



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



In the matter of:)
)
) ISCR Case No. 18-00764
)
Applicant for Security Clearance)

Appearances

For Government: Erin Thompson, Esq., Department Counsel
For Applicant: Leon J. Schachter, Esq.

04/04/2019

Decision

HARVEY, Mark, Administrative Judge:

Applicant wants to resume linguist duties in a conflict area outside of the United States. His half brother lives in Somalia, and his sister lives in Kenya. His contacts with them are limited, and he has strong connections to the United States. He mitigated foreign influence security concerns relating to his connections to Somalia and Kenya. Eligibility for access to classified information is granted.

History of the Case

On January 5, 2016, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On March 28, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance

for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under the foreign influence guideline.

On April 20, 2018, Applicant responded to the SOR and requested a hearing. (Hearing Exhibit (HE) 4) On October 1, 2018, Department Counsel was ready to proceed. On October 4, 2018, the case was assigned to another administrative judge, and on February 7, 2019, the case was assigned to me. On February 21, 2019, Applicant's Counsel was notified of the date, time, and location of the hearing by email. (HE 5) On March 1, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for March 12, 2019. (HE 1) Applicant's hearing was held as scheduled. (Transcript (Tr.) 13) Applicant waived his right to 15 days of notice of the date, time, and location of his hearing. (Tr. 14-15)

During the hearing, Department Counsel offered five exhibits, Applicant submitted the six exhibits as attachments to his SOR response; there were no objections; and all of Department Counsel's proffered exhibits were admitted into evidence. (Tr. 8, 13-20; Government Exhibit (GE) 1-5; Applicant Exhibit (AE) A-F) On March 27, 2019, I received the transcript of the hearing.

Procedural Ruling

Department Counsel offered summaries for administrative notice concerning foreign influence security concerns raised by Applicant's connections to Somalia and Kenya. (Tr. 13; GE 2-GE 5) Department Counsel also provided supporting documentation. (GE 2-GE 5) Applicant did not object to me taking administrative notice of facts concerning Somalia and Kenya, and I granted Department Counsel's motion. (Tr. 15) Applicant requested administrative notice of the absence of evidence that the governments of Somalia and Kenya engage in the following activities: (1) spy on the United States or commit espionage against the United States; and (2) encourage or sponsor terrorism. (Tr. 17-18) There is no record evidence that terrorists use residents of Kenya or Somalia to coerce their relatives in the United States to breach U.S. security. (Tr. 17-18) Department Counsel responded stating that the Government's administrative notice materials provided a fair discussion of the security concerns relating to foreign interest pertaining to Somalia and Kenya. (Tr. 19-20) I agreed to take administrative notice of the absence of facts as outlined by Applicant. (Tr. 20)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 16-02522 at 2-3 (App. Bd. July 12, 2017); ISCR Case No. 05-11292 at 4 n. 1 (App. Bd. Apr. 12, 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). Portions of the Department Counsel's requests are quoted without quotation marks and footnotes in the Somalia and Kenya sections of this decision, *infra*.

Findings of Fact¹

The SOR alleges that Applicant's sister is a citizen of Somalia residing in Kenya, and his half brother is a citizen and resident of Somalia who is employed by the police. Applicant admitted all of the SOR allegations with some clarifications. (HE 3) He also provided mitigating information. (HE 3) His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 55-year-old former linguist who wishes to return to linguist duties overseas. (GE 1) Pending approval of his security clearance, he is working as an ultrasound technician. (Tr. 39)

In 1991, Applicant left Somalia, due to a civil war, and he has not returned to Somalia for personal reasons since then. (Tr. 22, 40, 44) From Somalia, he went to Kenya, and then he lived in Europe for six years. (Tr. 22) He attended medical school in Europe for four years. (Tr. 23) He received a lottery visa to the United States, and he immigrated to the United States in 1998. (Tr. 23-24) In 2007, Applicant became a U.S. citizen. (Tr. 27)

Applicant attended two U.S. universities where he studied public health for two years and to be an ultrasound technician. (Tr. 24-25; AE A; AE B) In 2012, he received an associate's degree. (AE B) Applicant owns a home in the United States. (Tr. 28)

From February 2016 to March 2018, Applicant worked as a linguist at a location outside of the United States. (Tr. 29, 40) He risked his life serving along with U.S. Forces in an area of hostilities. (Tr. 30, 37) He was not permitted to disclose details of his service because it was classified. (Tr. 31)

In 2002, Applicant married, and he has five children. (Tr. 25) His children are ages 2, 6, 11, 13, and 15. (Tr. 25-26) His children are citizens and residents of the United States. (Tr. 26-27) Applicant met his spouse in the United States. (Tr. 27) She was born in Somalia and became a U.S. citizen in 2008. (Tr. 27)

Applicant said he believed that he renounced his Somali citizenship; however, he did not provide details about how or when he renounced his Somali citizenship. (Tr. 39, 50) He took the Naturalization Oath of Allegiance to the United States of America, which states:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will

¹ The facts in this decision do not specifically describe employment, names of witnesses, names of other groups, or locations in order to protect Applicant's and his family's privacy. The cited sources contain more specific information.

bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.²

Applicant's half brother is about 66 years old, and he was a Somali police officer. (Tr. 31, 46; SOR response) His half brother supervised other police officers; however, Applicant was unsure whether his focus was on street-level crime or other crime. (Tr. 48-49) Applicant has not met with his half brother since 2002. (Tr. 31) Applicant believes his half brother is retired because of his age; however, Applicant has not asked his half brother about whether he is retired. (Tr. 40-42, 45) Applicant communicates with his half brother every few months. (Tr. 31; SOR response) Most likely in the future, he will communicate with his half brother less frequently. (Tr. 33)

Applicant's sister lives in a refugee camp in Kenya. (Tr. 32; SOR response) She is 51 years old. (Tr. 32; SOR response) He has not seen her since 1991, and he communicates with her "perhaps once a year by telephone." (Tr. 32; SOR response)³ For about three years, he has sent about \$200 twice a year to his half brother, who then provided the funds to his sister. (Tr. 42-43, 47-48) In the future, he does not intend to communicate with his sister. (Tr. 33) Applicant's half brother maintains contact with his sister, and Applicant learns about her situation from him. (Tr. 48)

Applicant said if his relatives in Somalia or Kenya contacted him and asked for classified or sensitive information, he would report the contact to his security officer or to the Federal Bureau of Investigation. (Tr. 34-36)

Somalia

In 2012, Somalia was established as a federal parliamentary republic.⁴ The United States recognized the Federal Government of Somalia in January 2013. U.S. foreign policy objectives in Somalia are to promote economic and political stability, promote democratic reforms, oppose international terrorism, and alleviate humanitarian crisis caused by conflict and bad weather. The United States supports the success of the African Union Mission in driving al-Shabaab, a terrorist organization, out of strategically

² The language of the current Oath of Allegiance is found in the Code of Federal Regulations Section 337.1 and is closely based upon the statutory elements in Section 337(a) of the Immigration and Nationality Act. U.S. Citizenship and Immigration Services, 8 U.S.C. § 1448, <https://www.uscis.gov/us-citizenship/naturalization-test/naturalization-oath-allegiance-united-states-america>.

³ Later in his hearing, Applicant said he had not spoken to, contacted, or emailed his sister since 1991. (Tr. 43) He clarified that he did not remember any conversations with her, and he could not confirm that he spoke to her or communicated with her. (Tr. 44-45) From Applicant's responses to some questions at the hearing, it is apparent that he has some difficulties communicating in English.

⁴ The facts in this paragraph are from U.S. Department of State, *U.S. Relations with Somalia Fact Sheet* (Aug. 13, 2018) (GE 2, Item 1).

important population centers. The United States provided more than \$3 billion in assistance to Somalia from 2006 to present. The United States supports and works closely with Somalia to establish an effective and representative security sector including military, police, and justice officials.

