



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 10-09334

**Appearances**

For Government: Daniel F. Crowley, Esquire, Department Counsel  
For Applicant: *Pro se*

September 8, 2011

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant did not take any action to address three debts that have been delinquent about five years and now total more than \$38,000. Financial considerations concerns are not mitigated. Foreign influence concerns raised by his marriage to a Turkish citizen, and her relationships with her family in Turkey are mitigated. Access to classified information is denied.

**Statement of the Case**

On April 30, 2010, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (hereinafter SF-86) (Government Exhibit (GE) 1). On April 15, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, alleging security concerns under Guideline F (financial considerations) and B (foreign influence) (Hearing Exhibit (HE) 2). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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. The SOR detailed reasons why DOHA could not make the

preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and it recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On May 17, 2011, Applicant responded to the SOR. (HE 3) On July 7, 2011, Department Counsel was prepared to proceed. On July 18, 2011, the case was assigned to an administrative judge. On July 27, 2011, 2010, DOHA issued a hearing notice setting the hearing for August 15, 2011. (HE 1) On August 15, 2011, the case was transferred to me. The hearing was held as scheduled on August 15, 2011, using video teleconference. At the hearing, Department Counsel offered three exhibits (GE 1-3) (Transcript (Tr.) 20-22), and Applicant offered four exhibits. (Tr. 22-27; AE A-D) I admitted GE 1-3 and AE A-D. (Tr. 22, 27) Additionally, I admitted the SOR, response to the SOR, and the hearing notice. (HE 1-3) On August 23, 2011, I received the hearing transcript.

### **Procedural Ruling**

Department Counsel requested administrative notice of facts concerning Turkey. (Tr. 20-23; Administrative Notice Request, June 21, 2011) Applicant objected to the documents as unfairly characterizing Turkey as a threat to the United States. (Tr. 23) Applicant offered three documents reflecting a close, positive relationship between the United States and Turkey, and that the United States, like Turkey, faces a substantial threat from terrorists. (Tr. 23, AE B-D) Department Counsel provided supporting documents to show verification, detail, and context for facts relating to Turkey's relationship with the United States in his Administrative Notice request. I overruled Applicant's objection because his objections go to the weight and not the admissibility of the documents Department Counsel submitted. (Tr. 24-25)

I also took administrative notice of the facts requested by Applicant. Specifically, that Turkey and the United States have had a close relationship for decades. The United States and Turkey are both threatened by terrorists, and both countries have active counter-terrorism programs.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). See the Turkey section of the Findings of Fact of this decision, *infra*, for additional material facts concerning Turkey.

## Findings of Fact<sup>1</sup>

Applicant admitted the underlying facts alleged in SOR ¶¶ 1.a and 2.a to 2.e. (HE 3) His admissions are accepted as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 41-year-old employee of a defense contractor, who is seeking a security clearance to enhance his employment in security. (Tr. 9, 47-48, 60; GE 1) He has completed two years of college, where he majored in criminal justice. (Tr. 8-9) He married in 2003, and his only child was born in 2008. (GE 1)

### Financial Considerations

The SOR alleges three delinquent debts totaling \$38,687 as follows: 1.a is a collection account, alleging a delinquent debt from a bank for \$9,272; 1.b is a collection account, alleging a delinquent debt from a bank for a credit card debt for \$25,489; and 1.c arises from a debt on a vehicle lease for \$3,926. (Tr. 43-45; HE 2) The three debts became delinquent in 2005 or 2006. (Tr. 61)

Applicant opened a franchise pizza restaurant in the United States in 2005; however, the restaurant went out of business in 2007. (Tr. 35-37) In 2007, Applicant worked in a casino. (Tr. 37) In December 2009, Applicant went overseas to work as a contractor. (Tr. 37) He returned to the United States in January 2010 after 30 days overseas because of a medical problem. (Tr. 39, 30; GE 1) From April 2010 to the present, he has been employed in a security position at an energy company in the United States. (Tr. 39, 50; GE 1)

The debt in SOR ¶ 1.a for \$9,272 was for furniture for Applicant's pizza restaurant. (Tr. 43) The debt in SOR ¶ 1.b for \$25,489 was somewhat inflated due to excessive creditor or collection-agent charges, and it resulted from family and restaurant-related business expenses. (Tr. 44, 48) He did not make any payments because he did not believe he could afford to do so. (Tr. 43) Applicant believed the debt in SOR ¶ 1.c for \$3,926 was released because the creditor sent him an Internal Revenue Service (IRS) tax form after he questioned the debt. (Tr. 44-46) Applicant did not have a copy of the IRS form. (Tr. 46)

Applicant completed a personal financial statement (PFS) in February 2011, and the financial entries remain the same as of his hearing on August 15, 2011. (Tr. 40) His monthly financial entries are: gross income of \$3,254; net income of \$2,766; expenses of \$1,855; debt payments of \$704; and net remainder of \$207. (GE 3 at 190) He has \$10,000 in savings, and none of his debt payments were listed as being paid to the

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<sup>1</sup>The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information. Unless stated otherwise, the sources for the facts in this section are Applicant's SF-86 (GE 1) or his investigative personal subject interview (PSI).

SOR creditors. (GE 3 at 190) If he receives a security clearance, his income will increase from \$40,000 to about \$110,000 per year. (Tr. 41-42)

Applicant paid some small debts that were listed in his SF 86 and response to DOHA interrogatories. (GE 1, 3) When Applicant responded to DOHA interrogatories on February 23, 2011, he said he would pay the three SOR debts “when discretionary funds became available.” (GE 3 at 176) Although Applicant did not make any payments on any of his SOR debts, he promised to start making payments when he received a security clearance, using the increased income from his promotion. (Tr. 47-48) He attributed his failure to make payments to his SOR creditors to limited income from his current employment. (Tr. 60) He reiterated that he planned to pay his SOR debts within the first six months of obtaining employment paying over \$100,000 per year. (Tr. 62-63)

### **Foreign Influence**

Applicant was born in the United States. (Tr. 29, GE 1) His stepfather, who raised him from the age of four, was a U.S. Army soldier. (Tr. 29) Applicant moved around the world and was primarily educated in U.S. Department of Defense schools in Germany. (Tr. 29) When Applicant was 20 years old, he joined the U.S. Air Force. (Tr. 29) He served four years in the Air Force security police and received an honorable discharge. (Tr. 29-30) His military service included a tour in Southwest Asia for Operation Desert Storm. (Tr. 29-30)

After he left active Air Force service, he became a contractor for the U.S. Army and provided security for an installation in Southwest Asia from 1994 to 1997. (Tr. 31-32) His security clearance was upgraded from Secret to Top Secret, and he worked in security at various overseas locations and in the United States from 1998 to 2005 as a contractor. (Tr. 30-35) While working in Turkey, he met his future spouse. (Tr. 34)

Applicant’s spouse, and her father, mother, sister, and two brothers are Turkish citizens. (SOR ¶¶ 2.a-2.e) Her mother, sister, and two brothers live in Turkey.

Applicant’s spouse intends to apply to become a U.S. citizen, as soon as she is eligible to do so and the family is more settled. (Tr. 52; SOR ¶ 2.a) His father-in-law is a dual citizen of the United Kingdom and Turkey. (Tr. 50, 53; AE A; SOR ¶ 2.b) His father-in-law lives half of the year in Turkey and the other half in the United Kingdom. (Tr. 53) Applicant has never met his father-in-law in person, and he talks to his father-in-law over the telephone about four times per year. (Tr. 54)

Applicant’s most recent visit with his mother-in-law in Turkey was in 2004, and she came to the United States and visited Applicant’s family after Applicant’s daughter was born in 2008. (Tr. 55-56) Applicant’s spouse has visited Turkey about every year since they were married. (Tr. 55) In 2004, Applicant met his sister-in-law, who is a Turkish citizen, and lives in Turkey. He does not communicate with his siblings-in-law because they do not speak English. (Tr. 56-58) None of Applicant’s in-laws work for the Turkish Government. (Tr. 57) Applicant does not own any Turkish property. (Tr. 58)

There is no derogatory information concerning Applicant's police records. There is no evidence of record showing any U.S. arrests, illegal drug possession or use, or alcohol-related incidents.

