



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 18-02532
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

10/21/2019

Decision

MASON, Paul J., Administrative Judge:

Applicant was born in Kenya. He became a naturalized United States (U.S.) citizen in March 2015. He has at least 13 foreign family members who are citizens and residents of Kenya. From 2010 to 2017, he sent them financial support, a practice that he intends to continue. Applicant has not mitigated the foreign influence guideline. Eligibility for security clearance access is denied.

Statement of the Case

On November 29, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) (Item 4) to obtain security clearance required for a position with a defense contractor. On December 19, 2017 and March 20, 2018, he provided summary interviews (PSIs) (Item 5) to an investigator from the Office of Personnel Management (OPM). After reviewing the results of a background security investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On October 30, 2018, DOD issued a Statement of Reasons (SOR) to Applicant detailing security reasons under the foreign influence guideline (Guideline B). The action was taken under Executive Order (E.O.) 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 Security Executive Agent Directive 4, establishing *National Security Adjudicative Guidelines for Determining Eligibility for access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs). The guidelines were made applicable to all individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position.

Applicant provided his notarized answer to the SOR on December 6, 2018. He elected to have his case decided on a written record instead of a hearing. On April 4, 2019, the Government sent Applicant a copy of the File of Relevant Material (FORM) containing evidence in support of the allegations in the SOR. Applicant received the FORM on June 21, 2019. The Defense Office of Hearings and Appeals (DOHA) received no response to the FORM. DOHA assigned the case file to me on July 9, 2019.

Rulings on Procedure

On the second page of Department Counsel's FORM, at "III. Important Notice to Applicant," Department Counsel advised Applicant that the two PSIs (Item 5) would be excluded from evidence if he objected to the exhibits. Alternatively, Department Counsel advised him that he could correct, update, or modify the exhibit to improve its clarity or accuracy. Applicant did not object, and the exhibit was admitted into evidence. See, E3.1.20., DOD Directive 5220.6, page 52.

Item 7 of the FORM contained four documents from the U.S. Department of State. Department Counsel requested that I take administrative notice of facts relating to Kenya. The facts administratively noticed are limited to matters of general knowledge and not subject to reasonable dispute.

Findings of Fact

The SOR alleges foreign influence by Applicant because his immediate family members are citizens and residents of Kenya (SOR 1.a-1.g). Applicant's ownership of a home in Kenya (SOR 1.f) and the financial support he has provided to family members in Kenya, and will provide in the future (SOR 1.g), raises additional concerns under the foreign influence guideline. Applicant admitted all allegations.

Applicant, born in Kenya in 1979, is 40 years old and has been married since September 2006. He has five children whose ages are 13, 10, 8, and 6 years of age (twins). In May 2006, he received a bachelor's degree in computer science from another African country. In December 2015, he earned a master's degree in information technology from an American university. Applicant immigrated to the United States in December 2009. He was naturalized as a U.S. citizen in March 2015. His wife was born

in Kenya in 1981. She is also a naturalized U.S. citizen. (Item 4 at 4 at 7-18, 19-20, 26, 67; Item 5 at 5; item 6 at 4-5)

Applicant is a dual citizen of the U.S. and Kenya. He has both a U.S. passport and a Kenyan passport that is not scheduled to expire until January 2022. He has expressed his intention to renounce his Kenyan citizenship, but is waiting for the U.S. Government or his security clearance sponsor to instruct him to carry out his intention. He is unable to begin working as a linguist until his security clearance is approved. Applicant is currently working as a part-time taxi driver. From 2010 to September 2017, he was employed as a business analyst for a business process company. He has never had a security clearance. He has owned his American home since June 2017. (Item 4 at 4 at 7-18, 19-20, 26, 67; Item 5 at 5; item 6 at 4-5)

Before immigrating to the United States in December 2009, Applicant lived with his wife, a former Kenyan air force officer, on a Kenyan air force base from November 2007 to about June 2008. His wife resigned honorably from the military and they moved to a location near the base until they immigrated to the United States in December 2009. There is no indication in the record of his wife's military position or how long she was in the military, or whether she receives a military pension. She currently is employed as a para professional for a public school system. (Though the wife is unalleged in the SOR, evidence regarding her status will be presented under the whole-person concept below.) (Item 4 at 4 at 7-18, 26, 67; Item 5 at 5; item 6 at 4-5, 16)

Applicant stated that he and his wife send money to her mother (SOR 1.e) to help pay monthly bills. They send money to help her father (SOR 1.e) fix his farm machines. (Item 5 at 7-8, 10)

SOR 1.a – Applicant has four brothers who are citizens and residents of Kenya. His 39-year-old brother works in a hardware store. Applicant's 34-year-old brother is a Kenyan government police officer, and guards diplomatic aircraft. Neither Applicant's 23-year-old brother nor his 19-year-old brother have ever worked. The 34-year-old brother is the only sibling affiliated with the Kenyan government or military. (Item 4 at 34-47)

SOR 1.b – Applicant has four sisters who are citizens and residents of Kenya. His 36-year-old sister, his 32-year-old sister, and his 29-year-old sister are housewives. Applicant's 20-year-old sister is unemployed. None of his four sisters are affiliated with the Kenyan government or military. (Item 4 at 37-41)

SOR 1.c – Applicant's fifth brother, 26 years old, is a citizen of Kenya and a resident of Saudi Arabia where he is attending school. Applicant contacts all siblings about once or twice a week through a cell phone application. (Item 4 at 44; Item 5 at 5-7)

SOR 1.d – Applicant's sister-in-law, 35 years old, is a citizen and resident of Kenya. She is a housewife with no affiliation with the Kenyan government or military. Applicant has monthly contact with her. The mode of contact is not identified.

Applicant's brother-in-law, 44 years old, is a citizen and resident of Kenya. He is a project officer for an international emergency and relief organization. Applicant has monthly contact with him. The type of contact is not identified. (Item 6 at 5)

SOR 1.e – Applicant's mother-in-law, 67 years old and a citizen and resident of Kenya, is a housewife with no affiliation with the Kenyan government or military. Applicant's father-in-law, 72 years old, a citizen and resident of Kenya, is a self-employed farmer with no ties to the Kenyan government or military. Applicant's contact with both in-laws is monthly, though the kind of contact is not identified. (Item 6 at 4; December 2018 answer to SOR)

SOR 1.f – Applicant owns a home in Kenya valued at approximately \$30,000. His parents, living with Applicant as permanent residents of the U.S. since September 2017, did not want to own the Kenyan home because of potential inheritance issues with Applicant's siblings on their death. Applicant, his parents, and his children use the home instead of hotels for accommodations when they are in Kenya on vacation or while visiting relatives. (Item 5 at 9; item 6 at 12; December 2018 answer to SOR)

SOR 1.g – Between 2010 and 2017, Applicant provided approximately \$32,450 in financial support to his family who are citizen residents of Kenya. Applicant plans to continue with financial support in the future to at least 13 foreign family members. He provides specific amounts of money to them to pay for their food, rent, medical bills, schooling, and emergencies. (Item 5 at 11-12; Item 6 at 10-12; December 2018 answer to SOR)

Applicant indicated during his counterintelligence screening questionnaire interview in November 2017 that he never served in a foreign military service. He never provided material or financial support to any organization seeking to harm the United States, and was never threatened with blackmail or pressure. He averred that he would never betray the United States. (Item 6 at 5-15)

Since immigrating to the United States in December 2009, Applicant traveled to Kenya on five occasions. In 2015, he stayed in Kenya for four months visiting his parents who were ill. He made four shorter trips between February 2016 and September 2017 to visit them.

Administrative Notice - Kenya

The Kenyan republic has three branches of government: (1) a directly elected president; (2) a two-tier legislature consisting of a Senate and a National Assembly; and

(3) a judiciary. The United States and Kenya have been partners in the global war on terrorism.

The U.S. State Department advises extreme caution when traveling throughout Kenya because of crime and terrorism. Terrorist acts could occur by assault, suicide operations, bomb and grenade attacks, or kidnappings. On March 29, 2018, the State Department provided an advisory not to travel in the Kenya-Somalia border region due to acts of terrorism committed by the al-Shabaab terrorist faction. There were 23 terrorist attacks in the country in 2017, resulting in 80 fatalities. The U.S. government receives ongoing information about terrorism threats directed at U.S., Western, and Kenyan entities.

Human rights problems continue to plague Kenya. These issues manifest themselves in unlawful and politically motivated killings, disappearances occurring under force, torture, life-threatening prison conditions, arbitrary arrest and detention, restrictions on freedom of the press and assembly, and violence against women.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines, which are flexible rules of law, are applied together with common sense and the general factors of 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(d) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

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 applicant or proven by Department Counsel. . ." The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Foreign Influence

AG ¶ 6 sets forth the security under Guideline B:

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.

Conditions under AG ¶ 7 that could raise a security concern and may be disqualifying include:

(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;

(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; and

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

Contacts and ties to family members who are citizens of a foreign country do not automatically disqualify an applicant from security clearance access. As set forth under AG ¶ 7(a), the contacts are only disqualifying if they create a heightened risk of foreign exploitation. As set forth in AG ¶ 7(b), connections to family members are only disqualifying if they create a potential conflict of interest between Applicant's security duties and his desire to assist his foreign family members.

Applicant's regular contacts with his five brothers, his four sisters, his sister and brother-in-law, and his father and mother-in-law, who are citizens and residents of Kenya, create a heightened risk of foreign inducement and pressure. These foreign-family connections also create a potential conflict of interest for him. Applicant's 34-year-old brother has a close connection to the Kenyan government because he is a police officer responsible for guarding diplomatic aircraft. Applicant's relationships with all his foreign family members, to whom he provided \$32,450 in financial support from 2010 to 2017, and to whom he intends to provide future financial support, create a greater potential for Applicant's ties to produce a heightened risk of foreign exploitation and a potential for conflict of interest. The evidence establishes security concerns under AG ¶¶ 7(a) and 7(b).

The security concerns created by Applicant's foreign family members are magnified when evaluated with ongoing terrorist activity in Kenya. The U.S. State Department has issued repeated warnings of terrorism committed by groups both inside and outside Kenya directed against or affecting U.S. and Western interests.

Applicant's ownership of a home in Kenya valued at approximately \$30,000, and apparent intention to keep the home, triggers an additional heightened risk or personal conflict of interest under AG ¶ 7(f).

Conditions under AG ¶ 8 that could mitigate security concerns include:

(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; 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.

AG ¶ 8(a) does not apply to the facts of this case because Applicant's family members could place him in a compromising position of having to choose between the interest of the relatives or the United States. Though eight of the nine siblings have no affiliation with the Kenya government, one of the brothers is a police officer for the government of Kenya. In view of the level of terrorist activity in the country, I cannot rule out the possibility that Applicant's foreign family members, including his four in-laws, could be threatened by insurgents or government operatives to a point where Applicant would have to choose between the interests of his family members and the interests of the United States.

Applicant receives partial mitigation under AG ¶ 8(b). He entered the United States in December 2009 and became a naturalized U.S. citizen in March 2015. His

wife is a naturalized U.S. citizen. His five children are U.S. citizens. He has some ties to the United States. He earned his master's degree from an American university. Applicant's only documented economic ties to the United States are his home that he has owned since June 2017, and his longest employment as a business systems analyst from 2010 to September 2017. There is no evidence that reveals the value of the home. There is no other evidence regarding Applicant's financial assets, i.e., savings or checking account, retirement account, stock portfolio, or investment fund, in the United States. Overall, those connections to the United States do not outweigh his ties to his foreign family members as is demonstrated by his continuing financial support for them and frequent and recent visits to see them in Kenya. On balance, Applicant has not submitted persuasive evidence that shows his connections and loyalty to the United States is so strong that he would decide any conflict of interest in favor of U.S. interests.

AG ¶ 8(c) does not apply because of the totality and regularity of Applicant's contacts with his foreign family members. From 2010 to 2017, he provided over \$32,000 to them. Given the frequency of the contacts between Applicant and his foreign family, the contacts and communication cannot be considered casual or infrequent.

Whole-Person Concept

I have examined the evidence under the specific guidelines in the context of the nine general factors of the whole-person concept 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), the ultimate determination of whether to grant eligibility for access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant is 40 years. He married in September 2006. He, his wife, and five children are U.S. citizens. In 2006, he earned a bachelor's degree from a college in a neighboring African state. He earned a master's degree in December 2015 from an American institution.

The evidence favoring Applicant's eligibility for a security clearance is insufficient to overcome the evidence supporting denial of his eligibility. Applicant has 13 listed foreign family members who are citizens and residents of Kenya that he provides financial support. Apparently, Applicant intends to maintain ownership of his Kenyan

home. Though Applicant's wife is a naturalized U.S. citizen, he shares a home with her. She was an officer in the Kenyan air force and resigned sometime in 2009, then lived with Applicant close to the air base before they immigrated to the United States. Applicant presented no evidence indicating her military job, how long she served, or whether she receives some kind of pension for her service. Applicant provided no evidence of his wife's current employment in the school district. (SOR 1.e) Because Applicant and his wife provide financial support to her parents (SOR 1.e), foreign insurgents or state operatives have an additional reason to apply pressure through one of those family members, including his wife, to Applicant making him disclose classified information or compromise his security clearance responsibilities to the United States in some other fashion. Having weighed and balanced all the evidence under the specific conditions in light of the record as a whole, Applicant has not mitigated the lingering security concerns arising from the foreign influence guideline.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.g:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the security interests of the United States to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge