



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



In the matter of:)
)
) ISCR Case No. 09-07565
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel

For Applicant: *Pro Se*

03/27/2012

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, testimony, and exhibits, I conclude that Applicant mitigated security concerns under the financial considerations adjudicative guideline but failed to mitigate security concerns under the foreign influence adjudicative guideline. His eligibility for a security clearance is denied.

Statement of the Case

On June 9, 2009, Applicant signed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). The Defense Office of Hearings and Appeals (DOHA) issued Applicant an undated Statement of Reasons (SOR) detailing security concerns under Guideline B, Foreign Influence, Guideline F, Financial Considerations, and Guideline E, Personal Conduct. DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security*

Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On November 22, 2011, DOHA received Applicant's answer to the SOR. In his answer, Applicant provided additional information and requested a hearing before a DOHA administrative judge. The case was assigned to me on December 21, 2011. On January 23, 2012, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The Government called no witnesses and introduced five exhibits (Ex. 1 through Ex. 5), which were entered in the record without objection. The Government also offered for administrative notice a summary memorandum containing facts about the People's Republic of China (China) found in 15 official U.S. Government documents. The Government also provided for administrative notice the 15 source documents from which the facts in the summary memorandum were derived. I marked the Government's summary memorandum as Hearing Exhibit (HE) 1. Applicant did not object to my taking notice of the facts about China in the summary memorandum or in the source documents.

Applicant testified and called one witness. He introduced five exhibits, which were identified as Ex. A through Ex. E and admitted without objection. DOHA received the transcript (Tr.) of the hearing on January 30, 2012.

Procedural Matters

The SOR contained one allegation of disqualifying conduct under Guideline E, Personal Conduct. At the hearing, the Government moved to amend the SOR by striking the Guideline E allegation (SOR ¶ 3.a.). Without objection, the Government's motion was granted. (Tr. 12-13.)

Findings of Fact

The amended SOR contains six allegations under AG B, Foreign Influence (SOR ¶¶ 1.a. through 1.f.) and three allegations under AG F, Financial Considerations. In his Answer to the SOR, Applicant admitted the six AG B allegations. He admitted one AG F allegation (SOR ¶ 2.c.). He denied the AG F allegations at SOR ¶¶ 2.a. and 2.b. and provided additional information. Applicant's admissions are admitted as findings of fact.

After a thorough review of the record in the case, including Applicant's testimony, all exhibits, all relevant policies, and the applicable adjudicative guidelines, I make the following findings of fact:

Applicant is 49 years old, a native-born U.S. citizen, and employed as an engineering technician by a government contractor. In 1982, Applicant enlisted in the U.S. military and served in the active reserves until 1984. In 1984, he enlisted in another

branch of the U.S. military and served on active duty until 1990, when he received an honorable discharge. At times during his military service, Applicant held a security clearance. (Ex. 1; Tr. 34-35.)

Financial Considerations

In 1996, Applicant earned a bachelor's degree. From 1997 until 2006, Applicant was employed as a senior technician by a company. His employer fired him over a quality control issue. Applicant was subsequently unemployed from May 2006 until about December 2006, when he started his own insurance business. In October 2007, he discontinued his insurance business because he was unable to make a living from it. In November 2007, Applicant acquired a position as a contract employee at a business. He worked there as a technician until about October 2008, when the contract ended, business slowed down, and his employer let him go. Applicant was then unemployed again from October 2008 until June 2009, when he acquired his present employment. (Ex. 1; Tr. 36-38.)

Applicant's unemployment in 2007 and his unsuccessful insurance business venture caused him to fall behind on his financial obligations. In about November 2007, he sought help from a debt consolidation service and agreed to make payments of \$550 a month to satisfy his delinquent debts. He made the payments until he became unemployed again. He notified the debt consolidation service of his unemployment. When he found employment again, he also notified the debt consolidation service and resumed monthly payments. Applicant estimated that he made approximately 18 monthly payments totaling \$10,000 through the debt consolidation service. (Tr. 39-41.)

While he was making payments through the debt consolidation service, Applicant received notice that another creditor had executed a garnishment order against his salary. Applicant tried to negotiate with the creditor, but he was unsuccessful. Applicant lacked sufficient income to pay the debt consolidation service and satisfy the garnishment. In June 2010, he filed a petition for Chapter 7 bankruptcy. In September 2010, Applicant's debts were discharged by the bankruptcy court. (Ex. 5; Tr. 41-42.)

The SOR alleged that Applicant was responsible for two unresolved delinquent debts, one for \$8,690 (SOR ¶ 2.a.) and another for \$8,574 (SOR ¶ 2.b.). In his answer to the SOR, Applicant asserted that both debts should have been settled in his bankruptcy. At his hearing, Applicant reported that he had consulted his bankruptcy attorney and reviewed his bankruptcy petition. He learned that because of clerical error, the debt alleged at SOR ¶ 2.a. was not included in the bankruptcy. Applicant's credit report revealed that the debt had been charged off and the account closed. The debt had not been paid, and the creditor no longer sought payment. (Ex. D; Tr. 42-43.)

