



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



In the matter of: ----- SSN: ----- Applicant for Security Clearance)))))))	ISCR Case No. 09-00244
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Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel

For Applicant: *Pro se*

March 31, 2010

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant signed a security clearance application on July 22, 2008. On August 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence) and Guideline C (Foreign Preference). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, and 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.

In his September 11, 2009 response to the SOR, Applicant admitted the four allegations raised under Guideline B and the three allegations set forth under Guideline C. He also requested a hearing before an Administrative Judge. The case was ultimately assigned to me on December 16, 2009. Department Counsel and Applicant agreed to a January 20, 2010, hearing date. A Notice of Hearing was issued by DOHA

on January 13, 2010, setting the hearing for that date. Prior to and during the hearing, Applicant waived his right to a written 15-day notice regarding the hearing date.¹

The hearing took place as scheduled. Department Counsel submitted three exhibits (Ex.) which were accepted into the record as Exs. 1-3 without objection. Applicant gave testimony and was accompanied by his wife, who also gave testimony. He submitted 16 exhibits, accepted as Exs. A-P without objection. Applicant was given through February 2, 2010, to submit any additional materials. The transcript (Tr.) was received on January 28, 2010. On February 26, 2010, Department Counsel forwarded four additional documents from Applicant without objection, noting that all the documents had been timely received. They were accepted into the record as Exs. Q-T. The record was closed on March 1, 2010. Based upon a review of the case file, exhibits, and testimony, security clearance is granted.

Administrative Notice

The Government requested administrative notice of certain facts and materials regarding the Republic of the Philippines (Phillippines). The Phillippines is a multiparty republic. It has an elected president and bicameral legislature comprising a representative democracy modeled on the United States' (U.S.) system. It is an ally of the U.S. with ties dating back to 1898. The nation has experienced severe economic decline since the end of World War II, as has its infrastructure and ability to provide policy and regulatory stability.² These problems have become increasingly more challenging in the face of the growing presence and activity of such terrorist groups as Abu Sayyyaf (ASG), Jemaah Islamiya (JI), and the Rajah Solaiman Movement (RSM). Tensions also exist between the government and the Moro Islamic Liberation Front (MILF), which have resulted in MILF sponsored bombings, assassinations, and kidnappings. The U.S. State Department warns U.S. citizens contemplating travel to the Phillippines to be aware of the threat posed by such groups and other gangs that prey on tourists. Specifically, it cites to the risks of travel to the regions of Mindanano and the Sulu Archipelago, which are in the largest, southern-most islands in the country.³ Clashes between lawless groups and the Philippine Armed Forces, as well as kidnap-for-ransom gangs, are also noted in specific provinces of Mindanao and the Sulu

¹ Tr. 9-10.

² Ex. 3 (Administrative Notice Memorandum, dated Nov. 2, 2009).

³ *Id.*, citing to U.S. Department of State Travel Warnings: Phillippines, dated Nov. 2, 2009. It also notes that foreign tourists are often targeted by these groups. It further notes the threat of terrorism and acts of violence against U.S. citizens and interests throughout the world.

Archipelago.⁴ Crime is considered high in Manila, the capital, and internal human rights issues exist within the country.⁵

Geographically, the Philippines is an archipelago comprising over 7,000 island, over 800 of which are occupied. It is broadly defined as consisting of three geographical regions (Luzon, Visayas, and Mindinao) spanning a vast area of approximately 117,187 square miles. Its capital of Manila is to the north.⁶ Traditionally, the U.S. has been the country's largest investor.⁷

Nearly 400,000 Americans visit the Philippines each year.⁸ A popular tourist venue is the isolated and narrow strip situated to the southwest of Mimaropa known as Palawan Island, which includes Puerto Princesa City, just north of the island's center.⁹ Distant from the rest of the country, Palawan is noted for its tropical beauty, exotic beaches, scuba diving, landscape, nature, and minerals; it has more protected areas than any other region of the Philippines.¹⁰ Palawan Island is located to the southwest of the Luzon region, separated by the Mindoro Strait and the North Bay. It is situated between the Sulu Sea and the South China Sea. Palawan Island is a considerable distance south by southwest from Manila. The distance to the inland area of Mindanao, which is to the east across the Sulu Sea, past the Zamboanga Strip, and across the Moro Gulf, is much further. The Sulu Peninsula is even further south, located where the Sulu Sea meets Malaysia. All the documents contained within the government's request for administrative notice regarding the Philippines (Ex. 3) have been reviewed and given due consideration in light of the particular facts of this case, as have supplemental documents submitted by Applicant.¹¹

⁴ *Id.*

⁵ *Id.*, citing to U.S. Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices: Philippines (Human Rights Report), dated Feb. 25, 2009. Manila is also noted for the sale of counterfeit goods; a bomb detonated near a Philippine government building in 2007 has been linked to terrorist activity. See Philippines, Country Specific Information. U.S. Department of State.

⁶ *Id.*, citing to U.S. Department of State Background Note: Philippines, dated Apr. 2009.

⁷ *Id.*

⁸ *Id.*

⁹ Puerto Princesa City is currently described as a "model city" noted for its cleanliness, environmental protection and conservation, and local governance. Ex. E (Palawan Company information). It is accessible from the larger mainland areas of the Philippines by ship and airport. It is known for its eco-tourism and resort areas.

¹⁰ Ex. R (Applicant's letter, dated Jan. 27, 2010).

¹¹ Ex. R, *supra*, note 10, Ex. E, *supra*, note 9, and Ex. S (Palawan information).

Findings of Fact

Applicant is a 26-year-old test technician who has worked for the same defense contractor since June 2008. Born in 1983, he moved to the U.S. with his mother and siblings in 1992. The family joined Applicant's father, who had moved to the U.S. in 1986. After his father became a U.S. citizen and registered voter, Applicant was granted U.S. citizenship in 2001.¹² He later received a U.S. passport, which he used to visit the Philippines for three weeks after he graduated from high school in order to see his childhood homeland. In May 2006, Applicant received an undergraduate degree from an American state university. Following graduation, he traveled on his U.S. passport to the Philippines for a three-week vacation.¹³ On that trip, a leisure trip planned as a graduation present, he traveled with a cousin who now lives in the Philippines and with whom Applicant now maintains no contact.¹⁴ He has not returned to the Philippines since that vacation. In early 2007, shortly after Applicant started his first post-collegiate professional position, Applicant's father, a dual U.S.-Philippines citizen, urged him to reestablish dual citizenship with the Philippines. His father argued that such a reestablishment was a good idea because "it was good for . . . business opportunities in the Philippines."¹⁵ Although he had no personal or business plans which dual-citizenship would promote,¹⁶ Applicant complied with his father's request, became a dual citizen, and, on November 7, 2007, received a Philippine passport.¹⁷ He never

¹² Applicant's brother and sister also became U.S. citizens.

¹³ The SOR inaccurately states that the trip Applicant took after college was in 2007. See, e.g., Tr. 56.

¹⁴ See Tr. 56.

¹⁵ Tr. 16, 20, 78-79.

¹⁶ Ex. R, *supra*, note 10.

¹⁷ Tr. 73, 78-79. "So it doesn't look like his citizenship [was] directly related to preserving a property interest at that time, so as to buy property, or something like that." See *also* Ex. R, *supra*, note 10.

used the Phillipine passport.¹⁸ Had he known of the potential ramifications of his actions, he would not have proceeded with the idea.

At some point around the time Applicant became a dual citizen, his father was laid off from his job as a mechanical engineer. His father returned to the Phillipines for work in April 2008.¹⁹ He moved to Puerto Princesa City, Palawan Island. The isolated island is south by southwest of Manila. There, he and his wife owned some land about five minutes from the airport.²⁰ There, he started a business and began constructing a hotel and retail complex on his property. He remains a resident of Palawan Island, where he manages his hotel.²¹ Busy with his hotel, Applicant's father, now 58 years old, has no immediate plans to return to the U.S.²² He hopes Applicant or his siblings might someday become involved in his business in some capacity.²³ The business is worth approximately \$100,000. If Applicant's father were to keep and ultimately leave the business to his children, it is possible the three children could take evenly divided interests, but their father's future plans for the project, if any, are unknown.²⁴

