



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



In the matter of: )  
 )  
 [REDACTED] ) ISCR Case No. 17-00937  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: David Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

09/26/2018  
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Decision  
\_\_\_\_\_

HESS, Stephanie C., Administrative Judge:

Due to circumstances largely beyond his control, Applicant experienced financial difficulties. However, Applicant acted responsibly under the circumstances and has mitigated the potential financial security concern. Applicant has mitigated the foreign influence security concerns raised by his wife’s family members who are citizens and residents of Azerbaijan. Access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on December 1, 2015. On April 25, 2017, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline B, Foreign Influence, and Guideline F, Financial Considerations. The DOD acted under Executive Order (Ex. 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 the DOD on September 1, 2006.

Applicant answered the SOR on May 4, 2017, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 16, 2017, and the case was assigned to me on December 14, 2017. On February 13, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for March 6, 2018. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. Applicant testified and called one witness. DOHA received the transcript (Tr.) on March 15, 2018.

The SOR was issued under the AG implemented on September 1, 2006. The DOD implemented the amended AG on June 8, 2017, while this decision was pending. This decision is based on the amended AG effective June 8, 2017.

### **Findings of Fact**

Under Guideline F, the SOR alleges three debts totaling \$30,184, and that Applicant defaulted on his mortgage loan, which led to foreclosure, in April 2015. The SOR alleges under Guideline B, that Applicant's in-laws, sister-in-law, and two brothers-in-law are citizens and residents of Azerbaijan, Applicant's wife is joint-owner of a house in Azerbaijan valued at \$120,000, and that Applicant provides financial support to his wife's family in Azerbaijan. Applicant denies the amount of the alleged balances of the three debts, but admits the underlying accounts and that he defaulted on his mortgage loan. Applicant admits the Guideline B allegations. His admissions are incorporated in my findings of fact.

Applicant is a 62-year-old inspector currently employed by a federal contractor since November 2015. He has worked in the aerospace industry his entire career however this is his first application for a security clearance. He and his wife married in 2003 and have a 13-year-old son and a 10-year-old daughter. Applicant properly disclosed his foreign contacts during her background investigation. (GX 1; GX 2; Tr. 67.)

Applicant began experiencing financial difficulties in 2005. He was employed by a large commercial airline that terminated him three days before his fifth anniversary with the airline, which prevented the vesting of 5,000 shares of stock worth approximately \$500,000. He was unemployed from approximately May or June 2006 until November or December 2006. He was hired for a short-term contract that ended in approximately April 2007, then was unemployed for approximately one month. He was also unemployed from March 2013 until September 2013, from November 2014 until January 2015, and during May and October 2015. In these periods of unemployment, he used his 401(k) savings to support himself and his family. Between February 2010 and October 2012, Applicant was underemployed earning approximately \$60,000 a year, which was about half of his usual salary. (GX 1; Tr. 39-48; Tr. 56.)

Applicant and his wife purchased a home in 2004. In 2007, after two periods of unemployment, Applicant took a job in another state and moved his family there. For a period of time, Applicant paid the mortgage and other expenses for the house he

purchased and his regular living expenses for himself and his family in another state. He contacted a property management company that, after allegedly vetting potential renters, rented Applicant's house. The renters did not timely pay the rent and ultimately broke the lease. Before vacating the premises, the renters threw a large party and substantially damaged the house, including many of the fixtures, and threw furniture and other property into the pool. Applicant and his wife spent their vacation and a substantial sum of money repairing the damage and replacing the fixtures. Applicant rented the house two additional times, with similar results. (Tr. 40-41.)

Applicant's wife grew up living in one house in Azerbaijan and was adamant in her desire to retain the house they bought in 2004 as her home in the United States and one day return to living there. Primarily because of this, Applicant tried to maintain the mortgage-loan payments despite being an absentee homeowner, for a period of approximately 10 years. During that time, Applicant listed the house for sale on several occasions, but was unsuccessful. In order to make the mortgage-loan payments, Applicant continued to deplete his 401(k) and worked a second job. He attempted to enter a mortgage-modification agreement with the mortgage-loan holder, but was required to first make six on-time consecutive monthly payments. After doing so, the mortgage-loan holder told Applicant that his paperwork was incomplete. When the mortgage-loan holder finally offered a mortgage-modification agreement to Applicant, the terms of the agreement added an additional \$100,000 and 10 years to the original mortgage loan, and Applicant did not enter the agreement. Applicant and his attorney then secured a buyer for a short sale of the house, but the mortgage-loan holder would not agree to the sale. Ultimately, in April 2015, the house was foreclosed. (SOR ¶ 1.c.) Applicant has not been contacted by any entity attempting to collect a deficiency balance. Applicant checked the county records and saw that the house sold for greater than the balance due on Applicant's loan. (GX 2; Tr. 40-53.) The September 2016 credit bureau report shows a \$0 balance due to this creditor and the account does not appear on the February 2017 credit bureau report. (GX 4; GX 5.)

In 2012, while underemployed, Applicant's car and motorcycle were repossessed. The balance due on the car at the time of repossession was \$24,178 (SOR ¶ 1.a.) The balance due on the motorcycle at the time of repossession was \$4,705 (SOR ¶ 1.b.) The car was sold at auction and Applicant paid the remaining debt of \$1,292 in February 2018. (AX A.) Applicant received a letter from the original creditor for the motorcycle after it was repossessed, showing that the motorcycle had sold for more than Applicant owed on his loan at auction. Applicant has not been contacted by the creditor since that time and the debt does not appear on his March 2017 credit bureau report. (Tr. 46; Tr. 50; GX 5.) The \$1,301 debt alleged in SOR ¶ 1.d was for an unpaid rental car balance. Despite the fact that this debt does not appear on the record credit bureau reports, Applicant paid this debt in full in February 2018. (AX A; Tr. 50.)

Applicant recently received approximately \$38,000 from a retirement account from a previous employer. He used the proceeds to resolve his SOR debts and to reestablish a savings account. Applicant has not incurred any delinquent debt since 2012, lives within

his means, and considers his financial circumstances to be stable. (Tr. 59-60; GX 4; GX 5; GX 2.) He was straightforward and sincere during his testimony.

The Guideline B SOR allegations arise because Applicant's wife's parents and siblings are citizens and residents of Azerbaijan. Applicant's wife's family members are C Christians of Armenian descent. Because of their ethnicity and religion, Applicant's wife's family members are in a minority that is subject to discrimination. (Tr. 33.) In 1988, Nagorno-Karabakh, a majority Armenian oblast within Soviet Azerbaijan, sought to unite with Armenia. A full-scale war began in 1992 between the former Soviet republics of Armenia and Azerbaijan over control of Nagorno-Karabakh. Approximately 30,000 people died and a million people were displaced before a Russian-brokered cease-fire was instituted in 1994. The U.S. has had diplomatic relations with Azerbaijan since its independence in 1994. Around 700,000 ethnic Azeris were forced out of the region where a separatist Armenian government declared de facto independence, although the region is still part of Azerbaijan. Approximately 235,000 Armenian refugees fled to other parts of Azerbaijan. The conflict between Armenia, a predominantly Christian nation which has grown closer to Russia, and Azerbaijan a predominantly Muslim nation that has received strong backing from Turkey, complicates the politics of the region. Despite the ceasefire, the struggle for control over the territory remains volatile. The government of Azerbaijan restricted individuals' rights to freedom of association, expression, and assembly.<sup>1</sup> According to the U.S. State Department's *Country Reports on Human Rights Practices for 2011: Azerbaijan*:

Some of the approximately 20,000 to 30,000 citizens of Armenian descent living in the country historically complained of discrimination in employment, housing, and the provision of social services. Citizens who were ethnic Armenians often concealed their ethnicity by legally changing the ethnic designation in their passports.

None of Applicant's wife's family members in Azerbaijan served in the military or worked for the government. Applicant's wife, a U.S. resident since 2003 and citizen since 2009, has petitioned for her parents to immigrate to the United States. Applicant's wife's parents were interviewed by U.S. immigration officials in March 2018. Applicant's wife has also petitioned for her younger sister, who currently resides in Canada, to immigrate to the United States. One of Applicant's wife's brothers resides in the United States. Applicant's wife has one brother and one sister who remain in Azerbaijan. (Tr. 26-27.) Applicant's wife maintains frequent contact with her family members in Azerbaijan, Applicant and his wife have provided financial support for her family in the past, and they last visited Azerbaijan in 2012. However, the financial support was infrequent, totaling approximately \$10,000 over many years, and had no impact on Applicant's overall financial circumstances. Applicant's wife's ownership of the family home in Azerbaijan is indivisible from that of her other family members and she does not anticipate inheriting the property or any money from its potential sale. Applicant's wife is active in her church

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<sup>1</sup> Applicant and his wife testified about the conditions and conflict in Azerbaijan and I supplemented their testimony with facts from several U.S. Government-based websites.

and local community and considers the United States to be her home. (AX A.) Applicant has infrequent contact with his wife's family. (Tr. 62-63.)

### **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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant's 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." See 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 F, Financial Considerations**

The concern under this guideline is set out in AG ¶ 18:

Failure 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 or sensitive information....

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The record evidence establishes two disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts; and

AG ¶ 19(c): a history of not meeting financial obligations.

The following mitigating conditions are potentially applicable:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation,

clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

AG ¶ 20(d): individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems arose due to conditions that were primarily beyond his control and he acted responsibly under the circumstances. Applicant experienced significant periods of unemployment and underemployment beginning in 2005. In 2007, he relocated to another state for a job, and was responsible for his family's living expenses as well as the mortgage-loan payment for the family's house in his home state. Applicant diligently attempted to maintain the mortgage-loan payments. He rented the house to three separate renters, he attempted to sell the house on several occasions, he tried to enter a mortgage-loan modification agreement, and he arranged for a short sale of the house. During part of this 10 year effort, Applicant worked two jobs. Despite his efforts and the depletion of his 401(k) savings, Applicant ultimately lost the house to foreclosure. Applicant has not been contacted by any entity attempting to collect a deficiency balance for the house, and the house sold for more than Applicant owed on the mortgage loan. While underemployed in 2012 and still struggling with living expenses and the mortgage-loan payments, Applicant's car and motorcycle were repossessed. He did not owe a deficiency balance on the motorcycle and he has paid the balance due for the car. Applicant also paid the balance due for a rental car. He has paid or otherwise resolved the SOR debts. He has not incurred any delinquent debt since 2012, lives within his means, and is financially stable. AG ¶¶ 20(a), 20(b), and 20(d) apply.

### **Guideline B, Foreign Influence**

The concern is set forth in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The following disqualifying conditions are applicable: AG ¶ 7

AG ¶ 7(a): contact, regardless of method, 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;  
and

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 classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

AG ¶¶ 7(a) requires evidence of a "heightened risk." The "heightened risk" required to raise this disqualifying condition is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The mere possession of ties with family in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if an applicant or his spouse has such a relationship, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See Generally ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001). "[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at \* 8 (App. Bd. Feb. 20, 2002); see also ISCR Case No. 09-06457 at 4 (App. Bd. May 16, 2011). The totality of Applicant's family ties to a foreign country as well as each individual family tie must be considered.

Applicant's wife's family members living in Azerbaijan are among a minority subject to discrimination due to their ethnic background and religious affiliation and are considered to be displaced as a result of the 1992 conflict. The Azerbaijan government is known to commit human rights violations, including government intervention on personal freedoms. Given the ongoing conflict in Azerbaijan and the potential targeting of Applicant's wife's family, Applicant's relationships with his wife's family members and property interest creates a heightened risk of foreign exploitation and coercion and the potential risk for a conflict of interest. AG ¶¶ 7(a) and 7(b) are established.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, "even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security." ISCR Case No. 00-0317, (App. Bd. Mar. 29, 2002).

The following mitigating conditions are potentially applicable:

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 United States;

AG ¶ 8(b): there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

AG ¶ 8(d): the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country;

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

The evidence in the record mitigates the concerns about Applicant and his wife's relationships with her family members who are Azerbaijan nationals. While Applicant's wife's family members are among a group discriminated against for their ethnic background and religion, they do not participate in professions or activities that are likely to place Applicant in a position of having to choose between foreign interests and U.S. interests. Applicant's wife has lived in the United States for more than 15 years, has been a citizen since 2009, and considers the United States to be her home. Her brother resides in the United States. She has petitioned for her parents to become permanent residents and they have undergone their interviews with immigration officials. She has also petitioned for her sister, a resident of Canada, to immigrate to the United States. Applicant's wife's potential inheritance interest in the family home in Azerbaijan is indivisible from that of her family members and she does not anticipate or rely on inheriting her share of it. Applicant and his wife's minimal financial support of her family members does not raise security concerns. Applicant properly reported his foreign contacts. AG ¶¶ 8(a), 8(b), 8(d), and 8(f) apply.

### **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 factors listed at AG ¶ 2(a), 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. I have incorporated my comments under Guidelines F and B in my whole-person analysis and considered the factors in AG ¶ 2(a).

After weighing the disqualifying and mitigating conditions under Guidelines F and B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by prior financial circumstances and his wife's family members in Azerbaijan. Accordingly, I conclude he has 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**

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.d: For Applicant

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

Subparagraphs 2.a – 2.d: For Applicant

**Conclusion**

I conclude that it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess  
Administrative Judge