DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 11-01933
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: Jon L. Roberts, Esq.

08/21/2013

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline B and Guideline E, but failed to mitigate security concerns related to Guideline F. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On October 5, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence), Guideline F (Financial Considerations), and Guideline E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In a letter dated November 15, 2012, Applicant addressed the SOR allegations and requested a hearing before an administrative judge. On January 22, 2013, the SOR was amended to expand the allegations under Guideline E. A timely response to the

amendments was received on February 15, 2013. In the interim, the case was assigned to me on January 29, 2013.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 15, 2013, setting the hearing for March 21, 2013. The hearing was convened as scheduled. The Government offered Exhibits (GX) 1-16 and a request for administrative notice was offered as Hearing Exhibit (HE) 1. They were accepted without objection. Applicant offered testimony and five documents, which were accepted as Applicant's Exhibits (AX) A-E without objection. The transcript of the proceeding (Tr.) was received on March 29, 2013. On May 15, 2013, the Government received additional material from Applicant without objection. That file was accepted into the record as AX F and the record was closed.

Request for Administrative Notice

Department Counsel submitted a Request for Administrative Notice regarding certain facts about the nation of Colombia. It was accepted into the record as HE 1 without objection.

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)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common request for administrative notice at ISCR proceedings, is to notice 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). Various facts pertaining to Colombia were derived from HE 1 and its attachments. The facts thus derived are contained *infra* under the subheading "Colombia" of this decision.

Findings of Fact

Applicant is a 43-year-old assistant engineer who has worked for the same employer since October 2011. He is married to his second wife and has three minor children. Before permanently moving to this country from Colombia, he visited family that had already immigrated to the United States. On a trip in December 1992, he was arrested for driving while intoxicated (DWI). He pled guilty, was sentenced to pay a fine, and had his state driver's license suspended for one year. In 1994, Applicant moved to this country "looking for new opportunities." (Tr. 34) He initially worked in the service industry before pursuing a career in computers. At age 27, he earned a technical certificate in network engineering and data communications, then sought employment in that field. He became a United States citizen in 2007.

Married in July 2010, Applicant's current wife is a college student. She is a citizen of Colombia and a permanent resident of the United States. She intends to apply for United States citizenship by the end of the year.

Applicant's parents are dual citizens of the United States and Colombia. Like their son, they came to the United States in 1994. His father held a job with the Colombian government a few decades ago, but receives no pension. (Tr. 40-41, 48) Applicant's father no longer has contact with his former peers. He never served in a foreign military. He lives in the United States with Applicant's mother, a homemaker with no nexus to a foreign government or military. They speak with Applicant weekly. Neither parent has any financial interest or holding abroad. Neither have plans to return to Colombia. Their only significant contact with anyone remaining in Colombia is with Applicant's father's nonagenarian mother, a housewife. (Tr. 53-54) Applicant states that his parents consider the United States to be their home and that they are dual citizens only because they were not afforded the opportunity to formally renounce their Colombian citizenship.

Remaining in Colombia is Applicant's aforementioned grandmother, with whom Applicant speaks by phone once or twice a year. Also in Colombia is his mother-in-law, a retired hair stylist. She has never been employed by a government agency. Applicant's wife speaks with her about once a week, whereas Applicant speaks with her monthly. Applicant also has some extended family remaining in Colombia. Due to his own involvement with family, work, and friends in the United States, Applicant's contact with these individuals has dwindled considerably. He now feels "distant" from them. (Response to the SOR at 6 of 26) None of these individuals know what Applicant does for a living.

On March 7, 2003, around the time he divorced his first wife, Applicant was depressed over the dissolution of his marriage, his wife's infidelity, and her attempt to take their daughter away from him. He went to dinner with a coworker who had also been divorced. At dinner, he drank too much alcohol. On his way home, he was arrested for DWI. He pled guilty to the charge, was fined $200, ordered to attend an alcohol awareness class, and had his license suspended for a year. As a result of this incident, Applicant now rarely imbibes alcohol. (Answer to the SOR at 11 of 26)

In 2005, while working in the computer field, Applicant decided to use some of his savings and open a restaurant. Within a year, he knew the business was not doing well. This reckoning came as a financial crisis began to loom over the United States. After closing the restaurant, he had about $70,000 in debt. A bankruptcy attorney advised him to file for Chapter 7 bankruptcy, which he did in December 2006. It was discharged in May 2007. In the interim, Applicant received required financial counseling.

In executing a Security Clearance Application (SCA) on or about April 16, 2009, and again on March 27, 2010, Applicant was asked in Section 22 whether he had "EVER" been charged with any offenses related to alcohol or drugs. (capitalized in the original) Applicant answered "yes," but only mentioned the 1992 DWI, not the more recent 2003 DWI arrest and conviction. He did so as an oversight, not as a deliberate act of falsification or obfuscation. (Tr. 107) In interviews on June 23, 2009, and on May 4, 2010, he only admitted to the 2003 DWI.

In October 2011, Applicant and his wife had a disagreement as to what to do that evening. An argument ensued and voices were raised. They struggled to gain possession of the telephone. Applicant's wife dialed 911. Applicant heard the operator and suddenly relinquished the receiver. With no corresponding resistance, Applicant's wife's grabbing of the phone led her to smack herself with the handset. (Tr. 102) An officer arrived and assumed Applicant had struck his wife. At trial, Applicant and his wife explained what had happened. The charges were *nolle prosequi*. The incident stands out as an isolated incident. The couple generally does not disagree. Applicant does not have a history of violence. (Tr. 103).

During a January 2012 interview, Applicant stated that he had never worked for a foreign company. At one time, he was set to be assigned to work for a certain foreign entity. That job, however, fell through at the last minute. (Tr. 112-113)

Investigators found several debts noted in Applicant's credit reports, as set forth in the following SOR allegations:

2.b. -- $26,935 judgment filed against him in October 2011. Applicant borrowed money from an in-law in 2004 or 2005. The loan was not explicitly listed in the 2006 bankruptcy petition, and Applicant continued making payments on the loan through 2010. When Applicant discovered there was a judgment against him based on the loan, he contacted a lawyer. He was advised that since the debt predated his bankruptcy, it should have been constructively considered to have been part of that bankruptcy. (Tr. 139, 147) In October 2010, Applicant moved the district court to vacate the judgment regarding the loan. The court denied Applicant's claim that the debt should have been considered to have been in the 2006 bankruptcy. (Tr. 140) A motion for reconsideration was also denied. The issue is now on appeal before the circuit court. (Tr. 66-67, 142-143; Ex. E) Presently, the status of the debt is unresolved and there is no indication that he does not owe the debt. (Tr. 144)

2.c./2.d. -- $98 and $285 medical accounts related to a car accident reported as unpaid in August 2012. Applicant denies that these charges are his, noting that they should have been paid by the other driver's insurance company. (Tr. 69) He stated in January 2013 that he advised the creditors that there was a mistake. As of the hearing, he was planning to dispute these entries with the credit reporting bureaus. There is no documented evidence from either before or after the hearing showing that he has formally disputed these entries with either the credit bureaus or the noted creditors.

2.e./2.f. -- $8,300 and $9,234 debts (a voluntary repossession of a 2006 vehicle purchased in 2010 and a charged-off account, respectively). Applicant was led to believe that returning the 2006 vehicle erased any liability for that car. (Tr. 79-80) No notable documentary evidence regarding these automobiles, their return, or the consequences of their repossession was introduced at the hearing. (Tr. 84) He similarly believed returning the other vehicle also absolved him of liability. (Tr. 94) Applicant pointed to credit entries indicating a current zero balance on the accounts, but those entries also reflect that the accounts were previously charged-off. (Tr. 87) Debts are not

satisfied because they are charged-off, leading to a zero balance. (Tr. 87) Applicant explained that he discussed the cars with the creditors, but received no documentation substantiating his efforts or the current status of the debts. (Tr. 88-89; Ex. F) There is no documented evidence from either before or after the hearing showing that he has ever formally disputed these entries with either the credit bureaus or the noted creditors. Applicant was given time after the hearing to submit evidence regarding these accounts.

2.g. -- $1,760 past-due account. Applicant denied having had an account with this merchant since the early 2000s, when his first wife had a credit union account through this entity. (Tr. 95-96) They divorced in 2002. After the divorce, Applicant paid off a car debt through this account. He assumed the account was automatically closed when the car debt was paid. (Tr. 96) The creditor told him that it has no record of this debt. (Tr. 96) The most recent credit report shows a zero balance with no past-due amount. This debt is no longer at issue. (Tr. 99-100)

Applicant has acquired a string of traffic offenses. He was convicted of speeding once in 2007, twice in 2009, thrice in 2010, and once in 2011. He was also convicted of failing to display his license to a uniformed police officer in February 2010, driving with license revoked and failure to keep proper control of vehicle in August 2010, driving without a license in September 2010, and failure to obey a highway sign in September 2011. Applicant attributes these infractions to his repeated trips across country to visit with family and friends. Since late 2011, he has made a concerted effort to watch his driving and to closely follow traffic laws. (Tr. 120-122)

Today, Applicant maintains a bank account and a modest retirement account in the United States. He rents his family's home. He lives within his means. He has settled into the life of a family man and rarely imbibes liquor. At work, Applicant is well regarded and considered a reliable employee. He submitted six highly favorable letters of recommendation. (Exs. M-R) He has completed multiple training programs and received several professional honors. (Exs. H-L)

Colombia

Colombia is a constitutional, multiparty democracy with extensive strategic ties to the United States. Colombian citizens enjoy rights similar to U.S. citizens. International observers described the May 2006 elections as free and fair, despite efforts by terrorist groups to interfere in the election process.

In the past, Colombia had significant internal problems because of the powerful drug cartels. With strong support from the United States, the drug cartel problems have been reduced. The citizens of Colombia and other countries face serious threats from terrorist and paramilitary organizations within Colombia, but not the Colombian government. The United States is fully committed to supporting the Colombian government in its efforts to defeat Colombian-based foreign terrorist organizations and narco-terrorists. In recent years, Colombia has expanded its role as a regional leader in counter-terrorism.

The Colombian government cooperates with U.S. and international organizations on human rights issues. Despite this fact, arrests of suspected terrorists and paramilitary can lead to human rights violations for these detainees. In Colombia, human rights violations are often committed, not by the government, but by terrorist organizations. In response to these problems, the Colombian government successfully improved human rights and security issues; for example a reduction in massacres and kidnapping, through effective law enforcement supported by an active judiciary. Again, through effective judicial decisions, the prosecutors successfully investigated and prosecuted links between politicians and paramilitary groups.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, 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 not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision."

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

the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information.

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

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

> 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. One is potentially applicable in this case:

> AG ¶ 7(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.

Applicant's wife is a Colombian citizen residing legally in the United States with plans to apply for U.S. citizenship later this year. Applicant's parents are dual citizens of the United States and Colombia. All three have resided in the United States for many years. There is no evidence any of these three have any plans to leave their settled lives in the United States. There is no evidence that any have notable financial or property interests in that country. Applicant's nonagenarian grandmother and mother-in-law are citizens and residents of Colombia, with whom Applicant and his wife maintain telephonic contact. With the exception of Applicant's father, none of these kin have any nexus to the Colombian government or military. Applicant's father worked for the Colombian government decades ago. However, he maintains no contact with his former work peers and receives no pension.

To be fully applicable, AG ¶ 7(a) requires substantial evidence of a heightened risk. The heightened risk required to raise a disqualifying condition is a relatively low standard. Heightened risk denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or substantial assets in a foreign nation. Terrorist groups and other criminal organizations operate within Colombia. They participate in kidnappings and other criminal activities. The evidence is sufficient to raise the above disqualifying condition.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

> AG ¶ 8(a) the nature of the relationship with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S., and
>
> AG ¶ 8(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interests in favor of the U.S. interests.

Applicant has the burden to demonstrate evidence sufficient to refute or mitigate the allegations.

Here, the primary concern is Applicant's relationships with his mother, father, and wife, all of whom are long term residents of the United States. Their possessions and their lives are here. Applicant's parents' only remaining personal nexus in Colombia is a 90+ year old grandmother with limited life expectancy. His wife's nexus to Colombia is her mother, a retired hair dresser. Neither have any ties to the Colombian government or military, nor is there evidence that they are involved in narco-terrorism or the fight against narco-terrorism. The likelihood of their being used by a foreign government or interest to influence, compromise, or oblige Applicant is exceptionally remote. Moreover, it is clear that Applicant's loyalties are based here. He immigrated here in search of a better life. Here, he has been educated, found a career, married, built a family, and thrived. He is close to his parents here. His home and his banked savings are here. There is sufficient evidence suggesting he has deep and longstanding relationships and loyalties in the United States that would result in any conflicts of interest being resolved in favor of the United States. Therefore, I find that AG ¶ 8(a) and AG ¶ 8(b) apply.

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant has multiple delinquent debts. Such facts are sufficient to invoke two of the financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate these finance-related security concerns:

> AG ¶ 20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
>
> AG ¶ 20(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;
>
> AG ¶ 20(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;
>
> AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
>
> AG ¶ 20(e) 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.

At issue here is Applicant's 2006 bankruptcy, which was deemed necessary as his new restaurant quickly failed at the onset of poor financial times. As a requirement of the bankruptcy proceeding, he received financial counseling. These two facts raise AG ¶ 20(b) and AG ¶ 20(c).

Less can be said about the remaining debts. Applicant did not include a $26,935 loan from an in-law in his 2006 bankruptcy. Rather, he continued making payments on that loan through 2010, when he discovered it had been made into an adverse judgment. He now argues that the adverse judgment should have been included in his 2006 bankruptcy. One court disagreed with Applicant's assertion that the judgment

should have been part of the bankruptcy; Applicant has appealed this decision to the circuit court. To date, however, no court has set aside, vacated, remanded, or otherwise altered the district court's finding. Without more, or until a future court finds to the contrary, I conclude that this debt remains valid and owed.

Applicant denies responsibility for approximately $400 in medical bills, but provided no documentary evidence showing he has formally disputed the inclusion of these debts on his credit report with either the health care provider or the credit reporting bureau. The same may be said of the nearly $17,500 in debt noted as owed for the two vehicles at issue. Although Applicant's oral testimony regarding these debts was credible, paper evidence is required to support Applicant's contentions and document his efforts to address. Lacking that, I find none of the available mitigating conditions applicable for this nearly $45,000 in unaddressed debt.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15:

> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

At issue are multiple allegations that Applicant falsified material facts on SCAs and interviews. Applicant has raised issues related to personal conduct in several different contexts. While speeding tickets generally do not play heavily into this process, here, they represent a 2007 to 2011 period of disregard of the rules of the road. Under these circumstances, the following disqualifying conditions under AG ¶ 16 are relevant:

> AG ¶ 16(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and
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> AG ¶16(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;
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> AG ¶ 16(d) (credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment,

> untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicting that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (3) a pattern of dishonesty or rule violations); and
>
> AG ¶ 16(e) (personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing).

For AG ¶¶ 16(a) and 16(b) to apply, Applicant's omissions must be deliberate. The Government established that Applicant's disclosure of facts regarding the number of drinking and driving offenses was less than complete. He argues that it was simply an oversight. When the allegation of falsification is controverted, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred. (*See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 1, 2004)(explaining ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)). Here, there is no evidence discrediting Applicant's plausible and credible testimony that his failure to disclose was inadvertent. This is especially true since the information he did provide was more than sufficient to put investigators on notice that his driving record was an issue. In turn, with such notice, it would be almost inevitable that investigators would discover any and all additional incidents.

We are thus left with multiple incidents of unintentionally incomplete statements and a string of speeding and driving-related incidents. Taken piecemeal, not one is of special significance. Taken as a whole, however, they still fail to show that Applicant's personal conduct demonstrates that he is untrustworthy and unable of protecting classified information. This is particularly true given Applicant's ameliorative actions to monitor his driving in the future, and two years of being free of any additional driving infractions. Personal Conduct Mitigating Condition AG ¶ 17(c) (the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment) applies.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I incorporated my comments under the three guidelines at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a 43-year-old assistant engineer who has worked for the same employer since October 2011. He is married to his second wife and has three minor children. He came to this country from Colombia to seek a better life. Over the years, he has acquired a mixture of criminal and civil charges, the majority of which involved speeding and driving-related infractions. Applicant mitigated these activities under personal conduct because he has since outgrown such behavior, matured, and is now focused on adult responsibilities. While his answers to his SCA and interviewer questions may not have been complete, either because it slipped his mind or due to linguistic confusion, they gave sufficient notice to the investigators of areas worthy of further investigation, and there is no evidence that his answers were intentionally false. As for foreign influence, given the country at issue and the relatives at issue, it is highly unlikely that any of Applicant's kin could be used as a tool of coercion against him.

My main concern is related to the delinquent debts attributed to Applicant. I do not doubt that he is earnest in pursuing an appeal regarding the $26,935 judgment. I note, however, that his continued payments on this debt through 2010 to a former in-law suggest that his current legal argument was recently adopted, and that it is highly likely it was intentionally not in Applicant's 2006 bankruptcy because the loan was from an in-law. At this point in time, however, the court has found him liable for the judgment and I cannot predict the result of his appeal. Even if that debt is eventually subsumed into his 2006 bankruptcy, however, there remains over $17,500 in automobile-related debt that lacks documentary evidence showing it has been resolved or formally disputed with either the creditors or the credit reporting bureaus. While formally disputing a credit bureau report entry does not guaranty that a debt will be deemed satisfied, addressed, or deleted from a credit report, it is a simple process. Yet Applicant apparently failed to pursue this course when he was unable to secure alternative documentation regarding his past dealings with the creditor after the hearing. For lack of documentation regarding these debts, Applicant fails his burden and financial considerations security concerns are sustained. Therefore, I conclude Applicant failed to mitigate security concerns arising under Guideline F.

Formal Findings

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

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a-1.d:	For Applicant

Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraphs 2.b.-2f:	Against Applicant
Subparagraph 2.g:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraphs 3.a-3.r:	For Applicant

Conclusion

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

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Arthur E. Marshall, Jr.
Administrative Judge