



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



In the matter of:

[REDACTED]

Applicant for Security Clearance

)  
)  
)  
)  
)

ISCR Case No. 15-05147

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel

For Applicant: *Pro se*

02/23/2017

**Decision**

MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence) and Guideline C (Foreign Preference). The Guideline C concerns are mitigated. Eligibility for access to classified information, based on the Guideline B concerns, is denied.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on August 15, 2014. On January 31, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines B and C. The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant answered the SOR on February 23, 2016, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on March 30, 2016. On April 1, 2016, a complete copy of the file of relevant

material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on April 4, 2016, and submitted his response on April 25, 2016, to which the Government did not object. The case was assigned to me on December 12, 2016.

### **Findings of Fact<sup>1</sup>**

Applicant is 33 years old and has been married since 2013. He and his wife have one child, age 3. Applicant received his bachelor's degree from a Philippine college in April 2005. He served on active duty with the U.S. Navy from November 2005 through November 2010, when he was honorably discharged as a second-class petty officer. He took classes at a U.S. college from January 2010 to April 2011, and began pursuing his master's degree at another Philippine college from June 2011 to June 2014. He has been employed full time by U.S. federal contractors since July 2014.

Applicant is a Philippine citizen by birth. He first immigrated to the United States in December 2004 but remained for only a few weeks before moving back to the Philippines to complete the courses required for his bachelor's degree. He returned to live in the United States full time in June 2005, and was naturalized in October 2007. In April 2011, he reacquired his Philippine citizenship to pursue his master's degree<sup>2</sup> (which he believed was unachievable in the United States due to his poor GPA) in order to further his career. However, Applicant has stated a willingness to renounce it.<sup>3</sup>

In April 2011, Applicant returned to the Philippines to live, work, and attend school. He first lived with his aunt in her home and later lived with his mother-in-law and father-in-law in their home.<sup>4</sup> From June 2011 through May 2013, he worked part time for a Philippine university and, from June 2011 through June 2014, attended classes full

---

<sup>1</sup> I extracted these facts from Applicant's FORM response, SOR answer (Item 1), e-QIP (Item 3), and the summary of his personal subject interview (Item 3) unless otherwise indicated by citation to another item in the record. I considered that Item 3 was not authenticated as required by Directive ¶ E3.1.20. However, Department Counsel informed Applicant that he was entitled to make corrections, additions, deletions, and updates to Item 3. Applicant was also informed that he was entitled to object to consideration of Item 3 on the ground that it was not authenticated. Applicant did neither in his response to the FORM.

<sup>2</sup> According to Applicant, he reacquired his Philippine citizenship so that he would be able to stay in the Philippines longer than the year otherwise permitted as a non-Philippine citizen and have sufficient time to pursue his master's degree.

<sup>3</sup> In his SOR answer, Applicant stated that he was willing to "revoke" his Philippine citizenship in order to "pass the security clearance." In his FORM response, Applicant stated that he is willing to renounce his Philippine citizenship "if I have to." I note that Applicant's dual citizenship itself is not a disqualifying condition (but rather the exercise of any right, privilege or obligation of that citizenship) and, therefore, renunciation is not required.

<sup>4</sup> From April 2011 through June 2013 (aunt) and from June 2013 through June 2014 (in-laws). Applicant has not had any contact with his aunt since June 2014.

time at another Philippine university.<sup>5</sup> Applicant did not make any lasting contacts with foreign nationals due to either his employment or schooling. While there, Applicant met and married his wife, and became a father.<sup>6</sup> He moved back to the United States in June 2014 where he continues to reside.

Applicant's wife and child are citizens of the Philippines and reside there with his father-in-law and mother-in-law. Applicant plans to move his wife and child to the United States sometime in 2017.<sup>7</sup> He also plans to file a CRBA (Consular Report of Birth Abroad of a Citizen of the United States of America) on behalf of his child and a visa application on behalf of his wife.<sup>8</sup> Once she is eligible, Applicant intends for his wife to apply for U.S. citizenship. His parents and two siblings are naturalized U.S. citizens, residing in the United States. His mother-in-law and father-in-law are citizens and residents of the Philippines. Neither his wife nor her parents are employed by the Philippine government or have other employment ties of security concern.

In his e-QIP and during his personal subject interview, Applicant acknowledged owning two different parcels of land, one acquired in about 2006 worth approximately \$16,000 (initially intended as an investment and later contemplated as a gift for his mother); and one acquired in about 2010 worth approximately \$10,000 (intended as an investment). Without explaining whether and how he disposed of one of the parcels, Applicant states in his SOR answer that he now owns land worth about \$20,000. Since the Government's support for SOR ¶ 1.i rests solely on Applicant's self-report, I find that he owns land in the Philippines worth approximately \$20,000 USD.

Applicant owns two bank accounts in the Philippines jointly with his wife, one to pay expenses and the other for savings.<sup>9</sup> He estimated their combined value to be approximately \$4,800 during his personal subject interview, and \$5,000 – \$6,000 in his SOR answer. Applicant provides monetary support monthly to his wife and mother-in-law to cover his wife and child's expenses,<sup>10</sup> and occasionally sends money for the emergency needs of other relatives.<sup>11</sup> Applicant uses his Philippine bank account to

---

<sup>5</sup> Applicant did not attain his master's degree at this university because of financial issues stemming from his marriage and the birth of his child.

<sup>6</sup> During his personal subject interview, Applicant stated that he first met his wife in January 2012. However, in that same interview, he also stated that he and his wife started making payments to acquire land together in October 2006. Despite the lack of explanation for this discrepancy, I do not consider it security significant.

<sup>7</sup> Previously, Applicant had plans to move his wife and child to the United States sometime in 2016. There is no information in the record as to the reason for the delay.

<sup>8</sup> In his February 2016 SOR answer, Applicant stated that these actions would be "done and submitted . . . within 3-6 months from this date." The record, however, does not contain any evidence that these actions were, in fact, completed.

<sup>9</sup> I considered two other bank accounts owned by Applicant: one which has not been active since May 2014 when he withdrew the balance in full, and another that was closed in July or August 2011.

<sup>11</sup> No other relatives were noted as a security concern in the SOR. However, the record references two other Philippine citizens and residents with whom Applicant had close and continuing contact: an

facilitate the transfer of those funds. There is no evidence in the record of any stocks owed by Applicant in the Philippines. Since the Government's support for SOR ¶ 1.j rests solely on Applicant's self-report, I find that Applicant owns two bank accounts in the Philippines worth approximately \$5,000 to \$6,000 USD, and that he does not own any stocks in the Philippines.

Applicant plans to transfer title of the land to his wife's sole name or, if necessary to maintain his security clearance, sell the land. Although he contemplated either transferring title of his bank accounts to his wife's sole name or closing them, both remain titled in his name jointly with his wife. Applicant acknowledges that the bank account used for expenses is important to his overall financial situation, but claims that the land and the other bank account used for savings are not. Applicant does not own a home in the United States and the record does not reflect what, if any, other assets he maintains in the United States besides his employment income.

In his SOR answer, Applicant stated that he "understand[s] the importance of classified information and know[s] how to keep it to [him]self." In his FORM response, Applicant stated that he "could not do all required mitigation actions . . . because of time and location constraints" but if given "enough time to do so," he would "ensure" that "all required actions will be done." He also stated that his job is his "bread and butter to support [his] family and [his] ticket to getting a good career here in the United States." Finally, he stated that he "will ensure safeguarding of the [U.S.] national interest" and that his "future works will benefit the United States."

### **Administrative Notice (Philippines)**

In response to the Government's requests, to which Applicant did not object, I have taken administrative notice of the following relevant facts about the Philippines:

- The Philippines is a multi-party, constitutional republic with a bicameral legislature. However, dynastic political families continue to monopolize elective offices at the national and local level. There is widespread official corruption and abuse of power. Authorities fail at times to maintain effective control over the security forces. Security forces commit human rights abuses to include extrajudicial killings and enforced disappearances.
- Other human rights problems include allegations of prisoner and detainee torture and abuse by security forces; violence and harassment against human rights activists by local security forces; warrantless arrests; lengthy pretrial detentions; overcrowded and inadequate prison conditions; killings and harassment of journalists; violence against women; abuse and sexual exploitation of children; and trafficking in persons. The government continues

---

individual named as a reference on his eQIP (monthly contact by phone and email as of August 2014) and his aunt with whom he resided in the Philippines from April 2011 through June 2013 (no contact since June 2014). Since neither was alleged in the SOR, I consider them only for the purposes of evaluating mitigation.

to investigate and prosecute only a limited number of reported human rights abuses, and concerns about impunity persist.

- Long-running Muslim separatists and communist insurgencies continue to result in the displacement of civilians and the killing of soldiers and police in armed clashes. Terrorist organizations such as Abu Sayyaf Group (ASG), Jemaah Islamiya (JI), and the New People's Army (NPA), as well as elements associated with the separatist Moro Islamic Liberation Front (MILF), continue to kill security forces, local government officials, and other civilians. Although Philippines counterterrorism efforts sustained pressure on terrorist organizations, its members are suspected to have carried out attacks against government, public, and private facilities, primarily in the central and western areas of Mindanao; others were linked to extortion operations in other parts of the country.
- U.S. citizens contemplating travel to the Philippines should carefully consider the risks to their safety and security while there, including the risk of terrorism.
- None of the source documents submitted by the Government reflects that the Philippines engages in economic or military intelligence activity directed toward the United States.

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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). 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. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Guideline C (Foreign Preference)**

The SOR alleges that Applicant obtained Philippine citizenship after becoming a U.S. citizen (SOR ¶ 1.a), and attended a Philippine university (SOR ¶ 1.b). The security concern under Guideline C (Foreign Preference) is set out in AG ¶ 9, as follows:

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.

Two disqualifying conditions under this guideline are potentially relevant:

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. This includes but is not limited to:

. . . (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country . . . ; and

AG ¶ 10 (b): action to acquire or obtain recognition of a foreign citizenship by an American citizen.

Applicant's dual citizenship is not, by itself, a disqualifying condition.<sup>12</sup> Under Guideline C, "the issue is not whether an applicant is a dual national, but rather whether an applicant shows a preference for a foreign country through actions."<sup>13</sup> Thus, the fact that Applicant took action, after becoming a U.S. citizen, to reacquire his Philippine citizenship establishes AG ¶ 10(b).

Applicant returned to the Philippines to pursue a master's degree in order to further his career in the United States. While his Philippine citizenship allowed him to stay in the country longer than the year to which he was otherwise entitled as a non-citizen, no record facts suggest that it was a requirement for his matriculation at the university. Furthermore, there are no facts in the record that the cost for him to attend the university was subsidized, in whole or in part, by the Philippine government. Therefore, AG ¶ 10 (a)(3) is not established.

Applicant expressed a willingness to renounce his dual citizenship, which establishes the mitigating condition in AG ¶ 11(b).<sup>14</sup> He served honorably in the U.S. Navy for five years. He left the Philippines in June 2014 with no plans to return. Instead, his wife and child will join him in the United States. His child is already eligible for U.S. citizenship and his wife will apply once she becomes eligible. He has been employed full time by U.S. federal contractors since July 2014. These actions indicate a preference for the United States over the Philippines. The concerns alleged in SOR under Guideline C are mitigated. Therefore, I resolve SOR ¶¶ 1.a and 1.b in favor of Applicant.

### **Guideline B (Foreign Influence)**

The security concern under Guideline B (Foreign Influence) is set out in AG ¶ 6, as follows:

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

---

<sup>12</sup> ISCR Case No. 99-0454 at 5, 2000 WL 1805219 (App. Bd. Oct. 17, 2000).

<sup>13</sup> ISCR Case No. 98-0252 at 5 (App. Bd. Sep. 15, 1999).

<sup>14</sup> AG ¶ 11 (b) (The individual has expressed a willingness to renounce dual citizenship).

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.

Three disqualifying conditions under this guideline are relevant:

AG ¶ 7(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;

AG ¶ 7(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

AG ¶ 7(d): a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant's wife, child, father-in-law, and mother-in-law are citizens and residents of the Philippines (SOR ¶¶ 2.a, 2.b, 2.g, and 2.h). Moreover, he owns land (worth approximately \$20,000 USD) and two bank accounts (worth approximately \$5,000 to \$6,000 USD) in the Philippines (SOR ¶¶ 2.i and 2.j). Therefore, AG ¶¶ 7(a), 7(b), and 7(d) are established as to SOR ¶¶ 2.a, 2.b., 2.g through 2.i, and as to the bank accounts alleged, SOR ¶ 2.j.

Applicant's mother, father, and two siblings are citizens of the United States, not the Philippines as alleged (SOR ¶¶ 2.c through 2.f). He does not own any stocks as alleged in SOR ¶ 2.j. I have considered the fact that Applicant provides monthly financial support to his wife and child (as alleged in SOR ¶ 2.k) as conduct that underscores his ties of affection for and obligation to them. Such conduct is not security significant on its own. Therefore, I resolve, in favor of Applicant, SOR ¶¶ 2.c through 2.f, 2.k, and as to the stocks alleged, SOR ¶ 2.j.

