



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-12020
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Nicole Noel, Esquire, Department Counsel
For Applicant: *Pro Se*

November 20, 2009

Decision

HARVEY, Mark, Administrative Judge:

In 1971, Applicant was born in Afghanistan. In 1987, Applicant's father brought him to the United States, and in 2002, he became a U.S. citizen. His son, father, sister and brother are U.S. citizens. Applicant returned to Afghanistan, and assisted U.S. combat forces as a translator and liaison for six months. An Army Lieutenant Colonel who worked with Applicant in Afghanistan lauded his duty performance, bravery, and contributions to mission accomplishment. Applicant wishes to return to Afghanistan as a translator. He has significantly greater contacts with the United States than with Afghanistan. He can be expected to resolve any conflict of interest in favor of U.S. interests.

In January 2008, Applicant became unemployed due to the decline in his mortgage and real estate business. He was the victim of a massive fraud. He was unable to pay seven debts listed in the statement of reasons (SOR); however, he acted responsibly under the circumstances. He credibly promised to pay his delinquent debts when he receives adequate employment. Foreign influence and financial considerations security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On January 29, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) (SF-86) (Government Exhibit (GE) 1). On May 8, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, alleging security concerns under Guidelines F (Financial Considerations) and B (Foreign Influence) (Hearing Exhibit (HE) 2). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On May 20, 2009, Applicant responded to the SOR and requested a hearing before an administrative judge (HE 3). On June 16, 2009, Department Counsel was prepared to proceed. On June 19, 2009, DOHA assigned the case to me. On July 8, 2009, DOHA issued a hearing notice (HE 1). On August 11, 2009, the hearing was held. At the hearing, Department Counsel offered five exhibits (GE 1-5) (Transcript (Tr.) 28), and Applicant offered eight documents (AE A-H)¹ and one book (AE I) (Tr. 22-31). There were no objections, and I admitted GE 1-5 and AE A-I (Tr. 26-31). I received the transcript on August 19, 2009. On September 4, 2009, Department Counsel forwarded six additional exhibits she received from Applicant (AE J-O). There were no objections (HE 5), and I admitted AE J-O.

Procedural Ruling

Department Counsel requested administrative notice (AN) of facts concerning Afghanistan (Tr. 31; HE 4, AN Request). Department Counsel provided supporting documents to show detail and context for these facts (HE 4, Ex. I to VIII). Applicant did not object, and I granted Department Counsel's request (Tr. 31).

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

¹ At the hearing, Applicant's exhibits were pre-marked AE A with Attachments 1-7 (Tr. 20-23). After the hearing I re-marked them as AE A-H.

Findings of Fact²

Applicant's response to the SOR admitted the allegations in ¶¶ 1.a to 1.j, and 2.c to 2.g (HE 3). He denied the SOR allegations in ¶¶ 2.a and 2.b (HE 3). His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 38-year-old employee of a government contractor who is seeking a security clearance (Tr. 6-7). He married in 2000, and his divorce was final in 2008 (Tr. 32, 56). He has an eight-year-old son; however, he is not required to pay child support because he is underemployed (Tr. 33-34). The family court will establish his child support requirement after he is re-employed (Tr. 33-34). He has the equivalent of an associate's degree in political science (Tr. 7, 33).

Financial Considerations

From September 2002 to December 2007, Applicant was self-employed in the mortgage and banking industry (Tr. 21-22, 35-36; GE 1). Applicant went to Afghanistan for about six months in 2004 to 2005 (Tr. 22). After he returned from Afghanistan, he discovered an employee had defrauded his business in 2004 (Tr. 22-23).³ The employee created a "shell company" and forged Applicant's signature on loan documents (AE C). The employee defrauded Applicant and banks or mortgage companies of hundreds of thousands of dollars (AE C).

Applicant spent tens of thousands of dollars attempting to resolve the allegations of fraud (Tr. 22). The employee who committed the thefts and forgeries was indicted, and Applicant is listed as the victim of the forgery in one of the counts of the indictment (Tr. 22; AE C). An August 5, 2009, letter from a deputy district attorney (DDA) indicates Applicant is the victim of forgery and his cooperation and assistance resulted in the felony conviction of the perpetrator (AE C).⁴ During the course of mediation, the employee who defrauded Applicant accepted responsibility for one of the debts generated during the fraud (Tr. 80-81; AE L). The DDA suggested that Applicant use the fraud conviction to obtain judgments against the person who defrauded him for any debts generated by the fraud (Tr. 81).

²The facts in this decision do not specifically describe employment, names of witnesses, names of other groups or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information. Applicant's opening statement was admitted as an exhibit and as substantive evidence (Tr. 27).

³The indictment indicates one theft of mortgage-related funds occurred September 23-30, 2004 (AE C).

⁴Department Counsel agreed with Applicant that Applicant was exonerated from a mortgage-fraud allegation, and credited him with continuing to work with the district attorney's office to bring the criminals to justice (Tr. 18).

Applicant's mortgage and real estate business was barely breaking even in 2006 and throughout 2007 (Tr. 35-36). He was unemployed starting in December 2007. He decided to seek employment as a translator and cultural advisor in January 2008 (GE 1). After he learned his security clearance was not being approved in December 2008 or January 2009, he obtained employment earning \$500 a month by taking care of elderly persons at their homes (Tr. 24, 34-35). He lives with a relative and pays monthly rent of \$300 (Tr. 71).

Applicant's SOR debts

Applicant's SOR listed ten delinquent debts totaling \$64,418 as follows: ¶ 1.a (judgment—\$7,610); ¶ 1.b (tax lien—\$3,230); ¶ 1.c (collection account—\$474); ¶ 1.d (collection account—\$269); ¶ 1.e (collection account—\$166); ¶ 1.f (repossession—\$34,000); ¶ 1.g (2007 judgment for fraud—\$17,500); ¶ 1.h (collection account—\$171); ¶ 1.i (collection account—\$599); and ¶ 1.j (collection account—\$399). His SOR response (HE 3) admitted all debts.

SOR ¶ 1.a (judgment—\$7,610)—UNRESOLVED. Applicant admitted he was responsible for this debt in his SOR response (HE 3; GE 3). The judgment was filed in November 2006 (GE 2 at 28). At the hearing, he said he was unfamiliar with this debt (GE 3).

SOR ¶ 1.b (tax lien—\$3,230)—PAYMENT PLAN. Applicant owed the state taxing authority \$3,230 (Tr. 42; SOR ¶ 1.b). On March 30, 2008, he promised to pay the state \$100 per month (AE F at 1, 4). He did not make any payments to the state because of underemployment and unemployment (Tr. 43-44).

SOR ¶ 1.c (collection account—\$474)—PAID. On March 11, 2008, he paid the creditor in SOR ¶ 1.c \$377 (Tr. 44-45; AE D at 10-12). The creditor responded that he still owed \$11 to the creditor (Tr. 44-45; AE D at 10-12).

SOR ¶ 1.d (collection account—\$269)—PAID. Applicant listed the debt in SOR ¶ 1.d (\$269) on his SF-86 at Section 28, Item 6 (GE 1; GE 2 at 24). On March 21, 2008, he paid the last \$151 owed on this account, and the creditor indicated the account was paid (Tr. 45-46; AE D at 15; AE N).

SOR ¶ 1.e (collection account—\$166)—PAYMENT PLAN. Applicant was unable to pay the debt because of unemployment (Tr. 46).

SOR ¶ 1.f (repossession—\$34,000)—SETTLEMENT PROPOSED. Applicant borrowed \$43,000 to purchase a Toyota in June 2005 (GE 2 at 14). The monthly payment was \$943 (GE 2 at 14). He made his last payment in November 2007, and his vehicle was repossessed (GE 2 at 14). Applicant disputed the amount of the debt (GE 2 at 27; GE 3 at 9). The creditor offered to settle the debt for \$17,000; however, Applicant was unable to pay the debt due to unemployment (Tr. 48).

SOR ¶ 1.g (2007 judgment for fraud—\$17,500)—DISPUTED. The employee who defrauded Applicant has taken responsibility for paying off one debt; however, he has not actually paid it (Tr. 48-49, 80-81; AE C; AE L). The debt he agreed to pay is not necessarily the debt is SOR ¶ 1.g.

SOR ¶ 1.h (collection account—\$171)—UNRESOLVED. Applicant admitted he was responsible for this debt in his SOR response (HE 3; GE 3). A February 21, 2008, credit report listed this debt as “disputed under reinvestigation” (GE 3 at 5). At his hearing, Applicant said he was unfamiliar with this debt (Tr. 53-55; GE 3).

SOR ¶ 1.i (collection account—\$599)—UNRESOLVED. Applicant admitted he was responsible for this debt in his SOR response (HE 3; GE 3). A February 21, 2008, credit report shows the last act on account was in February 2008, and the account was transferred to the collection company from a bank (GE 3 at 8-9). At his hearing, Applicant said he was unfamiliar with this debt (Tr. 55; GE 3).

SOR ¶ 1.j (collection account—\$399)—PAID. On November 13, 2007, Applicant paid the \$399 telecommunications debt (Tr. 55; AE D at 4; Section 28, Item 3, SF-86; SOR ¶ 1.j).

Non-SOR debts. Applicant paid a debt of \$427 on April 9, 2008 (AE D at 3; GE 1, Section 28, Item 8, SF-86). On March 25, 2008, he paid a \$910 debt (AE D at 5; GE 1, Section 28, Item 10, SF-86; AE D at 5). On March 27, 2008, he paid a \$637 debt (AE D at 6, 7). On March 24, 2008, Applicant satisfied a debt to the collection company he listed in his SF-86, Section 28, Item 1 as being owed \$474 (GE 1; AE D at 14, 16).

Federal income taxes. In 2002, Applicant’s adjusted gross income was \$13,850 (AE M). He had nothing withheld from his taxes, and the amount owed, if any, was not listed on his tax return (AE M). In 2003, Applicant’s adjusted gross income was \$35,922 (AE M). He had nothing withheld from his taxes, and owed \$4,706 (AE M). In 2004, Applicant’s adjusted gross income was \$41,749 (AE M). He had nothing withheld from his taxes, and owed \$4,882 (AE M). In 2005, Applicant’s adjusted gross income was \$77,954 (AE M). He had \$1,150 withheld from his taxes, and owed \$6,036 (AE M). In 2006, Applicant’s adjusted gross income was \$70,680 (AE M). He had \$674 withheld from his taxes, and owed \$5,384 (AE M). In 2007, Applicant listed no income on his tax return (AE M). For tax year 2008, he provided a Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return for 2008, with zero indicated in estimated tax liability and total 2008 payments to the IRS (AE M).

On March 2, 2007, the IRS released an IRS tax lien for tax year 2002 amounting to \$8,162 (AE F at 5). Applicant submitted the release of the 2002 IRS tax lien to demonstrate that he has paid off large obligations in the past (Tr. 44).

Applicant owed the Internal Revenue Service for tax years 2003, 2004, and 2005 (AE F at 3-5). The IRS accepted his offer to pay \$380 monthly starting June 1, 2008 (AE D at 3). Applicant did not provide documentation showing how much he owed the IRS

for tax years 2003 to 2005. Applicant did not indicate he made any payments under this agreement, and I presume he has not made any payments because of lack of income.

Other financial information. Applicant had a credit card with a limit of \$500, which was current as of March 11, 2008 (AE D at 9, 13). Applicant corresponded with the credit reporting companies to ensure their reports did not list the debts of his relatives (Tr. 23; AE E).

Applicant promised to pay his debts (Tr. 72). He offered to have funds withheld from his salary or to have his clearance automatically revoked if he fails to pay his creditors as promised (Tr. 25). He offered to work for the U.S. government without a salary until his debts are paid (Tr. 73). He was confident that he could resolve all of his debts in one year, or perhaps much sooner, if he receives employment as a translator (Tr. 43, 72). He expected his annual salary, if hired as a translator in Afghanistan, to be about \$210,000 (Tr. 72).

In August 2009, Applicant received some financial counseling and generated a budget (Tr. 80; AE K). The budget only addressed his situation while receiving a monthly gross income of \$500. He was well aware of financial issues through his experiences in the mortgage business (Tr. 79-80).

On February 22, 2008, Equifax reported the creditor holding the account in SOR ¶ 1.h was not reporting and some other accounts were listed as disputed (AE E at 7, 9). On March 21, 2008, Applicant disputed the presence of four debts on his credit report, including the accounts in SOR ¶¶ 1.i and 1.j (AE E). The February 21, 2008, credit report listed disputes and investigations in progress for SOR ¶¶ 1.d (GE 3 at 6), 1.e (GE 3 at 8), 1.f (GE 3 at 9), and 1.h (GE 3 at 5).

Foreign Influence

In 1979, Applicant's father was part of the resistance in Pakistan that opposed the Soviet Union's occupation of Afghanistan (Tr. 20). The U.S. Government funded his efforts and due to his role in the resistance he became well known in Afghanistan (Tr. 20). As a teenager, Applicant lived in a refugee camp in Pakistan (Tr. 20). Applicant assisted in the war to expel the Soviets by making trips into Afghanistan, and by interviewing Afghan and Soviet prisoners (Tr. 20). In 1987, Applicant's cousin was kidnapped and others in the same profession as Applicant's father were assassinated (Tr. 20). Applicant's father sought asylum in the United States and Applicant moved to the United States with his father (Tr. 21; GE 1).

Applicant lived in the United States from 1987 to 1993 (Tr. 21). He attended high school in the United States and participated in the U.S. political process (Tr. 21). Applicant's family left the United States and Applicant's father worked in an Afghan embassy as a consultant (Tr. 21). In 1996, Applicant returned to the United States and worked in the mortgage banking industry (Tr. 21).

In 2002, Applicant became a U.S. citizen (GE 1). His father returned to Afghanistan and was appointed to a high-level position in the Afghan national government (Tr. 22). In 2004, Applicant went to Afghanistan for his grandmother's burial (Tr. 38). For the six months Applicant stayed in Afghanistan (2004-2005), he was a voluntary liaison between the Afghan Government and a U.S. Army base (Tr. 22, 39). He worked closely with the U.S. Marines and U.S. Army Special Forces (Tr. 22). He acted as a linguist and advisor to the U.S. Army concerning the Pashtun tribal system, local culture, and customs in one of the most dangerous provinces in Afghanistan (Tr. 22, 67). In this role, he provided assistance to his father, who was an important Afghan Government Official (AGO), and to the U.S. Army (Tr. 39). Although there was always danger from explosives and mines, Applicant was not personally threatened or harassed by the Taliban (Tr. 67).

A U.S. Army Lieutenant Colonel (LTC T), who is a Special Operations Officer, lauded Applicant's assistance to LTC T's Provincial Reconstruction Team (AE C). Applicant helped with construction and development projects and on security issues (Tr. 69). LTC T emphasized Applicant's honesty, intelligence, focus, and compassion (AE C). LTC T noted that Applicant "brave[d] the violence [which was] necessary to gain the trust of local people who has been abandoned by everyone else. [Applicant] is a courageous and honorable young man who has a genuine passion for doing good. And, he is that rare man who has taken the action necessary, at great personal sacrifice, to actually get up and do that good for a great many people. . . ." (AE C at 1-2).

SOR foreign influence allegations. SOR ¶ 2.a alleges Applicant's spouse is a citizen of Afghanistan, who resides in the United States as a registered alien. He became divorced in 2008 (Tr. 32, 56). He does not stay in contact with his former spouse's family living in Afghanistan (Tr. 57).

SOR ¶ 2.b alleges Applicant's sister is a citizen of Afghanistan, who resides in the United States as a registered alien. His sister was born in Afghanistan, became a U.S. citizen in 2008, and now lives in the United States (Tr. 57; GE 1).

SOR ¶ 2.c alleges that Applicant has extended family members who are citizens of Afghanistan and who reside in Afghanistan. Applicant has an uncle who is serving with the U.S. Army as a contract linguist in Afghanistan (Tr. 58). His uncle is a U.S. citizen (Tr. 58). Applicant's brother is a U.S. citizen, who lives in Afghanistan (Tr. 59, 74). His brother lives in the Afghan capital and works on research projects and as a security analyst for private firms (Tr. 70). His brother also works closely with an agency that is under U.S. State Department supervision (Tr. 70, 89-90). His brother has not been threatened and is not protected by a security detail (Tr. 70). Although Applicant is in regular contact with his brother, he has not talked to his uncle in about two years (Tr. 59-60).

SOR ¶ 2.d alleges that Applicant has friends who are citizens and residents of Afghanistan. Applicant has some acquaintances in Afghanistan from his visit in 2004; however, he does not maintain contact with them (Tr. 59). His relationship with the

acquaintances living in Afghanistan is not close, and he did not maintain any friendships with citizens and residents of Afghanistan over the last five years.

SOR ¶¶ 2.e and 2.f allege that Applicant's father is a close personal friend of an important AGO (Tr. 59). His father has known the AGO for at least 20 years (Tr. 60). When his father lived in Pakistan, his father had frequent contact with the AGO, and they were part of the resistance effort against the Soviet occupation of Afghanistan (Tr. 60). From 1993 to 1996, Applicant's father was an employee of Afghanistan in an embassy located outside of the United States and Afghanistan (Tr. 61). Applicant and the AGO have been good friends for many years and remain good friends (Tr. 61). After Applicant's father returned to Afghanistan in 2002, the AGO appointed him to two important Afghan Government positions (Tr. 63-64). Applicant's father was very pro-United States, and because of that support he was targeted or threatened by terrorists or the Taliban (Tr. 68).

In 2006, Applicant's father resigned from his Afghan Government position and returned to the United States because he needed heart and eye surgeries (Tr. 64). The last time Applicant's father went to Afghanistan was in 2008, and he stayed there for six to nine months (Tr. 65). His father went to Afghanistan to visit family and friends and not to work for the Afghan Government (Tr. 65). Applicant's father introduced Applicant to many important Afghan Government officials when Applicant was in Afghanistan; however, Applicant did not maintain contact with them after he left Afghanistan (Tr. 66). Applicant's father may return to Afghanistan if his health improves (Tr. 74).

In sum, Applicant's mother, father, and one sister were born in Afghanistan, and all of them became U.S. citizens and live in the United States (GE 1). One of his sisters was born in Russia, became a U.S. citizen and now lives in the United States (GE 1). His brother was born in Pakistan, is a now U.S. citizen, and supports the United States' goals though his work in Afghanistan. Applicant's son was born in the United States and lives in the United States.

Afghanistan⁵

Afghanistan is a country in Southwestern Asia. It is approximately the size of Texas (249,935 square miles). Pakistan borders it on the east and the south. Iran borders it on the west and Russia to the north. It is a rugged and mountainous country which has been fought over by powerful nations for centuries. In 2006, the population was about 31 million people with about 3,000,000 Afghans living outside Afghanistan.

Afghanistan is presently an Islamic Republic with a democratically elected president. Afghanistan has had a turbulent political history, including an invasion by the Soviet Union in 1979. After an accord was reached in 1989, and the Soviet Union

⁵The facts in the section concerning Afghanistan are from Department Counsel's factual summary, except for some comments about the relationship between the United States and Afghanistan, which are from the U.S. Department of State, *Background Note: Afghanistan*, Nov. 2008 and U.S. Department of State, *Country Specific Information Sheet—Afghanistan*, Mar. 4, 2009 (HE 4, enclosures I and III).

withdrew from the country, fighting continued among the various ethnic, clan and religious militias. By the end of 1998, the Taliban rose to power and controlled 90% of the country, imposing aggressive and repressive policies.

In October 2001, U.S. forces and coalition partners led military operations in the country, forcing the Taliban out of power by November 2001. The new democratic government took power in 2004 after a popular election. Despite that election, terrorists including al-Qaida and the Taliban continue to assert power and intimidation within the country. Safety and security are key issues because these terrorist organizations target United States and Afghan interests by suicide operations, bombings, assassinations, car-jacking, assaults, or hostage taking. At this time, the risk of terrorist activities remains extremely high. The country's human rights record remains poor and violence is rampant. According to recent reports from the U.S. Department of State, insurgents continue to plan attacks and kidnappings of Americans and other Western nationals. Travel warnings are ongoing. No section of Afghanistan is safe or immune from violence.

The United States supports the efforts of the Afghan Government to establish,

a vibrant civil society, one that emphasizes democratic principles through a rule of law and creates accountable and transparent forms of government. The United States and its international partners remain committed to helping Afghans realize their vision for a country that is stable, democratic, and economically successful, and to an Afghan Government committed to the protection of women's rights, human rights, and religious tolerance.

U.S. Department of State, *Background Note: Afghanistan*, Nov. 2008 (HE 4, enclosure I at 13).

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An

administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to 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. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. 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.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guidelines F (financial considerations) and B (foreign influence) with respect to the allegations set forth in the SOR.

Financial Considerations

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

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides two conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts"; and "(c) a history of not meeting financial obligations." The Appeal Board has noted, "Applicant's credit report was sufficient to establish the Government's prima facie case that Applicant had . . . delinquent [SOR] debts that are of security concern." ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006). Applicant's history of delinquent debt is documented in his credit reports, his responses to DOHA interrogatories, his SOR response, and his oral statement at his hearing. He failed to ensure his creditors were paid as agreed. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c). Further inquiry about the applicability of mitigating conditions is required.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

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

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's conduct does not warrant full application of AG ¶ 20(a) because he did not act more aggressively and responsibly to resolve his delinquent debts. His delinquent debts are "a continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). He has made insufficient progress paying or resolving his seven unpaid SOR debts, which now total about \$65,000. However, his delinquent debts do not cast doubt on his current reliability, trustworthiness, and good judgment for the reasons in the discussion of AG ¶ 20(b), *infra*.

Applicant receives full mitigating credit under AG ¶ 20(b) because his financial problems resulted from the decline of his business, the fraudulent activity of an employee, and his unemployment and underemployment in 2008-2009.⁶ He was divorced in 2008; however, the record did not explain how his divorce exacerbated his financial problems. He has provided sufficient evidence that he acted responsibly under the circumstances over the last two years.

The Appeal Board's discussion of AG ¶ 20(b) in ISCR Case No. 08-06567 (App. Bd. Oct. 29, 2009) clarifies the applicability of this mitigating condition when an Applicant is unable to make substantial progress on delinquent debts after circumstances outside an applicant's control cause delinquent debt.⁷ In ISCR Case No. 08-06567 (A.J. July 27, 2009), the applicant had a judgment against him in June 2001 for \$7,948; an IRS tax lien in January 2001 for \$25,441 from tax years 1993 to 1997 (since released), and a state tax lien in September 1999 for \$6,701 (since released). These three delinquent debts established a history of financial problems, which included significant tax problems extending over eight years (1993 to 2001). *Id.* at 2. In 2007, the applicant's business faltered (the circumstance beyond his control), and he generated about \$21,000 in additional delinquent debt. *Id.* at 3-4. He paid six of his new debts, and three debts totaling about \$17,000 remain for resolution. ISCR Case No. 08-06567 at 2 (App. Bd. Oct. 29, 2009). He obtained financial counseling, developed a repayment plan, and took reasonable actions to effectuate his repayment plan. *Id.* at 3. The Appeal Board at 3 determined that administrative judge erred when he failed to explain,

what he believes that Applicant could or should have done under the circumstances that he has not already done to rectify his poor financial condition, or why the approach taken by Applicant was not "responsible" in light of his limited circumstances.

⁶"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether the Applicant maintained contact with his or her creditors and attempted to negotiate partial payments to keep debts current.

⁷ A copy of ISCR Case No. 08-06567 (A.J. July 27, 2009) and ISCR Case No. 08-06567 (App. Bd. Oct. 29, 2009) are attached to the record as HE 5 and 6 for convenience.

The Applicant in this case has received financial counseling, generated a budget, and in 2007 and 2008 he paid the SOR debts in ¶¶ 1.c (\$474), 1.d (\$269), and 1.j (\$399). On March 2, 2007, the IRS released an IRS tax lien for tax year 2002 amounting to \$8,162. On March 25, 2008, he paid a \$910 non-SOR debt. On March 27, 2008, he paid a \$637 non-SOR debt. On April 9, 2008, Applicant paid a \$427 non-SOR debt.

AG ¶ 20(c) partially applies. Applicant received financial counseling. He provided a personal financial statement and started a debt consolidation and repayment plan. He worked in the real estate and mortgage business and demonstrated a firm grasp of budgeting, payment plans, and expense reduction. He has managed to live on \$500 a month, demonstrating the financial self-discipline necessary to reduce and resolve his debts. There are not “clear indications that the problem is being resolved or is under control” because he still lacks the income to address his delinquent SOR debts. He also receives mitigation under AG ¶ 20(d) because he established good faith⁸ in the resolution of his SOR debts. He acted with reasonableness, prudence, honesty, and adherence to duty or obligation, and he did not use bankruptcy or otherwise seek to avoid his responsibility to repay his creditors.

AG ¶ 20(e) does not fully apply. Although Applicant filed some disputes with credit reporting companies, he did not provide documentation showing his basis for the disputes. Moreover, in his SOR response he admitted all SOR debts. He has disputed some amounts of debts (for example, the amount owed on his repossessed vehicle), and those disputes are reflected in credit reports and in AE E.

In sum, Applicant demonstrated sufficient diligence and effort to either resolve his delinquent debts or to stay current on their status while he seeks full employment. His debts initially resulted from underemployment, then unemployment in the aftermath of the fraudulent activity of one of his employees, and most recently underemployment as he has attempted to living on monthly income of \$500. His SOR listed ten delinquent debts totaling \$64,418. He paid three debts, and could settle his largest debt of \$34,000 for \$17,000. He paid other non-SOR debts. I am confident he will keep his promise to pay his delinquent debts once he receives employment as a translator because of his

⁸The 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)).

track record of financial responsibility prior to the thefts, and his efforts to resolve his debts.

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

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

AG ¶ 7 indicates two conditions that could raise a security concern and may be disqualifying in this case:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

(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.

Applicant and his wife are divorced. 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”) does not apply because there is no evidence he is living with someone who has foreign contacts.

AG ¶¶ 7(a) and 7(b) apply. Applicant, his father, brother, and sister were born in Afghanistan. His brother and his uncle are working in Afghanistan. His brother and uncle have connections to the United States, which makes them probable targets of terrorists and the Taliban, along with thousands of U.S. and coalition armed forces and civilian contractors serving in Afghanistan. His father has a close friend, who is an important AGO. His father held important Afghan Government positions from 2002 to 2006. He visited his Afghanistan in 2004-2005 for about six months, and he communicates frequently with his brother.

Although Applicant’s communications with family members living in Afghanistan are not particularly frequent, his spouse may have more frequent, non-casual

communications with family members living in Afghanistan. “[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person’s spouse.” ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). Applicant has not rebutted this presumption. Applicant’s relationship with his brother living in Afghanistan is sufficient to create “a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.” Applicant’s relationship with his brother creates a potential conflict of interest between Applicant’s “obligation to protect sensitive information or technology and [his] desire to help” any family members who are in Afghanistan. For example, if Applicant’s father should return to Afghanistan, Applicant would also be exposed to a risk of coercion through his father.

The mere possession of close family ties with a family member living in Afghanistan, is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation’s government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant’s family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence collection operations against the United States. The relationship of Afghanistan with the United States, places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his family members living in Afghanistan do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist a family member living in Afghanistan.

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

While there is no evidence that intelligence operatives from Afghanistan seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not possible to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Afghanistan has an enormous problem with terrorism.

Applicant's relationship with family members living in Afghanistan creates a potential conflict of interest because this relationship is sufficiently close to raise a security concern about his desire to assist family members in Afghanistan by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant's contacts with his brother and father and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply, and further inquiry is necessary about potential application of any mitigating conditions.

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

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

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

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

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

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant visited Afghanistan in 2004-2005. Applicant has frequent contact with his brother, who lives in Afghanistan. He also has frequent contacts with his father, who may return to Afghanistan. His father has a high profile in Afghanistan because of his past important Afghan Government positions and relationship to an important AGO. Because of his connections to Afghanistan, Applicant is not able to fully meet his burden of showing there is "little likelihood that [his relationships with his relatives who are Afghanistan citizens] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) fully applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has established that "[he] can be expected to resolve any conflict of interest in favor of the U.S. interest." In 1987, Applicant's father emigrated from Pakistan/Afghanistan to the United States to seek asylum because of threats to the family's safety. Applicant attended high school in the United States and became a U.S. citizen in 2002. His son was born in the United States. Most importantly, Applicant has assisted U.S. Armed Forces in Afghanistan, which is a combat zone. He has shown his patriotism, loyalty and fidelity to the United States.

Applicant has strong family connections to the United States. His mother, father, and two sisters are all U.S. citizens and live in the United States. His brother was born in Pakistan, is a now U.S. citizen, and supports the United States' goals though his work in Afghanistan. Applicant's son was born in the United States and lives in the United States.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with his father and brother. He frequently communicates with these two family members, and his brother is currently living in Afghanistan. His father was an important Afghan official until 2006, and remains a friend of an important AGO. There is no evidence, however, that terrorists, criminals, the Afghanistan Government, or those conducting espionage have approached or threatened Applicant or his family in Afghanistan to coerce Applicant or his family for classified or sensitive information. As such, there is a reduced possibility that Applicant or Applicant's family would be specifically selected as targets for improper coercion or exploitation. While the government does not have any burden to prove the presence of such evidence, if such record evidence was present, Applicant would have a heavy evidentiary burden to overcome to mitigate foreign influence security concerns. It is important to be mindful of the United States' huge investment of manpower and money in Afghanistan, and Applicant, his father and brother have supported U.S. goals and objectives in Afghanistan. His father and brother are potential targets of terrorists and the Taliban for their own activities and support for the United States, and Applicant's potential access to classified information is unlikely to add significantly to the risk they face from lawless elements in Afghanistan.

AG ¶¶ 8(d), and 8(e) do not apply. The U.S. Government has not encouraged Applicant's involvement with family members living in Afghanistan. Applicant is not required to report his contacts with family members living in Afghanistan.

AG ¶ 8(f) partially applies because there is no evidence that Applicant has any interest in property or bank accounts in Afghanistan. However, this mitigating condition can only fully mitigate AG ¶ 7(e), which provides, "a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation."

In sum, Applicant's connections to family living in Afghanistan are less significant than his strong connections to the United States. His connections to the United States taken together are sufficient to fully overcome the foreign influence security concerns under Guideline B.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. I have incorporated my comments under Guidelines F and B in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under this guideline, but some warrant additional comment.

Foreign influence

There are some facts supporting a foreign influence security concern because of Applicant's connections to Afghanistan. Applicant, his brother, sister, and father were born in Afghanistan. His brother currently works in Afghanistan, and his father may return to Afghanistan. He traveled to Afghanistan in 2004-2005, and frequently communicates with his father and brother. His father has a relationship to an important AGO and may be appointed to another Afghan Government position in the future.

A Guideline B decision concerning Afghanistan must take into consideration the geopolitical situation in Afghanistan, as well as the dangers existing in Afghanistan.⁹ Afghanistan is a very dangerous place because of violence from the Taliban and terrorists. The Taliban and terrorists continue to threaten the government of Afghanistan, the interests of the United States, U.S. Armed Forces, and those who cooperate and assist the United States. Applicant recognizes his work with the U.S. Armed Forces will endanger his family living in Afghanistan, and will be personally dangerous. The United States and Afghanistan are allies in the war on terrorism, and

⁹ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole person discussion).

the United States is committed to the establishment of a free and independent government in Afghanistan. Afghanistan and the United States have close relationships in diplomacy and trade.

The circumstances tending to support approval of a clearance for Applicant are more significant than the factors weighing towards denial of his clearance. In 1987, Applicant's father brought Applicant to the United States. In 2002, Applicant became a U.S. citizen. His son was born in the United States. He has significantly greater contacts or connections with the United States than with Afghanistan. Although he has frequent contact with his brother living in Afghanistan, his brother is a U.S. citizen and supports U.S. goals in Afghanistan. He does not own property in Afghanistan. When he was naturalized as a U.S. citizen, he swore allegiance to the United States.

Applicant returned to Afghanistan and served with U.S. Armed Forces as a linguist/translator/cultural advisor for about six months from 2004 to 2005. He voluntarily risked his life as part of his duties on behalf of the U.S. Army and Afghanistan. Reliable military personnel serving with him in Afghanistan laud his duty performance and contributions to mission accomplishment. He has put himself in harm's way, working alongside U.S. Armed Forces. He has made contributions to national security, fully aware of the risks to himself and his family. All these circumstances demonstrate that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group at coercion or exploitation. See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008). Applicant's strong connections to the United States and especially to his U.S. family, community and his employment as a translator in a combat zone establish "such deep and longstanding relationships and loyalties in the U.S., [he] can be expected to resolve any conflict of interest in favor of the U.S. interest." See Discussion of AG ¶ 8(b), *supra* at pages 16-17.

Financial considerations

There are some facts supporting a financial considerations security concern. Applicant has seven currently delinquent debts totaling about \$65,000. He also owes an undetermined amount of money to the IRS, and there may be additional unresolved debts created from his employee's fraudulent activities.

The facts supporting mitigation of the financial considerations security concern are sufficient under the whole person concept to warrant approval of his access to classified information. Applicant went to Afghanistan for about six months in 2004-2005. While he was in Afghanistan, an employee at his banking and real estate business forged documents and committed theft. When Applicant returned from Afghanistan his real estate business was beginning a downturn. The combination of a real estate downturn and legal problems from the forgery and theft caused Applicant financial problems. Applicant had a good track record of paying his debts prior to the decline in his business and the legal problems with an employee in 2005. In December 2007, he closed his business and planned to work in Afghanistan as a translator/cultural advisor. He was unemployed throughout 2008, and was divorced in 2008. When his security clearance was not approved, he obtained employment for \$500 a month as an

untrained medical aide. A recession has increased unemployment in his state, and I infer the allegations of fraud surrounding Applicant's business have made it more difficult for him to obtain employment in the banking and real estate sectors.

Applicant has received financial counseling and generated a budget. He has worked in the real estate and mortgage businesses and demonstrated a firm grasp of budgeting, payment plans, and expense reduction. In 2007 and 2008 he paid the SOR debts in ¶¶ 1.c (\$474), 1.d (\$269), and 1.j (\$399). On March 2, 2007, the IRS released an IRS tax lien for tax year 2002, amounting to \$8,162. In March and April 2008, he paid non-SOR debts of \$910, \$637, and \$427. He was unable to make any additional progress from April 2008 to the hearing on August 11, 2009, because he lacked the income to pay his debts. Even though he lacked the income to make any payments, he made payment arrangements with the IRS to pay \$380 per month, with the state tax authority to pay \$100 per month, and to pay other creditors under various payment plans. He could not pay child support; however, he promised to inform the court when he became adequately employed so that he could begin payments. He has done everything that he could reasonably and responsibly do to address his financial problems. He has managed to live on very little income (I presume he received unemployment compensation), and later on he subsisted on only \$500 a month for almost two years. He credibly promised to pay his delinquent debts when he receives adequate employment. He offered to have his security clearance automatically revoked if he is unable to pay all of his delinquent SOR debts within one year of obtaining employment as a translator/cultural advisor.¹⁰

After weighing all the facts and circumstances in this decision, including Applicant's demeanor and sincerity at his hearing, I specifically find his statements to be credible, and I conclude he has carried his burden of mitigating the financial considerations and foreign influence security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors"¹¹ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, all the evidence in this decision, and my interpretation of my responsibilities under the Guidelines. For the reasons stated, I conclude Applicant is eligible for access to classified information.

¹⁰ Of course, the government can re-validate Applicant's financial status at any time through credit reports, investigation and/or additional interrogatories. Approval of a clearance now does not bar the government from subsequently revoking it, if warranted. Violation of a promise made in a security context to pay legitimate debts also raises judgment concerns under Guideline E, and may support future revocation of a security clearance. Completion of a security clearance decision documents and establishes a warning to Applicants about the importance of financial responsibility and retention of documentation about debt resolution. The comments in this footnote do not imply that this clearance is conditional.

¹¹ See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

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 E: FOR APPLICANT

Subparagraphs 1.a to 1.j: For Applicant

Paragraph 2, Guideline B: FOR APPLICANT

Subparagraphs 2.a to 2.g: 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.

Mark Harvey
Administrative Judge