



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



In the matter of:)
)
) ISCR Case No. 10-00602
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel
For Applicant: James P. Beadle, Esq.

06/22//2012

Decision

DUFFY, James F., Administrative Judge:

Applicant has mitigated the security concerns under Guideline B, Foreign Influence, and Guideline F, Financial Considerations. Eligibility for access to classified information is granted.

Statement of the Case

On October 20, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F and B. DOHA took that action under Executive Order (EO) 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) implemented on September 1, 2006.

On December 9, 2011, Applicant answered the SOR and requested a hearing. Department Counsel submitted a notification that the Government was ready to proceed on February 23, 2012. The case was assigned to me on February 28, 2012. DOHA issued a notice of hearing on March 8, 2012, and the hearing was convened as scheduled on March 28, 2012.

At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 8 that were admitted into evidence without objection. Department Counsel's list of exhibits was marked as Hearing Exhibit (HE) 1. In documents marked as HE 2 and HE 3, Department Counsel requested that administrative notice be taken of facts concerning the Kyrgyz Republic, also known as Kyrgyzstan, and the United Arab Emirates (UAE). Applicant's Counsel objected to documents attached to the administrative notice requests on the grounds of relevancy because they addressed events that happened in the distant past. His objections were overruled and the requests for administrative notice were granted. Applicant testified and offered exhibits (AE) A through L that were admitted into evidence without objection.

The record was held open until April 11, 2012, for Applicant's Counsel to submit additional information. Based on a request from Applicant's Counsel, an extension of that deadline was granted until April 25, 2012. Applicant's Counsel timely submitted AE M through FF. Department Counsel objected to AE W, X, Y, CC, DD, EE, and FF, which included a practice guideline on foreclosures, regulations, and state court opinions. Department Counsel appeared to be objecting on the grounds of relevancy and noted that, to the degree these documents may be relevant, they may be admitted for administrative notice. Department Counsel's objections are overruled and AE M through FF are admitted into evidence. HE 4 is Department Counsel's memorandum forwarding Applicant's post-hearing submission. DOHA received the hearing transcript (Tr.) on April 5, 2012.¹

Procedural Matters

At the hearing, Applicant affirmatively waived the 15-day notice requirement in Paragraph E3.1.8 of the Directive.²

Findings of Facts

SOR and Applicant's Answer

Under Guideline F, the SOR alleged that Applicant had two delinquent mortgages totaling \$212,000. It indicated that one mortgage in the amount of \$134,000 (SOR ¶ 1.a) went into foreclosure and the other in the amount of \$78,000 (SOR ¶ 1.b) was charged off. In his Answer to the SOR, Applicant denied the debt in SOR ¶ 1.a. and indicated that he did not have sufficient facts to admit or deny the debt in SOR ¶ 1.b. He also stated he had had no obligation to repay the mortgage in SOR 1.b if it has been charged off.³

¹ Tr. 27-32. The exhibits that Department Counsel objected to have probative value in resolving issues presented in this case.

² Tr. 11-12.

³ Applicant's Answer to the SOR; GE 1, 2, 3, 5.

Under Guideline B, the SOR alleged that his wife was a citizen of Kyrgyzstan and resident of the United States (SOR ¶ 2.a), that his mother-in-law was a citizen and resident of Kyrgyzstan (SOR ¶ 2.b), and that his sister-in-law was a citizen of Kyrgyzstan and resident of the United Arab Emirates (UAE) (SOR ¶ 2.c). In his Answer, Applicant denied the allegation in SOR ¶ 2.a stating his wife is a citizen and resident of the United States, and admitted the other two Guideline B allegations. His admissions are incorporated herein as findings of fact.⁴

Applicant and His Family

Applicant was born in the United States. He is a 53-year-old senior consultant and has been working for his current employer since January 2008. He served on active duty in the U.S. Air Force (USAF) from 1976 to 2001, and retired honorably in the grade of master sergeant (E-7). He earned an associate's degree in January 1996. He has continually worked for defense contractors since retiring from the military. He has been married four times. His first marriage was from 1977 to 1979. Between 1981 and 2002, he was married twice to the same woman. Each of those prior marriages ended in divorce. He married his current wife in September 2007. He has three daughters, ages 28, 24, and 23. He has held a security clearance for over 30 years without incident.⁵

Applicant's current wife was born in Kyrgyzstan. She is 35 years old. He met her through a friend when he was working for a defense contractor in Korea. At the time, she was working for a folk dance troop in Korea and was a citizen of Kyrgyzstan. When they started dating, he reported his contact with her to his company's security officer. Since their marriage, she has visited both Kyrgyzstan and UAE once after her father passed away. She became a U.S. citizen in September 2011.⁶

Applicant's mother-in-law is a citizen and part-time resident of Kyrgyzstan. She was born in Russia and is 67 years old. Earlier in her life she worked in the medical profession, but has not worked in the past 30 years. She owns a condominium in Kyrgyzstan. She never worked for the Government of Kyrgyzstan or its military. She resides with her other daughter in the UAE during the winters and in Kyrgyzstan for the remainder of the year. Applicant's wife communicates with her mother a couple of times a month. In responding to interrogatories in July 2011, Applicant indicated that he never met his mother-in-law in person. He communicates with her about once a month through an Internet video program. His communications with her are limited because she does not speak English and he speaks only a few phrases in Russian. He and his wife occasionally send his mother-in-law about \$200 per month. His wife submitted a petition for her mother to become a permanent resident of the United States.⁷

⁴ Applicant's Answer to the SOR; GE 1.

⁵ Tr. 43-48, 57-59, 74-79; GE 1, 8.

⁶ Tr. 47-48, 53, 84-86; GE 1, 4, 6; AE E, F.

⁷ Tr. 48-52, 79-82, 114, 117-119; GE 1, 4, 6; AE G.

Applicant's sister-in-law is a citizen of Kyrgyzstan and a resident of UAE. She is about 37 years old, single, and has a 16-year-old daughter. She has resided in the UAE for about ten years. She is a manager of a textile company that manufactures plastic bags. To Applicant's knowledge, his sister-in-law never worked for any governmental entity in UAE or Kyrgyzstan. Applicant communicates with his sister-in-law about once a month through an Internet video program. In responding to interrogatories in July 2011, he indicated that he never met his sister-in-law in person.⁸

Applicant has never traveled to either Kyrgyzstan or the UAE. He and his wife own no property outside the United States. Besides her sister, Applicant's wife has no other siblings. She has no contact with any individuals in Kyrgyzstan other than her mother.⁹

Alleged Delinquent Debts

In 1998, Applicant and his second wife divorced. In February 2000, they remarried and later purchased a house together. The mortgage on this house was for about \$134,000. The house and mortgage were in both of their names. Their monthly mortgage payments were about \$1,200. They divorced again in 2002. She is hereinafter referred to as his "ex-wife."¹⁰

Before their divorce, Applicant and his ex-wife entered into a marital settlement agreement that was later incorporated into their divorce decree. The settlement agreement provided that the house was to be placed for sale when they mutually agreed to do so. Any proceeds of the sale were to be divided equally between them. Until the house was sold, they agreed to both retain possession of it, and he was responsible for making the monthly mortgage payments on the property and for all upkeep and repairs regardless of who occupied the house. After the divorce, they essentially owned the house as tenants in common. Under the marital settlement agreement, he was also responsible for paying her \$500 per month in alimony until either of them died or she remarried. She also receives half of his military retirement pay.¹¹

In January 2003, Applicant obtained a job working for a defense contractor in Korea. His ex-wife and daughters continued to reside in the house, and he continued to pay the mortgage. In April 2005, he executed a special real estate power of attorney

⁸ Tr. 51-52, 83,-84, 118-119; GE 7.

⁹ Tr. 52, 54-56, 86-88, 118.

¹⁰ Tr. 57-60; GE 1, 4, 7, 8; AE A, B. Applicant's ex-wife was born in Thailand. He and his ex-wife also owned another property that is not an issue in this proceeding. This other property was sold in 2005 or 2206. See Tr. 106, 112; GE 7.

¹¹ Tr. 57-60, 74-75, 88-91; GE 1, 4, 7; AE A, B, Q.

authorizing his ex-wife to sell, refinance, or perform any acts that he could in regards to the property. The power of attorney contained no termination date.¹²

In October 2006, Applicant opened a home equity line of credit (HELOC) that created a second mortgage on the house. The HELOC authorized him to withdraw as much as \$120,000 from this account. He initially withdrew about \$12,000 to pay some debts. His monthly payments for that initial withdrawal were about \$200.¹³

In May 2007, one of Applicant's daughters was seriously injured in an automobile accident. She was in intensive care for 89 days and then went through approximately six weeks of rehabilitation. He returned from Korea for three to four months to be with his daughter during her recovery. He then withdrew appropriately \$45,000 from the HELOC to cover his living expenses and his daughter's bills. With that withdrawal, the monthly payments on the HELOC increased to about \$600. After her release from the hospital, she resided in Applicant's and his ex-wife's house while going through rehabilitation. When Applicant returned to Korea, his daughters knew that he was planning to marry his current wife. He assumed then that his daughters would tell his ex-wife of his upcoming marriage. Shortly after his return to Korea, he married his current wife. In about January 2008, he returned to the United States to start a new job with his current employer.¹⁴

Upon his return from Korea, Applicant and his new wife moved into his and his ex-wife's house. At some point, his ex-wife vacated the house, but he indicated that she would come and go as she pleased. He attempted to make arrangements with his ex-wife for him to obtain sole ownership of the house. However, they could not reach an agreement. He eventually hired an attorney and brought a legal action seeking to modify the marital settlement agreement so that he would obtain sole ownership of the house. A letter from the attorney indicated that, while Applicant was residing in the house with his current wife, his ex-wife continued to enter the property. She reportedly left doors or windows open, changed temperature settings, and dumped potted plants on the carpet. In this legal proceeding, the court ruled against making any changes to the ownership of the house. The court order stated that Applicant was to have exclusive use and possession of the master bedroom in the house, while his ex-wife was to have exclusive use and possession of the other bedroom. During the proceeding, Applicant also learned that his ex-wife obtained a third mortgage on the house in October 2007.¹⁵

¹² Tr. 89-91, 94-96, 129-139; GE 4; AE M, P. The power of attorney also authorized his ex-wife to encumber the title to the property.

¹³ Tr. 59, 89-91; AE D.

¹⁴ Tr. 60-62, 91-92, 94, 126-139.

¹⁵ Tr. 62-64, 92-99, 114-115, 126-139; AE L, M, P, Q. Around the time Applicant's ex-wife obtained the third mortgage, she also purchased three condominiums near the house. She apparently resided at least part-time in one of those condominiums.

The third mortgage was for \$90,330. This mortgage was in Applicant's and his ex-wife's names. She signed his name to the mortgage as "attorney in fact" using the power of attorney. At the hearing, he testified that he did not authorize her to obtain this mortgage and that he received no funds from this mortgage. He also testified that, before the third mortgage was obtained, the value of the home exceeded the amount owed on the first two mortgages. While after the execution of third mortgage, the amount owed on the three mortgages exceeded the value of the home. The third mortgage does not appear on any of Applicant's credit reports. There is no evidence in record that the third mortgage is delinquent.¹⁶

Applicant indicated that his ex-wife stated she would sign over the house to him if he took sole responsibility for the three mortgages and paid her an additional \$50,000 or \$60,000. He discussed with his attorney the available options for resolving this situation, including a short sale. His ex-wife agreed to pursue a short sale, but the first mortgage holder would not approve the sale. Based on the advice of his attorney, Applicant elected to allow the house to go into foreclosure. The attorney advised him that the equity in the house would most likely satisfy the first mortgage, that the second mortgage holder may come after him for any deficiency on that note, and that he was not legally responsible for the third mortgage. Before defaulting on the mortgages, he informed his security officer of this intention to let his house go into foreclosure. He also called the first and second mortgage holders to advise them that he decided to let the house go into foreclosure. He advised the second mortgage holder that he thought it would receive some money during the foreclosure proceeding. After that conversation, he did not contact the second mortgage holder during the foreclosure process, but a collection agency did contact him about the second mortgage. Based on his conversation with the collection agency, he thought that he would be contacted after the foreclosure if there was a deficiency. The collection agency never contacted him about any deficiency.¹⁷

Applicant stopped making mortgage payments on the house in July 2008. During an interview with an Office of Personnel Management investigator in September 2009, Applicant reportedly stated that he had "no intention [of] paying the home." A Final Judgment of Mortgage Foreclosure was entered against Applicant on October 20, 2009. The judgment indicated that he owed \$129,574 on the first mortgage, which included unpaid principal (\$112,663), interest (\$11,303), and various fees (\$5,608). On December 2, 2009, the first mortgage holder purchased the house for \$100 at a

¹⁶ Tr. 62-66, 101-102, 115-117, 126-139; AE L, M, P, Q, R, CC, DD, EE, FF. Applicant contends that his ex-wife exceeded the authority he granted her in the power of attorney when she executed the third mortgage and that he was not bound by the third mortgage. Because the third mortgage is not considered a delinquent debt, the issue of whether he is financially responsible for the third mortgage is not important in this proceeding. Here, the third mortgage is relevant because it encumbered the property and limited his and his ex-wife's ability to sell the house.

¹⁷ Tr. 64-69, 73, 113-115; GE 1, 4; AE Q, Z, AA, BB. In his security clearance application, Applicant stated, "This was a voluntary foreclosure based upon a house owned between former spouse and myself and at the advice of my legal counsel to clean up unresolved activities from former divorce decree."

foreclosure sale. County property records indicate the house sold again for \$139,200 on August 31, 2010. Applicant's latest combined credit report dated March 20, 2012, reflected one credit reporting agency listed the first mortgage as "paid or paying as agreed," while another stated "foreclosure redeemed." Two credit reporting agencies listed the balance owed on the first mortgage as "zero," while the third credit agency merely left the space for the balance blank. The first mortgage was satisfied in the foreclosure.¹⁸

After receipt of the SOR, Applicant contacted the collection agency in an attempt to resolve the second mortgage. They discussed possible settlement options. The collection agency advised him that it had to coordinate with the second mortgage holder before agreeing to any settlement option. In his post-hearing submission, Applicant indicated that he again contacted the collection agency but "has received no information from either [the second mortgage holder or the collection agency] regarding the total amount allegedly to be owed on the HELOC note, or possible payment options." He intends to resolve the second mortgage. I found Applicant to be credible witness.¹⁹

Applicant's current wife does not work. He currently earns about \$115,000 per year in salary and also receives half of his military retirement. In 2008, he purchased another home before the foreclosure occurred. His most recent credit report reflected that he has a real estate mortgage for \$303,440. This mortgage is current and, according to its payment history, he has never missed a payment. The credit report also reflected that his only delinquent debt is the second mortgage (SOR ¶ 1.b) that is listed as charged off with a balance of \$78,140. On November 24, 2010, he submitted a personal financial statement that reflected his net monthly income was \$9,107, that his total monthly expenses were \$2,100, and that his monthly debt payments were \$3,542, which left him a net monthly remainder of \$3,464. His monthly debt payments included a mortgage payment of \$1,772. At the hearing, he testified that his net monthly remainder was then about \$1,500 or \$2,000. He also testified that he was never delinquent on his alimony payments or his former child support payments.²⁰

Character Evidence

Applicant has been awarded the Air Force Achievement Medal, Joint Service Achievement Medal, Joint Service Commendation Medal, Air Force Commendation Medal, Aerial Achievement Medal (5 awards), Air Medal, Meritorious Service Medal, Good Conduct Medal (7 awards) and various other awards. He has served in combat zones during Desert Storm and in military operations involving Panama and Kosovo.²¹

¹⁸ Tr. 63-69, 99-104, 119-126; GE 1, 2, 3, 4; GE 4; AE C, M, R, S, T, U, V, W, X, Y. At the hearing, a discussion occurred about whether Applicant's exhibits established that the first mortgage was resolved during the foreclosure proceeding. His post-hearing exhibits, particularly AE R, establish that the first mortgage has been resolved.

¹⁹ Tr. 63-69, 104-106; AE M, O.

²⁰ Tr. 69-74, 77-81, 106-112; GE 2, 3, 4, 5; AE R.

²¹ Tr. 46-47; AE N.

Applicant's program manager recommended him for a security clearance. He has known Applicant for about eight years and stated he has no reservations about his character or loyalty.²²

Kyrgyzstan²³

Kyrgyzstan is a small, poor Central Asian country that gained its independence after the dissolution of the former Soviet Union. It is a constitutional republic with a President and Prime Minister. About 90% of the country is mountainous. It maintains close ties to other former soviet countries, particularly Kazakhstan and Russia.

Kyrgyzstan has been subject to political turbulence and ethnic unrest. In late 2010, it had three reported terrorist attacks or attempted terrorist attacks. In one of those attacks, a bomb exploded outside a sports venue and two police officers suffered minor injuries. Human rights concerns exist in Kyrgyzstan. These concerns include reports of arbitrary killings and arrests, torture, abuse by law enforcement officials, lack of judicial independence, pervasive corruption, and discrimination against women and other minorities.

Since 2001, Kyrgyzstan has hosted the Manas Air Base, an important logistical hub for the Coalition efforts in Afghanistan. In mid-2009, Kyrgyzstan threatened to close the base, but kept it open after the United States agreed to a higher lease and other financial inducements.

United Arab Emirates²⁴

The UAE is a federation of emirates, each with its own ruler. The federal government is a constitutional republic, headed by a president and council of ministries. Traditional rule in the UAE is generally patriarchal with political allegiance defined in terms of loyalty to tribal leaders. There are no democratically elected legislative institutions or political parties, and no general elections. Only 15-20% of UAE's population is composed of UAE citizens. The remaining population includes significant numbers of other Arabs, including many Iranians. The government of UAE has expressed fears that the large Iranian-origin community in the Dubai emirate could pose a threat to UAE stability.

There are problems in the UAE with regard to human rights, including, arbitrary arrests and indefinite incommunicado detentions, government restriction on civil liberties, and a lack of judicial independence, political organizations, and political parties. Domestic abuse of women remains a common problem. Labor unions are illegal and private associations must follow censorship guidelines and receive governmental

²² AE H.

²³ Tr. 49; HE 2; AE I, K.

²⁴ HE 3; AE J, K.

approval before anything is published. The UAE does not recognize dual nationality, and UAE authorities have confiscated U.S. passports of dual nationals.

The United States and the UAE have had friendly relations since 1971. The UAE contributes to the continued security of the Persian Gulf, and is a partner against terrorism. However, the UAE is one of only three countries that recognized the Taliban as the legitimate government of Afghanistan and two of the September 11, 2001, hijackers were from the UAE. In 2009, UAE security officials were credited with breaking up an al Qaeda plot to blow up targets in the Dubai emirate. Additionally, issues of UAE's cooperation with terrorism and proliferation remain a concern because of UAE's lax pattern of enforcement of export and border controls, particularly with respect to leakage of U.S. or other technology to Iran. There have also been cases of illegal export, or attempted illegal export, of U.S. restricted, dual use technology to the UAE, including products with potential nuclear and military applications.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions that are to be 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, administrative judges apply the 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

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 describes three potentially applicable 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; and

(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.

Applicant's wife is now a citizen and resident of the United States. SOR ¶ 2.a is no longer an accurate statement. I find in favor of Applicant on SOR ¶ 2.a.

AG ¶ 7(a) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise this disqualifying condition is a relatively low standard. "Heightened risk" denotes a risk of greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant's family ties to a foreign country as well as each individual family tie must be considered.

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."²⁵

Furthermore, "even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security."²⁶ Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, 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 vulnerability to coercion from the government, terrorist organizations, or other groups.²⁷

Applicant has family members in Kyrgyzstan and UAE. His mother-in-law is a citizen of Kyrgyzstan and part-time resident of both Kyrgyzstan and UAE. His sister-in-law is a citizen of Kyrgyzstan and resident of UAE. Kyrgyzstan and UAE continue to have human rights issues and have been victimized by terrorist. This creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. His family contacts in Kyrgyzstan and UAE also create a potential conflict of interest with his obligation to protect sensitive information. AG ¶¶ 7(a), 7(b), and 7(d) apply.

AG ¶ 8 provides conditions that could mitigate foreign influence security concerns. Two are potentially applicable in this case.

(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

²⁵ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

²⁶ ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

²⁷ See *generally*, ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided.)

individual, group, organization, or government and the interests of the U.S.; and

(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.

No evidence has been presented to show that Applicant's relatives in Kyrgyzstan and UAE work for any governmental entities. Nevertheless, those countries have continuing human rights concerns. Because of the nature of those governments and the terrorist concerns, I am unable to find that AG ¶ 8(a) applies.

Applicant was born in the United States. He served on active duty in the USAF for about 25 years. During all of his adult life, he has either served in the military or worked for defense contractors. He has served in combat zones. He has never traveled to either Kyrgyzstan or the UAE. He and his wife own no property outside the United States. His wife has submitted paperwork for her mother to immigrate to the United States. His has had limited contact with his mother-in-law and sister-in-law. As of July 2011, he had not yet met his mother-in-law or sister-in-law in person. Based on Applicant's deep and longstanding relationships and loyalties in the United States, he can be expected to resolve any conflict of interest or security issue in favor of the United States. AG ¶ 8(b) is applicable to Applicant's foreign contacts.

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18 as follows:

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

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had two mortgages totaling about \$190,000 on which he defaulted. One of those mortgages totaling about \$78,000 remains unresolved. He has been

unable or unwilling to satisfy that unresolved mortgage for a couple of years. This evidence is sufficient to raise the above disqualifying conditions.

There are five financial considerations mitigating conditions under AG ¶ 20:

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

(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 and his ex-wife owned a home together for a number of years. After he married his current wife, he attempted to obtain sole ownership of the home. He and his ex-wife were unable to reach an agreement regarding the home. He brought a legal action to obtain sole ownership of the home, but the court ruled against him on that issue. During that legal proceeding, Applicant learned his ex-wife had obtained a third mortgage on the home. Because of the third mortgage, selling the home was not a viable option. After consulting with an attorney, he elected to default on the two alleged mortgages. He stopped paying the mortgages in July 2008. The first mortgage holder purchased the home at a foreclosure sale. The first mortgage was satisfied during a subsequent sale of the home. AG ¶¶ 20(c) and 20(d) apply to SOR ¶ 1.a.

During these events, Applicant has been continuously employed. His default on the mortgages was a voluntary decision he made to get himself out of an untenable situation. He could have continued to make payments on the first and second mortgage. As a practical matter, however, he could not live in the house with his current wife when his ex-wife would come and go as she pleased and would harass them. Because of the three mortgages, he could not sell the house without incurring a significant loss. He was boxed into a corner. He followed the advice of his attorney to let the house go into foreclosure. This decision was not purely a financial decision to get out from underneath the mortgages, but was driven by his desire to resolve a problematic domestic situation.

Before defaulting on these mortgages, Applicant contacted the second mortgage holder to tell them that he would let the home go into foreclosure. After talking with a collection agency, he thought that he would be advised after the foreclosure if there was a deficiency on the second mortgage. The first mortgage was resolved during a subsequent sale of the property in August 2010. It is not known whether the second mortgage holder received any proceeds from that sale. Applicant was never contacted about a deficiency. When he received the SOR, he initially thought that he had no obligation to repay the second mortgage because it was charged off. He now realizes the security concerns that arise from the defaulted second mortgage. Since receipt of the SOR, he contacted the collection agency to discuss ways to resolve this debt. The collection agency is coordinating with the second mortgage holder about resolution options. Applicant is still waiting to hear from the collection agency and indicated that he intends to resolve this debt.

In hindsight, Applicant should have revoked the power of attorney and resolved the issue concerning the ownership of the house before marrying his current wife. On the other hand, he could not have reasonably foreseen the actions that his ex-wife was going to take, particularly her execution of the third mortgage and her harassment of him and his current wife. His ex-wife's conduct created a situation that was beyond his control. The default on the second mortgage occurred under unusual circumstances that are unlikely to recur and that do not cast doubt on his current reliability, trustworthiness, and good judgment. The second mortgage is the only delinquent debt listed on his most recent credit report. He has a history of meeting his financial obligations. Since learning of the security significance of this delinquent debt, he has initiated steps to resolve it. Based on his testimony, I am convinced he is committed to resolving this delinquent debt. AG ¶ 20(a) applies to SOR ¶ 1.b. AG ¶ 20(b) partially applies. The remaining mitigating conditions do not apply.

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 all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

During all of his adult life, Applicant has served in the military or worked for defense contractors. He has held a security clearance for many years without incident. While his mother-in-law and sister-in-law are citizens and residents of foreign countries, he has relatively little contact with them. Whatever potential conflicts may arise from him having family members in Kyrgyzstan and UAE are more than counterbalanced by his interests, responsibilities, and loyalties in the United States. He mitigated the Foreign Influence security concerns.

Applicant defaulted on two mortgages. These defaults occurred under unusual circumstances that are unlikely to recur. The defaults are an isolated event. The first mortgage was resolved during the foreclosure proceeding. After the foreclosure, he initially did not appreciate the security significance of the delinquent second mortgage. Since receiving the SOR, he has initiated action to resolve the second mortgage. He is currently waiting to hear from the collection agency about possible options for resolving this debt. He is committed to resolving it. The underlying circumstances surrounding the defaulted mortgages do not persuade me that Applicant is currently an unreliable person who is unsuitable for a security clearance. Considering his long history of service to our country, he should be given the opportunity to resolve this debt while holding a security clearance. For these reasons, I conclude Applicant has mitigated the security concerns arising under the guideline for Financial Considerations.

Formal Findings

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

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a-1.b:	For Applicant
Paragraph 2, Guideline B:	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 clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

James F. Duffy
Administrative Judge