Application of the guidelines is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved one, such as a family member.<sup>15</sup> Family relationships can involve matters of influence or obligation.<sup>16</sup> As a matter of common

---

<sup>15</sup> ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009).

<sup>16</sup> ISCR Case No. 02-04786 (App. Bd. Jun. 27, 2003).



sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse.<sup>17</sup> Moreover, Applicant's marital relationship provides a conduit for susceptibility to foreign influence because of the vulnerabilities associated with his in-laws that may pass to him through his wife.<sup>18</sup> Since they are citizens and residents of the Philippines, Applicant's strong ties to his wife, child, mother-in-law, and father-in-law raise concerns for which he has the burden of persuasion to mitigate.<sup>19</sup>

Despite plans for them to join him in the United States and eventually become U.S. citizens, Applicant's wife and child remain in the Philippines and rely on him as their sole means of support. He lived with his mother-in-law and father-in-law for a year and his wife and child continue to reside with them now. Further, Applicant maintains substantial assets (land and bank accounts) in the Philippines as compared to his unknown U.S. assets. A "heightened risk" is associated with the country given the significant human rights and terrorism problems existent in the Philippines.

The following mitigating conditions under this guideline are potentially relevant:

AG ¶ 8(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;

AG ¶ 8(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;

AG ¶ 8(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; and

AG ¶ 8(f): the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and

---

<sup>17</sup> ISCR Case No. 01-03120 (App. Bd. Feb. 20, 2002).

<sup>18</sup> ISCR Case No. 03-24144 at 3-4 (App. Bd. Dec. 6, 2005)(The Appeal Board let stand the Administrative Judge's conclusion that the potential existed for pressure to be placed on the applicant's in-laws that could then be extended to the applicant through the applicant's spouse.).

<sup>19</sup> ISCR Case No. 99-0532 at 7 (App. Bd. Dec. 15, 2000) (When an applicant's ties in a foreign country raise a *prima facie* security concern, the applicant is required to present evidence of rebuttal, extenuation, or mitigation sufficient to carry his burden of persuasion that it is "clearly consistent with the national interest" to grant or continue a security clearance on his behalf).

could not be used effectively to influence, manipulate, or pressure the individual.

For the reasons set out in the discussion of AG ¶¶ 7(a), 7(b), and 7(d), above, AG ¶ 8(a) is not established.

While Applicant served honorably in the U.S. Navy for five years, he has only resided in the United States full time for eight and one-half of his 33 years. While his parents and siblings are U.S. citizens and residents, he has close ties to his wife and child, who rely on him as their sole means of support, and his in-laws who are citizens and residents of the Philippines. Until his wife and child are located here with him in the United States, it cannot be expected that Applicant would resolve any conflict of interest in favor of the U.S. interest. AG ¶ 8(b) is not established.

There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual,<sup>20</sup> and Applicant has not rebutted that presumption. AG ¶ 8(c) is not established.

Applicant does not own a home in the United States nor did he report any other significant U.S. assets. AG ¶ 8(f) is not established.

### **Whole-Person Concept**

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. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An 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.

I do not doubt Applicant's patriotism and sincerity as to his willingness to safeguard information. However, the security concern focuses on the country, and the facts that suggest he has reasons to compromise information. I have incorporated my comments under Guidelines B and C in my whole-person analysis, and I have considered the factors in AG ¶ 2(a). I have weighed the disqualifying and mitigating

---

<sup>20</sup> ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002).

conditions under Guidelines B and C, and evaluated all the evidence in the context of the whole person and the “heightened risk” associated with the Philippines. Applicant has mitigated the security concerns raised by him reacquiring his Philippine citizenship and attending university in the Philippines, but he has not mitigated the security concerns raised by his close ties with family members who are citizens and residents of the Philippines and the assets that he maintains there. Accordingly, I conclude that he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline C (Foreign Preference): FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Paragraph 2, Guideline B (Foreign Influence): AGAINST APPLICANT

Subparagraph 2.a – 2.b: Against Applicant

Subparagraph 2.c – 2.f: For Applicant

Subparagraph 2.g – 2.i: Against Applicant

Subparagraph 2.j: For Applicant (as to stocks); Against Applicant (as to bank accounts)

Subparagraph 2.k: For Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is denied.

Gina L. Marine  
Administrative Judge