



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



In the matter of:)
)
) ISCR Case No. 10-01997
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

September 20, 2011

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings and exhibits in this case, I conclude that Applicant failed to mitigate security concerns under Guideline B, Foreign Influence, and Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

Statement of the Case

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) on November 2, 2009. On March 1, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations, and Guideline B, Foreign Influence. 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.

Applicant's answer to the SOR was signed and notarized on April 1, 2011. He requested a decision on the record in lieu of a hearing. The government compiled its File of Relevant Material (FORM) on May 19, 2011. The FORM contained documents

identified as Items 1 through 9. Additionally, in the FORM, the Government requested that I take administrative notice of certain facts about Afghanistan and provided, as reference materials, official U.S. documents.¹ I marked the Government's administrative notice documents as Hearing Exhibit (H.E.) I.

On May 25, 2011, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and objections within 30 days of receipt. Applicant received the file on June 18, 2011. His response was due on July 18, 2011. Applicant timely submitted a four-page document in response to the FORM. Department Counsel did not object to the admission of Applicant's document. On August 3, 2011, when the case was assigned to me for a decision, I marked Applicant's document as Item A and entered it in the record.

Findings of Fact

The SOR contains nine allegations that raise security concerns under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.i.) and three allegations that raise security concerns under Guideline B, Foreign Influence (SOR ¶¶ 2.a. through 2.c.) In his Answer to the SOR, Applicant admitted all Guideline F and Guideline B allegations and provided additional information. Applicant's admissions are entered as findings of fact. (Item 1; Item 3.)

The facts in this case are established by the record provided in the FORM by the Government and by written information provided by Applicant in response to the FORM. The record evidence includes Applicant's answers to the SOR; his November 2009 e-QIP; his responses to DOHA interrogatories; his personal subject interview with an authorized investigator from the Office of Personnel Management (OPM); and his credit reports of November 26, 2009, February 7, 2011, and May 19, 2011.² (See Items 3 through 9; Item A.)

Applicant, who is 36 years old, was born in Afghanistan and immigrated to the United States with his parents when he was five years old. He became a naturalized U.S. citizen in 1999. Applicant's parents, his brother, and his two sisters are also naturalized U.S. citizens and reside in the United States. Since 2005, Applicant has claimed his parents' home as his residence. He has also helped his father with mortgage payments on the parental home. (Item 4; Item 5; Item 6 at 3.)

¹ The Government provided six official U.S. documents and a four-page factual summary containing facts about Afghanistan.

² Applicant was interviewed by an OPM investigator on December 16, 2009. In response to DOHA interrogatories, Applicant reviewed the investigator's report, noted that his financial statement had changed and that his wife had been interviewed by officials regarding her request for a visa to travel to the United States. He made no further additions or deletions, and on November 24, 2010, Applicant signed a statement that the investigator's report, with the changes he had made, accurately reflected his interview. (Item 7.)

Since December 2009, Applicant has been employed by a federal contractor and assigned overseas in a war zone as an Arab language linguist. He seeks a security clearance for the first time. (Item 4; Item A.)

Applicant was married for the first time in 2002. His first wife was born in Afghanistan and was a citizen of Sweden. Applicant and his wife divorced in 2005. In November 2008, Applicant traveled to Afghanistan and married his second wife, a citizen and resident of Afghanistan. He then returned to the United States, and his wife remained in Afghanistan with her mother and brother. For about two and one-half years, Applicant and his wife did not see one another; they spoke weekly by telephone, however. (Item 4; Item 6.)

Applicant told an OPM investigator that his wife did not know that he had applied for a security clearance, and she also did not know that he was working overseas in a war zone as a translator. He expressed concern for his wife's safety if it were known that he was serving as a linguist and translator. (Item 6 at 5.)

The SOR alleges at ¶ 2.a. that Applicant's wife is a citizen and resident of Afghanistan. In his Answer to the SOR, Applicant admitted the allegation and asserted that his wife had received a U.S. visa and planned to travel to the United States in April 2011. In response to the FORM, Applicant reported that his wife had arrived in the United States and was living with his parents in the family home. He provided copies of his wife's state identity card, her U.S. permanent resident card, her Social Security card, and his vision-only health insurance card, issued to him by his employer, which showed his wife as his dependent. (Item 1; Item 3; Item A.)

The SOR also alleges at ¶¶ 2.b. and 2.c. that Applicant's mother-in-law and brother-in-law are citizens and residents of Afghanistan. Applicant stated that his contacts with his wife's mother and brother were limited. He last spoke with his mother-in-law two years ago. He speaks with his brother-in-law, who is older than his wife, on the telephone twice a year to convey good wishes at holiday time. However, he acknowledged that because his wife's father was deceased, she was particularly close to her older brother and relied upon him as if he were her father. (Item 1; Item 3; Item 6.)

The SOR alleges that Applicant owes approximately \$28,204 in delinquent debt to nine creditors. In his response to the FORM, Applicant acknowledged that he had a history of financial delinquency. He told the OPM investigator that in about 2003, he had a serious medical problem which required treatment at two hospitals. His medical bills totaled \$300,000. His health insurance carrier paid all but approximately \$18,000 to \$19,000 of the medical debt. In his answer to the SOR, Applicant identified the debts alleged at SOR ¶¶ 1.d. (\$631), 1.e. (\$22,885), 1.f. (\$1,588), and 1.g. (\$179) as owed to one of the hospitals where he was treated for his serious medical problem. He stated that he had hired a credit advisor to help in the resolution of these debts in 2009, but the credit advisor misled him and, as a result, he was attempting to resolve the debts himself. However, Applicant acknowledged that he had not yet satisfied the debts but

intended to do so when he returned to the United States in April 2011. (Item 3; Item 6; Item A.)

The SOR alleges at ¶ 1.a. that Applicant owes a \$615 debt, in collection status, to a communication company for cable service. Applicant claimed he had entered into a payment plan with the creditor and had agreed to pay \$66.50 a month to satisfy the debt. While he did not provide documentation from the creditor corroborating a payment plan, he provided an annotated page from his credit report of October 2, 2010, and a copy of his December 2010 bank statement showing a payment authorization for \$66.50. (Item 1; Item 3 at 3; Item 6.)

The SOR alleges at ¶ 1.b. that Applicant owed a \$1,623 delinquent debt in collection status. In his answer to the SOR, Applicant identified the debt as a student loan. He stated that he asked the creditor to reduce the size of the debt “because most of the charges are fees.” He also stated that the credit advisor he hired in 2009 to resolve the debt had misled him. The debt remains unresolved. (Item 1; Item 3.)

The SOR alleges at ¶ 1.c. that Applicant owes a \$502 debt, in charged-off status, to a creditor. Applicant’s credit report states that the account was opened in September 2007 and became past due in October 2009. In his answer to the SOR, Applicant stated he had settled the debt in November 2010 by making a payment of \$251.08. He provided an annotated page from his credit report of October 2, 2010, indicating payment, and a copy of his bank statement showing he had authorized payment to the creditor on November 26, 2010. (Item 1; Item 3; Item 6.)

The SOR alleges at ¶ 1.h. that Applicant owes a \$116 delinquent debt, in collection status, to a medical creditor. Applicant’s credit report showed that the delinquent account was opened in March 2007 and became delinquent in June 2007. In his answer to the SOR, Applicant provided an annotated page from his credit report of October 2, 2010, indicating a total payment of \$121.75 on the debt, and a copy of his bank statement showing that he had authorized payment to the creditor on November 24, 2010. (Item 1; Item 3; Item 6.)

The SOR alleges at ¶ 1.i. that Applicant owes a \$65 delinquent debt to a medical creditor. In his answer to the SOR, Applicant reported that he had no information showing that he had paid or otherwise satisfied the debt. (Item 1; Item 3.)

Applicant provided a personal financial statement, dated November 24, 2010. He stated that his gross monthly salary was \$11,115.44, and his total net monthly income was \$9,954.94.³ He listed fixed monthly living expenses of \$350. He did not list any debt payments. He listed a monthly net remainder of \$8,254.94 and \$14,330 in savings and miscellaneous assets. (Item 5 at 5.)

³ Applicant’s bank statement for the period from November 23, 2010, to December 21, 2010, shows a beginning balance of \$14,402 and an ending balance of \$22,367. During the month, he wrote one check for \$600 and made seven ATM and debit card withdrawals totaling \$526. (Item 3 at 3.)

Applicant provided a letter of appreciation, dated October 24, 2010, from the military officer for whom he worked overseas. The military officer praised Applicant's work ethic, commitment to the mission, and leadership as follows:

The personal stake [Applicant] took in the mission made him an integral part of the . . . Section. He endured long and often disruptive hours with patience, enthusiasm, and unwavering dedication. Furthermore, [Applicant] displayed a great amount of initiative, often spending his own time with [a local group trained by the military] to further support mentoring efforts. His outstanding work ethic was a key factor in the successful completion of . . . [the] Section's mission.

Coming to work as an interpreter without any prior exposure to military life, [Applicant] seamlessly adapted to the unique living and working conditions required of civilian service with [a military unit]. He quickly overcame the steep learning curve associated with military terms and concepts, which greatly increased the quality of his translations. Aside from the experience he gained helping to facilitate tactical aspects of the mission such as patrols and searches, he displayed a high degree of proficiency while even adding his own useful insight into the mentoring of [the local group] in subjects such as personnel administration, information assurance, and logistical and operational planning.

Though far from being a requirement of his job, [Applicant] additionally displayed a fine quality of leadership, serving as an example for both other interpreters and [the local group]. When in contact with other interpreters, he was crucial in setting the example of professionalism and dedication. Amongst [the local group], he made it a personal endeavor to encourage them to adopt higher standards of professionalism, enthusiasm, and integrity. [Applicant's] personal sense of integrity and commitment were very much appreciated by . . . [the] Section, being of great importance in the effort to mentor the often morally austere [local group].

(Item A at 1-2.)

I take administrative notice of the following facts about Afghanistan. The facts in the following summary were provided by Department Counsel to Applicant and to me. The facts were derived from official U.S. Government documents provided as attachments to the FORM and are identified in the record as H.E. I.⁴

⁴ The following official U.S. Government documents were used to provide the factual summary on Afghanistan quoted in this decision: U.S. Department of State, *Background Note: Afghanistan*, December 6, 2010 (13 pages); U.S. Department of State, *2010 Human Rights Report: Afghanistan*, April 8, 2011 (25 pages); U.S. Department of State, Bureau of Consular Affairs, *Country Specific Information: Afghanistan*, November 12, 2010 (8 pages); Annual Threat Assessment of the U.S. Intelligence Community for the Senate Select Committee on Intelligence, Director of National Intelligence, February 2, 2010 (48 pages); U.S. Department of State, *Country Reports on Terrorism 2009, Chapter 5 – Terrorist Safe Havens and*

Afghanistan has been an independent nation since August 19, 1919, after the British relinquished control. Following a Soviet-supported coup in 1978, a Marxist government emerged. In December 1979, Soviet forces invaded and occupied Afghanistan. Afghan freedom fighters, known as mujaheddin, opposed the communist regime. The resistance movement eventually led to an agreement known as the Geneva Accords, signed by Pakistan, Afghanistan, the United States, and the Soviet Union, which ensured that Soviet forces would withdraw by February 1989.

The mujaheddin were not a party to the negotiations for the Accords and refused to accept them. As a result, a civil war continued after the Soviet withdrawal. In the mid-1990s, the Taliban rose to power largely due to the anarchy and the division of the country among warlords that arose after the Soviet withdrawal. The Taliban sought to impose an extreme interpretation of Islam on the entire country and committed massive human rights violations. The Taliban also provided sanctuary to Osama Bin-Laden since the mid-1990s, to al-Qa'ida generally, and to other terrorist organizations.

After the September 11, 2001, terrorist attacks, U.S. demands that Afghanistan expel Bin-Laden and his followers were rejected by the Taliban. U.S. forces and a coalition partnership commenced military operations in October 2001 that forced the Taliban out of power by November 2001.

After a few years of control by an interim government, the first democratic election took place in October 2004, and a second round of elections took place in 2009. Despite this and other progress made since the Taliban was deposed, Afghanistan still faces many daunting challenges, principally defeating terrorists and insurgents, recovering from over three decades of civil strife; and rebuilding a shattered physical, economic and political infrastructure.

Human rights problems included extrajudicial killings; torture and other abuse; poor prison conditions; widespread official impunity, ineffective government investigations of abuses by local security forces; arbitrary arrest and detention; prolonged pretrial detention; judicial corruption; violations of privacy rights; restrictions on freedom of the press, limits of freedom of assembly; restrictions of freedom of religion, including religious conversions; limits on freedom of movement; official corruption; violence and societal discrimination against women; sexual abuse of children; abuses against minorities; trafficking in persons; abuse of worker rights; and child labor.

Tactics and Tools for Disrupting or Eliminating Safe Havens, August 5, 2010 (15 pages); and U.S. Department of State, Bureau of Consular Affairs, *Travel Warning: Afghanistan*, August 13, 2010 (2 pages). Footnotes in the quoted text were omitted.

There were numerous reports that the government – or its agents – committed arbitrary or unlawful killings. Additionally, the Taliban-led insurgency has become increasingly dangerous and destabilizing. The Taliban's expansion of influence into northern Afghanistan since late 2007 has made the insurgency a countrywide threat. The insurgency has also increased in geographic scope and frequency of attacks and has shown greater aggressiveness and lethality. This lack of security in many areas, coupled with a generally low governmental capacity and competency, has hampered efforts to improve governance and extend development. The Taliban has been successful in suppressing voter turnout in elections in key parts of the country.

Despite the loss of some key leaders, insurgents have adjusted their tactics to maintain momentum following the arrival of additional US troops.

Afghan leaders also continue to face the eroding effects of official corruption and the drug trade. Criminal networks and narcotics cultivation constitute a source of funding for the insurgency in Afghanistan. Streams of Taliban from across the border in Pakistan, along with funds gained from narcotics trafficking and kidnapping, have allowed the insurgency to strengthen its military and technical capabilities.

In addition to the Taliban, al-Qa'ida and other insurgent groups and anti-Coalition organizations continue to operate in Afghanistan resulting in numerous attacks and deaths. Insurgents have targeted NGOs, Afghan journalists, government workers, and UN workers. Even the Afghan capital, Kabul, is considered at high risk for militant attacks, including rocket attacks, vehicle-borne IEDS, and suicide bombings.

Instability along the Pakistan-Afghan frontier continued to provide al-Qa'ida with leadership mobility and the ability to conduct training and operational planning, targeting Western Europe and U.S. interests in particular.

Overall, the State Department has declared that the security threat to all American citizens in Afghanistan remains critical, and travel in all areas of Afghanistan remains unsafe, due to military combat operations, landmines, banditry, armed rivalry between political and tribal groups, and the possibility of terrorist attacks.

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.

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 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

Guideline B, Foreign Influence

Under Guideline B, Foreign Influence, “[f]oreign 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.” AG ¶ 6.

Additionally, adjudications under Guideline B “can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target U.S. citizens to obtain protected information and/or is associated with the risk of terrorism.” AG ¶ 6.

In Afghanistan, the Afghan-Taliban dominated insurgency has become increasingly dangerous and destabilizing, despite International Security Assistance Force and Operation Enduring Freedom military operations. In addition to the Taliban, al-Qa’ida, other insurgent groups, and anti-Coalition organizations continue to operate in Afghanistan resulting in numerous attacks and deaths. The State Department has declared that the security threat to all American citizens in Afghanistan remains critical, and travel in all areas of Afghanistan remains unsafe, due to military combat operations, landmines, banditry, armed rivalry between political and tribal groups, and the possibility of terrorist attacks.

Applicant’s wife is a citizen of Afghanistan, now residing in the United States with Applicant’s parents. His mother-in-law and brother-in-law are citizens and residents of Afghanistan. These facts are sufficient to raise Guideline B security concerns.

I have considered all of the disqualifying conditions under the Foreign Influence guideline. The facts in this case raise security concerns under disqualifying conditions AG ¶¶ 7(a) and 7(b). AG ¶ 7(a) reads: “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.” AG ¶ 7(b) reads: “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.”

Applicant’s wife’s family members are citizens of Afghanistan who reside in Afghanistan, a country destabilized by war and terrorist activity. In the past, Applicant

contacted these relatives once or twice a year by telephone. However, now that his wife is residing in the United States, she will likely have contacts with her mother and brother in Afghanistan. Additionally, it is not clear from the record whether Applicant's wife, now that she is residing in the United States, knows of the nature of his work as a linguist and translator. Contacts with Applicant's mother-in-law and brother-in-law in Afghanistan, either by Applicant or by his wife, could create for Applicant a conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

Several mitigating conditions under AG ¶ 8 might be applicable to Applicant's case. If "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.," then AG ¶ 8(a) might apply. If "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," then AG ¶ 8(b) might apply. If "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," then AG ¶ 8(c) might apply.

Applicant is a newly-married man. His wife is a citizen of Afghanistan. After their marriage in November 2008, Applicant's wife remained in Afghanistan with her mother and brother. During that time, Applicant spoke by telephone with his wife every week, and he was concerned for her safety if terrorists or others learned of his work as a linguist and translator.

Applicant's wife is close to her brother, who is a citizen and resident of Afghanistan. In the past, Applicant's contacts with his in-laws in Afghanistan consisted of one of two telephone calls a year. However, now that his wife is living in the United States, it is reasonable to conclude that his relationships and contacts with his in-laws in Afghanistan will become more frequent and less casual. The record does not establish that under these circumstances Applicant would be able to put his loyalty to the United States above his relationships with his family members in Afghanistan.

Applicant has distinguished himself as a contract linguist, and his supervisor provided credible documentation establishing his honorable and dedicated service in carrying out the interests of the United States in the face of hardship and danger. However, I am not able to conclude that Applicant's family contacts and relationships with citizens and residents in Afghanistan, even when weighed against his demonstrated honorable civilian service to the United States, show that he can be expected to resolve any conflict of interest in favor of the U.S. interest. I conclude that AG ¶¶ 8(a), 8(b), and 8(c) do not fully apply in mitigation to Applicant's case.

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 two disqualifying 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 delinquency. He has accumulated delinquent debt which has not been paid or which has been paid only recently. This evidence is sufficient to raise potentially disqualifying conditions under Guideline F.

The guideline 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," such as "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 "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 has 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)).

The record in this case established that Applicant paid, or was paying as the result of a payment plan, three of the nine delinquent debts alleged on the SOR. Applicant's payments on the three debts total \$439. Accordingly, I conclude that AG ¶ 20 d) applies in part to the facts of Applicant's case, and SOR ¶¶ 1.a., 1.c., and 1.h. are concluded for Applicant.

However, Applicant has a history of financial delinquencies that began several years ago and continues to the present. The six remaining unresolved delinquent debts alleged on the SOR total over \$27,000, despite Applicant's monthly disposable income of over \$8,000. Applicant's financial statement of November 2010 does not reflect any planned payments on his delinquent debts, suggesting that he does not have a plan in place for managing his financial responsibilities and avoiding financial delinquencies in the future. I conclude that AG ¶ 20(a) does not apply in mitigation.

Applicant suffered a serious medical condition in 2003 that required treatment costing approximately \$300,000. His health insurance paid for all but \$18,000 to \$19,000 of the medical charges. However, eight years have elapsed, and Applicant has no plan in place to satisfy the remaining medical debt from 2003, identified in SOR allegations 1.d., 1.e., 1.f., and 1.g. While it is reasonable to conclude that his serious medical condition requiring \$300,000 in treatments was beyond Applicant's control, it is not clear from the written record that Applicant's failure to address the remaining \$18,000 to \$19,000 in medical debt for eight years shows that he acted responsibly under the circumstances. I conclude that AG ¶ 20(b) applies only in part to the facts of Applicant's case.

In 2009, Applicant retained a credit advisor to assist him with his debt payment. He claimed, however, that the credit advisor misled him. The record does not reflect that Applicant has sought or received any additional credit counseling. I conclude that AG ¶ 20(d) does not apply to the facts of this case.

Applicant did not provide documentation to establish that he had a reasonable basis to dispute any of his past-due debts. Accordingly, I conclude that AG ¶ 20(e) does not apply in mitigation.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an 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 the facts and circumstances surrounding this case. Applicant, who is serving overseas as a contract Arab linguist, elected to have a decision without a hearing. Because he did not appear in person, I was unable to question and observe him in order to assess his credibility. However, in his response to the FORM, Applicant provided an assessment of his character and job performance that enabled me to see him as he is seen by those with whom he serves and works. The assessment spoke to Applicant's strong work ethic, leadership among his peers, and commitment to the goals and interests of the United States. His command considers him to be a valued employee.

A careful review of Applicant's family relationships, however, raises security concerns about his vulnerability to conflict of interest, foreign exploitation, inducement, and coercion. Applicant failed to provide information to mitigate those concerns.

Additionally, despite a net monthly remainder of over \$8,000, Applicant is responsible for over \$27,000 in unresolved delinquent debt. His financial statement indicates that he has the resources to pay or settle these delinquencies, and yet he has not done so. This raises concerns about his judgment, reliability, and trustworthiness.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude that Applicant failed to mitigate security concerns arising under the foreign influence and financial considerations adjudicative guidelines.

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 F:	AGAINST APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	For Applicant
Subparagraphs 1.d. -1.g.:	Against Applicant
Subparagraph 1.h.:	For Applicant
Subparagraph 1.i.:	Against Applicant

Paragraph 2: Guideline B: AGAINST APPLICANT

Subparagraphs 2.a. - 2.c.: Against 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