and 8(e) partially apply in this case, and AG ¶ 8(b) fully applies.

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or

unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns as well. As noted above, with the exception of a period from July 2006 until October 2006, when he was terminated, Applicant has been gainfully employed since 1997. During his period of unemployment, he was forced to rely on his credit cards for necessary expenses. His lack of income made it difficult for him to remain current with his normal monthly payments, and some of those accounts became delinquent. Some were sent to collection, and some were "charged off." The evidence is sufficient to establish AG ¶¶ 19(a) and 19(c).

The guideline also includes examples of conditions that could mitigate security concerns arising from financial considerations. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." When "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., the loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances" is also potentially mitigating under AG ¶ 20(b). Evidence that "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" is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."¹⁰³ Also, AG ¶ 20(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" may apply.

¹⁰³ 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 [or statute of limitations]) 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)).

As noted above, the normal overriding concern pertaining to financial considerations in the security clearance context is that “[f]ailure 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. . . .” (emphasis supplied). To determine if an applicant is a person with poor self-control or possesses a lack of judgment, an analysis of the individual’s original and continuing intentions and actions is essential. In this instance, since his 2006 period of unemployment, Applicant’s financial history and actions reveals no evidence of poor self-control, lack of judgment, or an unwillingness to abide by rules and regulations. To the contrary, his sole goal was to obtain employment and satisfy his financial obligations. His efforts were responsible and disciplined. He immediately contacted each of his creditors to alert them of his status, but most of them declined to work with him. When he was able to do so, as early as mid-2007, well before the SOR was issued, he entered into repayment plans with creditors, avoided foreclosure on his residence, and paid off his first delinquent account. Several other repayment plans were likewise initiated, and additional accounts are either fully paid off, or will be shortly. The remaining accounts have either been corrected or are in the process of being addressed.

Considering the unusual circumstances of today’s economy in general, and the series of events involving Applicant’s financial obligations in particular, Applicant’s actions and his otherwise good financial status, there are clear indications that Applicant’s financial issues have been resolved and are now largely under control. The evidence establishes AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e), because the circumstances are unusual and unlikely to recur, and do not cast doubt on his reliability, trustworthiness, and good judgment.

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 common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a native-born American, not of Asian ancestry, who simply fell in love and married a citizen of PRC. He has such deep and longstanding family, military, financial, and employment relationships and loyalties in the U.S., he can be expected to resolve any conflict of interest in favor of the U.S. interest. His parents and blood-relatives are U.S. citizens, and all reside in the United States. His wife and he have resided together in the U.S. since 2003, and he has resided here his entire life, with the exception of the period during which he was serving on behalf of the U.S. Government in PRC. His values are U.S. values, and his wife is now in the process of making them her values as well, as she approaches U.S. naturalization. He served honorably with the U.S. Army and the U.S. Marine Corps, and worked for U.S. Government contractors, all the while holding a SECRET security clearance.

The Appeal Board has addressed a key element in the whole person analysis in financial cases stating:¹⁰⁴

In evaluating Guideline F cases, the Board has previously noted that the concept of “‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment of debts.” However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has “. . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan.” The Judge can reasonably consider the entirety of an applicant’s financial situation and his [or her] actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant became unemployed and his debts became delinquent. There is, however, simply no reason not to trust him. Moreover, he has established a “meaningful track record” of debt payments by actually paying some of his delinquent SOR debts, setting up arrangements with other remaining creditors, and setting up his personal plan to resolve his remaining debts. These factors show responsibility, rehabilitation, and mitigation.

¹⁰⁴ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has mitigated the security concerns arising under the guidelines for foreign influence and financial considerations.

Formal Findings

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

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	For Applicant
Subparagraph 2.f:	For Applicant
Subparagraph 2.g:	For Applicant
Subparagraph 2.h:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ROBERT ROBINSON GALES
Chief Administrative Judge