## **Turkey**

Turkey is a constitutional republic with a multiparty parliamentary system and a president with limited powers. Turkey has a population of about 76.8 million people. In foreign relations, Turkey's primary political, economic, and security ties are with the West.

Turkey entered NATO in 1952 and serves as the organization's vital Eastern anchor, controlling the straits leading from the Black Sea to the Mediterranean Sea and sharing borders with Syria, Iraq, and Iran. The United States and Turkey have a close relationship that began in 1947 with an agreement implementing the Truman Doctrine. The United States and Turkey have numerous common goals and positions on foreign policy and defense issues, and work to enhance bilateral relationships, particularly in science, technology, defense, counter terrorism, and foreign relations. Turkey has more than 1,700 troops serving in Afghanistan, and has pledged \$200 million to support reconstruction efforts in Afghanistan. The United States has utilized bases in Turkey for many years, and the logistical support provided from those bases has been crucial to U.S. efforts to quell terrorism.

Domestic and transnational terrorist groups have targeted Turkish citizens and foreigners in Turkey for more than 40 years. Terrorist groups that operated in Turkey have included Kurdish nationalists, al-Qaida, Marxist-Leninist, and pro-Chechen groups. The most prominent among terrorist groups in Turkey is the Kurdistan Workers' Party (PKK). The PKK operates from bases in northern Iraq and directs its forces to target mainly Turkish security forces.

Terrorist bombings over the past five years, some causing significant numbers of casualties, have struck religious, government, government-owned, political, tourist, and business targets in a number of locations in Turkey. A variety of terrorist groups have targeted U.S. and Western interests as well. Terrorists claiming association with al-Qaida were responsible for suicide bombings in Istanbul in 2003 that targeted Western interests. Terrorists do not distinguish between official and civilian targets. Terrorists have also targeted U.S. citizens, soldiers, and interests in the United States, Iraq, Afghanistan, and Turkey.

In terms of human rights, the Turkish Government generally respected the human rights of its citizens; however, serious problems remained in several areas, including a documented rise in cases of torture, beating, and abuse by security forces. Security forces committed unlawful killings as well. Other forms of human rights abuses continue with respect to detainees, fair criminal trials, and freedom of speech, the press, and religion. In addition, societal attitudes allowing such practices as the "honor killing" of women continue to be a problems.

## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing 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 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 and modified.

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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. Adverse clearance decisions are made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

### **Analysis**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concern is under Guidelines B (foreign influence) and F (financial considerations) with respect to the allegations set forth in the SOR.

#### **Foreign Influence**

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

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 indicates three conditions that could raise a security concern and may be disqualifying in this case:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information; and

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

AG ¶¶ 7(a), 7(b), and 7(d) apply because of Applicant's relationship with his spouse and through her with her family because they are citizens of Turkey and are living in Turkey.

There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at \*8 (App. Bd. Feb. 20, 2002). Applicant has ties of affection and obligation to his spouse, who is a citizen of Turkey. "[A]s a matter of common sense and human experience, there is [also] a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 07-17673 at 3 (App. Bd. Apr. 2, 2009) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). This concept is the basis of AG ¶ 7(d). Although Applicant does not have direct ties of affection to his in-laws living in Turkey, he has affection for his spouse, and she has affection for her family living in Turkey. So an indirect tie remains between Applicant and his in-laws living in Turkey.

Indirect influence from Applicant's in-laws living in Turkey, through Applicant's spouse to Applicant, could result in a security concern. Applicant's spouse's communications with her family living in Turkey are not fully described in the record, and there is insufficient evidence to rebut the evidentiary presumption. Her relationships with her family living in Turkey are sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." Her relationships with residents of Turkey create a concern about Applicant's "obligation to protect sensitive information or technology" and his desire to help his spouse and her relatives who are in Turkey. For example, if terrorists in Turkey wanted to expose Applicant to coercion, they could exert pressure on his in-laws in Turkey. Applicant would then be subject to indirect coercion through his spouse and classified information could potentially be compromised.

The mere possession of close family ties with relatives or in-laws living in Turkey is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has such a relationship with even one person living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally,



we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002). The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion or inducement. 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, or the country is known to conduct intelligence collection operations against the United States. The relationship of Turkey with the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his spouse's relationships with her relatives living in Turkey do not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his spouse and her family living in Turkey, being particularly mindful of the potential threat of coercion by terrorists in Turkey.

While there is no evidence that intelligence operatives or terrorists from Turkey seek or have sought classified or economic information from or through Applicant, or his in-laws living in Turkey, it is not possible to rule out such a possibility in the future. Applicant's spouse's communications and visits with her family living in Turkey are sufficiently frequent, to demonstrate her obligation to them and affection for her family living in Turkey. Her concern for her family is a positive character trait that increases her trustworthiness; however, it also increases the concern about potential foreign influence. Department Counsel produced substantial evidence to raise the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(d) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the 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 interest in favor of the U.S. interest;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

AG ¶¶ 8(a), 8(c), and 8(f) have limited applicability. Applicant's spouse frequently traveled to Turkey. Applicant did not prove that she had infrequent contact with her family living in Turkey or that she was estranged from her family living in Turkey. The amount of contacts between an applicant or the applicant's spouse and relatives living in a foreign country are not the only test for determining whether someone could be coerced through their relatives. Because of his spouse's connections to her family living in Turkey, Applicant is not able to fully meet his burden of showing there is "little likelihood that [he and his spouse's relationships with relatives who are residents of Turkey] could create a risk for foreign influence or exploitation." Her visits to her family in Turkey show that she feels an obligation to her family's welfare.

Applicant has "deep and longstanding relationships and loyalties in the U.S." He has strong family connections to the United States. His father is a career Army soldier, he was born in the United States, and he served in the U.S. Air Force for four years, including service in Southwest Asia during Operation Desert Storm. His daughter is a U.S. citizen, and his spouse intends to become a U.S. citizen.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his spouse's relationships with her family living in Turkey, and her Turkish citizenship. There is no evidence that terrorists, criminals, the Turkish Government, or those conducting espionage have approached or threatened Applicant or his in-laws in Turkey to coerce Applicant or his in-laws for classified or sensitive information. While the Government does not have any burden to prove the presence of such evidence, if such record evidence was present, Applicant would have a heavy evidentiary burden to overcome to mitigate foreign influence security concerns. It is important to be mindful of the United States' very positive relationship with Turkey, Turkey's human rights violations, and most of all the ever present danger from terrorists and those who seek to damage U.S interests. The conduct of terrorists in Turkey makes it more likely that terrorists would attempt to coerce Applicant through his in-laws living in Turkey, if the terrorists determined it was advantageous to do so.

AG ¶¶ 8(d) and 8(e) do not apply. The U.S. Government has not encouraged Applicant's involvement with his spouse or in-laws living in Turkey. Applicant is not required to report his contacts with his spouse or in-laws living in Turkey.

AG ¶ 8(f) does not apply. Applicant has some property interests in the United States, which include his employment in the United States. However, this mitigating condition can only fully mitigate security concerns raised under AG ¶ 7(e), and AG ¶ 7(e) is not raised in this case. Applicant does not own any property or have any investments in Turkey.

In sum, the primary security concern is Applicant's close relationship with his spouse and through her to her relatives, who live in Turkey. Her family living in Turkey is readily available for coercion. Although the Turkish Government's failure to follow the rule of law in some instances further increases the risk of coercion, the major cause of concern is the prevalence of terrorism in Turkey. Nevertheless, Applicant has "such deep and longstanding relationships and loyalties in the U.S.," which clearly outweigh his connections to Turkey, that he "can be expected to resolve any conflict of interest in favor of the U.S. interest." Foreign influence concerns are fully mitigated under AG ¶ 8(b).

### **Financial Considerations**

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant's history of delinquent debt is documented in his credit reports, his responses to DOHA interrogatories, and his SOR response. Applicant's SOR lists three delinquent debts totaling more than \$38,000. His SOR debts became delinquent over five years ago. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(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's conduct in resolving his debts warrants limited application of AG ¶¶ 20(b), 20(c), and 20(d).<sup>2</sup> There is no evidence of financial counseling. He showed some good faith when he admitted responsibility for his SOR debts on his SF 86, to the OPM investigator, and in response to DOHA interrogatories. Applicant's financial situation was damaged by insufficient income, the business downturn, which caused his restaurant to fail, and his illness, which caused him to lose his employment in Iraq. However, Applicant's financial circumstances have been relatively stable for more than 12 months, and he has not provided sufficient information about efforts to start paying his SOR creditors to fully establish any mitigating conditions. He did not explain why he

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<sup>2</sup>The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

has not been using some of his monthly remainder or part of his \$10,000 in savings to pay his delinquent debts. He did not describe how he is reducing his monthly expenses, which would allow him to have more money available each month to start paying his SOR creditors.

Applicant did not establish that he acted responsibly under the circumstances. The file lacks proof that he maintained contact with all of his creditors.<sup>3</sup> There are no receipts or account statements from creditors, establishing any payments to his SOR creditors. There is insufficient evidence that his financial problem is being resolved and is under control. The file lacks evidence that he has acted responsibly on any of his SOR debts.

### **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 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 have incorporated my comments under Guidelines B and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under these guidelines, but some warrant additional comment.

There are some facts supporting mitigation of security concerns. Applicant has strong connections to the United States. He was born in the United States. He honorably served in the Air Force, including service in Southwest Asia during Operation Desert Storm. After leaving the Air Force, he served overseas and in the United States as a contractor in security. His child is a U.S. citizen, and he and his family live in the United States.

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<sup>3</sup>“Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

There is no derogatory information concerning Applicant's police records, any U.S. arrests, illegal drug possession or use, or alcohol-related incidents. He is loyal to the United States, and he considers the United States to be his home. Applicant's demeanor, sincerity, and honesty at his hearing are important factors militating towards approval of his access to classified information.

A Guideline B decision concerning Turkey must take into consideration the geopolitical situation in Turkey, as well as the dangers existing in Turkey.<sup>4</sup> The Turkish Government aggressively combats terrorists, and has joined the U.S.-led Coalition in Afghanistan fighting terrorists. Turkey is a long-standing member of NATO. U.S. military bases in Turkey have provided crucial support for decades to the defense of the United States and Turkey. The danger of coercion from terrorists in Turkey or the Turkish Government is relatively low in comparison to some countries, and Applicant's connections to the United States are strong. Turkey and the United States are allied militarily, diplomatically, and through trade. Foreign influence concerns are mitigated.

Circumstances beyond Applicant's control caused him to have delinquent debt. His restaurant business failed, and he had brief periods of unemployment. He lost his high-paying security employment in Iraq after 30 days due to medical problems. He is 41 years old, mature, and intelligent. He understands what he must do to establish his financial responsibility.

The financial circumstances tending to support denial of Applicant's clearance are more significant than the factors weighing towards approval of his clearance at this time. Applicant currently has three delinquent SOR debts totaling more than \$38,000. Those three debts have been delinquent more than five years. He has \$10,000 in savings and a monthly remainder of \$207; however, he did not show any effort to set up payment plans or settle any of the three debts. Moreover, if he reduced his standard of living and expenses, he could increase his net funds available to address his SOR debts. There is no evidence that any SOR creditors have received any payments, even though Applicant has been employed for at least a year. Applicant has failed to provide sufficient evidence of progress resolving his delinquent SOR debts to establish his financial responsibility.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude Applicant has not fully mitigated the financial consideration security concerns.

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<sup>4</sup> See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

### **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
Subparagraphs 1.a to 1.c:	Against Applicant
Paragraph 2, Guideline B:	For APPLICANT
Subparagraphs 2.a to 2.e:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Mark Harvey  
Administrative Judge