



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-01655
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ray T. Blank, Esq., Department Counsel  
For Applicant: *Pro se*

February 25, 2011

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline F, Financial Considerations, but failed to mitigate the security concerns under Guideline B, Foreign Influence. Applicant's eligibility for a security clearance is denied.

On October 29, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines B and F. The action was taken 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 on September 1, 2006.

Applicant answered the SOR on November 8, 2010, and requested a hearing before an administrative judge. The case was assigned to me on December 23, 2010. DOHA issued a Notice of Hearing on January 5, 2010. I convened the hearing as scheduled on January 26, 2010. The Government offered Exhibits (GE) 1 through 4.

Applicant did not object and they were admitted into evidence. The Government requested administrative notice be taken of HE I. I granted the request. Applicant testified on his own behalf. He did not offer any exhibits. DOHA received the hearing transcript (Tr.) on February 3, 2011.

### **Findings of Fact**

Applicant admitted all of the allegations in SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 31 years old. He immigrated to the United States from Guatemala with his twin brother when he was about 13 or 14 years old. His mother had immigrated in about 1991. He graduated from high school in the United States in 1998. In 2005, he enlisted in the U.S. Army. He was deployed and served in combat in Iraq from January 2007 until April 2008. He became a naturalized citizen of the United States in June 2007. He intended to reenlist in the Army, but due to medical reasons he was not eligible. He received 60% medical disability. He remains in the inactive reserves. Applicant received an honorable discharge in 2009.<sup>1</sup>

Applicant married his wife in a civil ceremony in Guatemala in August 2008. His wife is a citizen and resident of Guatemala. They had a religious ceremony in April 2009. In September 2008, Applicant's twin brother passed away. This put a great deal of strain on his mother and she became ill. Applicant had planned on remaining in the military, but when he was no longer medically qualified, his future plans changed. With his twin brother's passing, he felt he needed to remain at home to help his mother. Applicant did not want to move his wife to the United States until his future plans were firm. He submitted the paperwork for her to obtain a visa in October 2010. Once the visa is approved, his wife will move to the United States. She had previously applied for a U.S. visa and it was denied. Applicant stated that she was not informed why it was denied. He intends to remain in the United States with his wife and raise a family. When Applicant became a U.S. citizen, he obtained a passport. Since then, he used only his U.S. passport when he traveled to Guatemala. Applicant communicates with his wife daily, either by telephone or computer. His wife works as a travel agent and does not have ties to the Guatemalan government.<sup>2</sup>

When Applicant was a boy, he returned to Guatemala in the summers to visit family. Since 2005, he has returned five times. He has another brother and a sister who are citizens and residents of Guatemala. He has a close relationship with his siblings. He estimated he communicates with them about three times a week. His sister is about 39 years old and a homemaker. She has visited Applicant in the United States two or three times. She has a child. Her husband works for a private company, but Applicant did not know the nature of the business. Applicant's brother owns a hardware store and his wife works with him. Neither sibling has ties to the Guatemalan government.

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<sup>1</sup> Tr. 26-29, 38-40, 80-82, 84.

<sup>2</sup> Tr. 25-26, 29-47, 89-92.

Applicant intends to maintain contact with his family in Guatemala. He anticipates he will visit them in the future. His mother returns to Guatemala to visit once a year or every other year.<sup>3</sup>

Applicant's parents-in-law are citizens and residents of Guatemala. His father-in-law is a construction foreman. His mother-in-law is a homemaker. Applicant's family and his wife's family have been friends for many years. His wife lives with her parents. Applicant maintains regular contact with his parents-in-law.<sup>4</sup>

Applicant purchased a house in the United States about a month ago. He is attending college at night and has completed about 45 credits. He has cash assets of about \$5,500 in his savings and checking accounts. He has been employed with a federal contractor since September 2009. He also maintains a bank account in Guatemala with about \$150. He uses this account to send money to his wife. He also maintains many friendships in the United States through college and the military.<sup>5</sup>

Applicant has one delinquent debt for a credit card. He admitted that when he was younger he was careless about his finances. He last made a payment on this account in 2004. The original amount owed was about \$7,000. He had periods of unemployment. At the time, he realized that even if he contacted the creditor he was not able to pay it. He received different forms of financial counseling while he was in the Army. He was counseled and advised about the importance of being fiscally responsible. When he returned from duty in Iraq, he realized that he needed to resolve this debt and he contacted the original creditor. He was advised that the debt was charged off and the creditor used it as a tax write-off. They told Applicant that they could not accept a payment. Applicant disputed the debt with a credit bureau so they would help him find who owned the debt. The credit bureau was unable to locate a collection company that owned the debt and determined the debt was deleted from the credit file. Applicant did not know how else to resolve the debt. He fully accepted responsibility that the debt belonged to him and he should have acted more responsibly before it became delinquent. However, since then he has made attempts to resolve it and has been unable. Despite his best efforts, he does not know how to settle the debt if he cannot find the company that owns the debt, and it is no longer on his credit file.<sup>6</sup>

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<sup>3</sup> Tr. 32-34, 51-57, 84-85.

<sup>4</sup> Tr. 31, 57-58, 87-88.

<sup>5</sup> Tr. 48-51, 58-66, 80-83.

<sup>6</sup> Tr. 22-25, 43-44, 66-79; AE 2.

## **Guatemala<sup>7</sup>**

Guatemala is a constitutional democratic republic. The government is democratically elected. The United States and Guatemala traditionally have maintained close ties based on mutual interest in maintaining democratic institutions and combating elements of crime that have plagued the country, such as money laundering, corruption, narcotics trafficking, alien-smuggling, and other transnational crime. The United States and Guatemala maintain trade and commercial ties, cooperating in fostering Guatemala's economic growth and development, and supporting Central-American integration.

The United States has played an important role in United Nations moderated peace accords, which were signed in 1996, and which form a blueprint for political economic and social change. However, relations between the United States and Guatemala are strained at times due to Guatemala's human rights issues. Their problems consist of improper conduct by security forces, substantial inadequacies in the police and judicial sector, and serious criminal activity in the national police, including engagement in torture, abuse, and excessive force.

Guatemala faces one of the hemisphere's most persistent security challenges and is considered one of the most dangerous countries in the hemisphere. Its weak institutions, corruption, and intimidation in the government create a widespread public distrust of the Guatemalan government that allows a variety of violent groups to operate with impunity, including drug traffickers and street gangs, both foreign and domestic. The weak criminal justice system, coupled with pervasive corruption, makes it difficult for the Guatemalan government to address the country's deteriorating security system. The ineffectiveness of the Guatemalan government hinders efforts against transnational crime threats and has made the country a major alien smuggling route and a transit point for terrorists seeking to gain access to the United States.

### **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, 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, these guidelines are applied 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,

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<sup>7</sup> HE I includes a summary and the source documents on the information regarding the country of Guatemala.

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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 and has the ultimate burden of persuasion 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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**

### **Guideline F, Financial Considerations**

The security concern 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 several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following are potentially applicable:

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

Applicant has one delinquent debt of approximately \$11,120 that was charged off and not paid. I find there is sufficient evidence to raise these disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered the following 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 acknowledged that when he was younger he was careless about his finances and had a credit card that he could not pay. The original debt was about \$7,000. He last made a payment on the debt in 2004. Applicant went into the Army and served in Iraq. While in the Army, he matured into a more responsible person, received financial counseling, and, upon his return from Iraq, he attempted to resolve the debt. He contacted the creditor and was advised the debt was charged off, the creditor had taken a tax loss, and could not accept a payment. He contacted a credit bureau to dispute the debt and determine if the debt was sold to a collection company. He was advised they could not find the debt and it was no longer on his credit file. Applicant

understood he was responsible for the debt and tried to determine if there is a current creditor. He was unsuccessful. The original creditor is not seeking payment and it does not appear the debt is held by a collection company. This is Applicant's only delinquent debt. He admitted he was immature and fiscally irresponsible when he incurred the debt. That no longer appears to be the case, as he has taken legitimate steps to resolve the debt. I find the behavior happened long ago and was infrequent. He has matured and has an understanding of the importance of being fiscally responsible. I find his actions are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, or good judgment. Therefore, I find that AG ¶ 20(a) applies.

The facts do not support application of AG ¶ 20(b) because there is no evidence that Applicant's financial problem was beyond his control. Applicant has received financial counseling and through it he has gained an understanding about the importance of being fiscally responsible. After returning from duty in Iraq he attempted to resolve the debt was unable because it had been charged off. After researching the debt further Applicant has been unable to determine if there is a current creditor. He has attempted to resolve the debt. His other finances are under control and it appears this debt is no longer being pursued. I find AG ¶¶ 20(c) applies. Applicant did not dispute he owed the debt, and considering the age of the debt, I cannot find he made a good-faith effort to repay it. I find the facts do not support the application of AG ¶ 20(d) and 20(e).

## **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 conditions that could raise a security concern and may be disqualifying. I have considered all of them and especially considered the following:

- (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;

(d) sharing living quarters with a person or person, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; and

(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.

Applicant's wife, two siblings, and parents-in-law are citizens and residents of Guatemala. When he visits Guatemala, he stays with his wife and her family. I find due to his close relationship to his wife, siblings, and parents-in-law that this contact could potentially create a heightened risk of foreign influence. I find AG ¶¶ 7(a), 7(b), and 7(d) apply. Applicant maintains a bank account in Guatemala with a small balance. He uses the account to transfer money to his wife for living expenses. He owns a house in the United States and maintains his other assets here. The bank account does not equate to a substantial business, financial, or property interest which could subject Applicant to a heightened risk of foreign influence. Therefore, I find AG ¶ 7(e) does not apply.

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8 and especially considered the following:

(a) the nature of the relationship 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 and 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 interests in favor of the U.S. interests; and

(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.

The mere possession of a close personal relationship with a person who is a citizen and resident of a foreign country is not, as a matter of law, disqualifying under Guideline B. However, depending on the facts and circumstances, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. Applicant's wife, siblings, and parents-in-law are



citizens and residents of Guatemala. Applicant visits them periodically, and talks with them often. He anticipates future visits to Guatemala until his wife is granted a visa to move to the United States. His contact with them is frequent and more than casual. AG ¶ 8(c) does not apply.

Applicant's relatives do not appear to have ties to the Guatemalan government. His wife works as a travel agent. His sister is a housewife whose husband is employed by a private company. His brother has a hardware business and his father-in-law is a construction foreman. It does not appear his relatives are reliant on the Guatemalan government. The United States maintains close relations with Guatemala. However, Guatemala has serious security challenges and is considered one of the most dangerous countries in the hemisphere. Its weak institutions, corruption, and intimidation in the government create a widespread public distrust of the Guatemalan government that allows a variety of violent groups to operate with impunity, including drug traffickers and street gangs, both foreign and domestic. The weak criminal justice system, coupled with pervasive corruption, makes it difficult for the Guatemalan government to address the country's deteriorating security system. The ineffectiveness of the Guatemalan government hinders efforts against transnational crime threats and has made the country a major alien smuggling route and a transit point for terrorists seeking to gain access to the United States.

Due to the nature of the country, the heightened security risk remains a security concern. Applicant travels to Guatemala and his wife lives there. The risk remains that Applicant could be placed in a position of having to choose between the interests of the United States and those of his family in Guatemala. I find mitigating condition AG ¶ 8(a) does not apply.

The nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that Applicant's family members are vulnerable to government coercion. 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, the country is known to conduct intelligence operations against the U.S., or there is a serious problem in the country with crime or terrorism.

Guatemala has a democratically elected government and has close ties with the United States. Applicant's family members do not appear to have any special connection with the Guatemalan government and do not rely on it for employment or other benefits. There is no evidence that Guatemala conducts intelligence operations against the United States. However, there is considerable evidence that Guatemala has serious problems with corruption, inadequacies with the police and judicial sector, violent crime, and an ineffective government in hindering major criminal threats, preventing alien smuggling routes, and blocking a transit point for terrorists seeking to gain access to the United States.

Applicant became a citizen of the United States while serving his adopted country in the Army. He deployed and was in combat in Iraq and was medically discharged from the Army. His wife is awaiting the approval of her visa so she can move to the United States to be with him. His mother lives in the United States. He owns a house and almost all of his assets are in the United States. He is attending college. It is clear that his life is firmly rooted in the United States. It cannot be overlooked that Applicant's ties to his wife, siblings, and parents-in-law in Guatemala are strong. Applicant has proven that he is deeply loyal to the United States. He has lived in the United States more than half of his life. He has been a citizen of the United States since 2007. However, I find that there is a conflict of interest because Applicant is devoted to his wife and relatives and his sense of obligation to them is not minimal. This conflict will be immensely reduced when Applicant's wife receives her visa and moves to the United States. At that point, Applicant ties to Guatemala will be significantly reduced and he can be expected to resolve any conflict of interest in favor of the United States interest. However, at this time his devotion to his wife and family is too great to find in his favor. Therefore, I find AG ¶ 8(b) does 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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant admitted that when he was young and immature he did not act fiscally responsible. He incurred a large credit card debt that he did not pay. After joining the Army and receiving financial counseling, he returned from a combat deployment with a new maturity. He attempted to resolve the debt, but was unable because it was charged off and he was unable to determine if there was a new creditor. Applicant has attempted

to resolve the debt. He has no other delinquent debts and this one does not rise to the level of being a security concern.

Applicant served his adopted country in the Army and was medically discharged. He is employed and is attending college at night. He has lived in the United States since his early teens and he owns a home. Applicant clearly has strong ties and loyalties to the United States. However, he is also deeply committed to his wife, who is a citizen and resident of Guatemala. He is also close to his siblings and his wife's parents. He is hopeful that his wife's visa will be approved soon and she can move to the United States. His deep commitment to his wife is admirable and understandable. The conflicts that are raised by her citizenship and residency will be greatly reduced once she immigrates to the United States. Until then, despite Applicant's loyalty and devotion to his adopted country, the heightened security risk and conflict of interest raised is not mitigated. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the Financial Considerations concerns, but failed to mitigate the security concerns arising under the guideline for Foreign Influence.

### **Formal Findings**

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraphs 1.a:	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 a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge