



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



In the matter of:)	
)	
)	ISCR Case No. 11-06095
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace L. Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

10/18/2012

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on December 13, 2010. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on May 30, 2012, detailing security concerns under Guideline B, Foreign Influence, and Guideline F, financial considerations. 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 For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR on June 5, 2012, and he answered it on June 22, 2012. Applicant requested a hearing before an administrative judge. DOHA received the request, and Department Counsel was prepared to proceed on July 25, 2012. I received the case assignment on July 30, 2012. DOHA issued a Notice of Hearing on August 8, 2012, and I convened the hearing as scheduled on August 28, 2012. The Government offered exhibits (GE) marked as GE 1 through GE 10, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits (AE) marked as AE A and AE B, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on September 7, 2012. I held the record open until September 21, 2012, for Applicant to submit additional matters. Applicant twice requested additional time to submit his documentation. His requests were granted, with his final submission date as October 4, 2012. Applicant timely submitted AE C - AE K, which have been marked, received, and admitted without objection. The record closed on October 4, 2012.

Procedural Ruling

Notice

Applicant received the hearing notice on August 14, 2012, less than 15 days before the hearing. I advised Applicant of his right under ¶ E3.1.8 of the Directive to receive the notice 15 days before the hearing. Applicant affirmatively waived his right to the 15-day notice. (Tr. 12)

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Vietnam. The request was not admitted into evidence, but were included in the record as Hearing Exhibit 1. The facts administratively noticed will be limited to matters of general knowledge and matters not subject to reasonable dispute, and are set out in the Findings of Fact below.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 2.a, 2.b, and 2.d of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶ 2.c of the SOR.¹ He also provided additional

¹When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 40 years old, works as an engineer for a Department of Defense contractor. He has worked for his employer or its predecessor company for more than 12 years. His supervisor describes him as a very capable engineer and the “go-to-person” on his team. His performance evaluations are good, and his supervisor expects to increase his skills and responsibilities in the future.²

Applicant was born in Vietnam and became a United States citizen in October 1994. His mother, three brothers, and sister are naturalized citizens of the United States and reside in the United States. His father is deceased. He married his first wife, a citizen of the Peoples Republic of China in 2000, and they divorced in January 2007. He does not have any contact with his first wife and does not know her current whereabouts. He married his second wife in December 2008 in Vietnam. She is a current resident and citizen of Vietnam. He hired an attorney to help him with the paperwork needed to bring his wife to the United States. Applicant obtained a social security number for her through the U.S. Citizenship and Immigration Services (CIS) and claimed her as a dependent on his federal tax returns for 2009 and 2011.³

Applicant met his wife through friends while on a trip to Vietnam in March 2008. She lives in a small village several hours from the capital city. His wife’s family are citizens and residents of Vietnam. Her mother is a homemaker with whom she lives and to whom she provides some care. Her brother is a farmer, who is married and the father of two children. His wife’s family is not involved in politics, and they do not work for the Vietnamese government. His mother-in-law owns land which he estimated was worth \$30,000 to \$50,000. To his knowledge, they have no contacts with the Vietnamese government. He talks with his wife by telephone and communicates with her through e-mail one or two times a week. He rarely talks with her mother when he calls. His wife’s family knows he is an engineer, but does not know for whom he works or what his job duties entail. His wife has never visited the United States, and her mother will remain in Vietnam when she relocates to the United States. His wife has a small fish business, which she works with her family. He does not provide her with financial assistance. He has not returned to Vietnam since his marriage.⁴

Applicant experienced debt problems in the past, which he resolved. He incurred additional debts when he and his first wife divorced because they fought over who would pay the debts and taxes owed on their income taxes. He also resolved his tax debt and most of his marital debts sometime ago. After his divorce, Applicant twice

²GE 1; AE J; Tr. 27.

³GE 1; GE 2; GE 5; GE 6; AE F; AE H; AE I; Tr. 27-29, 34, 51-52.

⁴GE 5; Tr. 29-33, 47-61.

signed rental leases for friends, who either stopped paying the rent or damaged the property, leaving him with the responsibility for paying these bills. He also allowed a friend to drive his motorcycle. The police impounded his motorcycle after discovering his friend did not have a driver's license. He did not receive any notice that his motorcycle had been impounded. After 30 days, the bank sold the motorcycle, and he still owes money on his loan.⁵

Applicant retained the services of a credit counseling company in 2011. With the help of this company, he has resolved four debts totaling \$11,375. These payments included two SOR debts, which are identified in allegations 2.b (\$1,920) and 2.c (\$8,683). Applicant made at least two payments of \$565 to the creditor in allegation 2.c before he retained the services of his credit counselor.⁶ His credit counselor continues to work with the two remaining creditors to settle or develop a payment plan for the debts in allegations 2.a (\$4,188) and 2.d (\$10,000).⁷

Applicant currently earns \$7,408 in gross monthly income and \$3,560 in net income. His monthly expenses include \$1,000 for rent and \$500 for food, clothing and miscellaneous items. He sets aside \$600 a month for payment of his debts. His assets include \$10,000 in savings, \$70,000 in investments, and \$15,000 in personal assets (car and furniture). Applicant has sufficient income each month to pay his bills and his past debts.⁸

At the hearing, Applicant indicated that he stopped renting apartments for friends and lending his vehicles to friends. Neither he nor his wife have a sense that the Government of Vietnam is watching them. If his wife or her family were harassed by the Vietnamese government, he would report the contacts to his security officer and to the police.⁹

I take administrative notice of the following facts about Vietnam. Vietnam is ruled by the Communist Party of Vietnam, an authoritarian government. China remains a large trading partner. The United States established diplomatic relations with Vietnam in 1995 because overlapping security concerns and economic interests led to the need to form a strategic partnership. However, tension exists between the two nations with respect to Vietnam's human rights record. The human rights record of the Government of Vietnam continues to worsen as the Government cracks down on anti-government activity. Arbitrary detentions remain a problem. Although Vietnam law provides for

⁵GE 5 - GE 7; Tr. 34-35, 40-42, 62-63.

⁶Applicant provided copies of many money order receipts showing varying amounts of payments to unidentified creditors. This evidence is given little weight because the payees are unknown. AE K.

⁷AE A - AE C; AE E; AE K; Tr. 35-39, 44, 62-64, 67.

⁸AE D; AE G.

⁹Tr. 43, 66-68.

freedom of speech and the press, the Vietnam government continues to restrict those freedoms by controlling the internet and by limiting citizen's privacy rights. The Government has a surveillance system, which it uses to watch its citizens. The Vietnamese government has opened mail, confiscated packages and letters, and monitored telephone conversations. The Vietnamese government encourages visitation and investment by emigrants, but it sometimes monitors them carefully. Vietnamese security personnel may place foreign visitors under surveillance and may monitor their hotel rooms, phone conversations, fax transmissions, and e-mail communications. The record contains no evidence that the Government of Vietnam seeks to obtain classified information or economic data from the United States nor is there evidence of terrorist activities in Vietnam.

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.

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. . . ." An applicant has the ultimate burden of persuasion for 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 an 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 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 the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following 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; and
- (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.

Applicant's mother, three brothers, and sister live in the United States and are citizens of the United States. Thus, no security concern is raised by these family members. His wife, her mother, and her brother and his family are citizens and residents of Vietnam. Applicant maintains a normal familial relationship with his wife, with whom he talks by telephone at least once a week. He also emails her once a week.

He has not visited his wife in Vietnam since their marriage in 2008. He does not talk with her family members when he calls her. He does not provide his wife or her family with financial assistance. His family relationships are not *per se* a reason to deny Applicant a security clearance, but his contacts with his wife must be considered in deciding whether to grant Applicant a clearance. The Government must establish that these family relationships create a risk of foreign exploitation, inducement, manipulation, pressure, or coercion by terrorists or would create a potential conflict of interest between his obligations to protect sensitive information and his desire to help his family members who may be threatened by terrorists.

In determining if such a risk exists, I must look at Applicant's relationships and contacts with his wife, as well as the activities of the Government of Vietnam and terrorist organizations within that country. The risk that an applicant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. Applicant's relationship and contacts with his wife in Vietnam raise a heightened risk and a security concern because the monitoring and surveillance activities of the Vietnamese government intrude upon the privacy of its citizens. The evidence of record fails to show that the Vietnamese government engages in espionage activities in the United States or that it targets U.S. citizens in the United States by exploiting, manipulating, pressuring, or coercing them to obtain protected information. Thus, the concern that the Vietnam government will seek classified information is low.

Under the guideline, the potentially conflicting loyalties must be weighed to determine if an applicant can be expected to resolve any conflict in favor of U.S. interests. In determining if Applicant's contacts in Vietnam cause security concerns, I considered that Vietnam and the United States have a relationship, which includes working together on international security issues. There is no evidence that the Vietnamese government targets U.S. citizens for protected information. The human rights issues in Vietnam continue to be a concern. While none of these considerations by themselves dispose of the issue, they are all factors to be considered in determining Applicant's vulnerability to pressure or coercion because of his wife in Vietnam. Considering the significant activities of Vietnamese government against its citizens, Applicant's contacts with his wife and occasional contact with her family raise a heightened risk under AG ¶¶ 7(a) and (b).

The Foreign Influence guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 8(a) through 8(f), and the following are potentially applicable:

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

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; 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's normal relationship with his wife and his rare contact with her mother is not a basis to deny him a security clearance; however, his burden of proof on mitigation requires him to provide information that shows that his family is not subject to coercion. His wife and her family members have never held a political position or a job with the Vietnamese government. His wife's family members have not been targeted by the Vietnamese government or terrorists. His family members in Vietnam have not suffered any abuses from the Vietnam government or been threatened by terrorists. His mother, three brothers and sister are citizens and residents of the United States. He owns no property nor does he have financial assets in Vietnam, although his mother-in-law owns some land. Applicant credibly testified that if the Vietnamese government harassed his wife and her family, he would report the incident to his security officer and the police. Balancing these factors as well as the lack of evidence that the Vietnamese government targets U.S. citizens for protected information against Vietnam's human rights record, I find that Applicant would resolve any conflict in favor of the U.S. interests. Likewise, any threats by terrorists organizations against Applicant's family in Vietnam would be resolved in favor of U.S. interests because Applicant will be unable to help his family members in Vietnam if such threats are made. His loyalties are to the United States, not Vietnam or terrorist organizations. Applicant has mitigated the Government's security concerns as to his family contacts specified in the SOR under AG ¶¶ 8(a) and 8(b), His contact with his mother-in-law is so infrequent and casual that there is little likelihood that it could create a risk for foreign influence or exploitation. AG ¶ 8(c) applies to SOR allegation 1.b.

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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Appellant developed significant financial problems when he and his first wife divorced and he signed rental contracts with friends. Some of the debts have not been resolved. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through 20(f), and the following are potentially applicable:¹⁰

- (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

¹⁰ In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has "... established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

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

Applicant's debts are continuing and recent. Most of his debts occurred after his divorce and are not the result of circumstances beyond his control. Thus, AG ¶¶ 20(a) and (b) do not apply. Applicant has hired a credit counselor, who has worked with him to resolve his debts. Through this individual, Applicant has resolved four debts, including two SOR debts. Prior to hiring this individual, Applicant made an effort to resolve several of his debts, as shown by payments made to at least one creditor. He has sufficient income to pay his monthly expenses and save money. He pays his current bills and is setting aside money each month to resolve his two remaining debts. His debts arose not because of his spending habits, but because he trusted his friends who were not reliable. Because he made some payments to at least one creditor, AG ¶ 20(d) is partially applicable. He has mitigated the security concerns arising from his finances under AG ¶ 20(c).

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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating

conditions in light of all the facts and circumstances surrounding this case. Applicant is a naturalized U.S. citizen, whose wife is a resident and citizen of Vietnam. She lives in a small town many miles from the capitol city. Her family operates a small fish business and her brother works on a farm. They have little contact with the Vietnamese government, and they are not involved in politics, which could make them a target of the current government. His wife and her family live quietly and simply. His wife knows he is an engineer, but she and her family do not have knowledge about his specific work duties. His wife's current residence and citizenship raises little concern that he will be placed in a position where he can be coerced, exploited or pressured to reveal classified information.

Applicant's finances have been a problem off and on for a number of years. In the past, he paid his debts and managed his finances. After his divorce, he incurred debts, most of which were resolved. Later, his generosity to his friends created unpaid debts because they reneged on their obligations for which he provided assistance. He is taking responsibility for their conduct given he co-signed the leases on their apartments. He realizes that he should not help his friends financially and has learned from this mistake. He has been and continues to work with a credit counselor to resolve his remaining debts. He has shown a track record to resolve debt and will continue to do so. While he still owes money on two debts, these debts cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all his debts are paid: it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. While some debts remain unpaid, they are insufficient to raise security concerns because he is actively working to resolve the two remaining debts. (See AG ¶ 2(a)(1).)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his finances under Guideline F and his wife in Vietnam in Guideline B.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant

Subparagraph 2.d:

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARY E. HENRY
Administrative Judge