



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



In the matter of:)
)
) ISCR Case No. 11-03188
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie Hess, Esq., Department Counsel

For Applicant: *Pro se*

08/29/2013

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, testimony, and exhibits, I conclude that Applicant mitigated security concerns under Guideline F, Financial Considerations, but failed to mitigate the Government’s security concerns under Guideline B, Foreign Influence. His eligibility for a security clearance is denied.

Statement of the Case

On September 22, 2010, Applicant signed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). On July 13, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations, and Guideline B, Foreign Influence. DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within DOD for SORs issued after September 1, 2006.

On August 7, 2012, Applicant answered the SOR and requested a hearing before a DOHA administrative judge. The case was assigned to me on May 8, 2013. I convened a hearing on July 10, 2013, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced five exhibits (Ex. 1 through Ex. 5), which were entered in the record without objection. The Government also offered for administrative notice four factual compilations. The first compilation was a summary of facts about Lebanon, as found in 18 official U.S. documents. The documents were identified as Ex. I through Ex. XVIII (HE 1). The second compilation was a summary of facts about Russia, as found in ten official U.S. Government source documents. The source documents were identified as Ex. I through Ex. X (HE 2). The third compilation consisted of documents identifying an attorney disciplined by a state bar association for her loan modification activities (HE 3), and the fourth compilation consisted of a summary of action in a class action lawsuit brought against the lender identified in SOR ¶¶ 1.a. and 1.b. (HE 4). Applicant did not object to including these factual compilations in the record, and I agreed to take administrative notice of them.

Applicant called no witnesses and testified on his own behalf. He offered one exhibit, which I marked as Ex. A and entered in the record without objection. DOHA received the transcript (Tr.) of the hearing on August 22, 2013.

Procedural Matters

At the conclusion of the evidence, the parties agreed to amend the SOR to include the following new Guideline B allegation, which was corroborated by Applicant's testimony: "2.g. Your daughter is a citizen of the United States currently living in Lebanon." (Tr. 117-119.)

Findings of Fact

The amended SOR contains two allegations of security concern under Guideline F, Financial Considerations (SOR ¶¶ 1.a. and 1.b.), and seven allegations of security concern under Guideline B, Foreign Influence (SOR ¶¶ 2.a. through 2.g.). In his Answer to the SOR, Applicant denied the Guideline F allegations and offered additional information. He admitted the Guideline B allegations. Applicant's admissions are entered as findings of fact.

After a thorough review of the record in the case, including witness testimony, exhibits, and the applicable adjudicative guidelines, I make the following findings of fact:

Applicant is 58 years old and employed as a systems engineer by a federal contractor. He seeks a security clearance. (Ex. 1.)

The SOR alleges at ¶ 1.a. that Applicant owes a mortgage lender approximately \$11,218 on a past-due account with a balance of about \$505,345. The SOR also alleges at ¶ 1.b. that Applicant owes a mortgage lender approximately \$21,292 on a

past-due account with a balance of about \$113,899. Applicant denied the allegations and offered information in mitigation.

In 2006, Applicant purchased a home with no down payment and secured by a primary adjustable rate mortgage (ARM) and a secondary fixed rate mortgage. The primary mortgage loan was for \$460,000 at 7.5% interest. The second mortgage was for \$115,000 at 12.5% interest. As a part of the purchase negotiation, the lender gave Applicant a verbal promise to modify his mortgage loan in one year from the ARM to a 30-year fixed rate mortgage.¹ (Ex. 2; Tr. 33-35.)

Applicant made all required mortgage payments on time. When a year had passed, he contacted the lender and reminded its agents of the verbal promise to modify his loan. The agent he spoke with told him to call back in two months. After two months had passed, Applicant again called and requested the loan modification he had been promised. Again, he was put off by the mortgage company's agent. He continued to make his mortgage payments. He retained an attorney who told him she would help him obtain the loan modification from the mortgage company. Applicant paid her a fee of about \$1,700, but she did not help him.² (Ex. 2; Tr. 36-37, 83-84.)

When it appeared that Applicant's company would lose the contract under which he was paid, Applicant contacted the mortgage lender with increased urgency and requested the loan modification which had been promised him. He was told to contact the mortgage lender if he lost his employment. (Ex. 2; Tr. 37-38.)

