



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



In the matter of:)
)
) ISCR Case No. 11-13974
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

11/27/2013

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guidelines B, foreign influence, and F, financial considerations. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On May 13, 2013, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines B, foreign influence and 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on June 28, 2013. He elected to have his case decided on the written record. On October 7, 2013, Department Counsel submitted the Government's file of relevant material (FORM). The FORM included an amendment to the SOR with additional allegations 2.j through 2.t.¹ The FORM was mailed to Applicant, and it was received on October 22, 2013. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted additional information. The case was assigned to me on November 25, 2013.

Request for Administrative Notice

Department Counsel submitted a written request, as part of the FORM, that I take administrative notice of certain facts about Vietnam. The documents are attached to the record. Applicant did not object, and I have taken administrative notice of the facts contained in the record. The facts are summarized in the Findings of Fact, below.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.d and 2.a through 2.i. He denied SOR ¶¶ 2.j through 2.t. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 55 years old. He was born in Vietnam. He married a Vietnamese citizen in 1977. He immigrated to the United States in 1980, and became a naturalized citizen in 1987. His wife became a naturalized citizen of the United States in 1988. He earned a bachelor's degree in 1988. He has worked for a federal contractor since 2005. They have four adult sons. The eldest was born in Japan and is a naturalized citizen of the United States. His other sons were born in the United States.²

Applicant's father is deceased, and his mother is a citizen and resident of Vietnam. She is retired, but her former occupation is unknown. It is unknown if she receives a government pension. Applicant indicated that his parents' contact with the Vietnamese government was more than 40 years ago when his father was a member of the South Vietnamese army, which was not part of the Communist regime at that time. Applicant has telephonic contact with his mother about twice a month and visits her every two to three years.³

Applicant has six siblings. In 2011, Applicant indicated in his interview with a government investigator that three of his siblings are permanent residents of the United States. In his answer to the SOR, he indicated that two of the siblings are now naturalized citizens of the United States and the other will become a citizen later this

¹ Department Counsel listed the additional allegations under the financial considerations guideline as 1.j through 1.t. I have changed the paragraph number to "2" to be sequential with the original SOR.

² Item 5.

³ Item 5; Answer to FORM.

year. In his 2011 interview, he also indicated that his three other siblings were citizens and residents of Vietnam. In his answer to the SOR, he indicated that one of his sisters, who was residing in Vietnam, is now residing in the United States. Presumably it is her husband who is alleged in SOR ¶ 1.c, as Applicant's brother-in-law. Applicant did not disclose what his sister's immigration status is, how long she has been in the country, if her husband accompanied her, and what their occupations are in the United States. Applicant sponsored his siblings for immigration to the United States. He visits his family in Vietnam about every two to three years. His last visit was March 2010. He has telephonic contact with his brother in Vietnam about twice a month and with his sister about once a month. His brother is a small business owner. His sister is disabled. There is no information as to whether she receives any type of government benefits. Applicant's daughter-in-law is a citizen of Vietnam and a permanent resident of the United States.⁴

Applicant's wife's father and her seven siblings are citizens and residents of Vietnam. Her father is retired, but it is unknown what his profession was or if he receives a government pension. Applicant last visited his wife's family in Vietnam in 2010. No other information was provided about his wife's siblings, such as their occupations or contact with the Vietnamese government.⁵

Applicant filed Chapter 7 bankruptcy in 1997 and had his debts discharged. He attributed his financial problems to his own medical expenses and his wife's excessive spending. In about 2007, he again experienced financial problems and had about \$40,000 of outstanding credit card debt. He enlisted a debt consolidation company to assist him in resolving his debts. After paying the company \$620 a month, totaling approximately \$8,085, in late 2008, he realized it was not using the money to pay his debts. He attempted to get his money back from the debt consolidation company, but it filed for bankruptcy, and he did not receive any reimbursement.

Applicant attempted to settle his debts on his own. In January 2010, the settlement payments and his home mortgage's tax escrow payments were negatively impacting his ability to make his monthly mortgage payments on his home, including both his first and second mortgages. Applicant indicated he had a payment plan in place to pay his taxes, but somehow his mortgage company changed his monthly payment. He failed to make five monthly mortgage payments. In May 2010, he contacted the mortgage company in an attempt to obtain a loan modification. He paid a reduced mortgage payment for three months until an investor, not his mortgage company, told him his house had been sold.

