



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



In the matter of:)	
)	
)	ISCR Case No. 10-00804
)	
Applicant for Security Clearance)	

Appearances

For Government: Raashid S. Williams, Esquire, Department Counsel
For Applicant: *Pro se*

November 28, 2011

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ Applicant's clearance is granted.

On 2 May 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR, requesting a hearing. DOHA assigned the case to me 27 September 2011, and I convened a hearing 2 November 2011 by video teleconference (VTC). DOHA received the transcript (Tr.) 14 November 2011.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-4, and Applicant exhibits (AE) A-W.

²DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

Findings of Fact

Applicant admitted the financial allegations in SOR 1.a; she denied the allegations in SOR 1.b. She is a 34-year-old intern employed by the U.S. mission to an international treaty organization since June 2009. She held a security clearance in February 2008, while employed by a joint state/federal drug task force. She left this job in September 2008 to attend graduate school overseas, where she obtained the internship that requires her clearance.

The SOR alleges, and Government exhibits substantiate, two Internal Revenue Service (IRS) tax liens totaling over \$64,000: a nearly \$16,000 lien entered against Applicant and her husband in October 2010 and a nearly \$49,000 lien entered against Applicant and her husband in July 2009. The liens were for tax years 2008 and 2007, respectively. Applicant admits the October 2010 tax lien, and documents that she reached a repayment agreement with the IRS in March 2011 and has made the first six payments (Answer; AE G, H), making her eligible to have the lien withdrawn under IRS policy (AE K). She also documents that the July 2009 lien was released in April 2011 (Answer; AE E, F).

Applicant's husband was a professional apartment manager, who in 2006 became a licensed real estate broker, and began working as a commercial broker. In 2007, he began buying and renovating multi-family housing, through partnerships and independently with Applicant. Although he discussed prospective properties with her, she was not otherwise involved in the business (AE A). By 2008, they personally owned three investment properties with all units rented.

The tax liens are directly related to the collapse of the real estate market where Applicant and her husband lived, and a business decision that went sour with the market. In early 2008, Applicant and her husband applied for, and were accepted into, two prestigious graduate programs overseas. Their finances were such that they were able to buy a property overseas that could be divided into two apartments. Their expectation was that they would refinance their U.S. properties, or at worst, sell those properties to finance their overseas plans. They also planned to use the proceeds from refinancing/selling the properties to address their 2007 tax liability to the IRS. Applicant's husband had reinvested any income from the properties into the business, and had gotten an extension for payment from the IRS.

Although the real estate market where Applicant and her husband lived was still stable, the beginning of the housing crisis elsewhere dried up the funding for their planned refinancing. Ultimately, they put three U.S. properties on the market, but were only able to sell one, and that one for only enough to cover their liability on the property. The other two properties went into foreclosure. Of course, there were few proceeds to pay the 2007 tax bill to the IRS. Nor were there funds to pay the 2008 liability. Applicant and her husband also sold their overseas property, again barely covering their liability on the property.

Notwithstanding the two tax liens, Applicant's evidence shows that this is largely a bookkeeping exercise between them and the IRS. The first lien was filed while their tax returns had been filed with, but not processed by, the IRS. The evidence also shows that Applicant and her husband have been working with the IRS to address the two liens. Their 2009 tax return (AE C) shows net losses of nearly \$300,000 that they applied to their 2008, 2007, and 2006 tax returns in accordance with IRS carry back rules (AE D), resulting in additional refunds for 2006 (\$24,181) and 2007 (\$32,414) being applied to their 2007 taxes. Their IRS account transcript for 2007 (AE F) shows these credits being applied to their account in April 2010 and 2011 respectively—resulting in a zero balance—as well as the lien release in April 2011. Their IRS account transcript for 2008 (AE H) shows that their account balance (including accrued interest and penalties through 7 November 2011) has been reduced to just over \$14,000.

Applicant's husband now has full-time employment overseas and they have \$1,000 positive monthly cash flow, not including Applicant's pay from her internship. Her work and character references are excellent, particularly the work references from her time with the drug task force.

Policies

The adjudicative guidelines (AG) list factors to evaluate a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a clearance. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, disputed facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the required judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels deciding any reasonable doubt about an Applicant's suitability for access in favor of the Government.³

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

Analysis

The Government established disqualifying conditions under Guideline F, but Applicant mitigated the security concerns. But for the organizational structure of her husband's business, the tax issues alleged in the SOR would belong to the business and not directly to Applicant and her husband, so while Applicant shares liability with her husband there is a strong case to be made that she does not share responsibility for the debt, except in the most attenuated sense. Nevertheless, she at least technically shares the burden of the financial problems she and her husband experienced in 2009 and 2010.⁴ However, Applicant and her husband have been dealing responsibly with the IRS since long before the SOR was issued.

Applicant meets most of the mitigating factors for financial considerations. Her financial difficulties were limited and recent, but occurred under a confluence of circumstances not likely to recur.⁵ Her husband was clearly qualified to run the real estate business he started, and but for the opportunity to pursue the graduate education opportunity overseas would likely have just continued to manage the renovated properties until the market improved. The real estate market crash is a circumstance beyond their control, but they clearly began discussing their delinquent tax accounts with the IRS before the liens were filed.⁶ Although Applicant has not received financial counseling, there are clear indications her financial problems are being brought under control.⁷ The carry back of business losses satisfied the tax lien for 2007 and reduced the balance for 2008. Because Applicant and her husband are now paying their monthly installment by direct debit, the lien for 2008 should soon be released. Applicant's conduct constitutes a timely, good-faith effort to address her delinquent debts.⁸ Applicant and her husband have significant positive monthly cash flow, and there is no indication of any problem staying current on their regular expenses. I conclude Guideline F for Applicant.

Formal Findings

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraphs a-b: For Applicant

⁴¶19 (a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations;

⁵¶20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

⁶¶20 (b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

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

⁸¶20 (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debt;.

Conclusion

Under the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR
Administrative Judge