¹⁸ Tr. 23, 66. Consideration of App. Bd. Dec. 01-00677 is urged to show a previous denial of a security clearance where an applicant did not wish to "share allegiance with [another] country, they just wanted to join a softball team, something as innocent as that, the idea of getting out and getting citizenship is a big deal." Tr. 78-79. The acquisition of citizenship in another country while a U.S. citizen is a major issue and raises genuine concerns. The case cited, however, is more complex and highly distinguishable on the facts. There, the applicant sought the acquisition of a foreign citizenship to maintain "professional and [particularly close] personal ties to two high-level [foreign country] softball officials," demonstrated a high present interest in promoting that team, served as a representative in the foreign country's international softball team as an umpire, coach, and non-voting delegate, and was using his involvement to promote his "dream of umpiring at the Olympics." Consequently, that applicant's activities and his association with the two high-level officials were deemed to "place them in a position to exercise influence over" that applicant. While this Applicant's acquisition of dual citizenship was also a matter raising genuine concerns, the evidence and Applicant's highly credible testimony indicate that it was done solely to placate his father's wishes. There is no evidence Applicant, then a recent college graduate, was pursuing any present or future personal, professional, pecuniary, or social benefit.

¹⁹ Tr. 47.

²⁰ Ex. R, *supra*, note 10. Applicant's mother's family comes from the Puerto Princesa City area, where they owned property.

²¹ Applicant's mother, who is a registered alien in the U.S., recently returned to the Phillipines to help Applicant's father with his business. Tr. 35, 45. She expects to travel back and forth to the U.S. Tr. 60.

²² Tr. 24.

²³ Tr. 21, 25, 49, 65, 75; Ex. E (Business information). Applicant has no apparent legal connection to this "family business" venture or present interest in the entity. Applicant derives no income from his father's business and the business is in his parents' names. The facts show that Applicant's father lost his job in the U.S., returned to the Phillipines, and eventually started his own business well after Applicant had already become a dual-citizen and a Phillipine passport holder. *See also* Ex. R, *supra*, note 10.

²⁴ Tr. 50.

Also in 2007, on advice from their mother, a real estate agent who has urged her children to make lucrative investments,²⁵ Applicant and his brother invested in a condominium property that was expected to be built in the resort area of Palawan.²⁶ They thought that having a property there could provide them with a source of rental income and a place to stay should they ever visit the Philippines in the future. It is valued at about \$600,000. They each pay under \$300 a month on the finance plan, which, with interest, will ultimately require the joint payment of about \$75,000.²⁷ The building is not expected to be finished before 2012. On completion, the unit will be fully furnished.²⁸ Thus far, Applicant has paid about \$6,000 toward the joint investment.²⁹

On November 25, 2009, Applicant renounced his dual citizenship with the Philippines; his passport from the Philippines was cancelled and returned.³⁰ He is now solely a U.S. citizen and only possesses a passport of U.S. issue.³¹

In high school, Applicant was an honor student and graduated in the top 20% of his class.³² In college, he earned mostly A's and B's while also working. He graduated with a 3.51 grade point average. During his last work-related annual performance evaluation, he uniformly earned "excellent" designations on all performance factors.³³ He has completed advanced training and been recognized for his work.³⁴ He participates in his company's retirement investment plan. Applicant is highly praised for both his professional and personal traits.³⁵ He has superlative credit scores from the

²⁵ See also Tr. 46. Applicant's mother, whose family is from the Puerto Princessa area of Palawan Island, also worked for a city government in the U.S. for about a decade.

²⁶ Tr. 69-70. The region is not currently cited as an area with crime or terrorism issues. Applicant stated, "[i]t is usually a tourist destination, there is a lot of tourist stuff over there, a lot of islands and a lot of beaches. So it is a nice area." Tr. 70. Applicant does not know of any terrorist activity or civil disruption in the area in which his family resides. Tr. 71. It was noted that the area in which Applicant's parents and the condominium are located are not "problematic." Tr. 76.

²⁷ Tr. 26-27. The brother split the monthly payment of about \$572 a month. See Tr. 64-65.

²⁸ Tr. 27.

²⁹ Tr. 28, 38-39.

³⁰ Tr. 29-30; Ex. A (Notarial Certificate, dated Nov. 25, 2009).

³¹ Tr. 31.

³² Tr. 34.

³³ Ex. F (2008 Appraisal).

³⁴ *Id.*

³⁵ See, e.g., Exs. C-D (References).

three major credit reporting bureaus.³⁶ He is settled in the U.S. with his wife, whom he married in 2008. She is a citizen of the Phillipines with a pending application to be a permanent U.S. resident. She is employed and also attending college courses.³⁷

Applicant is close to his siblings, both of whom served in the U.S. military and are settled in the U.S.³⁸ His brother is an accountant, currently on inactive status in the U.S. Marines. He lives in the family's home near Applicant. Their sister is a now a mortgage broker, also lives near Applicant, and is starting a family. Applicant's in-laws, a plumber and a professional working with special needs children, are permanent legal U.S. residents. They currently share their home with Applicant and his wife.³⁹ Applicant used to be close to the cousin who now lives in the Phillipines, but the two "barely talk" now.⁴⁰ Applicant's elderly grandmother, who has never had any connection to the Phillipines government, moved from the U.S. to retire in the Phillipines about five years ago.⁴¹ Applicant also has an uncle and another cousin in the Phillipines, but they do not maintain a relationship and Applicant does not know much about them.⁴² He does not believe either has a connection to the government of the Phillipines. He has no other contacts in the Phillipines.⁴³

Applicant's friends and contacts are in the U.S. When not working, he is active with friends in a local sports league and he is a regular at his gym. He is a weekly member of his church's congregation. He is a registered U.S. voter. He intends to remain a permanent resident of the U.S., where he is employed, surrounded by friends, and has lived since the age of nine.⁴⁴ His wife also intends to remain in the U.S.⁴⁵

³⁶ Ex. H (Credit Scores, dated Nov. 11, 2009).

³⁷ Tr. 40, 44, 62.

³⁸ Tr. 36-37.

³⁹ Tr. 53, 61.

⁴⁰ Tr. 56.

⁴¹ Tr. 57. Applicant's grandmother does not live in an area known for civil or terrorist unrest, but, as opposed to Applicant's parents, she is near Manila, which has some notable problems. Tr. 76

⁴² Tr. 57-58.

⁴³ Tr. 59-60.

⁴⁴ Tr. 70; Ex. R, *supra*, note 10.

⁴⁵ Tr. 71.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required 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 over-arching adjudicative goal is a fair, impartial and commonsense decision. Under AG ¶ 2(c), this 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ⁴⁶ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant. ⁴⁷

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 an 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.

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

⁴⁶ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁴⁷ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

for access to classified or sensitive information). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁴⁸ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁴⁹ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁵⁰ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find Guideline C (Foreign Preference) and Guideline B (Foreign Contacts) to be the most pertinent to the case. Conditions pertaining to these adjudicative guidelines that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are discussed below.

Analysis

Guideline C – Foreign Preference.

The concern regarding foreign preference is that when an individual acts in such a way as to indicate a preference for a foreign country over the U.S., then he or she may be prone to provide information or make decisions that are harmful to the interests of the U.S.⁵¹ Conditions that could raise a security concern and may be disqualifying include exercise of any right, privilege, or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member.⁵²

The SOR contains three allegations. First, Applicant re-established Philippine citizenship in about February 2007 after becoming a naturalized U.S. citizen in June 2001. Second, that he did so in order to acquire, along with his father and brother, a business interest in the Philippines. Third, that he applied for and now possesses a current Philippine passport that was issued in November 2007 with an expiration date in November 2012. Such facts, if established by substantial evidence, would be sufficient to raise Foreign Preference Disqualifying Conditions AG ¶ 10(a) (exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes, but is not limited to (1) possession of a current foreign passport. . . , (5) using foreign citizenship to protect

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Executive Order 10865 § 7.

⁵¹ AG ¶ 9.

⁵² AG ¶ 10(a).

financial or business interests in another country. . . .), and AG ¶10(b) (action to acquire or obtain recognition of a foreign citizenship by an American citizen). With foreign preference disqualifying conditions raised, the burden shifts to Applicant to mitigate security concerns.

As a threshold matter, there is no evidence that Applicant reestablished citizenship with the Philippines in order to acquire, further, or protect a business interest in the Philippines along with his father and brother, as noted in SOR allegation ¶ 1.b. Applicant's father independently started a business and commenced construction on a hotel complex in the Philippines using his own land. Neither of his sons is connected to that business. Applicant neither invested in, nor derives income from that business. Moreover, there is no indication he has any future interest in his father's yet to be completed business. At most, he might receive a share of the business should his father maintain the business for his lifetime and leave ownership to his children in shares. At present, however, he has expressed no such intention and Applicant has no expectation of a future interest. Consequently, with regard to SOR allegation ¶ 1.b, AG ¶ 10(a)(5) is not applicable.⁵³

Applicant did, however, acquire dual citizenship after becoming a U.S. citizen. He also applied for and received a Philippine passport after undergraduate school. His qualification for this re-establishment was the fact that he was born in the Philippines to parents who were then citizens of that country. He sought re-establishment of his Philippine citizenship at his father's urging, not as a demonstration of support for the Philippines. He has since effectively renounced that citizenship. He also acquired a Philippine passport in 2007, which he never used. He has since returned that passport to the appropriate Philippine authorities and it has been cancelled. Consequently, Foreign Preference Mitigating Conditions AG ¶ 11(a) (dual citizenship is based solely on parents' citizenship or birth in a foreign country), ¶ 11(b) (the individual has expressed a willingness to renounce dual citizenship), and AG ¶ 11(e) (the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated) all apply.

When Applicant graduated from college and was first beginning his career, his father urged him to seek dual citizenship to expand his professional options. He dutifully complied with his father's wishes. He remained, however, in this country. There is no evidence he ever considered leaving the U.S., his siblings, his friends, or his community in favor of employment or life in any other country. Indeed, Applicant did not follow his father back to Palawan Island for work, nor did he join his father in his current business enterprise there. Instead, he remained in the U.S., moved on to a more challenging career, married, and integrated himself further into his community. He voluntarily relinquished his dual citizenship when apprised that its acquisition had unforeseen professional repercussions antithetical to his father's advice. He similarly surrendered his unused Philippine passport to Philippine authorities. It has since been canceled.

⁵³ See Tr. 73.

Any suggestion that he has a preference for the Philippines over the U.S., or is prone to provide information or make decisions harmful to U.S. interests have been dispelled. Foreign preference security concerns have been mitigated.

Guideline B – Foreign Influence

The concern under Guideline B is that 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. The adjudication 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 U.S. citizens to obtain protected information or is associated with a risk of terrorism. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions below.

The country at issue is the Philippines. It has long-standing ties with the U.S. Unfortunately, instances of civil unrest and governmental deviation from its constitution have been noted, particularly with regard to its capital. Moreover, terrorist groups maintain a foothold in that country to the extent that the U.S. State Department has issued a travel warning advising U.S. citizens of the risks of travel to the southern Philippine islands of Mindanao and the Sulu Archipelago.⁵⁴ In noting the fact that the threat of terrorism and acts of violence against U.S. citizens and interests remain a concern throughout the world, it also notes that foreign tourists to those areas of the Philippines are often targeted by these groups.⁵⁵ Consequently, although the targeting of tourists and U.S. citizens is associated with violence, crime, and terrorist activity, albeit not with regard to the acquisition of protected information, the risk of terrorism described provides sufficient grounds to give issues regarding foreign influence heightened and serious scrutiny.

The SOR contained four allegations under this guideline. First, that Applicant's father is a dual citizen of the U.S. and the Philippines who frequently "visits and resides" in the Philippines. Second, that Applicant purchased a share in a real estate investment in the Philippines, a condominium under construction valued at about \$60,000. Third,

⁵⁴ Ex. 3, *supra*, note 2, *citing to* U.S. Department of State Travel Warnings: Phillipines, dated Nov. 2, 2009.

⁵⁵ Also noted is the high crime in distant Manila, where one bombing incident occurred near a Philippine government building in 2007. It was linked to probable terrorist activity.

that Applicant has an interest in a business incorporated by his father in the Philippines.⁵⁶ Fourth, that he traveled to the Philippines in 2002 and 2007.

Applicant's father is a dual citizen of the U.S. and the Philippines who recently returned to the Philippines after being laid off from his work in the U.S. There, he now manages his own business. Applicant has visited the Philippines twice since immigrating to the U.S. at the age of nine, visiting on leisure trips following his graduations from high school and college in 2002 and 2006, respectively. He and his brother jointly financed the purchase of a \$60,000 condominium unit for about \$75,000. Such facts are sufficient to give rise to Foreign Influence Disqualifying Conditions 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 exploitation, inducement, manipulation, pressure, or coercion), AG ¶ 7(b) (connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information), and AG ¶ 7(e) (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). With disqualifying conditions thus raised, the burden shifts to Applicant to mitigate security concerns.

Applicant cares for his father and the evidence shows that he has been an obedient son, following his elder's advice and counsel. Consequently, Foreign Influence Mitigating Condition 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) does not apply.

Applicant's father's residence and his business, however, are in a remote and isolated area, an island and eco-sanctuary sufficiently distant from those areas of U.S. State Department concern within the Philippines to constitute an entirely different land, such as the nearby Spratley Islands. Palawan Island is not noted for social discord or terrorism.⁵⁷ Its epicenter, Puerto Princesa City, is referred to as a model city for a variety of positive attributes, including its governance. It has at a nearby airport permitting access to the island and Applicant's business, obviating the need to traverse through the rest of the Philippines to get to Puerto Princesa City. Applicant's father's business, the construction and future maintenance of a hotel and retail complex, undoubtedly employs local residents, thus benefitting the local population and government of this comparatively peaceful and resort-oriented region. Resplendent in

⁵⁶ As noted above and at Tr. 73, no evidence was presented by the government indicating that Applicant has a business interest in his father's business. Applicant's credible testimony, as well as his materials, support the conclusion that this allegation is erroneous.

⁵⁷ The areas noted for terrorist activity are significantly distant from the Philippine shorelines facing Palawan.

its geographic isolation and noted for its local governmental stability, it is unlikely that Applicant's father or his business would be influenced or exploited to the disadvantage of his son or the state. Therefore, 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.) and 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) apply.

Moreover, there is no evidence that Applicant's loyalties or sense of obligation are directed toward any country or lifestyle other than those he has found and developed in the U.S. Although he became a resident as a minor, he chose to remain in the U.S. to pursue his college degree. He chose to pursue his professional path in the U.S., despite his father's urging to consider both the U.S. and the Philippines with regard to business opportunities. He and his wife have every intention of remaining in the U.S., where Applicant spent the majority of his childhood. He was educated and has made friends here, and he has fully integrated himself within his local community. His two trips to the Philippines were graduation gifts taken only for pleasure. There is no evidence he traveled to re-establish or maintain social ties. Indeed, he no longer maintains his friendship with the cousin with whom he traveled in 2006. Except for his father, with whom he chose not to join in the Philippines on his father's business venture, all his ties are based here.

Furthermore, regarding the condominium at issue, it is not expected to be fully constructed until at least 2012. The primary purpose for its acquisition was as a future rental property, not as a home for Applicant. Applicant's personal payments toward the property are under \$300 a month, half the monthly payment of the approximately \$572 obligation he splits with his brother, a U.S. Marine. Applicant's total payments on the property amount to only about \$6,000. Inasmuch as it is not yet completed, its actual and potential value cannot truly be determined. It does not, however, represent a substantial investment or financial commitment on the part of Applicant and his wife in contrast to his steady employment situation and the stable life he maintains in the U.S. Given all of these facts, 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) and AG ¶ 8(f) (the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in conflict and could not be used effectively to influence, manipulate, or pressure the individual) apply.

Applicant's factual situation is highly unique. The Philippines has suffered from a declining economy as threats from domestic turmoil and a growing terrorist presence have risen. Applicant's father, his father's business, and Applicant's condominium

investment, however, are all in the middle of a comparatively thriving resort island, accessible by air. While other countries riddled with crime and terrorist concerns in one or more areas may condemn them to an overall negative assessment in terms of security, the Philippines, comprised as it is of a sprawling chain of islands, is distinct. That distinction with regard to Palawa is highly notable even in light of the heightened scrutiny the Philippines merits.

Moreover, Palawan is noted for its eco-tourism, remote location, and model governance. Such factors that have helped it maintain a region isolated from the concerns that have besieged the southern Philippine islands of Mindanao and the Sulu Archipelago, as well as the governmental and civil infractions occurring elsewhere in the country. There is no evidence that the country is known for targeting U.S. citizens for the purpose of obtaining protected U.S. information. Nor is there evidence that the island of Palawan or the city central city of Puerto Princesa is associated with any risk of terrorism. Lacking any evidence that Applicant's loyalties are in any way divided or that his father or their respective business interests can be manipulated or made vulnerable to the whims of governmental or terrorist interests, foreign influence security concerns are mitigated.

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) 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the "whole-person" factors. Applicant is a credible, forthright, and happily settled young man with excellent educational and professional credentials. He re-established dual citizenship with the Philippines only as a gesture to honor his father's advice. When he discovered that his father's counsel could jeopardize the stable employment and lifestyle he enjoys in the

U.S. as an American citizen, he voluntarily and expeditiously renounced his Philippine citizenship and returned his passport. He purchased a condominium unit with his brother as a prudent investment, based on his mother's more seasoned, professional advice. In the nearly two decades since his immigration, he has fully become "Americanized." His two leisure trips to the Philippines were merely graduation gifts from proud parents of an academically successful son. Applicant's siblings have both served as members of the U.S. armed forces. Neither he nor his wife have any intention of leaving the U.S. He maintains no significant ties with the Philippines except for his father and his modest investment in Palawan.

At the same time, considerations working against Applicant include his father's current residence in the Philippines and Applicant's acquisition of that modest condominium. Both, however, are located on the island of Palawan, an island geographically separated from the rest of the Philippines and quite distant from those areas regarding which the U.S. State Department has expressed vehement concern and which necessitate heightened scrutiny of the country. In its isolation, separated from the rest of the country by significant bodies of water, the island has thrived as an eco-friendly tourist hub. Puerto Princesa as an acknowledged model city with regard to its many assets, including its governance. There is no evidence that civil unrest, national governmental interference, uncommonly high crime, terrorism, or the targeting of U.S. tourists for any purpose has infiltrated this island. Consequently, neither Applicant's father nor his business are at risk. Similarly, the island's stability protects Applicant modest investment in an incomplete potential rental property, toward which Applicant makes nominal monthly payments and has yet to invest more than 10% of the loan taken by Applicant and his brother, a U.S. Marine.

There is no way to predict the future of the Philippines in terms of its declining economy, government, its citizenry, or either the presence of terrorist groups in its most south-eastern province or crime in metropolitan Manila. Given Palawan's isolation, reputation, attributes, and popularity as a leisure destination, however, it appears to be able to maintain its comparatively thriving situation without incident or cause for concern. Should that situation ever change or should the specter of exploitation or terrorism ever encroach, Applicant's and his family are sufficiently savvy with regard to the Philippines to sense that change and make any needed adjustments expeditiously. Given these considerations, I conclude it is clearly consistent with national security to grant Applicant a security clearance. Clearance granted.

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 2, Guideline C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

Subparagraph 1.b: For Applicant
Subparagraph 1.c: For Applicant

Paragraph 2, Guideline B: FOR APPLICANT

Subparagraph 1.a: For Applicant
Subparagraph 1.b: For Applicant
Subparagraph 1.c: For Applicant
Subparagraph 1.d: For Applicant

Conclusion

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

ARTHUR E. MARSHALL, JR.
Administrative Judge