



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



In the matter of: )  
)  
) ISCR Case No. 18-00115  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

12/09/2019

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**Decision**

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COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the security concerns under Guidelines E and B, personal conduct and foreign influence. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On October 25, 2018, 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 E, personal conduct. 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 (AG), effective within the DOD on June 8, 2017.

Applicant answered the SOR on April 16, 2019. He requested a hearing before an administrative judge. The case was assigned to me on June 18, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 19, 2019, with a hearing date of July 24, 2019. Because of a miscommunication, Applicant did not attend the hearing scheduled on July 24, 2019. I granted a continuance and DOHA issued a subsequent notice of hearing on September 10, 2019, with a hearing date of September 25, 2019. The hearing was convened as scheduled. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection, except for GE 2 to which Applicant objected and I sustained. I included GE 2 in the record, but did not consider it. The Government's exhibit list was marked as a hearing exhibit (HE) I. Applicant testified and offered exhibits (AE) A-H (which were attached to his answer), which were admitted without objection. DOHA received the hearing transcript (Tr.) on October 7, 2019.

### **Procedural Ruling**

Department Counsel requested that I take administrative notice of certain facts relating to Djibouti. Applicant did not object and the request was granted. The request was not admitted into evidence but was included in the record as HE II. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted some of the SOR allegations and denied one (SOR ¶ 1.a). His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 44 years old. He was born in Djibouti in 1975. He graduated from high school there and completed his college in France in 1998. He immigrated to the United States in 2008. He became a U.S. citizen in November 2015. He is divorced and has two children. His ex-wife and both children are U.S. citizens and residents. He is currently unemployed, except he is driving for a car service. (Tr. 7, 26, 31, 33; GE 1, 3 AE D-E)

Under Guideline E, the SOR alleged that the Applicant failed to disclose the existence of two brothers and six sisters on his April 2017 security clearance application (SCA); and that on December 2015, he sent threatening texts and voice messages to a classmate who was in his training class. (¶¶ 1.a-1.b). Under Guideline B, the SOR alleged that Applicant's father is a retired Djiboutian congressman; that his brother is employed by the United Nations office of West Africa; that another brother is a colonel in the Djiboutian Army; that two sisters are employed by the Djiboutian government agency; that another sister is a former Djiboutian congresswoman; that another sister is the chief executive officer (CEO) of a major Djiboutian cable channel; that a brother-in-law is a former Djiboutian ambassador; that a brother-in-law is a

counselor to a Djiboutian ministry; and that a brother-in-law is a retired Djiboutian cabinet member.

In approximately 1999, Applicant was hired by the Djibouti Ministry of Foreign Affairs and was sent overseas to work as a counselor. His brother-in-law was the ambassador to the country at the time. Applicant later returned to Djibouti and quit working for the government. He joined an opposition political party and began writing newspaper articles in support of this political movement. He claimed these actions caused derision with his family. He subsequently sought and was granted political asylum in the United States. He has not traveled outside the United States since 2008. (Tr. 26, 28; GE 3; AE D)

In December 2015, while attending a police academy course, Applicant threatened a school administrator and a fellow student because he was failing the course. The threats were communicated by telephone and text messages. Several of the texts were captured and submitted to school authorities. Applicant admitted this behavior in his answer. As a result of his actions, Applicant was expelled from the academy, barred from the academy campus, and charged with criminal harassment. He was convicted and sentenced to one year of probation, fined, required to perform community service, and attend anger management. He has had no similar incidents. I note that when Applicant was asked about this incident during his May 2017 counterintelligence (CI) interview, he gave a completely different account of what occurred at the academy, which led to his expulsion. That version lacks credibility. (Tr. 33-39, 50-51; GE 4-5; AE B)

Applicant completed and certified as accurate his SCA in April 2017. In Section 18, which requires a listing of relatives, Applicant failed to list two additional brothers and six additional sisters. Although not alleged in the SOR, he also failed to list his ex-wife and two children (I will not consider this evidence for disqualification purposes, but I may consider it to weigh Applicant's credibility, determine the applicability of mitigating conditions, and in considering the whole-person factors). Applicant testified that his failure to list his omitted siblings was not intended to deceive the government. I do not find his testimony credible. During a polygraph interview in May 2017, he admitted deliberately withholding this information in order to increase his chances for employment. (Tr. 29, 31, 48; GE 1, 3; AE D)

Applicant testified that his father died in February 2019. He admitted that the remaining relatives listed in the SOR were in the locations and positions as alleged. His brother employed by the United Nations is still in that position. Applicant's last contact with him was in February 2019. He has no further information about his brother who is a colonel in the Djiboutian Army. His last contact with this brother was in 2008. His two sisters remain working for the Djiboutian Ministry of Energy. His last contact with them was in February 2019. His sister who was a former Djiboutian congresswoman now lives in France. His sister remains the CEO of a cable company. It is a French-owned company. He cannot recall his last contact with this sister. His brother-in-law is no longer the Djiboutian Ambassador to the United Arab Emirates. He has had no recent

contact with him and does not know his current location. His brother-in-law remains the counselor to the Djiboutian Ministry of Transportation. He was also the former CEO of the Djibouti airport. Applicant has no regular contact with him. His last contact with the brother-in-law who was the Djibouti Secretary of Energy was in 2008. (Tr. 39-45; Answer; AE D)

## **Djibouti**

Djibouti is a republic with a parliament and executive branch led by the President. Djibouti is strategically located in the Horn of Africa and is a key U.S. partner on security, regional stability, and humanitarian efforts across the region. (HE II; Note: no information was provided concerning Djibouti's human rights record or potential ties to terrorist activities)

## **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 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, these guidelines are applied 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 to AG ¶ 2(a), the entire process is a careful weighing 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an 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.

Section 7 of EO 10865 provides that 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 E, Personal Conduct**

AG ¶ 15 expresses the personal conduct security concern:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying conditions are potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

Applicant's threatening behavior towards a school staffer and fellow student led to his expulsion from the police academy, barment from the college campus, and a criminal conviction. This conduct as a whole demonstrates questionable judgment,

untrustworthiness, and shows an unwillingness to comply with rules and regulations. AG ¶ 16(c) applies to SOR ¶ 1.b.

Applicant deliberately failed to list several brothers and sisters on his SCA. In a subsequent interview with a polygrapher, he admitted intentionally withholding information in order to secure a job. AG ¶ 16(a) applies to SOR ¶ 1.a.

The guidelines also include conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and found the following relevant:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Although the police academy incident is somewhat removed in time and Applicant successfully completed the terms of his sentence, he also minimized his culpability in a subsequent statement. This suggests that he failed to take full responsibility for his actions. Applicant also failed to disclose several siblings, his ex-wife, and two children on his SCA. He subsequently admitted these nondisclosures after prompting by investigators. Overall, I found Applicant's testimony on these matters not credible and unreliable. He demonstrated a pattern of untruthfulness and deceit that casts doubt on his reliability, trustworthiness, and good judgment. None of the mitigating conditions fully apply.

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

The security concern relating to the guideline for foreign influence is set out in AG ¶ 7:

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 guideline notes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable in this case:

(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

(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.

Applicant has two brothers, three sisters, and three brothers-in-law who are citizens and residents of Djibouti, and hold influential positions there. His father died in February 2019 and one sister, the former congresswoman, now resides in France. Those two relatives no longer create a heightened risk of exploitation. The same cannot be said for the remaining relatives listed in the SOR. Though he has not visited Djibouti since moving to this country, Applicant has had recent contact with several siblings. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under 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; and

(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.

Based upon the prominent positions several of Applicant's relatives currently hold, or have held, in Djibouti, a situation exists where Applicant could be placed in a position to choose between the interests of his relatives in Djibouti and those of the United States. Although Applicant has lived in the United States since 2008, he failed to produce evidence of substantial ties to this country through his employment, purchasing of a residence, or other similar actions. On the contrary, the evidence produced showed that Applicant engaged in criminal behavior, which caused his expulsion from a police academy. As stated above, the protection of the national security is the paramount consideration and any doubt must be resolved in favor of national security. I am unable to find either of the mitigating conditions to be fully applicable. Despite the presence of some mitigation, it is insufficient to overcome the significant security concerns that exist.

### **Whole-Person Concept**

Under the whole person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the 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.

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.

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 associates are vulnerable to government coercion. Applicant has not overcome the vulnerability to pressure, coercion, exploitation, and duress created by his relationship to relatives in Djibouti.

I have considered Applicant's circumstances in immigrating to the United States. On the other hand, I have also considered Applicant's deceitfulness and false statements on his SCA, as well as his expulsion from a police training program.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I



conclude Applicant has not mitigated the personal conduct or the foreign influence security concerns.

### **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, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a – 1.b:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a, 2.e:	For Applicant
Subparagraphs 2.b - .d, 2.f – 2.i:	Against Applicant

### **Conclusion**

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge