



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



In the matter of:)	
)	
)	ISCR Case No. 10-03356
)	
)	
Applicant for Security Clearance)	

Appearances

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

July 13, 2011

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on December 16, 2009. On July 16, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and B for the Applicant. 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) promulgated by the President on December 29, 2005, and effective within the Department of Defense for cases after September 1, 2006.

The Applicant answered the SOR in writing on July 28, 2010, and later requested a hearing before an Administrative Judge. DOHA received the request on September 16, 2010, and it was assigned to another Administrative Judge. It was reassigned to the undersigned on January 14, 2011. DOHA issued a notice of hearing that same day, January 14, 2011, and I convened the hearing as scheduled on February 10, 2011. The

Government offered Exhibits (GXs) 1 through 5, which were received without objection. The Applicant testified on her own behalf. DOHA received the transcript of the hearing (TR) on February 24, 2011. I granted the Applicant's request to keep the record open until March 10, 2010, to submit additional matters. On February 25, 2011, through Department Counsel, she submitted Exhibit (AppX) A, which was received without objection. The record closed on March 10, 2011. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the Republic of the Philippines. The request was granted. The request, and the attached documents, were not admitted into evidence, but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In her Answer to the SOR, the Applicant admitted the factual allegations in all the Subparagraphs, with explanations. She also provided additional information to support her request for eligibility for a security clearance.

Guideline F - Financial Considerations

The Applicant incurred significant financial responsibilities in providing medical care for her now deceased mother. (TR at page 24 line 21 to page 26 line 11.) She also provides financial assistance to her ailing father, which has further exacerbated her financial difficulties. (*Id.*, and TR at page 42 lines 4~25.)

1.h. Previously, in 1994, the Applicant filed for the protection of a Chapter 7 Bankruptcy. (TR at page 40 line 25 to page 41 line 15.) Both she and her husband lost their federal employment due to a Base Realignment and Closure (BRAC). (TR at page 22 line 11 to page 23 line 11.)

1.a. The Applicant has an outstanding judgment on a credit card debt to Creditor A in the amount of about \$2,500. She is making monthly payments of \$60 towards this debt, as evidenced by a letter from the creditor's collection company. (TR at page 16 line 9 to page 17 line 8, at page 29 line 20 to page 31 line 12, and AppX A at page 1.)

1.b. The Applicant has a past due debt, as the result of a second mortgage, to Creditor B in the amount of about \$24,806. (GX 5 at page 1.) She has yet to settle this substantial debt, as evidenced by a letter from her legal representative's paralegal. (TR at page 17 line 9 to page 18 line 4, and AppX A at page 2.)

1.c. The Applicant has a past due debt to Creditor C in the amount of about \$9,465. (GX 5 at page 1.) She has yet to settle this fairly substantial credit card debt, again as evidenced by a letter from her legal representative's paralegal. (TR at page 18 lines 5~16, at page 33 lines 15~18, and AppX A at page 2.)

1.d. The Applicant has a past due debt to Creditor D, as the result of an automobile repossession, in the amount of about \$3,376. (GX 5 at page 3.) She avers that she is making monthly payments of \$60 towards this debt, but has offered no credible supporting documentation. (TR at page 18 line 17 to page 19 line 5, at page 33 line 19 to page 34 line 7, at page 37 line 3 to page 38 line 2, and AppX A at pages 4 and 7.)

1.e. The Applicant has a past due credit card debt to Creditor E in the amount of about \$6,765. (GX 5 at page 4.) She has yet to settled this debt, as evidenced by a letter from her legal representative's paralegal. (TR at page 19 lines 6~17, at page 34 lines 8~13, and AppX A at page 2.)

1.f. The Applicant has a past due debt to Creditor F, as the result of another automobile repossession, in the amount of about \$19,972. (GX 5 at page 4.) She avers that she is still "negotiating" this debt, but has offered no credible supporting documentation. (TR at page 19 line 18 to page 20 line 22, at page 34 line 14 to page 37 line 2, and AppX A at page 4.)

1.g. The Applicant has a past due debt, as the result of a primary mortgage, to Creditor G in the amount of about \$120,000. She has yet to address this foreclosure debt. (TR at page 20 line 25 to page 22 line 10, and at page 39 line 2 to page 40 line 16.)

Guideline B - Foreign Influence

2.a. and 2.e. The Applicant's 87-year-old father is a citizen and resident of the Philippines. (GX 1 at page 27.) She has incurred fairly substantial financial obligations in caring for her ailing father. (TR at page 41 line 24 to page 42 line 6, and at page 44 lines 2~24.)

2.b. The Applicant's brother is a citizen and resident of the Philippines. (GX 1 at page 30.) He works for the Philippine government as a university professor. (TR at page 45 line 9 to page 46 line 7, and at page 46 lines 16~20.)

2.c. The Applicant's oldest sister is a citizen and resident of the Philippines. (GX 1 at page 32.) She is "a homemaker." (TR at page 46 lines 10~16.)

2.d. The Applicant has two other sisters who are citizens and residents of the U.S. (TR at page 46 line 21 to page 47 line 18.)

Department Counsel asked me to take administrative notice of certain facts about the Philippines. The Philippines is a multiparty republic with an elected president and bicameral legislature. It has a representative democracy modeled on the U.S. system. It is an ally of the U.S. with ties stretching back to 1898. Since the end of World War II, the Philippine economy has been on an unfortunate trajectory, going from one of the richest countries in Asia to one of the poorest. In addition to the economic challenges facing the Philippines, the government continues to face threats from terrorist groups. Beyond the significant economic and terrorist threats faced by the Philippine government, internal human rights issues also present a serious destabilizing concern.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching 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. 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, 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 as to obtaining a favorable security decision.

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

grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

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

Analysis

Guideline F - Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in Paragraph 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. Under Subparagraph 19(a), an *“inability or unwillingness to satisfy debts”* is potentially disqualifying. Similarly under Subparagraph 19(c), *“a history of not meeting financial obligations”* may raise security concerns. The Applicant has significant past due debts, which she has yet to address. I can find no countervailing Mitigating Condition that is applicable. Although some of her debt can be attributed to ailing family members, this is not mitigating, as the vast majority of her debt can not be attributed so. She went bankrupt in 1994, and again is on the road to financial instability.

Guideline B - Foreign Influence

Paragraph 6 of the adjudicative guidelines sets out the security concern relating to Foreign Influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign 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 a foreign interest.

Here, Paragraph 7(a) is applicable: “*contacts with a foreign family member . . . 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.*” The Applicant’s father, her brother and one of her sisters are citizens of and reside in the Philippines. Again, I can find no countervailing Mitigation Condition that is applicable. Some of the Applicant’s financial difficulties are directly attributed to the needs of her Philippine father. By placing his financial concerns above her own, she has created a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Furthermore, her brother is a professor in a Philippine state run university, which adds to the heightened risk.

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. Under Paragraph (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.

The Administrative Judge should also consider the nine adjudicative process factors listed at AG Paragraph 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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Here, she does have the unqualified support of those who know the Applicant in the work place. (AppX A at pages 10~12.) However, the record evidence leaves me with questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her Financial Considerations and 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 F:	AGAINST APPLICANT
Subparagraph 1.a.	For Applicant
Subparagraphs 1.b.~1.d.	Against Applicant
Subparagraph 1.e.	For Applicant
Subparagraphs 1.f.~1.h.	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a. and 2.b.	Against Applicant
Subparagraphs 2.c. and 2.d.	For Applicant
Subparagraph 2.e.	Against Applicant

Conclusion

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

Richard A. Cefola
Administrative Judge