



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



In the matter of: )  
)  
) ADP Case No. 14-03907  
)  
Applicant for Public Trust Position )  
)

**Appearances**

For Government: Caroline E. Heintzelman, Esquire, Department Counsel  
For Applicant: *Pro se*

06/01/2016

**Decision**

DAM, Shari, Administrative Judge:

Applicant failed to rebut or mitigate the trustworthiness concerns raised under Guideline F, Financial Considerations, and Guideline B, Foreign Influence. His eligibility for a public trust position is denied.

On April 26, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On November 21, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, Financial Considerations. The action was taken under Executive Order 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) effective within the DoD for SORs issued after September 1, 2006.

On December 23, 2014, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. (Item 4.) On November

3, 2015, Department Counsel prepared the File of Relevant Material (FORM), which contained eight Items, including an Administrative Notice Memorandum pertinent to Iran. It also referenced and contained an Amendment to the SOR, adding Paragraph 2, which alleged three trustworthiness concerns under Guideline B, Foreign Influence. On December 7, 2015, Department Counsel mailed Applicant a copy of the FORM and Amendment. Applicant received the file on December 29, 2015, and had 30 days in which to submit an answer to the Amendment and/or file objections to the information contained in the FORM. Applicant did not file any information or objections to the Government's Items, or file an answer to the Amendment to the SOR. All Items are admitted into evidence, and the Amendment is granted. On March 29, 2016, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me.

### **Findings of Fact**

Paragraph 1 of the SOR contains 11 allegations related to delinquent debts. In his answer to the SOR, Applicant denied the allegations in SOR ¶¶ 1.a and 1.b, and admitted the other nine allegations, asserting that he paid or was paying the debts. (Item 2.) His failure to answer the three allegations alleged in the Amendment, adding Paragraph 2 to the SOR, is construed as a denial of said allegations.

Applicant is 45 years old. He is a citizen and resident of the United States. He has worked for his current employer since 2005. He and his first wife have two children. They divorced in January 2007. In 2011 he married for the second time. His second wife was born in Iran and is a naturalized citizen of the United States. Applicant's mother-in-law and brother-in-law are citizens and residents of Iran. (Item 3.) Applicant's wife co-owns property in Iran with her brother, which is worth approximately \$30,000. They inherited it from their deceased father (Item 4.) Applicant's wife visited Iran in 2012. She speaks to her mother monthly. (Item 3.)

Based on credit bureau reports (CBR) from April 2015, April 2014, and May 2013, the SOR alleged 11 delinquent debts which totaled \$53,859. They accumulated between 2010 and 2014. They consist of student loans, medical bills, utility bills, and a consumer account. Applicant asserted that the two largest debts are his ex-wife's student loans. (Items 2, 5, 6, and 7.) The status of the 11 delinquent debts is as follows. The debts in SOR ¶ 1.b (\$30,286) and SOR ¶ 1.d (\$175) are resolved. (Item 5.) Although Applicant asserted that he has paid or is paying the remaining nine debts totaling \$23,398, he did not provide proof to document those assertions. They remain unresolved. (Item 2.) There is no evidence that Applicant obtained credit or financial counseling. He did not provide a budget from which to access his ability to manage his financial responsibilities.

### **Iran**

I took administrative notice of the facts set forth in Item 8, concerning the Islamic Republic of Iran, which are incorporated herein by reference. Of particular significance are: Iran's history of state-sponsored terrorism; its dismal record of human rights

violations; its expanding nuclear capabilities; its overall active and hostile anti-democracy and anti-United States policies; and its commitment to illegally collecting U.S. technologies and proprietary materials.

### **Policies**

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the Adjudicative Guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2(a), describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 access to [sensitive] information will be resolved in favor of 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining a favorable trustworthiness decision.

A person who applies for access to sensitive information seeks to enter 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

## Analysis

### Guideline F, Financial Considerations

The trustworthiness concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes two conditions that could raise trustworthiness concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

From 2010 to 2014, Applicant accumulated 11 delinquent debts that he has been unable or unwilling to satisfy. The evidence raises both security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate trustworthiness concerns arising from Applicant's financial difficulties:

- (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;
- (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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Based on the evidence, 9 of Applicant's 11 delinquent debts remain unresolved. He did not provide sufficient information to demonstrate that such problems are unlikely to continue or recur, calling into question his reliability and trustworthiness. The evidence does not support the application of AG ¶ 20(a).

Applicant provided evidence that some of his financial problems arose during his first marriage. Although those problems may have been circumstances beyond his control, he did not provide evidence that he acted responsibly while the debts were accumulating, a factor that must be considered in establishing full mitigation under AG ¶ 20(b). Hence, this mitigating condition has limited application to the delinquent debts.

Applicant did not provide evidence that he participated in credit or financial counseling, established a budget, or developed a plan to manage debts and expenses. Because there are not clear indications that his financial problems are under control, AG ¶ 20(c) does not apply. The record contains proof that he resolved the delinquent debts alleged in SOR ¶¶ 1.b and 1.d, demonstrating a good-faith effort to pay these creditors. AG ¶ 20(d) applies to those two. There is no evidence that Applicant successfully disputed any delinquent debts. AG ¶ 20(e) does not apply.

## **Guideline B, Foreign Influence**

AG ¶ 6 explains the security concern about foreign influence stating:

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 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.

AG ¶ 7 indicates two conditions that could raise trustworthiness concerns and may be disqualifying in this case:

(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; and

(e) 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.

The mere possession of close family ties with a family member living in Iran is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of sensitive 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)).

Iran engages in state-sponsored terrorism threats that operate openly contrary to U.S. interests. It is known to target U.S. citizens to obtain protected information, and has a significant interest in acquiring defense-related proprietary information and advanced technology. Accordingly, Applicant's connections to two in-laws residing there have potential to generate a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a). Applicant's wife owns property in Iran, which is valued at \$30,000 and raises a trustworthiness concern under AG ¶ 7(e). These facts meet the Government's burden of production by raising the aforementioned foreign influence disqualifying conditions. Applicant's connections with Iran shift a heavy burden to him to prove mitigation under applicable Appeal Board precedent.

AG ¶ 8 lists three conditions that could mitigate foreign influence trustworthiness concerns. Those with potential application in mitigating the above security concerns are:

(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.;

(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; and

(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.

Considered in light of the substantial anti-western terrorism threat and state sponsored terrorist activities in Iran, Applicant did not provide information about the nature of his relationships with his in-laws living in Iran. Based on the record, it is not

possible to determine whether there is a likelihood of Applicant being placed in a position of having to choose between his loyalty to the United States and a desire to protect in-laws who might be coerced by terrorists or the Iranian government. Accordingly, he failed to establish mitigating conditions set forth in AG ¶ 8 (a). The evidence also fails to establish mitigation under AG ¶ 8(c). Applicant provided insufficient evidence of longstanding relationships or deep ties to the United States, from which to determine that he can be expected to resolve any conflict of interest in favor of the United States. He did not provide credible information that his wife's co-ownership of property in Iran could not be used to pressure him, if her family members' lives were placed in jeopardy. AG ¶ 8 (f) does not provide mitigation.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a trustworthiness determination must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. Applicant is a 45-year-old man, who began working for a defense contractor sometime in 2005. In November 2014 he received the SOR, notifying him of the Government's trustworthiness concerns based on his delinquent debts. In December 2014 Applicant answered the SOR, but did not provide any evidence to support assertions that he paid or resolved many of the delinquent debts. On November 3, 2015, the Government sent him a FORM and an Amendment to the SOR, alleging foreign influence trustworthiness concerns. In the FORM Department Counsel argued that a trustworthiness determination should be denied on the basis that he did not provide sufficient information to document resolution of delinquent debts. He failed to answer the Amendment or provide any additional information in response to his connections to Iran. Absent sufficient evidence, the record evidence leaves me with substantial questions as to Applicant's eligibility and suitability for a public trust position. For these reasons, I conclude Applicant did not

