DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
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	)	
Applicant for Security Clearance	)	

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

11/20/2012

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant has mitigated the security concerns regarding financial considerations and foreign preference. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On July 28, 2011, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing version of a Security Clearance Application (SF 86).[1] On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued her a set of interrogatories. She responded to the interrogatories on March 23, 2012.[2] On May 2, 2012, DOHA issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative*

[1] GE 2 (SF 86), dated July 28, 2011.

[2] GE 6 (Applicant's Answers to Interrogatories, dated March 23, 2012).

Guidelines for Determining Eligibility For Access to Classified Information (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (financial considerations), and detailed reasons why DOHA was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on May 15, 2012. In a sworn statement, dated May 29, 2012, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. On August 3, 2012, pursuant to ¶ E.3.1.13 of the Directive, DOHA issued her an amendment to the SOR. The SOR amendment added alleged security concerns under Guideline C (foreign preference). Applicant acknowledged receipt of the SOR amendment on August 14, 2012. On that same date, she responded to the SOR amendment. Department Counsel had indicated the Government was prepared to proceed on August 6, 2012. The case was assigned to me, along with the companion case of Applicant's husband, on August 9, 2012. A Notice of Hearing was issued on September 5, 2012, and I convened the joint hearing, as scheduled, on September 26, 2012.

During the hearing, ten Government exhibits (GE 1 through GE 10) and four Applicant exhibits (AE A through AE D) were admitted into evidence without objection. Applicant and her husband testified. The transcript (Tr.) was received on October 4, 2012. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity, and her husband submitted a substantial number of additional exhibits (AE E through AE AK) that were admitted into evidence without objection.

Findings of Fact

In her Answer to the SOR, Applicant admitted all 13 of the factual allegations pertaining to financial considerations (¶¶ 1.a. through 1.m. of the SOR). In her Answer to the SOR amendment, Applicant admitted both of the factual allegations pertaining to foreign preference (¶¶ 2.a. and 2.b.). Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 51-year-old principal co-owner of a defense contractor that her husband established in the United States in 1993. She has also been a licensed massage therapist on a part-time basis since August 1998. Applicant was born in the United Kingdom (UK) to British citizen-residents, and was raised and educated in the UK. She was married in 1983, and has two sons (born in 1985 and 1987).[3]

[3] GE 2, *supra* note 1, at 14, 16-17.

Applicant's husband first arrived in the United States in 1993 in response to an invitation by a state economic development commission conducting an assessment of his technology capabilities. He established the company in the United States and staffed it, but continued to operate both the U.S. entity and a UK entity, spending several weeks at a time at each location. In 1997, he relocated his family, including Applicant and their two young sons, to the United States.[4] Her husband became a naturalized U.S. citizen in May 2001,[5] and Applicant became a naturalized U.S. citizen in May 2004.[6]

Financial Considerations

While Applicant is identified as a principal co-owner of the company, she has not been involved in decisions regarding business or investments. Instead, she left all such decisions to her husband and merely signed documents presented to her for signature by her husband.[7] She was essentially a full-time wife and mother, and a part-time massage therapist.

It is unclear when Applicant's financial problems first started to develop. During the four-year period that her husband was commuting between the United States and the UK, he had an employee serving as the senior administrator who was looking after the company finances, running the business in his absence, and producing monthly reports. Eventually, however, Applicant's husband discovered that aside from being very nice and very clever, the employee had a propensity to steal. She had embezzled and fraudulently obtained monies and credit in the names of both the company and Applicant's husband. The employee also obtained a false Social Security number. There were balances on credit cards that neither Applicant nor her husband was aware of, forged signatures, and unpaid taxes. Applicant's husband estimated his company lost substantially over $300,000. The employee was successfully prosecuted by the authorities. She was placed on house arrest, given 15 years' probation, and required to pay restitution to the extent she could do so over the period of 15 years. The employee actually repaid only about $2,000.[8] Because of those illegal activities, Applicant, her husband, and their company were in substantial debt. Nevertheless, while Applicant and her husband were legally absolved from any responsibility for those debts, they felt a moral obligation to do so, and her husband embarked on an effort to pay their creditors in full.[9] Applicant's husband got the business back on track in 1998-1999.[10]

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[4] Tr. at 42-43.

[5] GE 7 (Applicant's Husband's Personal Subject Interview, dated August 29, 2011), at 1.