Applicant reported that he had used a telephone number provided on his July 2009 credit report in an attempt to contact the creditor identified at SOR ¶ 2.b. He learned that the creditor's telephone number had been disconnected. He further explained that in November 2011, he contacted the credit bureau to report his inability

to reach the creditor at the number provided on his credit report. Applicant's credit bureau report of January 2012 no longer lists the debt. (Ex. 4; Ex. D; Tr. 44-45.)

Applicant reported that his net monthly salary averaged \$3,600. His monthly expenses include the following: rent, \$1,275; groceries, \$350; clothing, \$40; utilities, \$300; car expense, \$250; life and other insurance, \$70; and, miscellaneous, \$350. Applicant also pays \$270 each month on a student loan debt. Applicant's net monthly remainder is \$695. His wife has been unemployed since June 2010. (Ex. 3; Tr. 46-48, 63.)

Applicant and his wife have one credit card, and they pay the existing balance in full each month. Applicant has \$1,000 in bank savings and \$5,100 in his 401(k) retirement account. He owns two automobiles which he values at \$3,500. (Ex. 3; Tr. 46-48.)

Foreign Influence

In 1998, Applicant met the woman who would become his wife. The woman, who came to the United States in 1992, was born and raised in the People's Republic of China (PRC or China). As a student in the PRC, she earned bachelor's and master's degrees in mathematics. Applicant and the woman married in 1999. (Ex. 1; Ex. 2; Tr. 49.)

Applicant's wife holds two master's degrees from U.S. universities. She studied for a Ph.D. in applied mathematics, but did not complete the degree. She has taught occasionally at the community college level in the United States. She is currently studying to become an actuary and hopes to acquire a job with an insurance company. (Ex. 2; Tr. 48, 57, 62.)

On his e-QIP, Applicant listed his wife as a dual citizen of the U.S. and the PRC. Applicant's wife became a naturalized U.S. citizen in 2006. She has a PRC passport, but it has expired. Since coming to the U.S. in 1992, Applicant's wife has returned only once to the PRC. That trip, which she took in the company of Applicant, occurred in 2007, and she used only her U.S. passport for the trip.¹ (Ex. 1; Ex. 2; Ex. E; Tr. 58, 69-71.)

Applicant's mother-in-law and father-in-law are citizens and residents of the PRC. Both individuals are in their 70s and retired. Applicant's mother-in-law worked as a mathematics teacher at a community college. Applicant's father-in-law was the chief executive officer of a refrigeration company. Applicant's parents-in-law came to the United States once, in 1998, to visit their daughter. (Ex. 2; Tr. 63-64, 70.)

¹ In order to obtain a visa from the PRC for her trip, Applicant's wife was required to submit her active PRC passport and her U.S. passport to PRC authorities for identification. (Tr. 71.)

Applicant's wife has two sisters, two brothers-in-law, and one uncle who are citizens and residents of the PRC. The older sister works in retail sales, and her husband is a cafeteria manager. They have one child, a daughter, who is 17 years old. About five years ago, Applicant's wife initiated sponsorship proceedings for her sister and her family for immigration to the United States. She estimates that it may take another five years before her sister and her family are granted permission to enter the United States. (Tr. 65, 68-69.)

The younger sister works for a bank, and her husband works as a magazine editor. They have a son who is in elementary school. (Tr. 65-66.)

Applicant's wife's uncle works for a provincial government and is a manager of a manufacturing enterprise. Applicant's wife last saw her uncle when she visited the PRC in 2007. (Ex. 2; Tr. 69-72.)

Applicant's wife speaks with her parents by telephone about once a week. She also calls and speaks with her parents and her sisters on holidays. Applicant's wife communicates with her sisters by e-mail. (Tr. 64-65.)

I take administrative notice of the following facts, which appear in official U.S. government documents:

People's Republic of China (China or PRC)

China does not recognize dual citizenship. Any Chinese national who has been naturalized as a foreign citizen will lose his or her Chinese citizenship and may encounter problems if attempting to enter the PRC on a Chinese passport. (U.S. Department of State, *China – Country Specific Information*, dated November 10, 2011, at 4.)

China has an authoritarian government, dominated by the Chinese Communist Party. “[I]n all important government, economic, and cultural institutions in China, party committees work to see that party and state policy guidance is followed and that non-party members do not create autonomous organizations that could challenge party rule.” (U.S. Department of State, *Background Note: China*, dated September 6, 2011, at 7.)

In its 2009 Annual Report to Congress, the U.S.-China Economic and Security Review Commission concluded that “China is the most aggressive country conducting espionage against the United States, focusing on obtaining U.S. information and technologies beneficial to China’s military modernization and economic development.” Multiple Chinese state entities are engaged in an active effort to acquire restricted U.S. technologies; the Chinese government also encourages and rewards the actions of private individuals who obtain technology on its behalf. Agents of the Chinese government are also displaying an increasing willingness to offer financial inducements to U.S. government officials in order to encourage them to compromise classified

information. Recent data released by the U.S. Department of Justice indicated that, for cases resulting in Federal prosecutions during fiscal years 2007 and 2008, China was ranked second only to Iran as the leading destination for illegal exports of restricted U.S. technology. (U.S.-China Economic and Security Review Commission, *2009 Report to Congress* dated November 2009, at 165.)

The U.S.-China Economic and Security Review Commission also noted that Chinese intelligence agents are known to target not only Chinese-Americans for enterprise-directed espionage, but also U.S. citizens of other ethnic backgrounds. The most common approach used on such targets is to arouse feelings of obligation toward China. (*2009 Annual Report to Congress*, at 150, 165.)

The U.S. Department of State's *2010 Human Rights Report: China (includes Tibet, Hong Kong, and Macau)*, dated April 8, 2011, provides the following details specifying China's poor human rights record:

arbitrary or unlawful killings by security forces; physical abuse and torture of prisoners; arbitrary arrest and detention; denial of fair public trials; searches of premises without warrants; monitoring of communication (including telephone conversations, facsimile transmissions, e-mail, text messaging, and Internet communications), opening of domestic and international mail, and failure to respect freedom of speech and the press; failure to respect academic and artistic freedom; severe restrictions on peaceful assembly and restrictions on freedom of association; restrictions on the freedom of religion; and [denying]citizens . . . the right to change their government peaceably, or change the laws and officials that govern them.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "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 an applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, an 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 used 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, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

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

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion in seeking to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk 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.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Foreign Influence

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

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or

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

AG ¶ 7 indicates three 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;
- (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;
- (c) 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.

AG ¶¶ 7(a), 7(b), and 7(c) are raised in this case. Applicant's wife, who was born, raised, and educated in the PRC, is now a U.S. citizen² and resides with him in the United States. However, her parents, her two sisters and their husbands, and her uncle are citizens and residents of the PRC. The uncle works for a provincial government in the PRC. Applicant's wife has close connections with her parents and sisters living in China. She communicates with her parents by telephone once a week. She e-mails her two sisters, and she is sponsoring one of her sisters for immigration to the United States.

Applicant's wife's frequent communications with her family members in the PRC reflect her ties of affection with them. "[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 at 3 (App. Bd. Feb. 20, 2002). Applicant provided no information to rebut the presumption. His wife's relationships with her parents and her siblings are sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." These relationships with residents of China create

² The PRC does not recognize dual citizenship. Accordingly, I conclude the allegation at SOR ¶ 1.a. for Applicant.

a potential conflict of interest between Applicant's "obligation to protect sensitive information or technology and [his] desire to help" his wife's family members who are in the PRC. For example, the Chinese Government could subject Applicant to potential, indirect coercion through his spouse's relationship with her parents, sisters, brothers-in-law, and uncle in the PRC.

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 China with the United States places a significant, but not insurmountable, burden of persuasion on Applicant to demonstrate that his wife's contacts with her family members living in China do not pose a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

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's wife has frequent contact with her parents, siblings, and her sibling's spouses, all of whom live in China. Because of his wife's contacts with her family members in the PRC, Applicant is not able to fully meet his burden of showing there is "little likelihood that [his spouse's relationships with relatives who are Chinese citizens] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) partially applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant is a native-born U.S. citizen, who served in the U.S. military and received an honorable discharge.

However, Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his and his wife's relationships with her family members who live in China. Applicant's spouse frequently communicates with her parents and her siblings. There is no evidence that terrorists, criminals, the Chinese Government, or those conducting espionage have approached or threatened Applicant or his wife's family members in China 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' recent relationship with China, and especially China's systematic human rights violations. China's conduct makes it more likely that China would coerce Applicant through his wife's family living in China, if China determined it was advantageous to do so.

AG ¶¶ 8(d) and 8(e) do not apply. The U.S. Government has not encouraged Applicant's involvement with family members living in China. Applicant is not required to report his contacts with family members living in China. AG ¶ 8(f) has minimal applicability since this mitigating condition can only fully mitigate security concerns raised under AG ¶ 7(e), and AG ¶ 7(e) is not raised in this case.

In sum, the primary security concern is Applicant's close relationship with his spouse and her close relationships with her parents and siblings, who are citizens and residents of the PRC and readily available for coercion. The Chinese government's history of espionage (especially industrial espionage) against the United States and its failure to follow the rule of law further increase the risk of coercion.

Nothing in Applicant's answers to the Guideline B allegations in the SOR suggested he was not a loyal U.S. citizen. Section 7 of Executive Order 10865 specifically provides that industrial security clearance 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.”

Guideline F, Financial Considerations

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

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

The guideline notes conditions that could raise security concerns in this case. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns.

Applicant has a history of financial delinquencies that he was unwilling or unable to satisfy. Thus, AG ¶¶ 19(a) and 19(c) apply.

Guideline F also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it “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.” (AG ¶ 20(a)). Additionally, unresolved financial delinquency might be mitigated if “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.” (AG ¶ 20(b)). Still other mitigating circumstances that might be applicable include evidence that “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control” (AG ¶ 20(c)) or “the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts” (AG ¶ 20 (d)). Finally, security concerns related to financial delinquencies might be mitigated if “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.” (AG ¶ 20 (e)).

For three years, from May 2006 until June 2009, Applicant experienced financial hardship resulting from his unstable employment. In May 2006, he was fired from a job,

and he was unemployed until December 2006. In December 2006, he started his own business, which he abandoned in October 2007 when he was unable to make a living from the business. In October 2007, he acquired a contract position. In October 2008, when the contract expired and the contractor's business slowed down, Applicant was let go. He remained unemployed until acquiring his present position on June 2009. During his periods of unemployment, Applicant struggled to pay his debts.

In about November 2007, Applicant sought help from a debt consolidation service and agreed to make payments of \$550 a month to satisfy his delinquent debts. He made the payments until he became unemployed again. He notified the debt consolidation service of his unemployment. When he acquired employment again, he notified the debt consolidation service and resumed monthly payments. Applicant estimated that he made approximately 18 monthly payments totaling \$10,000 through the debt consolidation service. (Tr. 39-41.)

While he was making payments through the debt consolidation service, Applicant received notice that another creditor had executed a garnishment order against his salary. Applicant tried to negotiate with the creditor, but he was unsuccessful. Applicant lacked sufficient income to pay the debt consolidation service and satisfy the garnishment. In June 2010, he filed a petition for Chapter 7 bankruptcy.

Of the two debts alleged on the SOR, one was erroneously not included in his bankruptcy petition. Applicant used contact information provided by the credit bureau in an unsuccessful attempt to reach the creditor on the second debt alleged on the SOR. When he reported his difficulties in contacting the creditor to the credit bureau, it removed the debt from his credit report.

While bankruptcy is a legitimate legal tool in the resolution of debt, it does not erase concerns about an individual's good-faith efforts to satisfy his creditors and his current and future financial stability. DOHA's Appeal Board has 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) in order to claim the benefit of [the "good-faith" mitigating condition.]

(ISCR Case No. 02-30304 at 3 (App. Bd. April 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

Even though his unemployment was caused in part by conditions beyond his control, Applicant behaved responsibly under the circumstances: he set up a payment plan with a debt reduction firm, and he adhered to the plan when he was employed. When he was laid off, he informed the debt reduction firm, and he resumed payment when he acquired new employment. He resorted to bankruptcy only when he was unable to satisfy the debt reduction obligation and a garnishment. I conclude that Applicant's actions were responsible and demonstrated a good-faith effort to satisfy his delinquent debts. I also note that his current financial status shows he is managing his finances responsibly. Accordingly, I conclude that AG ¶ 20(a) applies in part and that AG ¶¶ 20(b), 20(c), and 20(d) also apply in mitigation in Applicant's case.³

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 relevant 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 considered the potentially disqualifying and mitigating conditions in light of the whole person concept and all the facts and circumstances surrounding this case. Despite setbacks, Applicant has worked hard to meet his financial obligations. Applicant's wife is attentive and devoted to her parents and sisters, who are citizens and residents of the PRC. She is sponsoring one of her sisters for immigration to the United States. Her uncle, a citizen and resident of the PRC, is employed by a provincial government. Applicant failed to overcome the rebuttable presumption that his wife's close contacts with and ties to her family members in the PRC were also attributable to him. He failed to extenuate or mitigate the security concerns raised by his wife's close contacts with her family members who are citizens and residents of China, a country

³ AG ¶ 20(e) does not apply to the facts of Applicant's case. Applicant did not contact the credit bureau to dispute the debt alleged at SOR ¶ 2.b. Instead, he reported faulty contact information for a creditor and requested additional information.

that poses “an extraordinary threat to the national security, foreign policy, and economy of the United States.”

Overall, the record evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For these reasons, I conclude that while Applicant mitigated security concerns under Guideline F, he Applicant failed to mitigate security concerns arising under Guideline B.

Formal Findings

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraphs 1.b. - 1.f.:	Against Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraphs 2.a. - 2.c.:	For Applicant

Conclusion

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

Joan Caton Anthony
Administrative Judge