Applicant spent months working with an attorney and a financial services company in an attempt to reverse the sale, incurring approximately \$18,500 in attorney fees. On the advice of his attorney, he filed two Chapter 7 bankruptcies, in January and February 2011, and one Chapter 13 bankruptcy in June 2011, in an attempt to reverse

⁴ Item 3, 5; Answer to FORM.

⁵ Item 6.

the sale of his house. All of them were dismissed. Apparently his house was put up for auction several times during this period. Applicant abandoned his dispute with the mortgage company and moved out of his house in January 2013. In his 2011 statement, Applicant indicated that some of his debts were “wrote off” with his Chapter 13 bankruptcy filing, but there is no evidence to substantiate his claim.⁶

Applicant’s debt for his first mortgage was resolved in January 2013 by foreclosure. It appears there is no deficiency balance on the primary mortgage. Applicant believed the debt on his second mortgage, alleged in SOR ¶ 2.h (\$160,810) would be settled by the first mortgage company, so it could get a clean title. He did not provide any documents to support his position. He indicated he is still working on resolving the debt. The second mortgage debt is not resolved.⁷

Applicant admitted his debts in SOR ¶¶ 2.e (\$8,815) and 2.f (\$1,642). He stated he is attempting to settle the debts. At this juncture, they are unresolved.⁸ Applicant provided proof that he settled the debts in SOR ¶¶ 2.g (\$961) and 2.i (\$1,307).⁹

As part of his response to interrogatories from March 2013, Applicant provided a personal financial statement. He listed his gross monthly salary as \$11,900 and his net salary as \$7,007. He indicated his monthly expenses are \$5,220 and he has a net monthly remainder of \$1,787. He indicated that he has no debts, \$8,500 in savings and \$165,000 in stocks and bonds. It appears he has two 401k loans, but no other information was provided about these loans.¹⁰

The SOR allegations in ¶¶ 2.j through 2.t are based on Applicant’s 2011 bankruptcy filings. There is insufficient evidence to determine that the debts that were disclosed by Applicant as unsecured nonpriority claims are presently delinquent.

Vietnam

Vietnam is an authoritarian state ruled by the Communist Party of Vietnam. The government limits freedom of speech and the press and suppresses dissent, including restricted Internet freedom. It spies on its dissidents, limits privacy rights, freedom of assembly, association, and movement. Those exercising their right to freedom of religion are often subject to harassment, inconsistent legal protection, and differing interpretations of the law. Police corruption persists at various levels.

⁶ Item 5; Answer to FORM.

⁷ Item 3, 5, 7, 12, 13; Answer to FORM.

⁸ Item 3.

⁹ Answer to FORM.

¹⁰ Item 6.

The Vietnamese government requires household registration and a block warden system that exists for the surveillance of its citizens. It focuses on those involved in unauthorized political or religious activities. The government opens and censors targeted persons' mail and other means of communication.

The Vietnamese government does not permit private, local human rights organizations to form or operate, and it does not tolerate attempts by organizations or individuals to comment publically on its human rights practices. It uses a variety of methods to suppress domestic criticism. The U.S. Department of State reports that the most significant human rights problems in Vietnam continue to be severe government restriction on citizens' political rights, particularly their right to change their government; increased measures to limit citizens' civil liberties; and corruption in the judicial system and police.

By law the Vietnamese government considers anyone born to at least one Vietnamese-citizen parent to be a citizen. The Vietnamese government generally encourages visits and investment by Vietnamese emigrants but sometimes monitors them carefully.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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, 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 as to 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 that an applicant may deliberately or inadvertently fail to 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 conditions that could raise a security concern and may be disqualifying. I have considered all of them 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;
- (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.

Applicant's mother and two siblings are citizens and residents of Vietnam. It appears that another sibling and his daughter-in-law are permanent residents of the United States. It is unclear what the status of his sister who recently moved to the United States is and if her husband accompanied her. His wife's father and her seven siblings are citizens and residents of Vietnam. I find the above disqualifying conditions apply. I find sponsoring family members into the United States does not establish a disqualifying condition. I also find those member of Applicant's family who are permanent residents of the United States does not establish a disqualifying condition. SOR ¶¶ 1.c and 1.d are concluded in Applicant's favor.

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8, and the following 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.;

(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 has regular contact with his family in Vietnam. The only information provided was that the last time Applicant and his wife visited her family in Vietnam was in 2010. There is insufficient evidence to conclude that the familial connections and the nature of the relationship Applicant and his wife have with their families would make it unlikely that Applicant and his wife would be placed in a position of having to choose between their family interests and the interests of the United States.