[6] GE 2, *supra* note 1, at 6-7.

[7] AE C (Joint Statement by Applicant and her husband, dated September 24, 2012), at 1.

[8] Tr. at 43-46; Applicant's Husband's Response to his SOR, dated June 27, 2012), at 2.

[9] Applicant's Husband's Response to his SOR, *supra* note 8, at 2.

[10] Tr. at 69; AE C, *supra* note 7, at 1.

During a period of financial prosperity, both nationally and personally, Applicant's husband invested in ten rental properties. He paid cash for some of the properties and obtained several small home mortgages for others.[11] He also purchased a residence around 2004 or 2005 for $2.4 million, and he obtained several lines of credit. The rents from the rental properties easily covered the mortgages. Applicant's husband felt that some of the properties could be leveraged if he needed to generate additional income for research and development.[12]

Several additional circumstances created Applicant's present financial difficulties. In 2004 and 2005, there were expenses and development costs of certain technology that Applicant's husband expected to play "a significant role" in a high profile national activity that has been hotly debated over the past four years. Because of his enthusiasm with his project, Applicant's husband allowed his core business – product design – to drift as he put all of his focus on software.

In 2008, because of the national economic downturn, major corporations across the nation that had been working with Applicant and her husband's company suddenly ceased substantial involvement in several areas of the company's core technology design services. They lost over 50 percent of their anticipated revenue. Applicant's husband was confident that he was close to a breakthrough, and had to make a choice of either shutting down his project and losing what he had already put into it, or continuing with his efforts. He needed more time and more money to accomplish his goals, so he chose the latter option, and to generate the necessary funds to do so, he started mortgaging his properties.[13] Unfortunately, the bottom fell out of the housing market and the properties, now all with substantial mortgages, were all "under water."[14] Some renters bailed out of the properties. In 2009, without any forewarning, a major investor withdrew from further investment activity.[15]

Finally, as a result of poor decisions by Applicant's husband, various state payroll taxes were not properly withheld in locations where the company had performed services. In 2009, accounts started to become delinquent. Liens were placed against them, and some delinquent accounts were sent to collection or charged off. Despite mounting financial difficulties, Applicant and her husband maintained a good lifestyle: in August 2009, Applicant vacationed in the UK for ten days; in January 2011, she and her husband vacationed in Central America for five days; in April 2011, Applicant

[11] Tr. at 69.

[12] Tr. at 71.

[13] Tr. at 71, 75-76; AE C, *supra* note 7, at 2.

[14] Tr. at 76; AE C, *supra* note 7, at 2.

[15] Applicant's Husband's Response to his SOR, *supra* note 8, at 2-3.

vacationed in the Caribbean for one week; and they both vacationed in the UK for an unspecified period in July 2012.[16]

Attorneys and friends advised her husband to declare bankruptcy, but he refused to consider such an option.[17] Instead, he turned to a realtor and an accountant to seek professional guidance and assistance. In an effort to resolve their delinquent accounts, Applicant's husband opened discussions with all of their creditors, intending to resolve some accounts and engage in resolution efforts on other accounts. Applicant and her husband put their rental properties up for sale. Hoping to rely on an emergency backup plan – Applicant's mother's reserve of $375,000 – they could not do so for she had become the victim of a multi-million dollar Ponzi scheme, leaving her unable to assist them financially.

In March 2012, Applicant submitted a personal financial statement, and in May 2012, Applicant's husband did also. They reflected Applicant's husband's net monthly income as $3,517.98,[18] and Applicant's net monthly income as $4,800.[19] The monthly combined net income for them would be $8,317.98. He claimed $2,735 in monthly expenses and $45 in debt payments, leaving a monthly net remainder of $782.98 available for discretionary spending or saving.[20] She claimed $2,835 in monthly expenses and $2,310.59 in debt payments, leaving a monthly net remainder of minus $345.59 available for discretionary spending or saving.[21] They both included nearly the same monthly expenses. Therefore, it appears that they may have approximately a combined $3,227 available for discretionary spending or saving. Circumstances have changed, and Applicant's husband now earns approximately $2,000 per month from his company, in addition to a pension of $1,600.[22] Neither Applicant nor her husband ever received financial counseling.[23]

Applicant's husband's SOR essentially identified 22 purportedly continuing delinquencies, totaling approximately $1,250,812. Of those 22 accounts, her husband has resolved or is in the process of resolving 10 of the accounts, and has not yet resolved the remaining 12 accounts. Applicant's SOR identified 13 purportedly continuing delinquencies (including two accounts that were also listed in her husband's SOR), totaling approximately $636,929.19. Of those 13 accounts, Applicant and her

[16] GE 1 (SF 86, dated July 28, 2011), at 27; GE 2, *supra* note 1, at 25-26; GE 9 (Letter from Company Security Officer, dated July 12, 2012).

[17] AE C, *supra* note 7, at 3.

[18] GE 5 (Personal Financial Statement, undated), attached to Applicant's Husband's Answers to Interrogatories.

[19] GE 6 (Applicant's Personal Financial Statement, undated), attached to her Answers to Interrogatories.

[20] GE 5 (Personal Financial Statement), *supra* note 18.

[21] GE 5 (Personal Financial Statement), *supra* note 18.

[22] Tr. at 61-62, 64-65.

[23] Tr. at 137-138.

husband have resolved or are in the process of resolving none of the accounts. Each account listed in her SOR is described below, reflecting both the original and present status, as follows:

(SOR ¶ 1.a.): This is a federal tax lien in the amount of $124,090.68 that was filed separately against Applicant and her husband in February 2011, covering unpaid payroll taxes for the last three quarters of 2009.[24] Applicant's husband made garnishment payments on the balance when possible, and the balance was purportedly reduced accordingly. It was subsequently declared "uncollectable."[25] Applicant's husband intends to satisfy the lien as soon as he can sell the houses associated with it, neither of which has a mortgage.[26] The account, which is also listed in her husband's SOR, is currently in deferment as uncollectable.

(SOR ¶ 1.b.): This is a bank credit card with a high credit and unpaid balance of $17,772, and a past-due balance of $3,201, that was sent to collection and charged off.[27] Applicant acknowledged the debt during her interview with an investigator from the U.S. Office of Personnel Management (OPM) in September 2011.[28] She admitted the allegation in her Answer to the SOR, but during the hearing, she claimed to have no knowledge of the account.[29] Her husband subsequently claimed that he had called the creditor, but they had no information regarding the account.[30] He stated he was disputing the account with the credit reporting agencies and asking that the negative listing be removed from his credit report.[31] Neither Applicant nor her husband offered any documentary evidence to support the creditor's purported position or Applicant's husband's dispute. The account remains unresolved.

(SOR ¶ 1.c.): This is a $150,000 line of credit not associated with any property that became $149,359 past due, and the account was subsequently charged off.[32] Applicant's husband claimed he has been in contact with the creditor, and they are willing to accept an offer in compromise, but since Applicant's husband is not yet in a

[24] AE G (Notice of Federal Tax Lien, dated February 3, 2011).

[25] Tr. at 58, 60.

[26] Applicant's Husband's Response to the SOR, *supra* note 8, at 1.

[27] GE 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated August 17, 2011), at 7.

[28] GE 8 (Applicant's Personal Subject Interview, dated September 7, 2011), at 9-10.

[29] Tr. at 118-119.

[30] AE W (E-mail, dated October 5, 2012), at 1.

[31] AE W, *supra* note 30, at 1.

[32] GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated August 13, 2011), at 25; GE 4, *supra* note 27, at 14; Tr. at 81-82; GE 6 (Account Statement, undated), attached to Applicant's Answers to Interrogatories.

position to make a significant payment, no documentation has been exchanged.[33] The account, which is also listed in her husband's SOR, remains unresolved.

(SOR ¶ 1.m.): This is the mortgage for an office building which served as both the company headquarters and as a rental property that was purchased in 2000 for about $1,000,000, of which all but about $200,000 was financed. As the property increased in value, Applicant and her husband obtained additional financing.[34] At one point, the loan balance was up to $1,470,000.[35] With the downturn of the economy, renters bailed out of the building, and Applicant and her husband were unable to keep up with the monthly payments. Applicant contended the property was sold in a short sale in 2011, and the account was settled for $1,100,000,[36] but that assertion is false. The property was foreclosed and sold at a public sale for $68,300.[37] Applicant and her husband had previously signed a deficiency promissory note for $300,000, requiring 60 monthly payments of $3,255.79.[38] Applicant has submitted no documentation to indicate payments have been made. Applicant's husband acknowledged that the full amount is still owed, but contends the creditor is verbally willing to accept an offer in compromise.[39] There is no documentation to support his contention. The account has not been resolved.

(SOR ¶¶ 1.d. through 1.l.): These are purportedly unpaid tax balances owed to various states for failure to file the required forms or make timely payments, along with interest and penalties. In 2012, Applicant's husband engaged the professional services of an accountant to resolve the accounts as there were supposedly some questions as to whether the accounts were accurate.[40] The accountant stated:[41]

> It appears that either payment has been made and need re-allocations so taxes are paid in full and/or filing of missing forms. On the omitted filings the various States have estimated a tax liability and invoiced for the estimates adding accumulated penalties and interest.

[33] Tr. at 81; AE W (E-mail, dated October 5, 2012), at 1.

[34] Tr. at 127-128.

[35] GE 8, *supra* note 28, at 10.

[36] GE 8, *supra* note 28, at 10.

[37] AE AF (Certificate of Sale, dated July 27, 2012).

[38] GE 6 (Joint Stipulation for Entry of Agreed Final Judgment of Foreclosure, dated February 13, 2012), attached to her Answers to Interrogatories.

[39] Tr. at 129; AE W, *supra* note 30, at 1.

[40] AE AK (Letter from Accountant, undated); Tr. at 85-86, 120-126; AE W, *supra* note 30, at 1-2.

[41] AE AK, *supra* note 40.

The delinquencies, at the time the SOR was issued, totaling approximately $45,708, go back, in some instances, to 2003.[42] Despite Applicant's husband's relatively recent engagement of an accountant to resolve the accounts, there is no documentary or testimonial evidence that either Applicant or her husband made any previous efforts to address and resolve the delinquent tax accounts. The accounts have not been resolved.

Foreign Preference

In July 2004, shortly after she became a naturalized U.S. citizen, Applicant obtained a U.S. passport.[43] She apparently retained her UK passport. Applicant used her UK passport instead of her US passport for convenience to avoid the longer lines for non-UK citizens entering the UK.[44] Although she had previously surrendered her UK passport to her facility security officer, she retrieved it in July 2012 to use it while traveling in the UK that same month.[45] Applicant and her husband travelled to the UK to see his hospitalized sister and to attend a friend's wedding.[46] Friends warned them about "foreigners" going to England to see the Olympic Games and the long lines associated with such travel, so they decided to use their UK passports.[47] Applicant's husband "justified" the use of the UK passports for "easy access only due to Olympic traffic."[48] Both Applicant and her husband pledged their allegiance to the United States upon becoming naturalized citizens, and denied that their actions were associated with any preference for the UK.[49] Her husband stated: "I am American through and through."[50] The UK passports of both Applicant and her husband were returned to the facility security officer upon their return from the UK.[51] Applicant is willing to renounce her UK citizenship.[52]

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security

[42] GE 6 (Various Statements of Accounts, Notices of Overdue Tax, and Collection Notices, various dates).

[43] GE 2, *supra* note 1, at 6-7.

[44] GE 8, *supra* note 28, at 4. *See also*, GE 7, *supra* note 5, at 2.

[45] GE 9, *supra* note 16.

[46] Tr. at 52-53.

[47] Tr. at 53.

[48] Applicant's Husband's Response to the Amendment to the SOR, dated August 14, 2012, at 1.

[49] Tr. at 54-57.

[50] Tr. at 56.

[51] GE 10 (Letter from Company Security Officer, dated August 1, 2012).

[52] GE 8, *supra* note 28, at 1.

emphasizing, "no one has a 'right' to a security clearance."[53] 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."[54]

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

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."[55] The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.[56]

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the

[53] *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

[54] Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

[55] "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

[56] *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

possible risk the 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. Furthermore, "security clearance determinations should err, if they must, on the side of denials."[57]

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."[58] Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

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. The seeds of Applicant's financial problems commenced sometime between 2004 and 2008 when a variety of conditions occurred. During the earlier portion of the period, her husband allowed his core business to drift when his focus was elsewhere. Later, economic conditions worsened, and the consequences were such that he was unable to continue making his monthly payments on mortgages, credit card accounts, lines of credit, and taxes. Accounts became delinquent and were placed for collection, charged off, gone to foreclosure, or had liens filed. AG ¶¶ 19(a) and19(c) apply.

[57] *Egan*, 484 U.S. at 531

[58] *See* Exec. Or. 10865 § 7.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where *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*. Also, under AG ¶ 20(b), financial security concerns may be mitigated where *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*. When *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) may apply. Similarly, AG ¶ 20(d) applies where the evidence shows *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*.[59]

AG ¶¶ 20(a) and 20(b) partially apply. Applicant's financial problems commenced between 2004 and 2008 when a variety of conditions occurred. Her husband allowed his core business to drift when his focus was elsewhere; economic conditions worsened and their company lost over 50 percent of the anticipated revenue when other companies with which her husband had been working suddenly curtailed their activities; the value of their rental properties plummeted; renters bailed out; a major investor withdrew from further investment activity; and Applicant's husband made some poor decisions. While the business downturn and the devastation of the national and local economies were largely beyond Applicant's husband's control, some decisions made by him were clearly within his sole control. All the financial activities of Applicant's husband were seemingly beyond Applicant's control, for while Applicant is identified as a principal co-owner of the company, she has not been involved in decisions regarding business or investments. Instead, she left all such decisions to her husband and merely signed documents presented to her for signature by her husband.

Applicant's husband kept his eye on the "brass ring" but failed to understand the full dynamics of the situation. Focusing on his big technology project – to the detriment of his core business – Applicant's husband incurred substantial development expenses and costs. He gambled on success, and leveraged their rental properties to generate additional funds. He chased his losses hoping to cash in with eventual success. Applicant's husband was confident that he was close to a breakthrough and had to

[59] The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

> In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that she or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

make a business decision of either shutting down his project and losing what he had already put into it, or continuing with his efforts. He needed more time and more money to accomplish his goals, so he chose the latter option. While her husband remains enthusiastic about his potential achievement, there is little evidence of actual success. Instead, Applicant's husband has delivered hype, hope, and positive expectations, with few specifics. Applicant has merely deferred to her husband.

While their financial difficulties commenced between 2004 and 2008, they have continued and deteriorated to the point where they cannot be considered infrequent. Whether they occurred under such circumstances that are unlikely to recur is a matter of opinion. The current economic climate was unanticipated and is akin to a hundred year storm or the economic recession of the 1930s. Applicant's husband was either a technology visionary or a poor businessman, or both. His actions and decisions contributed to their financial problems, but did not cause them. However, while some of his decisions may, in retrospect, cast some doubt on his good judgment, they do not cast doubt on her current reliability or trustworthiness. After what appears to be a slow start in attempting to resolve their financial problems, Applicant's husband eventually acted responsibly under the circumstances. Applicant remained merely a signatory to his actions.

AG ¶ 20(c) does not apply because neither Applicant nor her husband ever received financial counseling. Applicant's husband engaged the services of attorneys, accountants, and realtors to assist them in mitigating their financial losses, and there are indications that some accounts listed in his SOR have been resolved or are in the process of being resolved. There is no such evidence that the accounts listed in Applicant's SOR have been addressed, except for the relatively recent accountant activity related to the state tax delinquencies. Nevertheless, it remains unclear if either Applicant or her husband has more than a rudimentary understanding of the financial issues.

AG ¶ 20(d) partially applies. At the outset, Applicant's husband is credited with laudable efforts in resolving the financial mess their former senior administrator left them with due to her embezzlement activities. Although not legally required to do so, Applicant and her husband accepted the moral obligation and paid their creditors in full. The more recent financial problems have provided them with another opportunity to resolve their financial problems. Applicant's husband contacted some of their creditors and eventually concluded that they should extricate themselves from their burdensome mortgages. During this horrible housing market, he put certain jointly-owned properties on the market and sought approval for short sales from their mortgage lenders. Some properties have been successfully sold, and they were absolved from any deficiency balances. Other properties are apparently awaiting short sale approval or actual closings, but since Applicant's husband failed to furnish the necessary documentation to me, I am unable to conclude that those remaining accounts listed in his SOR have been resolved. One lien has been placed into a period of deferment and they are, or at least were, making some monthly payments on it. Other delinquent accounts are in line, awaiting their attention. Nearly all of the accounts in Applicant's SOR are also in that line awaiting their attention.

There is some concern that Applicant and her husband have not given their delinquent accounts the timely attention due them, and have instead wasted valuable time and money on other endeavors. It is unclear if they are putting their monthly net remainder towards delinquent debts or using it for other purposes. They were apparently unable to make more substantial debt payments, but able to take foreign vacations while debts remained delinquent. Nevertheless, while Applicant's husband is finally acting responsibly under the circumstances,[60] and showing reasonableness, prudence, honesty, and adherence to duty or obligation, Applicant, on the other hand, is at the financial mercy of her husband, unable to take any further action.

Guideline C, Foreign Preference

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

> When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 10(a), *exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member* is potentially disqualifying. This includes but is not limited to *possession of a current foreign passport* under AG ¶ 10(a)(1). In July 2004, Applicant became a naturalized U.S. citizen, and obtained a U.S. passport. She apparently retained her UK passport. Applicant used her UK passport instead of her US passport for convenience to avoid the longer lines for non-UK citizens entering the UK. Although she had previously surrendered her UK passport to her facility security officer, she retrieved it in July 2012 to use it while traveling in the UK that same month. Applicant and her husband travelled to the UK to see his hospitalized sister and to attend a friend's wedding. Friends warned them about "foreigners" going to England to see the Olympic Games and the long lines associated with such travel, so they decided to use their UK passports. Applicant's husband "justified" the use of the UK passports for "easy access only due to Olympic traffic." By her actions, Applicant exercised the rights and privileges of foreign citizenship after becoming a U.S. citizen. AG ¶¶ 10(a)(1) has been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign preference. Under AG ¶ 11(b), the disqualifying condition may be mitigated where *the individual has expressed a willingness to renounce dual citizenship*. Similarly, AG ¶ 11(e) may apply where *the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*.

Dual citizenship, by itself, is not an automatic bar to a security clearance. It is only a security concern if the individual has actively exercised the rights and privileges

[60] *See* ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

of the foreign citizenship after becoming a U.S. citizen. Applicant, a naturalized U.S. citizen, stated unequivocally that she is willing to renounce her UK citizenship. Her only motivation for using her UK passport was not an indication of a preference for the UK over the United States, but rather solely for her personal convenience in entering the UK. Applicant pledged her allegiance to the United States upon becoming a naturalized citizen, and denied that her actions were associated with any preference for the UK. The UK passport was returned to the facility security officer upon her return from the UK. Applicant is willing to renounce her UK citizenship. Such actions have security significance. Thus, as to Applicant's dual citizenship, and her possession and use of the UK passport, considering Applicant's explanations, and her subsequent actions, I find ¶¶ 11(b) and 11(e) 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.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:[61]

> 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." However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding

[61] ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

> 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. 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.

There is some evidence against mitigating Applicant's conduct. She actively exercised the rights and privileges of foreign citizenship after becoming a U.S. citizen. Also, her husband's handling of the family, investment, and company finances permitted numerous accounts to become delinquent. As a result, accounts were placed for collection, charged off, gone to foreclosure, or became tax liens. She and her husband took foreign vacations while debts remained delinquent.

The mitigating evidence under the whole-person concept is more substantial. As noted above, due to a combination of events, both beyond their control and within Applicant's husband's control, the family and business financial situations deteriorated. Promising investments were leveraged to generate funds sufficient for their business to survive. With the devastated economy, those investment properties became albatrosses. Applicant's husband contacted their creditors in an effort to resolve their financial problems. Their combined SORs identified 33 purportedly continuing delinquencies. Of those 33 accounts, Applicant's husband has resolved or is in the process of resolving 10 of the accounts, and has not yet resolved the remaining 23 accounts. They turned to an attorney, an accountant, and a realtor for guidance, and attempted to disengage themselves from their delinquent mortgages by seeking mortgage lender approval of short sales. Some were successful, and others may have been. Applicant's husband acted honorably after he and their company were victims of employee embezzlement, and Applicant's husband is acting honorably by choosing to repay their debts and not seeking discharge under bankruptcy. Applicant is a good wife and mother, assisting her husband who has exceptional expertise in certain technology capabilities. Until the national economy was devastated, her husband was a successful investor.

I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.[62] Applicant's husband has demonstrated a meaningful track record of debt reduction and elimination of their joint debts. Overall, the evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from her financial considerations and her foreign preference.[63] *See* AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

[62] *See U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); *See also* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

[63] Although I have concluded that Applicant has mitigated the security concerns cited in the SOR and Amendment to the SOR, this decision should also be considered by Applicant to be a warning that any failure to

Formal Findings

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

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	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.

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ROBERT ROBINSON GALES
Administrative Judge

continue her debt resolution efforts, creating additional delinquent debt, or using her foreign passport in the future, will adversely affect her future eligibility for access to classified information.