The State Department has issued a Level 4 Travel Advisory for Somalia advising U.S. citizens not to travel to Somalia due to crime, terrorism, and piracy. Violent crime is common throughout Somalia, and criminals target foreigners in Somalia. Terrorism is an ongoing threat throughout Somalia. The State Department designated Somali-based Al-Shabaab as a Foreign Terrorist Organization. Al-Shabaab has frequently attacked a variety of targets in Somalia with a wide range of weapons and explosives. In four attacks in 2017, Al-Shabaab killed more than 100 people. The majority of those killed in the four attacks were soldiers and police officers.

In Somalia, human rights abuses occur primarily because of Al-Shabaab's lawless behavior. Some government officials have also engaged in rapes, extortions, and murders with impunity.

Kenya

Kenya is a republic with three branches of government: a president, who is directly elected by the people; a bicameral parliament; and a judiciary. After an election which was disputed in Kenya's Supreme Court, President Kenyatta took office on November 20, 2017. The United States and Kenya have partnered in counterterrorism efforts.

On March 29, 2018, the State Department issued a Level 2 Travel Advisory for Kenya "exercise increased caution" and indicated "do not travel" to the Kenya-Somalia border and some coastal areas due to terrorism." Violent crime and terrorism occur throughout Kenya and are ongoing threats. Somali-based Al-Shabaab and ISIS operate in Kenya. Terrorists have frequently attacked a variety of targets in Kenya utilizing a wide range of weapons and explosives. In 23 attacks in 2017, terrorists killed 80 people.

Human rights problems continue to occur in Kenya, including corruption, politically-motivated killings, forced disappearances, torture, and harsh prison conditions. Violations of privacy, restrictions on freedom of the press and assembly, and violence against women continue to occur.

Somalia and Kenya

While Department Counsel has no burden or obligation to present such evidence, I agree with Applicant's observation that there is no evidence of record that the governments of Somalia and Kenya engage in the following activities: (1) spy on the United States or commit espionage against the United States; and (2) encourage or sponsor terrorism. There is no record evidence that terrorists use residents of Kenya or Somalia to coerce their relatives in the United States to breach U.S. security. The primary foreign influence security concern in Somalia and Kenya arises from terrorism

and criminal activity and not from espionage from the governments of those two countries. Terrorists are known to conduct sophisticated and aggressive espionage.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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 meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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, 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 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 “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. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[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

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

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.

AG ¶ 7 has two conditions that could raise a security concern and may be disqualifying 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.

When an allegation under a disqualifying condition is established, “the Directive presumes there is a nexus or rational connection between proven conduct or circumstances . . . and an applicant’s security eligibility. Direct or objective evidence of nexus is not required.” ISCR Case No. 17-00507 at 2 (App. Bd. June 13, 2018) (citing ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018)).

Applicant admitted that his half brother is a citizen and resident of Somalia, and his sister is a citizen and resident of Kenya. There are widely documented safety issues for residents of Somalia and Kenya primarily because of terrorists, criminals, and insurgents, and Applicant's sister and half brother, like every other resident of those countries, are vulnerable to those dangers. Applicant is willing to voluntarily serve in a dangerous location on behalf of the DOD in the future. Numerous linguists, supporting U.S. forces, have family living in countries such as Somalia, Kenya, Afghanistan, Iraq, Pakistan, and Syria. Hundreds of United States and coalition armed forces and civilian contractors serving in those countries are targets of terrorists, along with civilians and soldiers who support the governments in those countries and cooperate with coalition forces.

The mere possession of close family ties with relatives living in a country hostile to the United States or with a problem with terrorists and insurgents is not, as a matter of law, disqualifying under Guideline B. However, if an applicant or his or her spouse has such a relationship with even one person 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 classified information. See ISCR Case No. 08-02864 at 4-5 (App. Bd. Dec. 29, 2009) (discussing problematic visits of applicant's father to Iran).

There is a rebuttable presumption that a person has ties of affection for, or obligation to, his or her immediate family members, and this presumption includes in-laws. ISCR Case No. 07-06030 at 3 (App. Bd. June 19, 2008); ISCR Case No. 05-00939 at 4 (App. Bd. Oct. 3, 2007) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)).

The DOHA Appeal Board has indicated for Guideline B cases, "the nature of the foreign government involved and the intelligence-gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the Judge's ultimate conclusions in the case. The country's human rights record is another important consideration." ISCR Case No. 16-02435 at 3 (May 15, 2018) (citing ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017)). Another significant consideration is the nature of a nation's government's relationship with the United States. These factors are relevant in assessing the likelihood that an applicant's family members living in that country are vulnerable to government coercion or inducement.

The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorists cause a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The relationship of Somalia and Kenya with the United States, and the situation in those countries with terrorists places a significant burden of persuasion on Applicant to demonstrate that his relationship with any family member living in or visiting those countries does not pose a security risk. Applicant should not be placed into a position

where he might be forced to choose between loyalty to the United States and a desire to assist a relative living in or visiting Somalia or Kenya.⁵

Guideline B security concerns are 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, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 02-22461, 2005 DOHA LEXIS 1570 at *11-*12 (App. Bd. Oct. 27, 2005) (citing ISCR Case No. 02-26976 at 5-6 (App. Bd. Oct. 22, 2004)) (discussing Taiwan).

While there is no evidence that intelligence operatives, criminals, or terrorists from or in Somalia or Kenya seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Somalia or Kenya have a significant problem with terrorism. Applicant’s family in Somalia and Kenya “could be a means through which Applicant comes to the attention of those who seek U.S. information or technology and who would attempt to exert coercion upon him.” ADP Case No. 14-01655 at 3 (App. Bd. Dec. 9, 2015) (citing ISCR Case No. 14-02950 at 3 (App. Bd. May 14, 2015)).

Applicant’s relationships with relatives who are living in Somalia or Kenya or visiting those countries create a potential conflict of interest because terrorists could place pressure on his family in Somalia or Kenya in an effort to cause Applicant to compromise classified information. These relationships create “a heightened risk of foreign inducement, manipulation, pressure, or coercion” under AG ¶ 7. Department Counsel produced substantial evidence of Applicant’s relationships with his family in Somalia and Kenya and have raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply, and further inquiry is necessary about potential application of any mitigating conditions.

⁵ The Appeal Board in ISCR Case No. 03-24933, 2005 DOHA LEXIS 346 at *20-*21 n. 18 (App. Bd. 2005), explained how relatives in a foreign country have a security significance:

The issue under Guideline B is not whether an applicant’s immediate family members in a foreign country are of interest to a foreign power based on their prominence or personal situation. Rather, the issue is whether an applicant’s ties and contacts with immediate family members in a foreign country raise security [or trustworthiness] concerns because those ties and contacts create a potential vulnerability that a foreign power could seek to exploit in an effort to get unauthorized access to U.S. classified information that an applicant -- not the applicant’s immediate family members -- has by virtue of a security clearance [or public trust position]. A person may be vulnerable to influence or pressure exerted on, or through, the person’s immediate family members -- regardless of whether the person’s family members are prominent or not.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(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;

(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;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(e) 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; 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.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(b) and 8(c) apply. Applicant has “deep and longstanding relationships and loyalties in the U.S.” Applicant has resided in the United States and since 1998, and in 2007, he became a U.S. citizen. His spouse and children are citizens and residents of the United States. He swore an oath of allegiance to the United States as part of the citizenship process. He is willing to serve as a linguist overseas supporting U.S. goals.

Applicant’s willingness to support the DOD overseas as a linguist and cultural advisor, including the dangers that service entails, weighs towards mitigating security concerns. Applicant seeks a security clearance to enable him to continue to provide assistance to DOD possibly in a dangerous environment. He has offered to risk his life to support the United States’ goals overseas. His offer of service in a dangerous area of the world shows his patriotism, loyalty, and fidelity to the United States.

In ISCR Case No. 17-00629 at 4 (App. Bd. May 24, 2018), the Appeal Board cogently explained the relevance of such service on behalf of the United States:

Such evidence demonstrates that Applicant has repeatedly been willing to assume a high level of risk on behalf of the U.S. and shows his ties and sense of obligation to the U.S. could be sufficiently strong enough to support a favorable application of mitigating condition 8(b). See ISCR Case No. 05-03846 at 6 (App. Bd. Nov 14, 2006) (An applicant’s work in support of U.S. forces in Afghanistan occurred “in the context of dangerous high-risk circumstances in which [he] made a significant contribution to national security.”) See *also* ISCR Case No. 04-12363 at 2 (App. Bd. Jul. 14, 2006); ISCR Case No. 07-00034 at 2-3 (App. Bd. Feb. 5, 2008); and ISCR Case No. 10-02803 at 6 (App. Bd. Mar. 19, 2012).

Applicant’s connections to Somalia or Kenya are limited as the only family members living in those countries are his half brother and sister. He does not intend to travel to those countries for personal visits. He does not have property in Somalia or Kenya.

Applicant’s relationship with the United States must be weighed against the potential conflict of interest created by his relationships with relatives who are citizens and residents of Somalia or Kenya. Like every other resident of Somalia or Kenya, his relatives are at risk from criminals, terrorists, and human rights violations of the governments in Somalia or Kenya.

It is important to be mindful of the United States’ historical investment of manpower and money in Somalia and Kenya, and Applicant is willing to support U.S. goals and objectives overseas. Applicant’s relatives living in Somalia and Kenya are potential targets of terrorists, and Applicant’s access to classified information could theoretically add risk to his relatives living in those countries from lawless elements.

In sum, Applicant’s connections to his relatives living in Somalia and Kenya are limited. His connections to the United States taken together, including his spouse and five children who are U.S. citizens, and his willingness to support U.S. goals in a

dangerous environment, are sufficient to overcome the foreign influence security concerns under Guideline B.

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(d):

(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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline B are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 55-year-old former linguist who wishes to return to linguist duties overseas. Pending approval of his security clearance, he is working as an ultrasound technician. In 1991, he left Somalia, and he has not returned to Somalia for personal reasons since then. In 1998, he immigrated to the United States, and in 2007, he became a U.S. citizen. In 2012, he received an associate's degree. He owns a home in the United States.

A Guideline B decision concerning Somalia and Kenya must take into consideration the geopolitical situation and dangers there.⁶ Somalia and Kenya are dangerous places because of violence from terrorists, and the Somalia and Kenya governments do not respect the full spectrum of human rights. Terrorists continue to threaten these governments, the interests of the United States, U.S. Armed Forces, and those who cooperate and assist the United States. The United States, Somalia, and Kenya governments are allies in the war on terrorism.

Applicant's half brother is a citizen and resident of Somalia, and he is probably retired from the police. The police in Somalia have been the victims of terrorists. His sister is a citizen of Somalia and a resident of Kenya. Applicant rarely communicates with his sister, and he communicates with his half brother every few months. He provided about \$1,200 to his sister in the last three years or so. He has not been to

⁶ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

Somalia on personal business in 28 years. His communications and support to his family in Kenya and Somalia are a manifestation of his care and concern for them. His relationship with his half brother and sister in Somalia and Kenya raise important foreign influence security concerns. Those connections are balanced against his connections to the United States. Applicant's spouse and five children are citizens and residents of the United States, and he owns a home in the United States. He swore allegiance to the United States and believes he offered to or did renounce his Somali citizenship.

Applicant served U.S. interests as a linguist overseas. He made contributions at personal risk on behalf of U.S. forces. All these circumstances increase the probability that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit him. See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008). His past honorable service overseas in an environment hostile to the United States weighs heavily towards mitigation of foreign influence security concerns. See ISCR Case No. 07-00034 at 3 (App. Bd. Feb. 5, 2008) (affirming grant of security clearance and commenting "Applicant has served as a translator and as a cultural liaison between Americans and Afghan citizens, diffusing tensions and facilitating transactions between the two groups. . . . Applicant put his life in danger on at least one occasion to protect American lives and interests in Afghanistan.").

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude foreign influence security concerns are mitigated. Eligibility for access to classified information is granted.

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 B:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant

Conclusion

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

Mark Harvey
Administrative Judge