



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-11698
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gina L. Marine, Esquire, Department Counsel  
For Applicant: *Pro se*

June 15, 2010  
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**Decision**  
\_\_\_\_\_

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant’s spouse, father, brother, and parents-in-law are resident citizens of Vietnam as of January 2010. Applicant applied for his spouse to immigrate to the United States, but foreign influence concerns are not yet fully mitigated. Financial concerns raised by delinquent debt of about \$20,000, including a collection balance of \$17,169, are not mitigated. Applicant lacks the funds to resolve the debt in the near future and a longer track record of payments is required to demonstrate financial responsibility. Personal conduct concerns because of Applicant’s failure to disclose two old arrests, and any financial delinquencies, on his e-QIP are not established because he lacked the intent to conceal. Clearance is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on October 15, 2007. On July 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F, Financial Considerations, Guideline B, Foreign Influence, and Guideline E, Personal Conduct, that provided the basis for its preliminary

decision to deny him a security clearance. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense as of September 1, 2006.

Applicant responded to the SOR on September 29, 2009, and he requested a hearing on the Guideline E concerns.<sup>1</sup> On October 27, 2009, the case was assigned to me with a motion for administrative notice pending from the Government. On November 6, 2009, I scheduled a hearing for December 9, 2009.

I convened the hearing as scheduled. Six Government exhibits (Ex. 1-6) were admitted into evidence without an objection. Applicant submitted two exhibits (Ex. A-B) that were also entered without an objection, and he testified, as reflected in a transcript (Tr.) received on December 17, 2009. I also agreed to take administrative notice of pertinent facts about Vietnam.

At Applicant's request, I held the record open until December 30, 2009, for additional documentation. On December 18, 2009, Applicant timely submitted a record of the payments made on the loan debt in SOR 1.a, and his billing statements for another loan with the same bank (not alleged in SOR). The Government did not object, and the documents were marked and entered as Exhibits C and D, respectively.

## **Procedural and Evidentiary Rulings**

### **Request for Administrative Notice**

On October 22, 2009, Department Counsel requested administrative notice be taken of certain facts relating to the Socialist Republic of Vietnam (Vietnam) and its foreign relations, including with the United States. The request was based on publications from the U.S. State Department and the Congressional Research Service.<sup>2</sup> The government's formal request and the attached documents were not admitted into evidence but were included in the record.

On November 20, 2009, I notified the parties of my intention to take administrative notice of pertinent facts as requested by the Government, subject to

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<sup>1</sup>Applicant indicated he did not want a hearing on the Guideline F and Guideline B issues, but they were discussed during the hearing conducted on December 9, 2009.

<sup>2</sup>See *Country Reports on Human Rights Practices-2008: Vietnam*, Feb. 25, 2009, *Background Note: Vietnam*, Oct. 2009, *Country Specific Information: Vietnam*, Aug. 28, 2009, and *CRS Report for Congress: U.S.-Vietnam Relations in 2009: Current Issues and Implications for U.S. Policy*, Feb. 5, 2009. While a decision in this case was pending, the State Department issued updated information about Vietnam. See *2009 Human Rights Reports: Vietnam*, Mar. 11, 2010, and *Background Note: Vietnam*, May 27, 2010. A review of the updated information confirms the strong economic relationship between the United States and Vietnam as well as ongoing U.S. concerns about human rights abuses in Vietnam.

revision based on the evidence admitted at the hearing and any valid objections raised by Applicant. Before the introduction of any evidence at his hearing, Applicant indicated that he had no objections. I agreed to take administrative notice of particular facts pertaining to Vietnam and its relations with the United States, as set forth below.

### **Findings of Fact**

The SOR alleged under Guideline F, Financial Considerations, that Applicant owed a debt of \$16,921 in collection since about August 2007 (SOR 1.a). Under Guideline B, Foreign Influence, it was alleged that Applicant's spouse (SOR 2.a), father and brother (SOR 2.b), and his mother-in-law (SOR 2.c), are resident citizens of Vietnam, and that Applicant was in Vietnam from December 2006 through April 2007 to marry his spouse (SOR 2.d). Under Guideline E, Personal Conduct, Applicant was alleged to have deliberately falsified his October 2007 e-QIP by not disclosing a 1993 felony arrest for second degree burglary and criminal conspiracy (SOR 3.a), and a 1994 arrest for assault with a firearm on his person (SOR 3.b), and by not disclosing the loan debt in SOR 1.a in response to whether he was currently over 90 days delinquent on any debts (SOR 3.c).

Applicant admitted the allegations, although he clarified at his hearing that he did not intentionally lie about his arrest record. He explained that he had not known that there were any offenses on his record when he completed his e-QIP. (Tr. 55.) After considering the pleadings, transcript, and exhibits, I make the following findings of fact.

Applicant was born in Vietnam in August 1973.<sup>3</sup> (Ex. 1.) He left Vietnam for the Phillipines as a refugee when he was nine or ten with his grandmother and some aunts and uncles. (Tr. 131-32.) Applicant's parents and two brothers remained in Vietnam. While Applicant was living in a refugee camp in the Phillipines, he was adopted by a couple in the United States. His grandmother immigrated separately to the United States, and eventually Applicant went to live with her. (Tr. 134-35.) Before junior high school, Applicant moved in with an aunt and uncle. He stayed with them until he graduated from high school in June 1993. (Tr. 136.) In May 1993, Applicant was arrested for second degree burglary and criminal conspiracy. He lent his vehicle to a friend to buy beer. Sometime later, as Applicant was driving this friend home, they were pulled over and the police found stolen property in the vehicle. The charges against Applicant were later amended to receiving known stolen property and dismissed.<sup>4</sup>

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<sup>3</sup>Applicant apparently was born in what was then the Republic of Vietnam (South Vietnam). He married his current spouse in a city south of Ho Chi Minh City (formerly Saigon). (Ex. A.)

<sup>4</sup>The Government presented no police or court documents to shed light on the particular criminal statutes at issue. Under Section 461 of the state's penal code, burglary in the second degree is punishable by imprisonment in the county jail not exceeding one year or in the state prison. Section 496 pertinent to receiving stolen property states as follows:

(a) Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be

Applicant denies knowing that there was any stolen property in his vehicle or that he had been charged with a felony offense. (Ex. 3, Tr. 111.)

After high school, Applicant attended a junior college for about 18 months. (Tr. 136.) In November 1993, he became a naturalized U.S. citizen. (Ex. 1.) In July 1994, he was working at a movie theater when he got involved in an argument with a coworker, whom Applicant felt was not doing his share of the cleaning duties. Applicant threatened the coworker, who complained to the police that Applicant had assaulted him with a firearm. Applicant denies he had a firearm or other weapon on him (Ex. 3, Tr. 112-13), and the available record does not show otherwise.

In about July 1995, Applicant moved to his current state of residence. (Ex. 1, Tr. 137-38.) In May 1997, he began working as a machinist for a local company. (Ex. 1, A.) In August 1997, Applicant was issued his U.S. passport. (Ex. A.) Sometime before 2000, Applicant's mother emigrated from Vietnam to the United States under Applicant's sponsorship. Applicant's parents were separated, and his father did not want to immigrate to the United States (Tr. 138.), so Applicant traveled to Vietnam to visit his father about once a year. (Tr. 129.) Applicant's mother acquired U.S. citizenship through naturalization in June 2005. (Ex. 1.)

In mid-2005, Applicant, who was married to his first wife at the time,<sup>5</sup> began corresponding via the Internet with a Vietnamese farmer, who would eventually become his second wife. As their friendship progressed, they had once weekly contact by telephone. (Ex. A.) Around late 2005 or early 2006, the elder of Applicant's two brothers in Vietnam passed away, leaving a spouse and two small children. (Tr. 69, 125.) Applicant traveled to Vietnam in January 2006. He paid for the trip with savings from his employment in the United States. (Tr. 87-88.) Applicant arranged to meet his future spouse at her sister's home in Vietnam in February 2006. (Ex. A.) He gave his father and brother's widow some money before he left. (Tr. 124-25.)

After Applicant returned to the United States in late February 2006, Applicant and his future spouse had telephone contact on average three times per week. (Ex. A.) By about the fall of 2006, they were discussing marriage. Planning a trip to Vietnam to propose in December 2006, Applicant took out a loan from a bank in the U.S. in September 2006 (SOR 1.a) to pay for his trip and to provide financial support for his relatives in Vietnam. He recalls the original loan amount was \$10,000 (Tr. 71, 74, 77-

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punished by imprisonment in a state prison, or in a county jail for not more than one year. However, if the district attorney or the grand jury determines that this action would be in the interests of justice, the district attorney or the grand jury, as the case may be, may, if the value of the property does not exceed nine hundred fifty dollars (\$950), specify in the accusatory pleading that the offense shall be a misdemeanor, punishable only by imprisonment in a county jail not exceeding one year. A principal in the actual theft of the property may be convicted pursuant to this section. However, no person may be convicted both pursuant to this section and of the theft of the same property.

<sup>5</sup>According to the I-130 petition that Applicant filed for his current spouse to immigrate to the United States, his first marriage ended in divorce in November 2005. Applicant married his first wife in Vietnam in April 1998, and had sponsored his first wife's immigration to the United States in March 1999. (Ex. A.)

78), although available credit reports show a high credit of \$15,620. (Ex. 4, 5, 6.) In October 2006, he borrowed \$3,000 from a \$3,500 line of credit. (Ex. D.) In November 2006, Applicant was laid off from the job he had held for nine years. (Ex. 1, A.) Applicant collected \$488 per week in unemployment compensation for four weeks until he traveled to Vietnam in December 2006 to propose marriage. (Ex. A.) He testified he made payments on both loans until he lost his job (Tr. 79.), although he had taken out the line of credit only the month before.

Applicant and his spouse celebrated a traditional wedding in Vietnam in late December 2006, with both families present. It took three months to register their marriage with civil authorities in Vietnam.<sup>6</sup> (Ex. 1, A.) From late December until he returned to the United States in April 2007, Applicant stayed with his spouse at her family's home for the most part. (Ex. A.) He spent \$8,200 on his wedding, and \$1,200 for his plane ticket, but gave a substantial portion of the money he borrowed from the U.S. banks to his relatives in Vietnam. (Tr. 77-78.) On May 2, 2007, Applicant applied for his spouse to immigrate to the United States. (Ex. A.)

Applicant made no payments on his loans when he was in Vietnam, and in February 2007, the lender identified in SOR 1.a placed a delinquent balance of \$15,620 for collection. He paid \$445 on the line of credit debt on April 25, 2007 (Ex. D.), but he was out of work collecting unemployment at \$445 per week, so he made no further payments. His account was past due in the amount of \$356 as of October 2007. (Ex. 4, 5, 6. D.)

In October 2007, Applicant began working for his present employer, a defense contractor, as an assembler at an hourly wage of about \$11. (Ex. 1, Tr. 66.) Applicant was asked by his employer to complete an e-QIP, which he assumed was for his employment. He did not fully appreciate that it was for a security clearance. (Tr. 95, 107.) On his October 15, 2007, e-QIP, Applicant disclosed that his father, brother, and spouse were resident citizens of Vietnam, and that he had traveled to Vietnam for pleasure from December 2006 to April 2007. Applicant responded negatively to the police record inquiries, including whether he had ever been charged with or convicted of any felony offense, and whether he had been charged with or convicted of a firearms or explosives offense. He also answered "No" to the financial delinquency questions about whether he had been over 180 days delinquent on any debts within the last seven years, and whether he was currently over 90 days delinquent on any debts. Applicant believed he had been charged with misdemeanor offenses in the two incidents in the early 1990s (Tr. 111, 116), did not have a firearm on him when he threatened his coworker in 1994 (Tr. 112.), and that he did not owe a past due balance that would fall within the scope of the inquiries since he planned to pay back the bank (Tr. 110-11.). Applicant was granted an interim Confidential security clearance. (Tr. 103.)

Applicant began making the monthly minimum payments of \$89 on his line of credit account (not alleged in SOR) in late November 2007, but late fees continued to

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<sup>6</sup>Applicant indicated on his e-QIP that they married in March 2007, which was the date the Vietnamese authorities registered their marriage.

accumulate. Payments made of \$89 in January and February 2008 were returned due to insufficient funds. While he continued to pay \$89 on the account, a late fee of \$49 was added each month because his account was past due. In late June 2008, he began paying \$100 per month on the account, which was \$5 less than the current payment due. He was notified in January 2009 that his account was scheduled to be written off because it was \$603 past due. As of February 2009, his account was considered current, although there is no evidence that he paid the past due balance. As of August 2009, his account was \$25 past due because he had been paying \$100 each month when the current payment due was \$105. He brought the account current in September 2009, and increased his monthly payment thereafter to \$105. As of November 2009, the balance on the account was \$3,284.30. In December 2009, he authorized the lender to automatically debit \$105 from his account each month through November 2010. (Ex. D.)

On January 10, 2008, Applicant was interviewed by a government investigator about the debt in SOR 1.a. He acknowledged that he had stopped making payments on the account, but he denied it was in collection. He related that he just began making \$90 payments on the loan, which he was unaware had to be disclosed on his e-QIP. (Ex. 2.) At his hearing, Applicant testified that he was making \$50 and \$100 payments on his two accounts (debt in SOR 1.a and credit line) when he got his job with his current employer, and that in December 2009, he increased his monthly payment to where he was paying \$100 on both loans. (Tr. 80-82.) The collection agency's summary of payments on the account in SOR 1.a shows \$50 monthly payments only in 2009. (Ex. C.) As of December 10, 2009, his account had a collection balance of \$17,169.65. (Ex. C.)

On July 18, 2008, Applicant was interviewed about his family members in Vietnam. He indicated he had daily telephone contact with his spouse, who is a rice farmer, and he was saving the funds to bring her to the United States. Applicant telephoned his father, who worked as a taxi driver, once every two or three months. He had heard that his brother was traveling to Cambodia for work, but their contact was limited to once or twice a year. As for his in-laws, Applicant did not mention his father-in-law, but he indicated that his mother-in-law was a homemaker and resided with Applicant's spouse. Applicant expressed no problems or difficulties with Vietnamese authorities during his stay in the country from December 2006 through April 2007. In February 2009, Applicant provided DOHA with the full names of his parents-in-law. (Ex. 2.)

On July 24, 2008, U.S. immigration notified Applicant that he had to complete an affidavit of financial support in order to continue processing the visa petition for his spouse. In January 2009, Applicant submitted a letter from his current employer attesting to his full-time employment at an annual income of \$28,579.20. On January 14, 2009, U.S. consular officials in Vietnam denied an immigrant visa to Applicant's spouse because of inadequate documentation showing the spousal relationship and a detailed chronology (time line) of their relationship. Applicant provided a copy of his marriage certificate, but his notarized statement contained insufficient detail to grant the visa. On July 11, 2009, he submitted additional documentation, including a more detailed chronology of his relationship with his spouse (Ex. A.), and she was interviewed

by U.S. Consular officials in Vietnam in the summer of 2009. As of December 2009, he was awaiting a decision from U.S. immigration on his visa petition for his spouse's immigration. (Tr. 141.)

As of mid-December 2009, Applicant's spouse was still residing in Vietnam with her parents. Applicant had daily telephone contact with his wife. Her father was employed as a rice farmer. Applicant's spouse has two sisters, one of whom had recently immigrated to the United States. (Tr. 118-22). In late November or early December 2009, Applicant sent his spouse \$400. (Tr. 127.) Applicant has not been in Vietnam since 2007. (Tr. 140.) His spouse and her parents have never traveled to the United States. (Tr. 127.)

Applicant sends his father money when he can afford to do so. (Tr. 124.) Applicant's father works at a construction site as a type of security guard after work hours. (Tr. 140.) In early November 2009, he sent his father \$200, which Applicant's father and brother were to share if his brother was around. (Tr. 126-27.) As of December 2009, Applicant's mother was a U.S. resident citizen. Applicant had not spoken to his mother in over a year after they argued. (Tr. 123, 139.) His mother sponsored his brother for immigration to the United States and was waiting for official action on the petition. (Tr. 139.)

Applicant has no financial assets in Vietnam. (Tr. 128.) As of December 2009, he had about \$100 in his checking account and \$800 in savings in the United States. (Tr. 83.) His currently hourly wage is \$16.18. (Tr. 64.)

Applicant has been a productive employer for the defense contractor, initially as an assembler, then in the materials' department. (Tr. 64-65.) Applicant learned quickly on the job, and was able to work independently within a short period of time. In the opinion of a support engineer who acted as his supervisor on occasion, Applicant outperformed his coworkers during the year that he was employed in the materials' area. In July 2009, Applicant's interim clearance was withdrawn on issuance of the SOR (Tr. 143-44), and he was transferred to the facilities operation department where he did not require a security clearance for his duties. Applicant continued to demonstrate favorable work ethic and attention to detail. He has the support of supervisory personnel and coworkers, who have found him to be a conscientious worker and good team member. (Ex. B)

Concerning facts for administrative notice, Vietnam is single party, constitutional republic ruled by the Communist Party of Vietnam. Adherence to ideological orthodoxy has become less important than economic development, but the Vietnamese government holds a tight rein over most sectors of the economy through large state-owned economic enterprises and much of the banking system. China reestablished full diplomatic ties with Vietnam in 1991, and China remains its largest trading partner, although tensions have periodically flared between the two countries over maritime claims in the South China Sea.

Vietnam has made a concerted effort to adjust its foreign relations to reflect the evolving international economic and political situation in Southeast Asia. Vietnam is a member of the World Bank, the International Monetary Fund, the Asian Development Bank, and the Association of Southeast Asian Nations. The United States formally recognized diplomatic relations with Vietnam in July 1995, and relations between the countries have become increasingly cooperative and broad-based. In December 2006, the United States granted Vietnam unconditional normal trade relations status, and the United States is now Vietnam's second largest trading partner. The United States and Vietnam engage in a wide range of cooperative activities in the areas of peacekeeping, humanitarian assistance and disaster relief, search and rescue, maritime and border security, law enforcement, and non proliferation. Vietnam is one of the largest recipients of U.S. assistance in East Asia.

The two countries hold an annual dialogue on human rights, although tensions remain regarding some human rights issues. Vietnam permits most forms of personal and religious expression while repressing individuals and organizations it deems a threat to the Communist Party's monopoly on power. Suppression of political dissent in Vietnam has been criticized by successive U.S. administrations. The Vietnamese government continues to prohibit its citizens from changing their government. Several political activists were arrested in 2008, and prominent newspaper editors and reporters were fired for reporting on official corruption. Individuals continued to be detained arbitrarily for political activities, and denied the right to fair and expeditious trials, although in 2009, the central government granted amnesty to approximately 20,000 prisoners, most of whom had ordinary criminal convictions. The amnesty in advance of the Tet holiday included a well-known journalist, a democratic party activist, and a land rights protester, but several high-profile dissidents remained in prison. Corruption among the police at all levels remains a significant problem.

In 2009, the government continued to limit citizens' privacy rights and tightened controls over the press and freedom of speech, assembly, movement, and association. Control over media content is ensured through pervasive self-censorship, backed by the threat of dismissal and possible arrest. Vietnam's Ministry of Public Security, which is responsible for internal security in the country, maintains a system of household registration and block wardens to monitor the population. While the system has generally become less intrusive, it is used to monitor those suspected of engaging in unauthorized political activity. Police ignored laws against forced entry into homes, and removed personal computers, cell phones, and other materials from homes of prominent dissidents. Government authorities opened and censored targeted persons' mail, confiscated packages and letters, monitored telephone conversations, e-mail, text messages, and fax transmissions, and cut the telephone lines and interrupted cellular phone and Internet service of some political activists and their family members.

Internet access is permitted only through a limited number of state-owned Internet service providers. Firms such as cyber-cafes are required to register the personal information of their customers and store records of Internet sites visited by customers. However, not all such businesses were in compliance. The Vietnamese



government used firewalls to block some web sites that it deemed politically or culturally inappropriate.

The Vietnamese government requires foreign passport holders to register to stay in private homes, although in 2009, there were no known cases of local authorities refusing to allow foreign visitors to stay with friends and family. Citizens must register with local police when staying overnight in any location outside of their own homes. Foreign visitors are required to register their stay in hotels with the local police. Citizens who had emigrated abroad are generally permitted to return to visit Vietnam, except in the case of certain activists living abroad. By law, the government considers anyone born to at least one Vietnamese citizen to be a citizen of Vietnam. Emigrants who acquire another country's citizenship are generally considered Vietnamese citizens unless they formally renounce their Vietnamese citizenship. In 2008, the country passed legislation allowing for dual citizenship, and the trend liberalizing travel restrictions for overseas Vietnamese continued in 2009. U.S. citizens in Vietnam have been detained and arrested for political activities (including criticizing the government or advocating alternatives to Communist Party rule). Despite a 1994 agreement between the United States and Vietnam that provides for the immediate notification of and reciprocal access within 96 hours to each other's detained citizens, U.S. consular officers are rarely notified in a timely manner when a U.S. citizen is arrested or detained, especially when the Vietnamese government considers the person to be a Vietnamese citizen.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under

Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion when seeking to obtain a favorable security decision.

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. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about the potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Financial Considerations**

The security concern for finances 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.

Applicant took out two loans, including the debt in SOR 1.a, to pay for a trip to Vietnam from December 2006 until late April 2007. He testified that he made payments on both loans before he lost his job in November 2006 (Tr. 79.). Assuming that he made a couple of payments on the debt in SOR 1.a, he allowed both loans to become seriously delinquent while he was in Vietnam from December 2006 until late April 2007. The debt in SOR 1.a was placed for collection with a balance of \$15,620. Billing records of the line of credit account (not alleged in the SOR) show the account as \$445 past due as of May 2007. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Concerning the potentially mitigating conditions, AG ¶ 20(a), “the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment,” does not apply, given the recency of the delinquencies. While he paid the \$445 past due balance on the line of credit account in April 2007, the account was again past due as of January 2009, in the amount of \$603.

(Ex. D.) He presented no proof of payments on the debt in SOR 1.a before January 2009. (See Ex. C.).

AG ¶ 20(b), “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation),” applies in the absence of any evidence that Applicant knew he was going to be laid off in November 2006 when he took out the large loan to travel to Vietnam for his proposal and wedding. He was also unemployed after he returned from Vietnam until October 2007. While one has to question his expenditure of \$8,200 in borrowed funds for a wedding in Vietnam when he did not have a job to return to in the United States, he does not exhibit a pattern of spending beyond his means. Low income when he started with the defense contractor (about \$11 an hour) explains his failure to address the debt in SOR 1.a in a timely manner.

AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” is pertinent because he started repaying the credit line debt at \$89 per month in late November 2007. While the payments on his account in late January 2008, in early February 2008, and July 2008, were returned, he continued to make monthly payments of at least \$100 per month. None of the subsequent payments were returned. As of mid-February 2009, the creditor no longer reported his account as past due. Around January 2009, he had made repayment arrangements with the creditor in SOR 1.a to repay that debt at \$50 per month, and as reflected in Exhibit C, those promised payments were made.

Despite these payments, the balances of the two loans have not been reduced below their original obligations because of late and over limit fees, interest on the unpaid balances, and in the case of the loan on his line of credit, returned check charges. As of December 2009, he owed \$17,169.65 on the debt in SOR 1.a and about \$3,000 on the line of credit account. Given his promised payments of \$105 monthly on the line of credit debt, and \$50 monthly on the debt in SOR 1.a, the debts are not likely to be resolved in the near future. AG ¶ 20(c), “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control,” does not require that debts be paid in full, but it would be premature to apply AG ¶ 20(c) given his income and the debt balance. Should Applicant continue to make his monthly payments, he may be able to mitigate the financial concerns when he is again eligible to apply for a security clearance one year from the date of this decision.

## **Foreign Influence**

The security concern 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.

Applicant immigrated to the United States as a child from his native Vietnam. Despite his consistent residency, citizenship, education, and employment in the United States, he maintains strong ties to family members in Vietnam. He provides financial support to his father. He visited him about once a year up until his latest trip in December 2006. After the elder of his two brothers in Vietnam passed away, Applicant traveled to Vietnam in January 2006 and gave his brother's widow some money as well. Applicant began corresponding with a Vietnamese national by Internet, met her in person for the first time in February 2006, and returned to Vietnam to marry her in December 2006. He borrowed substantial sums in the United States to travel to Vietnam, pay for his wedding, and support his father and spouse in Vietnam. Since he returned to the United States in April 2007, Applicant has maintained regular telephone contact with his spouse and with his father. Applicant's ties to his native Vietnam are significant, and 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," applies.

Applicant testified that in 2006, he rented a hotel room and brought his family members to stay with him there. (Tr. 129.) The U.S. State Department reports that hotels in Vietnam require that foreigners present their passports upon check-in so that their stay can be registered with the local police, and that every guest in a hotel room must be registered.<sup>7</sup> There is no evidence that Applicant encountered any difficulties with Vietnamese authorities, including customs or law enforcement, during his trips to Vietnam. AG ¶ 7(i), "conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country," applies because his contacts with his family members (spouse, father, brother when available, parents-in-law) in Vietnam, which includes recent and ongoing financial support, raise the risk of undue foreign influence, but those contacts are more aptly covered under AG ¶ 7(a).

Mitigating condition AG ¶ 8(a), "the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.," cannot be fully applied. There is nothing about the positions or activities of Applicant's father, brother, spouse, or in-laws, that raise concerns of foreign influence. As of July 2008, Applicant's father was driving a taxi in Vietnam. By December 2009, he was working in security at a

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<sup>7</sup>See *Vietnam, Country Specific Information*, Aug. 28, 2009.

construction site. Applicant's brother was working in Cambodia for a stepfather. Applicant's spouse and her father were rice farmers, while her mother was a homemaker. None of Applicant's or his spouse's family members (including her three siblings, one of whom recently moved to the United States) had any known connections to the Vietnamese government or military. That said, common sense suggests that the stronger the ties of affection or obligation to foreign nationals, the more vulnerable a person is to being manipulated or influenced. The closeness of the spousal and paternal bonds make it more, rather than less, likely that Applicant will be placed in an untenable position of having to choose between the interests of these foreign family members and the interests of the United States. Moreover, while relations between Vietnam and the United States have improved considerably since the mid-1990s, the risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, or a record of human rights abuses. Vietnam is a one-party state with power concentrated in the Communist Party. Although there has been a favorable trend toward more religious freedom in Vietnam, the government continues to suppress political dissent and challenges to its authority, to detain persons arbitrarily, to control public access to information through the Internet and the press, and to monitor and interfere with correspondence of targeted individuals. While there is no indication that Vietnamese authorities have targeted Applicant's relatives or Applicant during his stay there, registration requirements for foreign visitors and Vietnamese citizens make it easier for the government to monitor and track activities and associations.

As of the close of the record in January 2010, Applicant's spouse had not been approved to immigrate to the United States. A grant of her visa would lessen, but not eliminate, the foreign influence concerns. In addition to the bonds with his father, who does not want to immigrate to the United States, Applicant would also still be at risk through his spouse's bond with her parents in Vietnam. See AG ¶ 7(d) (stating, "*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.*"). Should his spouse join him in the United States, she is likely to contact her parents out of affection and for reassurance as she attempts to familiarize herself with a foreign culture while Applicant is at work. Applicant testified that his spouse and her parents had never been to the United States. (Tr. 127.)

Furthermore, while Applicant has been a law-abiding citizen of the U.S. for the past 15 years, I cannot apply AG ¶ 8(b), "there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest." Applicant's loyalties to his relatives in Vietnam cannot reasonably be characterized as minimal. Even though all of his financial assets, most notably his employment income, are in the United States, his strongest personal relations appear to be in Vietnam. Applicant sponsored his mother's U.S. immigration, but he and his mother argued and they have not been on speaking terms in over a year. Both of his marriages were to Vietnamese native citizens in Vietnam.

Applicant has not returned to Vietnam while his petition for his spouse's immigration has been pending U.S. approval. He speaks with his brother only if his brother happens to be around when he calls his father. But the frequency of his communications with his spouse and his father do not permit application of AG ¶ 8(c), "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation." The foreign influence concerns are not sufficiently mitigated.

## **Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is the failure to provide truthful and candid answers during the security clearance process or other failure to cooperate with the security clearance process.

Applicant did not disclose any arrests or financial delinquencies on his October 2007 e-QIP. The Government submits that Applicant was required to disclose that he had been charged with second degree burglary, and with criminal conspiracy in about 1993, in response to question 23.a regarding any felony charges (SOR 3.a). Applicant expressed his belief that he was arrested for minor or misdemeanor offenses, which would have fallen outside of the scope of question 23. The Government cited no statutory authority, and presented no arrest or court records, that would substantiate its assertion that Applicant was charged with a felony offense. The state's penal code provision covering second degree burglary does not specifically characterize the offense as a felony or misdemeanor. The charges were later amended to a single count of receiving stolen property, which carries a similar penalty to second degree burglary, i.e., imprisonment in county jail not exceeding one year or in state prison. But the penal code also provides that if the value of the stolen property does not exceed \$950, the crime may be a misdemeanor, punishable only by imprisonment in county jail not exceeding one year. Based on the record before me for review, I find that the Government did not establish its case for knowing falsification of question 23.a.

Concerning Applicant's alleged failure to disclose his arrest in 1994 for assault with a firearm in response to question 23.b ("Have you ever been charged with or convicted of a firearms or explosives offense?") (SOR 3.b), the Government presented only Applicant's accounts of the incident to substantiate its case for knowingly falsification. In response to DOHA interrogatories, and at his hearing Applicant denied that he had a firearm. In the absence of credible evidence contradicting Applicant's denial, I cannot find a knowing and willful falsification of question 23.b.

The evidence shows that Applicant was more than 90 days delinquent on the debt in SOR 1.a when he completed his e-QIP in October 2007 (SOR 3.c), so the debt should have been disclosed on his security clearance application in response to

question 28.b. Applicant testified that since he was repaying the bank, he did not realize that he was required to list the debt. The record does not substantiate that he made payments on that loan before 2009. As for the other loan from his line of credit account, he made one payment of \$445 in late April 2007, but he was over 90 days past due as of October 2007. When he was interviewed on January 10, 2008, Applicant indicated that he stopped payment on the debt in SOR 1.a about seven months before his interview, which would correspond to the record of payments on the credit line loan. While he has failed to differentiate between the two loans at times, he knew that he had not made any payments to the bank during the summer and into the fall of 2007 when he was unemployed. His full-time employment in October 2007 was likely the impetus for him resuming payments to the bank in late November 2007, as reflected in Exhibit D.

However, it is unclear whether he understood that he was required to disclose that debt in response to question 28.b. During his January 2008 interview, he indicated that he did not realize that he had to list the debt. He intended to repay his loans to the bank as soon as he was able, and he resumed paying on the credit line loan the month after he started working for the defense contractor. Applicant was not familiar with the security clearance process, as evidenced by his belief that he completed the form for his employment and not for a security clearance. He also discussed the debts during his interview in January 2008, and asserted then that he was unaware that he had to list the debt on his e-QIP. I conclude he lacked the knowing and willful intent that would warrant application of AG ¶ 16(a), “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.” AG ¶ 17(f), “the information was unsubstantiated or from a source of questionable reliability,” applies to the issue of whether Applicant had the intent to conceal.

### **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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).<sup>8</sup> Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

Work references are consistent in extolling Applicant’s contributions on the job, his ability to work independently, and his value as a team member. But they are not

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<sup>8</sup>These factors are: (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.

sufficient to overcome the foreign influence concerns that exist because of his strong bonds to his spouse, father, and other Vietnamese resident citizens. He is indebted about \$20,000 on two bank loans that he obtained to travel to Vietnam to propose to his current wife, to pay for his wedding, and to support his family members (spouse and father primarily) in Vietnam. The loan amounts were sizeable in relation to his income and available assets. While he may not have foreseen the loss of his employment, it was his decision to continue with his plan to propose to his spouse in Vietnam, and within weeks, they had a ceremony that cost him about \$8,200. He made no effort to pay on his loans while he was in Vietnam, and gave his family members the balance remaining after he paid for his travel and wedding. After he returned to the United States in April 2007, he applied for his spouse to immigrate to the United States, but approval has been delayed in part because he did not adequately document his relationship with her. He also showed questionable judgment in making three payments on his loans in 2008 when he apparently did not have the funds to cover the amounts.

Applicant made regular, monthly payments on both loans in 2009, and he provided U.S. Consular officials with information that may lead to an approval of his spouse's immigration. But without more progress toward reduction of the debt, and without sufficiently strong ties in the United States to counter the foreign influence concerns, I am unable at this time to find that it is clearly consistent with the national interest to grant Applicant access to classified information. Certainly, relations between the United States and Vietnam have improved, especially in trade and economic issues. Yet, even the best of allies do not always share the same interests, and Applicant has not persuaded me that he can be counted on to make decisions free of any concern for his relatives in Vietnam.

### **Formal Findings**

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

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



## **Conclusion**

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

Elizabeth M. Matchinski  
Administrative Judge