



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



In the matter of:)
)
) ISCR Case No. 15-08534
)
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq.
For Applicant: *Pro se*

01/31/2018

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant has submitted sufficient evidence to mitigate the foreign influence and financial considerations concerns alleged in the Statement of Reasons (SOR). Clearance is granted.

Statement of the Case

On October 15, 2016, the DOD issued a SOR detailing security concerns under the financial considerations and foreign influence guidelines.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to continue Applicant's security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke his security clearance.

Applicant timely answered the SOR and requested a hearing. On September 1, 2017, I issued a prehearing order to the parties regarding the exchange and submission

¹ The DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on September 1, 2006.

of discovery, the filing of motions, and the disclosure of any witnesses, and the parties complied.² At the hearing, convened on September 19, 2017, I admitted Government's Exhibits (GE) 1 through 6 and Applicant's Exhibits (AE) A through J, without objection. DOHA received the transcript (Tr.) on September 27, 2017. After the hearing, Applicant timely submitted AE K through W, without objection.

Procedural Matters

Implementation of Amended Adjudicative Guidelines

While the case was pending decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing the National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The 2017 AG superseded the AG implemented in September 2006, and they are effective for any adjudication made on or after June 8, 2017. Accordingly, I have applied them in this case.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts about the Philippines. However, the information provided was not current at the time of the hearing.³ On my own, I take notice of relevant facts about the Philippines from U.S. State Department documents highlighted in the Findings of Fact section, below.⁴

Findings of Fact

Applicant is a pilot. He has worked as an independent contractor for federal contracting companies since March 2012. He previously served on active duty in the U.S. Navy from June 1987 to September 1990, and in the U.S. Navy Reserve from September 1990 to September 1997. Applicant also served on active duty in the U.S. Army from October 1997 to February 2005 and in the U.S. Army Reserve from April 2005 to March 2014. He was initially granted a security clearance in 1987, and has maintained access to classified information for the last 30 years. Applicant completed his most recent security clearance application in November 2014. He disclosed his relationship with his parents-in-law and four sisters-in-law who are citizens and residents of the Philippines. He also disclosed his friendship with an officer in the Philippine Army. Applicant's background investigation revealed derogatory financial

² The prehearing scheduling order and the discovery letter are appended to the record as Hearing Exhibits (HE) I and II, respectively.

³ The Government's administrative notice summary and attached documents are admitted to the record as HE III-IV.

⁴ The source documents cited are appended to the record as HE V- VII.

information including Applicant's failure to file federal and state income tax returns for 2013 and 2014, as well as \$39,000 in delinquent debt.⁵

Applicant is a married father of three. Applicant's wife is a naturalized U.S. citizen from the Philippines, a multiparty, constitutional republic with a bicameral legislature. U.S.-Philippine relations are based on strong historical and cultural links and a shared commitment to democracy and human rights. The United States has designated the Philippines as a Major Non-NATO Ally, and there are close and abiding security ties between the two nations. However, the U.S. State Department has observed significant human rights concerns in the country. Extrajudicial killings have been the chief human rights concern in the country for many years and they increased sharply during 2016 after the election of Rodrigo Duterte in May 2016. Also, conflicts between the government and long-running Muslim separatist, communist insurgent, and terrorist groups continued to displace civilians and kill security force members and civilians. Currently, the State Department advises U.S. citizens against travel to Sulu Archipelago, including the southern Sulu Sea, Marawi City in Mindanao, and other areas of Mindanao due to crime, terrorism, and civil unrest. Terrorist and armed groups continue plotting possible kidnappings, bombings, and other attacks in the Philippines. Terrorist and armed groups may attack with little or no warning, targeting tourist locations, markets/shopping malls, and local government facilities. The Philippine government has declared a "State of National Emergency on Account of Lawless Violence in Mindanao."⁶

For the duration of their 22-year marriage, Applicant's parents-in-law and his four sisters-in-law have lived in the Philippines. His parents-in-law, who are nearly 80 years old, and three of his sisters-in-law live together in his wife's hometown, a small fishing village. Applicant's father-in-law is a retired fisherman. Neither his mother-in-law nor his three sisters-in-law work outside the home. Applicant's fourth sister-in-law lives in another city. She works for her husband's solar energy company. While Applicant does not maintain independent contact with his in-laws in the Philippines, his wife maintains daily contact. Applicant's family members live more than 1,500 km away from the areas of concerns identified by the U.S. State Department.⁷

In August 2010, Applicant met a Philippine Army officer through his wife. At the time, Applicant was stationed at a U.S. Army base and his wife regularly had parties at their home for the local Filipino community. The Philippine Army officer was taking a class at the same base. Over the years, the two men maintained contact. Applicant described the relationship as causal and with infrequent contact. When Applicant and his family lived in the Philippines between 2013 and 2016, the relationship remained casual, but the frequency of their contact increased. Applicant ceased all

⁵ Tr. 26-27; GE 1.

⁶ <https://www.state.gov/r/pa/ei/bgn/2794.htm>; <https://www.state.gov/j/drl/rls/hrrpt/>; <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/philippines-travel-advisory.html>

⁷ Tr. 25, 28-36.

communication with the officer in 2014 in response to potential security concerns raised by the relationship during the present adjudication.⁸

Applicant's financial problems became acute in 2014. In 2013, Applicant and his wife decided to move their family to the Philippines. They wanted to experience living abroad and thought the cost of living would be lower than that in the United States. In January 2014, Applicant was scheduled to report for a mission in another country. He learned in December 2013 that his employer lost the contract and that the mission was cancelled. Applicant also learned that he would not be reimbursed for the one-way ticket he purchased to his duty location as had been the practice. Applicant, who works a cycle of 90 days on duty, followed by 90 days off, received his last paycheck in September 2013. He was at the end of a 90-days-off cycle, did not have a lot of money, and was depending on his January through March paychecks to support his family until July 2014 when his second duty cycle of the year was scheduled to begin.

Without any income, Applicant could not pay his bills and began experiencing financial problems immediately. Because of the unreliable nature of phone and internet service in the Philippines, Applicant had difficulty job searching. So, he returned to the United States to find employment, leaving his family in the Philippines. Applicant recalled, with emotion, having to borrow money from his father to help support his family. Applicant secured another job in March 2014 and began flying missions again immediately after completing his employer's training. Applicant worked from April 2014 to August 2014, in an effort to rehabilitate his finances. His wife, who had historically handled the household finances during Applicant's absences without issue, struggled to keep up with everything due to of the difficulty of communicating with U.S.-based companies from the Philippines.⁹

At the time Applicant completed his 2014 security clearance application, he knew he was having financial problems. However, it was not until his subject interview in August 2015 that he felt the full impact of his financial situation. In September 2015, Applicant hired a U.S.-based attorney to help him resolve his delinquent accounts. To facilitate the payment of his debts, Applicant worked two extended missions, with only two months off, between February 2015 and July 2016. He earned \$130,000 and \$187,000 in 2015, and 2016 respectively. Between 2015 and 2016, the attorney negotiated settlements on five accounts, totaling \$9,700. Applicant resolved several other delinquent accounts on his own. Over the course of two years, Applicant believes that in paid over \$60,000 toward delinquent accounts. In addition to helping Applicant resolve some of his delinquent accounts, the attorney referred Applicant to a tax accountant. Applicant did not file his federal and state income tax returns for 2013 through 2015. The accountant filed the outstanding federal and state tax returns, and helped Applicant establish an installment plan to resolve his outstanding federal and state tax liabilities. Applicant satisfied a \$1,062 state tax liability in August 2017.¹⁰

⁸ Tr. 36-46; GE 1-2.

⁹ Tr. 52-60.

¹⁰ Tr. 61-86; GE 3; AE O, U; Answer.

In 2017, Applicant retained a different tax preparer with expertise in the taxation issues related to independent contractors and U.S. citizens living abroad to file his 2016 income tax return. Applicant owed \$7,900 in federal taxes for the 2016 tax year. As a result, the IRS terminated the November 2016 installment agreement and established a new installment agreement with Applicant in June 2017 for the 2013, 2015, and 2016 tax years. The new preparer also reviewed the federal and state income tax returns filed by the previous accountant and discovered material mistakes resulting in the overstatement of Applicant's federal tax liability by over \$17,600. The previous accountant also inexplicably filed state income tax returns for Applicant for the two years he lived outside the United States, resulting in Applicant paying over \$4,900 in state taxes he did not owe. The preparer is also investigating the possibility that Applicant overpaid \$12,000 in payroll taxes for a company Applicant owned and operated for less than 12 months between 2012 and 2013.¹¹

To date, Applicant has resolved SOR ¶¶ 1.b, 1.d, 1.g – 1.i, and 1.k. The creditor holding SOR ¶ 1.c has cancelled the debt, relieving Applicant of any obligation to repay it. He has rehabilitated the accounts alleged in SOR ¶¶ 1.e¹² and 1.f to current status. Applicant has no outstanding state or federal income tax returns. He does not have any unpaid state tax liability, warrants, or liens. Applicant is in compliance with his current federal tax installment plan. His current tax preparer has filed amended returns for 2013 through 2015. He expects that his \$17,000 overpayment of federal taxes will be applied to current outstanding balance, reducing it to approximately \$33,000. He also plans to apply his expected \$4,900 state tax refund to his federal tax liability.¹³

Applicant and his family moved back to the United States in 2016. Although he is still paying off his debt, he believes that his finances are under control. Applicant believes he can pay off his tax debt by the end of 2018.¹⁴

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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

¹¹ Tr. 47-50; 87-90, 100' AE A, C-D.

¹² SOR ¶ 1.j is the same account. The creditor sold the account to the creditor identified in SOR ¶ 1.e. Accordingly, SOR ¶ 1.j is resolved in Applicant's favor.

¹³ Tr. 23-24; GE 4-6; AE B, F-N, P, Q, S-T, V; Answer.

¹⁴ Tr. 90-92.

to AG ¶ 2(a), 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 national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 F, Financial Considerations

Failure to meet one’s 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 or sensitive information.¹⁵ The record is sufficient to establish the government’s *prima facie* case that Applicant demonstrated an inability to satisfy his debts; a history of not meeting financial obligations; and a failure to timely file his federal income tax returns as required between 2013 and 2014 as alleged.¹⁶ However, Applicant has submitted sufficient evidence to mitigate the alleged security concerns.

¹⁵ AG ¶ 18.

¹⁶ AG ¶¶ 19 (a), (c), and (f).

Applicant's financial problems were caused by three months of unemployment between January 2014 and March 2014. Although the length of Applicant's unemployment was brief, the financial impact was exacerbated by the nature of Applicant's pay schedule. By the time he returned to work in March 2014, Applicant had not received a paycheck in six months. Since returning to work, Applicant has made significant effort to resolve his delinquent accounts and rehabilitate his financial situation. All of the SOR debts are either resolved or in good standing. Applicant has demonstrated a good-faith effort to repay his creditors or otherwise resolve debts.¹⁷ Applicant has also made a good-faith effort to resolve his tax problems. By the time the SOR was issued, Applicant's outstanding income tax returns had been filed. He has demonstrated a track record of repayment of his federal tax liability and paid state taxes he did not owe. The record shows that Applicant has made arrangements with the appropriate tax authority to file or pay the amount of taxes owed, and he is in compliance with those arrangements.¹⁸ Applicant's current finances are under control and the financial considerations concerns are mitigated.

Foreign Influence

"[F]oreign contacts and interest may be a security concern if the individual has divided loyalties or 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."¹⁹ Guideline B is not limited to countries hostile to the United States. "Even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security."²⁰ Key to heightened risk analysis is the nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion, as well as any terrorist activity in the country at issue.²¹ Even though Applicant has maintained his foreign contacts for at least 22 of the 30 years he has held a security clearance, political changes within the Philippines warrant an examination of Applicant's contacts.

Although the Philippines is not known to engage in economic or military intelligence activity directed toward the United States, the human rights violations committed by the government against its citizens, the operation of terrorist groups in the country, and potential threats to U.S. citizens in certain areas of the country is enough to raise a heightened risk.²² However, the record contains sufficient evidence to mitigate

¹⁷ AG ¶ 20(d).

¹⁸ AG ¶ 20(g).

¹⁹ AG ¶ 6.

²⁰ ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

²¹ See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006)

²² AG ¶ 7(a).

the foreign influence concerns. Applicant's in-laws do not reside in areas of concerns identified by the U.S. State Department's travel warning. They are not engaged in any activities or hold any positions that could place Applicant in position of having to choose between U.S. and foreign interests.²³ Applicant's friendship with the Philippine Army officer is no longer a concern. In response to the potential security concerns raised during this investigation, Applicant voluntarily chose to end the relationship more than three years ago. Applicant's actions show that his sense of obligation and loyalty to the Philippine Army officer were minimal and that he chose to resolve any potential conflict of interest in the favor of U.S. interests.²⁴

After reviewing the record, I have no doubts about Applicant's continued access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). Applicant is a long-time clearance holder and served honorably in the military. He has properly managed his relationships with his foreign national relatives and friends. Although Applicant has experienced some financial problems, he has not engaged in any conduct that suggests an inability to properly handle and safeguard classified information.

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, Financial Considerations:	FOR APPLICANT
Subparagraphs 1.a – 1.k:	For Applicant
Paragraph 2, Foreign Influence	FOR APPLICANT
Subparagraphs 1.a – 1.b:	For Applicant

Conclusion

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

Nichole L. Noel
Administrative Judge

²³ AG ¶ 8(a).

²⁴ AG ¶ 8(b).