



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



In the matter of:)
)
) ISCR Case No. 15-05336
)
Applicant for Security Clearance)

Appearances

For Government: Brittany Muetzel, Esq., Department Counsel
For Applicant: Troy L. Nussbaum, Esq.

04/12/2018

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant mitigated foreign influence and financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 5, 2014. On March 19, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence, and Guideline F, financial considerations. The DOD CAF acted under Executive Order (EO) 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 (AGs) implemented by DOD on September 1, 2006.

On December 10, 2016, the Director of National Intelligence signed Security Executive Agent Directive 4 (SEAD 4), implementing new AGs effective within the DOD on June 8, 2017. Accordingly, I have applied the June 8, 2017 AGs in this decision.¹

Applicant answered the SOR on May 2, 2016, admitting all of the SOR allegations except for the allegations in SOR ¶¶ 2.c, 2.g, and 2.i, which he denied. Applicant also provided amplifying explanations and requested a hearing before an administrative judge. The case was assigned to me on April 7, 2017. The Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for October 30, 2017. However, that hearing was cancelled because Applicant engaged counsel who requested a continuance. DOHA issued a new notice scheduling the hearing for March 29, 2018. I convened the hearing as scheduled.

Government Exhibits (GE) 1 through 3 were admitted into evidence without objection. (Tr. 14) At the hearing, Applicant testified, and presented testimony from two witnesses, including his wife. Applicant's Exhibit (AE) 1.a through 1.j, and AE 2 through 6, were admitted without objection. AE 1 is comprised of a five-page affidavit signed by Applicant on March 20, 2018. It also includes several sub-exhibits including debt relief agency documents; credit-card letter; pocket sense article; cell-phone mobility documents; insurance documents; apartment documents; and Applicant's wife's application for citizenship. AE 1 also includes 10 character reference letters and several certificates of appreciation; a budget; a document reflecting payment on SOR ¶ 2.e (telecommunications provider) and medical records pertaining to Applicant's father-in-law.² DOHA received the transcript (Tr.) on April 11, 2018.

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about the Philippines. The request and the attached source documents were not admitted into evidence but were included in the record as Hearing Exhibit (HE 1).

The request listed supporting documents to show detail and context for those facts. AG ¶ 6, Foreign Influence, provides, "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." A risk assessment in this case necessitates administrative notice of facts concerning the Philippines.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12,

¹ Although I have decided this case under the adjudicative guidelines (AG) effective June 8, 2017, I also considered the case under the former AG effective on September 1, 2006, and my decision would be the same under either AG.

² These documents were all included in one compendium or binder marked as Applicant's Exhibit 1.

2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Applicant did not object, and I have taken administrative notice of the facts contained in the HE 1 source documents, and incorporated them by reference. The source documents were provided by the U.S. Department of State. The facts are summarized in the written request and will not be repeated in this decision. However, of particular note, are the following salient facts from HE 1:

The Philippines is a multiparty, constitutional republic with a bicameral legislature. However, dynastic political families continued to monopolize elective offices at the national and local level. There remains widespread official corruption and abuse of power. The most significant human rights issues over the last few years were killings allegedly undertaken by vigilantes, security forces and insurgents; apparent disregard for human rights and due process; and a weak and overburdened criminal justice system, feeble prosecutions, and poor cooperation between police and investigators. Additional human rights problems include: torture and abuse of prisoners and detainees by security forces; harassment of political activists; warrantless arrests; lengthy pre trial detentions; overcrowded prisons; killings of journalists; abuse against women and children; gender identity discrimination; and child labor.

Terrorist organizations engaged in kidnappings for ransom and bombings of civilian targets and operated shadow governments in areas that they controlled. Conflicts ensued between the government and Muslim separatists and communist insurgents. The emergence of Islamic State of Iraq and Syria (ISIS) – affiliated extremist groups; persistent kidnappings by the Abu Sayyaf Group (ASG), attacks on government forces, and bombings, all indicated that violent extremism and terrorism remained a problem. The U.S. Department of State advises all U.S. citizens contemplating travel to the Philippines to exercise increased caution due to crime, terrorism, and civil unrest. U.S. citizens are specifically advised to not travel to Sulu Archipelago, including the southern Sulu Sea, and Marawi City, and there remains a state of national emergency in Mindanao. Terrorist and armed groups continue to conduct kidnappings, bombings, and other attacks targeting U.S. citizens, foreigners, civilians, government facilities and security forces.

Findings of Fact³

Applicant is 37 years old. He has been married for seven years to a dual citizen of the U.S. and Philippines (PI). (Tr.18-19) His wife is a permanent resident who recently applied for U.S. citizenship and intends to renounce her Filipino citizenship. (Tr.

³ Unless otherwise stated, the basis for these findings of fact is Applicant's Questionnaire for National Security Positions (SCA) dated October 5, 2014. (GE 1)

54, AE 1) She lives with Applicant in the U.S. and has a job here earning \$2,400 per month. (GE 1, Tr. 120) Applicant was previously married in 2008, and divorced in 2009. (Tr. 23) He has two children from his first marriage, ages 10 and 14. They live with their mother in State A, and Applicant pays \$1,400 child support each month. (Tr. 24) Applicant enlisted in the U.S. Air Force (AF) in 1999 and served for almost 12 years, earning an honorable discharge. (Tr. 16, GE 1) He was a military policeman and obtained the rank of Technical Sergeant (E-6). Applicant deployed to Iraq in 2006, and Qatar in 2009. He also served as a flight security officer at a nuclear inter-continental ballistic (ICBM) missile facility for five years. (Tr. 21) He earned awards including an AF Commendation Medal, an Army Commendation Medal, and an AF Achievement Medal. (Tr. 22) He had a security clearance since 1999 with no issues.

Applicant submitted a Questionnaire for National Security Positions (SCA) on October 5, 2014.⁴ In section 18 of his SCA, he disclosed his [stepbrother] and father-in-law are citizens and residents of the PI. Applicant clarified that it is actually his brother-in-law, vice his stepbrother, and they have since moved to a new address in Las Pinas, PI. (Tr. 55) Applicant testified that his wife's family lives in the Manilla metropolitan area in the central portion of the PI. (Tr. 52 -54) The unstable and dangerous areas of the PI, as outlined in the administrative notice, are in the south portion of the PI. (HE 1) Applicant's father-in-law and brother-in-law now live in central PI. (Tr. 56) Applicant's wife is a citizen of the PI. She is a permanent resident in the U.S. and has started the process of applying for citizenship. (AE 1, Tr. 53 - 54) She holds a job in the U.S. and lives with Applicant, and plans to renounce her PI citizenship. (Tr. 52, 54)

Applicant testified that his brother-in-law is a discipline coordinator for a private high school in PI and a basketball coach. (Tr. 56) He has no affiliation with the Philippine government and they only speak a few times a year, around holidays or special events. (Tr. 56) Applicant has deleted his Facebook account, and curtailed his communications with his brother-in-law and father-in-law since answering the SOR and once he realized it could be an issue. (Tr. 57) Applicant's father-in-law is a retired Brigadier General, and intelligence chief, in the Filipino Air Force. (Tr. 58, 80) He has been retired for over 17 years. (Tr. 59) Applicant rarely speaks to him. Applicant last saw him when he traveled to PI in 2014. (Tr. 59) He is in poor health, and rarely leaves the house in PI. (AE 1, Tr. 60) His father-in-law knows nothing about Applicant's occupation or security clearance and he is no longer affiliated with the Philippine government. He has no computer or smartphone.

Applicant testified that in addition to his two children, and extended family in the U.S., he has approximately \$40,000 in assets. He has no assets in the PI. (Tr. 62, 120) Before they got married, Applicant would routinely send money to his wife in the PI to help with her family's living expenses. (Tr. 65) He last sent money to her in 2016. (Tr. 66) Now, his wife sends money to support her family back in the PI, which is impoverished. Applicant sent as much as \$10,000 to his father-in-law before he realized it might be an issue. (Tr. 82) Applicant sent his wife approximately \$185,000 over several years, to help her family. (Tr. 93) Applicant's wife testified telephonically and

⁴ GE 1.

stated that she earns \$1,200 each two weeks and sends \$600 to \$700 to her family in the PI each two weeks. (Tr. 104)

Since being honorably discharged from the AF in 2010, Applicant has been employed overseas continuously by contractors supporting DOD. (Tr. 16, GE 1) He has served in Iraq as a civilian, and recently in Afghanistan from 2011-2017. (Tr. 36) He obtained a bachelor's degree online in 2016 while working in Afghanistan. (Tr. 21) His present employer testified that Applicant is a key member of the company's biosecurity force. (Tr. 29) Applicant has been the biosecurity subject matter expert at his company since November 2017, and he has completed counterintelligence training. (Tr. 37)

Applicant testified that he resolved most of the alleged financial delinquencies before receiving the SOR. (Tr. 16-17) He has been working with a debt relief agency since 2014, paying \$379 each month, to resolve his delinquencies. (Tr. 39) The debt relief agency presently holds \$3,600 for Applicant, to be paid out to creditors. (Tr. 42) He has never missed a payment to the agency, and it has already resolved three delinquent debts for Applicant. He has five debts presently enrolled. (Tr. 41)

SOR ¶ 2.a is a bank loan in the amount of \$8,411 that Applicant obtained for a medical treatment, which he paid for but never received. (Tr. 42) He deployed to Qatar, and when Applicant returned, the medical company went out of business. He is working with his debt relief agency to resolve it. SOR ¶ 2.b is a bank loan that Applicant obtained during his divorce. It is enrolled in a repayment plan with his debt repair agency. (AE 1.C) SOR ¶ 2.c is a joint credit-card debt. Applicant testified credibly, and produced documentation showing, that he was only an authorized user on this credit card. (AE 1.D, Tr. 46) SOR ¶ 2.d is a credit-card delinquency from Applicant's previous marriage. It has been paid off. (AE 1.C, Tr. 47) SOR ¶ 2.e is a cell phone service debt for \$616. Applicant paid it off. (AE 1.F, GE 5) SOR ¶ 2.f is another cell phone service debt that has been resolved. (AE 1.C) Applicant had difficulty paying his bills when he separated from AF and during his separation in 2008–09 and subsequent divorce. (Tr. 47-48)

SOR ¶ 2.g is a debt Applicant incurred for a security system, which he had at his apartment. When he separated from the AF and was preparing to deploy to Iraq as a civilian, he was unable to return some security equipment. (Tr. 49) It is now fully resolved. (AE 1.G) SOR ¶ 2.h is for a loan that Applicant took out for over \$9,000 when he was separating from the AF. (Tr. 50) He enrolled this delinquent debt with his debt relief agency and paid it off. (AE-1.C, Tr. 50) SOR ¶ 2.i is a delinquent insurance debt. Applicant didn't realize that he had one more payment remaining before he deployed to Iraq in 2011. Once he found out about it, he sent the creditor a check and resolved it. (AE 1.E, Tr. 51) Applicant is looking for a part time job to augment his income. He earns \$86,000 per year from his primary job. (Tr. 99) He has a budget with his wife, and they have \$340 left over each month in discretionary income. (Tr. 52)