The nature of a nation's government and its relationship with the United States is 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, a family member is associated with or dependent upon the foreign government or the country is known to conduct intelligence operations against the United States. Some of Applicant's family and his in-laws are citizens and residents of Vietnam. Although it is possible that Applicant's family members do not pose a security risk, I cannot make that determination without additional evidence that was not provided. There is insufficient information to make a determination that Applicant's family members would not be vulnerable to government coercion. The record is void of additional information about Applicant's family and his wife's relatives that would allow me to find that any of the mitigating conditions are applicable.

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. I have considered the following under AG ¶ 19:

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

Applicant had debts discharged in bankruptcy in 1997. Applicant has approximately \$171,267 in delinquent debts that he is unable or unwilling to pay. I find the above disqualifying conditions apply to these facts.

Applicant filed three additional times for bankruptcy in an attempt to save his house from foreclosure. No debts were discharged and each bankruptcy was dismissed. These facts do not establish a disqualifying condition. SOR ¶¶ 2.b, 2.c, and 2.d are concluded in favor of Applicant.

Listing liabilities in a bankruptcy filing does not automatically mean that the debts are delinquent. Often when filing a bankruptcy claim the claimant will include all of his or her debts, even if they are not delinquent at the time of the filing. The government cited Applicant's bankruptcy filings from 2011 as proof of the delinquent debts. Applicant disputes the allegations. Without additional evidence, I find the government's evidence insufficient to conclude the debts are delinquent.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under AG ¶ 20:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant provided documented proof that he settled and resolved the debts in SOR ¶¶ 2.g and 2.i. He stated he is still working on the debt in SOR ¶ 2.h (\$160,810) and is attempting to settle the debts in ¶¶ 2.e and 2.f. AG ¶ 20(a) does not apply because Applicant continues to have delinquent debts that are unpaid or resolved. His history of financial problems casts doubt on his reliability, trustworthiness, and good judgment.

Applicant attributed his early financial problems to his medical problems and his wife's excessive spending. He had his debts discharged in bankruptcy in 1997. He had a clean financial slate. He failed to provide amplifying information as to why he had financial difficulties in 2007 and accumulated approximately \$40,000 of credit card debt. He attempted to settle the debt through a debt consolidation firm in 2008. He was taken advantage of and lost more than \$8,000. He later was unable to pay his property taxes and became delinquent on his mortgage payments. He attributes some of his later financial problems to issues with his mortgage company, but those issues were after he got behind on his property taxes and five months of mortgage payments. Applicant's initial financial problem of accumulating \$40,000 of credit card debt has not been explained. He attempted to do the right thing by enlisting the services of the debt consolidation firm. His initial financial problems were within his control. However, he is given credit for trying to resolve his credit card debts, albeit unsuccessfully. Some credit

is given under AG ¶ 20(b) because he attempted to resolve his earlier debts with the consolidation firm. However, Applicant has savings to pay some of his remaining creditors and has not yet done so.

No information was provided about whether Applicant has received financial counseling. At this time, there are not clear indications his financial problems are being resolved or under control. AG ¶ 20(c) does not apply. Applicant provided documentation to show he resolved the debts in SOR ¶¶ 2.g and 2.i. AG ¶ 20(d) applies to those debts. Applicant admitted the debt in SOR ¶ 2.h, but it also appears he is disputing it. He did not provide documents substantiating the basis or the validity of his dispute. AG ¶ 20(e) does not 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 B and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 55 years old. He has a history of financial difficulties dating back to at least 1997, when he had his debts discharged in bankruptcy. He began experiencing financial problems again in 2007 when he had \$40,000 of credit card debt. He tried to resolve it, but it impacted his other financial responsibilities. Applicant did not provide sufficient information about his finances to conclude they will not continue to be a problem in his future. He has sufficient income and savings to resolve some of his delinquent debts and has not.

Applicant and his wife have family who are citizens and residents of Vietnam. He provided insufficient information to mitigate the security concerns regarding them. Applicant has failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline B, foreign influence, and Guideline F, 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 B:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Subparagraphs 1.c-1.d:	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b-2.d:	For Applicant
Subparagraphs 2.e-2.f:	Against Applicant
Subparagraph 2.g:	For Applicant
Subparagraph 2.h:	Against Applicant
Subparagraphs 2.i-2.t:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge