



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



In the matter of:)
)
) ISCR Case No. 11-02187
)
Applicant for Security Clearance)

Appearances

For Government: David Hayes, Esquire, Department Counsel
For Applicant: Michael Prichard, Esquire.

January 18, 2012

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

On September 1, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and F. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on September 19, 2011, and requested a hearing before an administrative judge. The case was assigned to me on October 24, 2011. DOHA issued a Notice of Hearing on November 3, 2011. I convened the hearing as scheduled on November 29, 2011. The Government offered Exhibits (GE) 1 through 10.

Applicant did not object and they were admitted. Applicant and two witnesses testified. He offered Exhibits (AE) A through E, which were admitted without objections. DOHA received the hearing transcript (Tr.) on December 6, 2011.

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.¹ Applicant objected to the information because it did not relate specifically to him. I overruled the objection and granted the request. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant admitted all of the allegations in THE SOR except ¶¶ 2.a. I have incorporated his admissions into my findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 44 years old. He married in 1989 and has four children, ages 21, 14, 8 and 7. He has worked for his current employer, a federal contractor, since 2006. He has held a top secret security clearance since 2008. Applicant served in the Army from 1985 to 1992, when he was honorably discharged. He is a high school graduate.²

After being discharged from the Army, Applicant attended culinary school from 1993 to 1994. After completing school he worked for a federal agency until 1999. From 1999 to 2006, he worked for different businesses. He was unemployed from July 2002 to September 2003.³

Applicant's father is retired from the Navy and also retired from another government agency. He receives social security benefits and two pensions. His mother does not work. They both have lived with Applicant since 1992. They are both citizens of the United States. They own a retirement house in the Philippines and intend on returning there one day to permanently retire. Applicant's parents do not pay rent. They help pay for groceries and occasionally will help out financially if necessary, but they have never provided a consistent amount of money to the household. Applicant does not know how his father used his salary when he was working OR later his two pensions when he retired.⁴

¹ The Administrative Notice Request is marked as Hearing Exhibit (HE) I.

² Tr. 24-28, 157-158.

³ Tr. 28-34, 128-129.

⁴ Tr. 36-37, 43, 62-65, 101-111, 172.

Applicant's wife's sister lives with them in the United States. She is a citizen of the Philippines. She has a work visa and has lived with them for nine years. She is employed as an accountant. Applicant does not know how much she earns. Applicant is unsure if she is a permanent resident of the United States. Applicant's sister-in-law does not pay rent. She will occasionally help pay for groceries and provide money for school items the children may need, but she does not contribute a consistent amount of money to the household. She has weekly contact with her relatives in the Philippines through video communication.⁵

In 1997, Applicant and his wife filed for Chapter 7 bankruptcy. They had approximately \$45,000 of consumer debt discharged. During this period, Applicant had back surgery and only received worker's compensation benefits for about six months. His wife worked at a bank, but was not earning enough to cover their bills. Applicant and his family, along with his brother, sister, and parents were living with him at the time. His brother and sister split the rent with him. They moved out, and Applicant had difficulty paying his bills. His medical bills were covered by insurance.⁶

After Applicant's debts were discharged in bankruptcy, he and his wife obtained credit cards and a line of credit to begin to reestablish a credit history. In 1997, they lived in a townhouse where the rent was \$900. They moved in 1998 to a condominium where the rent was \$1,000.⁷

In August 2007, Applicant was earning \$85,000, and his wife was earning between \$50,000 and \$55,000. They purchased a house for \$359,000. They paid some fees, but Applicant did not recall if they put a down payment on the house. If they did, it was nominal. The monthly mortgage payment was approximately \$3,000. Two months after purchasing the house, Applicant took out a second mortgage in the amount of approximately \$40,000 (SOR ¶ 1.c). Applicant and his wife consolidated their credit card bills and used this money to pay them. They had about \$40,000 of credit card debt. After the credit card bills were paid they opened new credit card accounts. Applicant stated he also opened lines of credit to make improvements on the new house.⁸

In January 2009, Applicant's wife lost her job due to downsizing. She received unemployment benefits until July 2010. She took the money she had saved in her 401k retirement account, paid the taxes due, and paid about \$40,000 in credit card debt. They became more dependent on credit cards. The debts in SOR ¶¶ 1.a (\$19,092), 1.b (\$26,648), and 1.e (\$1,426) are delinquent credit card debts. Applicant's wife attempted to work out a payment plan with the creditors, but was unsuccessful.⁹

⁵ Tr. 37-39; 111-115, 172.

⁶ Tr. 56-62, 67-76, 165-166.

⁷ Tr. 65-76, 130-133, 167.

⁸ Tr. 35, 85-94, 133-136, 167-169.

⁹ Tr. 83-84, 92-96, 136-141, 169-171, 173.

Applicant began falling behind on his mortgage. His wife attempted several times to have the mortgage modified, but her request was denied. They continued to use their credit cards. They had difficulty paying their second mortgage (\$40,843).¹⁰

Applicant and his wife filed for Chapter 13 bankruptcy in June 2011. They anticipated the plan being approved in December 2011. As part of the proposed plan Applicant has been making full payments on his mortgage through the plan. In June he paid \$330, July \$330, August \$547, September \$600, October \$600, and November \$700, as part of the proposed plan for his other debts. His monthly bankruptcy payment is anticipated to be \$700 for 60 months. The plan had not been approved at the time of the hearing. The plan lists two creditors holding secured claims (SOR ¶¶ 1.c and 1.d, these are the first mortgage and the second mortgage) totaling more than \$400,000. Of that amount approximately \$132,834 is unsecured. The plan lists 12 creditors holding unsecured nonpriority claims totaling \$159,889, including those alleged in the SOR.¹¹ Also included in this list is Applicant's student loan in the amount of \$32,641. The plan moves to avoid the lien listed as the second mortgage (SOR¶ 1.c, \$40,843) because there is no equity to secure the loan. The creditor had the right to file an objection with the bankruptcy court regarding canceling the lien.¹²

Applicant stated that he used the credit cards to pay for living expenses. He also stated he was uncertain what other expenses were included on the credit cards. He does not have any car payments. He indicated his parents helped him financially, but he did not know what they contributed or how often. He did not disclose that he receives any monthly income from other sources or members of his family living with him, in his bankruptcy filing¹³.

Applicant presently has \$35 in his bank account. His student loan is not paid. It is unclear whether he defaulted on the loan. He indicated he contacted the student loan creditor and advised them he could not make the full payments. He stated he was permitted to miss a couple of payments. He was unable to resume payments. His last payment was either December 2010 or January 2011. He will be required to make \$371 monthly payments. He stated he no longer has credit cards.¹⁴

The only financial counseling Applicant has received was that which was mandatory in order to file for his bankruptcy. His wife has a budget. Applicant was

¹⁰ Tr. 95, 173-174.

¹¹ GE 9.

¹² Tr. 79-83, 97-100, 147; GE 9; AE B, D, E. The bankruptcy documents note that a hearing was scheduled for December 19, 2011.

¹³ Tr. 136-141.

¹⁴ Tr. 76-79, 143, 149-157, 175-177.

unfamiliar with many of the specifics of his finances because his wife was responsible for handling them. He has not sat down with his wife to discuss how to handle their debts. When Applicant realized he had serious financial problems and decided to file for bankruptcy, he advised his security officer. He told his security manager that his financial difficulties were the result of his wife losing her job.¹⁵

Approximately a month ago, Applicant voluntarily stepped down from his position and requested a new position. He did so because of the stress associated with filing for bankruptcy and family issues. He stated he told his manager that he could not handle the stress and wanted to see his family.¹⁶

After Applicant's father retired from the Navy, he moved the family to the Philippines. Applicant lived there for two years and graduated from high school there. His parents live in the United States and he indicated they do not claim dual citizenship status.¹⁷

Applicant's wife's parents, sister, and four brothers are citizens and residents of the Philippines.¹⁸ Applicant and his wife have daily contact with her parents and sister through video communications. Applicant's wife last visited her family in the Philippines in 2009 and also in 2008. Applicant visited his in-laws frequently when he was traveling for business and had a layover in the Philippines. He also had two extended stays there when he was working on a contract in the Philippines. He would stay with his wife's family for a day or two, on his layovers. He did not visit his father's relatives. His parents-in-law are retired. They owned a cantina. They do not receive a government pension. Applicant's personal contact is now limited to telephone or video communication because he no longer travels through the Philippines. When he was traveling, he would purposely plan his layovers through the Philippines so he could visit family.¹⁹

Applicant's sister-in-law in the Philippines is a homemaker and has no ties to that government. One of Applicant's brothers-in-law is an assistant to a local mayor. A second brother-in-law has a local contract for trash services in the town where he lives. He has a partnership on this contract with the brother who works for the local mayor. Applicant has contact with both of them about 15 times a year. A third brother-in-law is an electrical engineer. Applicant has contact with him about seven times a year. The fourth brother-in-law owns a dental office with his wife, who is a dentist. Applicant has

¹⁵ Tr. 55, 94-96, 142; AE B.

¹⁶ Tr. 159-161.

¹⁷ Tr. 105-106.

¹⁸ The SOR does not allege a security concern regarding Applicant's wife's sister who is a citizen and resident of the Philippines. I will not consider Applicant's relationship to his sister-in-law for disqualifying purposes, but may consider it when analyzing the "whole-person."

¹⁹ Tr. 39-53, 115-126.

contact with them about 15 times a year. Applicant's wife has regular contact with her siblings in the Philippines. None of Applicant's in-laws are employed by the Philippine government or receive any pensions from the government.²⁰

Applicant and his wife do not have any property or assets in the Philippines. All of Applicant's mother's family which includes a brother and sisters live in the United States. His father's sister and two brothers also live in the United States. They are all U.S. citizens. His father has two siblings who live in the Philippines.²¹

Applicant's facilities security officer testified and states she has known him for four years. She confirmed that Applicant notified her that he was having financial problems when his wife lost her job. He advised her of his financial problems before he filed for bankruptcy. She did not have any personal concerns about Applicant being a security risk.²²

Philippines²³

The Philippines is a multiparty republic with an elected president and bicameral legislature. It models the U.S. democratic system. It is an ally with the United States dating back to 1898. Its economy has declined since the end of World War II, making it one of the poorest countries in Asia. The current worldwide economy has had a severe impact on the Philippines' economy. Foreign investors, as well as tourists, remain concerned about law and order in the country. There is additional concern about the country's infrastructure, policy, regulatory instability, and governance issues.

The Philippine government faces threats from terrorist groups, including four on the U.S. Government's Foreign Terrorist Organization list. One gained international notoriety when it kidnapped foreign tourists. The Philippine government, with the assistance of the United States, has kept pressure on the terrorist groups; however, some continue to wage attacks. There was an upsurge in violence by terrorist groups against political candidates and the general population before the 2010 elections. The U.S. State Department posted warnings to U.S. citizens contemplating traveling to the Philippines to be aware of the threat posed by these terrorists groups.

The Philippine government also has internal human rights issues that present a serious concern. There are arbitrary, unlawful, and extrajudicial killings by elements of the Philippine security services, and political killings, including killing of journalists, that continue to be a problem. Warrantless arrests and detentions are common, as well as violence against women, abuse of children, child prostitution, and trafficking in persons.

²⁰ Tr. 44, 53-55, 115-126.

²¹ Tr. 39-42.

²² Tr. 179-182.

²³ HE I

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 avoided drawing inferences grounded on mere speculation or conjecture.

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

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

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

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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

- (a) inability or unwillingness to satisfy debts;
- (b) a history of not meeting financial obligations; and
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

Applicant has a history of accumulating delinquent debts. He filed for Chapter 7 bankruptcy in 1997 and had \$45,000 of consumer debts discharged. He filed for bankruptcy under Chapter 13 in 2011. He has approximately \$105,260 in delinquent debts alleged. I find there is sufficient evidence to raise these disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has been making his mortgage payments since May 2011. He has also made some small payments from May 2011 to October 2011, as part of his Chapter 13 bankruptcy. In November 2011, he made a \$700 payment, which is the anticipated amount he will be required to pay for 60 months, if the final bankruptcy plan is approved. Applicant's debts are ongoing. I find mitigating condition AG ¶ 20(a) does not apply.

Applicant filed for Chapter 7 bankruptcy in 1997 and had approximately \$45,000 of consumer debt discharged. He lived in residences where he paid \$900 and later \$1,000 for rent. In 2007, he and his wife purchased a house and the mortgage payment was approximately \$3,000. This did not include any of the other expenses, such as utilities and other things associated with home ownership. Applicant began using credit cards. He took out a second mortgage (SOR ¶ 1.c) for approximately \$40,000 and used the money to pay his credit cards. Then he opened new credit card accounts and took out lines-of-credit to make repairs on the house. Applicant's wife lost her job in January 2009. She received unemployment benefits until July 2010. Applicant continued to use credit cards to pay bills. I find that when Applicant's wife lost her job, this was a condition that was beyond his control under AG ¶ 20(b). However, for full application of this mitigating condition, Applicant must have acted responsibly under the circumstances. Although Applicant could not have anticipated that his wife would lose her job, he was on notice after his Chapter 7 bankruptcy, of the perils of using credit cards and his obligation to pay his bills timely. After purchasing the house, his living expenses drastically increased. He took out a second mortgage to pay credit card bills. After they were paid, he opened more credit cards and took out lines of credit, that he was then unable to pay. Applicant's parents and sister-in-law live with him. His father and sister-in-law both have sources of income, but only help nominally. I find, under the circumstances, that there is insufficient evidence to conclude that Applicant's actions regarding his finances were responsible. Therefore, AG ¶ 20(b) only partially applies.

There is no evidence that Applicant received financial counseling, other than the mandatory counseling required when filing for bankruptcy. Applicant filed for Chapter 13 bankruptcy which has some application that his financial problems are being resolved or are under control. However, based on his past financial history of filing for Chapter 7 bankruptcy and then taking out a second mortgage to pay credit cards, opening new credit cards, and obtaining lines of credit, I am not convinced there are clear indications that the problem is under control. Applicant's testimony reflected that he was not involved in his finances even after filing for bankruptcy in 1997. He offered minimal evidence to show substantive changes he has made regarding handling his finances, other than his bankruptcy plan. He has not established a consistent history of making

the proposed bankruptcy payments. I find AG ¶ 20(c) does not apply. Applicant has not provided sufficient evidence to conclude he has initiated good-faith efforts to repay overdue creditors or otherwise resolve debts. Bankruptcy is a legal means to address extreme financial problems, but it does not constitute a good-faith effort to pay creditors. I find AG ¶ 20(d) does not apply.

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes disqualifying conditions that could raise a security concern. I have considered all of them and the following three are potentially applicable:

- (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) require evidence of a "heightened risk." The "heightened risk" necessary to raise one of these disqualifying conditions 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 owning property in a foreign country. The totality of Applicant's family ties to a foreign country as well as each individual family tie must be considered.

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.”²⁴

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.”²⁵ Friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation’s government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, or the country is known to conduct intelligence operations against the U.S. The Philippines’ poor human rights record, recent terrorist activity, kidnapping of tourists, and intermittent political turmoil create a heightened risk.

Applicant’s parents are citizens and residents of the United States. Applicant denied they are dual citizens of the Philippines. There was insufficient evidence to conclude they are dual citizens of the Philippines. Applicant’s parents-in-law and four brothers-in-law are citizens and residents of the Philippines. Applicant’s sister-in-law is a citizen of the Philippines and resides in the United States.

Applicant’s parents-in-law, sister-in-law, and brothers-in-law are citizens and residents of the Philippines. He has one sister-in-law who has lived with him and his wife for nine years. She has a work visa and is a citizen of the Philippines. These facts potentially create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, and also create a potential conflict of interest. I find AG ¶¶ 7(a), 7(b) and 7(c) apply. Applicant’s parents are citizens and residents of the United States and their relationship with Applicant does not create a heightened risk. Therefore, none of the above disqualifying conditions apply to them.

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8 and conclude the following three are potentially applicable:

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

²⁴ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

²⁵ ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interests in favor of the U.S. interests; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant maintains a relationship with his parents-in-law, sister-in-law, and brothers-in-law in the Philippines. He also maintains a relationship with his sister-in-law who lives with his family in the United States. His wife has daily contact through video communications with her relatives in the Philippines. He visited his in-laws often when he was traveling and had a layover in the Philippines. His wife last visited her family in the Philippines in 2009. I find AG ¶ 8(c) does not apply because Applicant's and his wife's familial relationships in the Philippines and with his sister-in-law living with them in the United States are more than casual.

The United States maintains close relations with the Philippines. There are problems with terrorists in the Philippines and its human rights record is poor. 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 operations against the United States. Applicant's parents are naturalized citizens of the United States. Applicant has lived most of his life in the United States. His parents live with him in the United States and he does not have close ties with his parents' relatives in the Philippines. Applicant, his wife, and their children are citizens of the United States. He has no assets in the Philippines. None of his or his wife's family members receive any pension or compensation from the Philippine government, nor do they have contact with the government. There is no indication that Applicant's relatives are in positions or involved in activities that would place Applicant in a position of having to choose between his or his wife's family interests and those of the United States. There is no indication that the Philippine targets or exploits its own citizens to obtain intelligence. Based on the Philippines long relationship to the United States, it is unlikely that intelligence officials would attempt to pressure Applicant's or his wife's relatives in the Philippines to gather valuable or classified information from the United States through Applicant. It is highly unlikely, considering Applicant's relationship with the United States and his close ties to the United States, that he would choose his or his wife's family in the Philippines over his family and life in the United States. I find mitigating conditions AG ¶¶ 8 (a) and 8(b) apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's

conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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

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

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant has a history of financial problems. He had \$45,000 of consumer debt discharged in bankruptcy in 1997. He purchased a house and increased his expenses significantly. He took out a second mortgage and paid his credit card bills, but began accumulating new credit card debts and lines of credit. He has more than \$105,000 of overdue or delinquent debt alleged in the SOR, of that \$47,000 is consumer debt. Although his wife's unemployment affected his finances, he has failed to show that he has a handle on how to live within his means and manage his finances. He has not established a consistent payment record with his Chapter 13 bankruptcy. His parents and sister-in-law live with him and have income, but do not contribute towards paying the monthly housing expenses, except to provide some money for groceries on a non-regular basis.

Applicant and his wife have strong ties to the United States. Their relatives in the Philippines do not have ties to the government. I find Applicant has met his burden of persuasion regarding the foreign influence security concerns. However, he failed to meet his burden of persuasion regarding the financial considerations security concerns. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the guideline for Foreign Influence, but failed to mitigate the security concerns for Financial Considerations.

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-1.g: | Against Applicant |
| Paragraph 2, Guideline B: | FOR APPLICANT |
| Subparagraphs 1.a-1.d: | 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.

Carol G. Ricciardello
Administrative Judge