When Applicant next contacted the lender's agent, he was told that his mortgage could not be modified until he missed three to five of his monthly mortgage payments. He asked for confirmation of this policy in writing, but the agents refused to give it to him. However, Applicant complied with the mortgage company's request, making no payments on his mortgage in April, May, and June 2009. (Ex. 2; Tr. 38-39.)

In June 2009, Applicant received approval for a loan modification program for a trial period of three months. He was required to pay \$3,539 each month on his first mortgage. He was informed that his second mortgage loan had been charged off and transferred to a collection agency. The lender did not explain why Applicant's second mortgage loan had been charged off and was not included in the loan modification process. (Ex. 2; Tr. 39.)

Applicant made eleven monthly payments under the loan modification plan and sent all requested accompanying documents to the mortgage lender. He was then

¹ At the time he was negotiating his home purchase, Applicant began to keep a contemporaneous log or journal of his dealings with the lender and its agents. The log consists of 13 single-spaced pages of narrative and is included in Applicant's response to interrogatories at Ex. 2.

² The attorney advertised in states where she was not licensed to practice law that she would help consumers obtain loan modifications. She was later disciplined by the bar of her home state for misconduct related to her loan modification activities. (HE 3; Tr. 83-84.)

informed by the mortgage lender that his request for loan modification had been denied because his application was incomplete and missing documentation. The lender's agents were unable to explain why Applicant had been denied a loan modification after the three-month trial period ended. (Ex. 2; Tr. 39-40.)

The agents then recommended that Applicant again withhold three to five months of mortgage payments and apply for another mortgage modification program. Applicant requested a written statement confirming their offer. They refused to do so. They required Applicant to file a financial statement, which he did. Applicant then deliberately "missed" the required payments in order to qualify again for a loan modification. In February, March, and April 2011, Applicant then repeated the process of making three payments of \$3,132 in order to qualify for a loan modification program. The lender then told Applicant he was not eligible for a loan modification. (Ex. 2; Tr. 40-43.)

Applicant retained counsel in his home state and applied for a third loan modification program with his lender's successor. He made clear his intention to cure his default. That request was also denied. Through his attorney, Applicant then filed litigation against the lender, charging fraudulent mortgage service. Subsequently, Applicant's counsel has done a forensic audit on his mortgage loan, discovering that it was securitized³ and sold in unidentifiable "pieces" to many investors. (Tr. 45-47.)

The Government introduced for administrative notice a summary of an amended complaint filed in a U.S. District Court against the mortgage lender which serviced Applicant's mortgage loan. The complaint recites the same loan modification process outlined by Applicant in his testimony and alleges that such conduct by the lender was a violation of the state's fair debt collection practices and reflected unlawful, unfair, and deceptive business practices. The complaint also alleges that the lender's conduct constituted breach of contract and fraud. (HE 4.)

Applicant is pursuing quiet title litigation against the mortgage lender. He continues to reside in the home. He continues to seek modification of his loans, and he is prepared to renegotiate the loans and begin paying the new mortgage amounts.⁴ If this cannot be done, he will seek a short sale or a deed-in-lieu of foreclosure. He is also setting aside money to pay the arrearages in the mortgage debts. (Tr. 79-88.)

Applicant's mortgage loan difficulties occurred during the recent economic downturn and many years after he retained U.S. citizenship. He immigrated to the United States from Lebanon in 1979, and in 1986, he became a U.S. citizen. In 1987, he returned to Lebanon to marry his first wife, who was born in Lebanon, and who became a naturalized U.S. citizen. After the marriage, Applicant and his wife returned to the United States. In 1989, they became the parents of a daughter, who was born in

³ Mortgage obligations are "securitized" when they are pooled with other types of contractual debt, and sold as securities.

⁴ Applicant's credit report of June 2012 shows that the second mortgage has been charged off. (Ex. 4.)

the United States. In 1990, Applicant's wife abandoned the marriage and took the child to live in Lebanon. Applicant has not seen his daughter since 1990, although he has spoken with her by telephone and communicated with her on the internet. He has, however, provided for her support and education. (Ex. 1; Tr. 14, 50, 91-93, 111-113.)⁵

When Applicant's daughter, who holds only U.S. citizenship, sought admission to a Lebanese university, she asked her father to come to Lebanon to help her acquire a Lebanese identity card. Applicant refused to go to Lebanon because he fears for his life if he goes there. Applicant explained that his first wife put him on a Hezbollah watch list because she feared he would come to Lebanon and try to take their daughter back to the United States. (Tr. 104-115.)

In 1997, Applicant married for a second time. His wife, who was born in Syria, became a U.S. citizen. No children were born to the marriage. In 2000, Applicant divorced his second wife because he believed she was unfaithful. (Ex. 2, Tr. 93-94.)

In 1998, Applicant traveled to Russia, and he met the woman who became his third wife. Applicant and his third wife married in 2000. They have a 12-year-old son. (Tr. 51-52, 90.)

Applicant's wife is a dual citizen of the United States and Russia. She is aware that he is applying for a security clearance. Applicant has a 26-year-old stepdaughter who is also a dual citizen of the United States and Russia. Applicant's stepdaughter resides and works in the United States. (Tr. 56-59.)

Applicant's mother-in-law and brother-in-law are citizens and residents of Russia. His mother-in-law is retired and in ill health. His brother-in-law works as a financial analyst.⁶ Applicant's father-in-law, now deceased, was a general in the Russian army. His mother-in-law receives a small pension from her husband's military service. Applicant stated, however, that the pension was insufficient to satisfy his mother-in-law's daily needs. He therefore provides her with approximately \$250 each month for her living expenses. (Tr. 53-55.)

Applicant's wife speaks by telephone with her mother in Russia once or twice each week. She travels to Russia to see her family approximately every two years. When she goes to Russia, Applicant's wife also takes their son with her. Applicant has not traveled to Russia since 2000. (Tr. 53-55.)

Applicant's cousin, a physician, is a citizen and resident of Lebanon. The cousin comes to the United States for professional training on occasion, and he contacts

⁵ Applicant did not list the daughter on his September 2010 e-QIP. He identified her when interviewed by an authorized investigator in December 2010. Applicant and the daughter's mother divorced in 1993. (Ex. 1, Ex. 2.)

⁶ Applicant's sister-in-law is also a citizen and resident of Russia. Applicant's wife has contact with her once or twice a year. The sister-in-law's citizenship and residency are not alleged in the SOR. (Tr. 53-54.)

Applicant. Applicant maintains some contact with this cousin and another cousin through internet web sites. Applicant also has a cousin who is a colonel in the Lebanese army. (Ex. 2; Tr. 60-63.)

Applicant provided a letter from his security manager stating that Applicant surrendered his Lebanese passport in July 2013. At his hearing, Applicant explained that his Lebanese passport had expired in 1990, and he retained it as a souvenir. (Ex. A; Tr. 89-90.)

I take administrative notice of the following facts about Russia, which appear in official U.S. Government publications and which were provided by Department Counsel to Applicant and to me:⁷

According to information compiled for the National Counterintelligence Executive's 2011 Report to Congress on Foreign Economic Collection and Industrial Espionage, Russia's intelligence services are conducting a range of activities to collect economic information and technology from U.S. targets, and [Russia] remains one of the top three most aggressive and capable collectors of sensitive US economic information and technologies, particularly in cyberspace. Non-cyberspace collection methods include targeting of US visitors overseas, especially if the visitors are assessed as having access to sensitive information. Two trends that may increase Russia's threat over the next several years [are] that many Russian immigrants with advanced technical skills who work for leading U.S. companies may be increasingly targeted for recruitment by the Russian intelligence services; and a greater number of Russian companies affiliated with the intelligence services will be doing business in the United States.

On June 28, 2010, the U.S. Department of Justice announced the arrests of ten alleged secret agents for carrying out long-term, deep-cover assignments on behalf of Russia. Within weeks, all ten defendants pleaded guilty in federal court and were immediately expelled from the United States. On January 18, 2011, convicted spy and former CIA employee Harold Nicholson, currently incarcerated following a 1997 espionage conviction, was sentenced to an additional 96 months of imprisonment for money laundering and conspiracy to act as an agent of the Russian government for passing information to the Russian government between 2006 and December 2008.

Beyond collection activities and espionage directed at the United States, Russia has provided various military and missile technologies to other countries of security concern, including China, Iran, Syria, and Venezuela. Because of [Russian President Vladimir] Putin's instinctive distrust of U.S.

⁷ I have omitted footnotes that appear in the quoted materials.

intentions and his transactional approach towards relations, it is likely that he will be continue to be confrontational with Washington over policy differences. Continuing concerns about U.S. missile defense plans will reinforce Russia's reluctance to engage in further nuclear arms reductions and Russia is unlikely to support additional sanctions against Iran. Russian intelligence and security services continue to target Department of Defense interests in support of Russian security and foreign policy objectives.

I also take administrative notice of the following facts about Lebanon which appear in official U.S. government publications and which were provided by Department Counsel to Applicant and to me:⁸

Lebanon became independent in November 1943. Its history since independence "has been marked by periods of political turmoil interspersed with prosperity." The country's 1975-90 civil war was followed by years of social and political instability.

Neighboring Syria has long influenced Lebanon's foreign policy and internal polices, with its military forces in Lebanon from 1976 until 2005. After Syria's withdrawal, the Lebanon-based Hezbollah⁹ militia and Israel continued to engage in attacks and counterattacks against each other and fought a brief war in 2006. Lebanon's borders with Syria and Israel are still to be resolved. Syria, designated by the United States as a state sponsor of terrorism, has provided political and weapons support to Hezbollah, a U.S.-designated "Foreign Terrorist Organization," in Lebanon. Hezbollah, a Lebanese-based radical Shia group, "... takes its ideological inspiration from the Iranian revolution and the teachings of the late Ayatollah Khomeini." Hezbollah "... is closely allied with Iran and often acts at its behest," and "... is helping advance Syrian objectives in the region." Hezbollah also "... provides support to several Palestinian terrorist organizations" and has been involved in numerous anti-U.S. and anti-Israeli terrorist attacks."

While Hezbollah remains a significant threat to the stability of Lebanon, the group plays an active role in Lebanese politics. The participation of Hezbollah in the Lebanese government has not changed the current position of the U.S. Government that it is a terrorist organization. The United States remains "extremely concerned about the role Hezbollah is playing in Lebanon." In the view of the U.S. Department of State: "Hezbollah clearly remains a danger to Lebanon and the region." "The United States sees no distinction between the leadership and funding of

⁸ I have omitted footnotes that appear in the quoted materials.

⁹ For consistency, I have used the spelling Hezbollah and not Hizbollah throughout this discussion.

[Hezbollah's] terrorist, military, political, and social wings. Nor does Hezbollah." In May 2009, the U.S. Permanent Representative to the United Nations condemned Hezbollah's "unwarranted interference in the domestic affairs of a sovereign state."

The UN-appointed Special Tribunal for Lebanon (STL) indicted four individuals, all Hezbollah operatives, suspected of collaborating in the 2005 killing of former Prime Minister Rafik Hariri. The STL also established its jurisdiction over the killing of other prominent Lebanese figures, due to the similar nature and gravity of the attacks, but were notified by authorities that they were unable to serve the accused with the indictments or arrest them. The government does not exercise full control over all its territory and investigations of suspicious killings have rarely led to prosecutions.

On May, 9, 2008, the Secretary of State condemned the use of violence by illegitimate armed groups in Lebanon, and stated that the legitimate authority of the Lebanese government and the institutions of the Lebanese state were being undermined by Hezbollah and its allies, backed by Syria and Iran. On August 13, 2008, the State Department issued a condemnation of a terror attack in Lebanon, and on September 10, 2008, it issued a condemnation of a car bomb attack that killed a ranking official of a Lebanese political party. The State Department condemned another terrorist attack in Lebanon on September 29, 2008.

In addition to Hezbollah, several other terrorist organizations remain active in Lebanon, including Abu Nidal Organization, Al-Aqsa Martyrs Brigade, Asbat-alAnsar, Hamas, Palestine Liberation Front- Abu Abbas Faction, the Popular Front for the Liberation of Palestine, and the Popular Front for the Liberation of Palestine General Command.

Lebanon's main human rights abuses include limitations on freedom of movement for some refugees and poor prison and detention conditions sometimes involving torture. Other abuses include killings related to societal violence, arbitrary arrest and detention of individuals, and systematic discrimination against Palestinian refugees and minority groups. Although Lebanese law requires judicial warrants before arrests, except in situations involving immediate pursuit, the government has arbitrarily arrested and detained persons. While prohibited by the law, Lebanese authorities have also frequently interfered with the privacy of persons regarded as enemies of the government. Further, militias and non-Lebanese forces operating outside the area of Lebanon's central government authority have frequently violated citizens' privacy rights, using informer networks and telephone monitoring to obtain information regarding their perceived adversaries.

U.S. citizens have been the target of numerous terrorist attacks in Lebanon in the past, and the threat of anti-Western terrorist activity continues to exist in Lebanon. Hezbollah and other para-military groups have at times detained U.S. citizens or other foreigners for interrogation.

In addition to being subject to all Lebanese laws, U.S. citizens who also possess Lebanese nationality may also be subject to other laws that impose special obligations on them as Lebanese citizens. A travel warning issued by the U.S. Department of State in September 2012, alerts American citizens to the "... potential for a spontaneous upsurge in violence" and the presence of extremist groups operating in Lebanon. Palestinian groups hostile to both the Lebanese government and the United States operate largely autonomously inside refugee and military camps in different areas of Lebanon. Based on safety concerns, the U.S. Department of State continues to urge U.S. citizens to avoid unofficial travel to Lebanon.

U.S. citizens living and working in Lebanon should understand that they accept risks in remaining and should carefully consider those risks. "Lebanese government authorities are not able to guarantee protection for citizens or visitors to the country should violence erupt suddenly."

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables

known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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

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

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

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in 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. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant is in arrears in paying his two home mortgages. This evidence is sufficient to raise these disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it “happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.” (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if “the conditions that resulted in the financial problem were largely beyond the person’s control, (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(b)) Still other mitigating circumstances that might be applicable include evidence that “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control” (AG ¶ 20(c)) or “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” (AG ¶ 20(d)) Finally, if “the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of options to resolve the issue,” then AG ¶ 20(e) might apply.

In 2006, when Applicant purchased a home secured by an ARM, he was assured by the mortgage company that he would be eligible for a loan modification in one year. However, when the year had passed and Applicant requested the loan modification, the mortgage lender’s agents were evasive and did not honor Applicant’s request. Later, after Applicant persisted in his request for a loan modification, he was required three separate times to apply for a loan modification and to make good-faith payments, only to be told each time that he was not qualified for a loan modification. Applicant provided credible documentation, including his contemporaneous notes, showing his good-faith efforts to work with the mortgage lender.

When it became clear to him that the mortgage lender was not acting in good faith, Applicant retained counsel and initiated quiet title action against the lender. He remains willing to work with the lender to pay the two mortgage debts alleged in the SOR, and he is setting aside funds necessary to satisfy the debts. The lender, who has been sued in another state for loan modification fraud, has remained unwilling to cooperate with Applicant in modifying his loan. At his time, however, Applicant’s mortgage debts remain unresolved, despite his efforts to work with the mortgage lenders to do so.

I conclude that the circumstances that gave rise to Applicant’s financial delinquencies are extraordinary and not likely to recur in the future. Additionally, he

acted responsibly when faced with a financial situation beyond his control. He has acted in good faith to pay or settle his delinquent debts, and although he has not satisfied them because the lenders will not cooperate with him, he has displayed a determination to satisfy his financial obligations in the future.

Applicant has acted responsibly in addressing his financial delinquencies. By his actions, he has demonstrated that he is serious about satisfying his creditors and avoiding future debt. He provided documentary evidence to corroborate his unsuccessful dealings with the mortgage lenders. I conclude that AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) are applicable in mitigation.

Guideline B, Foreign Influence

Under Guideline B, “[f]oreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest.” AG ¶ 6.

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

A Guideline B decision assessing the security worthiness of a U.S. citizen with Russian contacts must take into consideration Russia’s aggressive efforts to collect sensitive U.S. economic and technological information. American citizens with immediate family members who are citizens or residents of Russia could be vulnerable to coercion, exploitation, or pressure. Additionally, a Guideline B decision assessing the security worthiness of a U.S. citizen with family contacts in Lebanon must consider the instability of the Lebanese government, ongoing concerns about terrorism in that country, and the vulnerability to exploitation or pressure of individuals of U.S. citizenship who choose to reside in Lebanon.

I have considered all of the disqualifying conditions under the foreign influence guideline. The facts of Applicant’s case raise security concerns under disqualifying conditions AG ¶¶ 7(a), 7(b), and 7(d).¹⁰

¹⁰ AG ¶ 7(a) reads: “contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.” AG ¶ 7(b) reads: “connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information.” AG ¶ 7(d) reads: “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.”

Applicant shares living quarters with his wife, who has a close familial relationship with her mother, a citizen and resident of Russia and the widow of a Russian general. Applicant's wife and stepdaughter are naturalized U.S. citizens who maintain dual citizenship with Russia. Applicant's wife has a brother, a businessman, who is a citizen and resident of Russia. Applicant sends his mother-in-law \$250 each month for her support. Applicant's wife speaks with her mother by telephone once or twice a week, and she travels to Russia to visit her mother about every two years. When she goes to Russia, she takes their son with her. Applicant has not traveled to Russia since 2000.

Applicant also has familial contacts in Lebanon. He has provided for the support of his daughter, a U.S. citizen who resides in Lebanon. One of his cousins, a citizen and resident of Lebanon, is an officer in the Lebanese military.

Several mitigating conditions under AG ¶ 8 might be applicable to Applicant's case. If "the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.," then AG ¶ 8(a) might apply. If "there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest," then AG ¶ 8(b) might apply. If "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation," then AG ¶ 8(c) might apply.

Applicant's relationships with his wife, stepdaughter, mother-in-law, and brother-in-law, all of whom have Russian citizenship, are not casual but familial and committed. Additionally, while he has not seen his daughter, a U.S. citizen and resident of Lebanon, for many years, he has been in contact with her, and he has supported her since her childhood. He has occasional contact with several Lebanese cousins, one of whom is an officer in the Lebanese military. Applicant's Lebanese contacts are also not casual but enduring and familial.

Applicant is a loyal and caring husband, son-in-law, family member, and father. His contacts with his foreign family members raise concerns that he could be targeted for exploitation, pressure, or coercion by the governments of Russia and Lebanon in ways that might threaten U.S. security interests. Applicant's relationships with these individuals are strong and enduring.

Applicant failed to rebut the Government's allegations that his contacts with his family members who are citizens of Russia or who are residing in Lebanon created a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Applicant's contacts and relationships with these individuals could force him to choose

between loyalty to them and the security interests of the United States. (ISCR Case No. 03-15485 at 4-6 (App. Bd. June 2, 2005); ISCR Case No. 06-24575 (App. Bd. Nov. 9, 2007)) I conclude that the mitigating conditions identified under AG ¶¶ 8(a), 8(b), and 8(c) do not apply to the facts of Applicant's case.

Nothing in Applicant's answers to the Guideline B allegations in the SOR or in his testimony at his hearing suggested he was not a loyal U.S. citizen. Section 7 of Executive Order 10865 specifically provides that industrial security clearance 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."

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):

- (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 the whole-person concept and all the facts and circumstances surrounding this case. Applicant is a talented and valued employee of a U.S. government contractor. While he experienced financial difficulties, he persevered and made good-faith efforts to honor his financial obligations. Applicant is also a committed and loyal family member. However, his relationships and contacts with family members who have Russian and Lebanese citizenship and with his daughter who is a U.S. citizen residing in Lebanon, raise serious unmitigated concerns about his vulnerability to coercion and his heightened risk for foreign influence.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude that while Applicant mitigated security concerns under the financial considerations adjudicative guideline, he failed to mitigate the security concerns arising under the foreign influence adjudicative guideline.

Formal Findings

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

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a. and 1.b.:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a. - 2.g.:	Against Applicant

Conclusion

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

Joan Caton Anthony
Administrative Judge