



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



In the matter of:	)	
	)	
	)	ISCR Case No. 18-02707
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Erin Thompson, Esq., Department Counsel  
For Applicant: *Pro se*

10/29/2019

**Decision**

BENSON, Pamela C., Administrative Judge:

Applicant mitigated the foreign influence security concerns arising from his connections with relatives and a friend in Somalia. National security eligibility for access to classified information is granted.

**Statement of the Case**

On November 16, 2017, Applicant completed and signed his security clearance application (SCA). On November 23, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (Foreign Influence). The action was taken 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 *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on December 18, 2018, and requested a hearing before an administrative judge. He admitted SOR allegations ¶¶ 1.a and 1.b, but he denied ¶¶ 1.c and 1.d. On August 15, 2019, the case was assigned to me. On August 30,

2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for September 16, 2019.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 through 3, and Applicant offered Applicant Exhibit (AE) A. I admitted all exhibits into evidence without objection. Applicant and one witness testified. DOHA received the hearing transcript (Tr.) on September 30, 2019. I held the record open for one month in the event either party wanted to submit additional documentation. Applicant timely submitted two letters of recommendation and corrections he made on the hearing transcript that was provided to him. I admitted his documents, AE B through D, without objection. The record closed on October 16, 2019.

### **Administrative Notice**

Department Counsel requested that I take administrative notice of certain facts about Somalia. Without objection, I have taken administrative notice of the facts contained in the request. The facts are summarized in the written request and will not be repeated verbatim in this decision.

I have taken administrative notice of the following facts concerning Somalia:

In 2012, Somalia was established as a federal parliamentary republic. 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 poor weather conditions.

The United States supports the success of the African Union Mission in driving Al-Shabaab, a terrorist organization, out of strategically 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. 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.

## Findings of Fact

Applicant is 34 years old. He was born in a small village in Somalia. He received his primary education through a private school because his village did not have its own school. He worked at the family-owned grocery shop in the village. His family in Somalia includes his mother, a sister, one brother, and two half-brothers. Applicant is uncertain if his other sister lives in Central or Southern Africa. His father passed away in 2006. (Tr. 18-26, 35; GE 1, GE 2, GE 3)

In 2009, Applicant left Somalia and was admitted into a refugee camp in the Netherlands after he requested asylum. He said his country and the government were in chaos. While residing in the Netherlands, he met a woman who was a naturalized U.S. citizen, and they were married in a religious ceremony, but not a legally recognized ceremony in the U.S. She returned to the U.S. in early 2012, and Applicant's son was born in the United States in November 2012. (Tr. 18-26, 35; GE 1)

In February 2014, Applicant immigrated to the U.S. on a fiancé visa. He legally married his wife about a week after his arrival. They had another son in November 2015. Applicant worked as a truck driver, and his spouse worked in a warehouse. He became a naturalized U.S. citizen in July 2017. He and his spouse separated in about September 2017. During their separation, his spouse gave birth to his daughter in 2018. As of the date of the hearing, they were still separated, but Applicant and his wife were working to repair their relationship and reunite. Applicant has never returned to Somalia since he entered the U.S. in 2014. All members of his family are U.S. citizens. He considers himself an American and intends to raise his family in his adopted and beloved country. (Tr. 24-32, 65)

### Foreign Influence:

Applicant's mother is approximately 74 years old. She is a citizen and resident of Somalia. One of his sisters, also a citizen and resident of Somalia, lives with his mother in their village home. They continue to operate the family's grocery shop. His mother owns a cell phone, and Applicant cannot speak with his mother while she is in the village due to connectivity limitations. His mother calls Applicant whenever she visits the city where she is able to obtain cell phone service. Applicant sometimes goes as long as three to four months without hearing from his mother. There are times Applicant speaks briefly with his sister during these phone calls. He sends his mother financial assistance on approximately a monthly basis. He sends the money through a registered money service business, and his mother must pick up the funds at a bank in the city. Applicant described his mother and family members in Somalia as simple people with extremely limited income. His family members have no connections with the Government or military of Somalia. (Tr. 34-42)

Applicant is not certain where his second sister is currently living, but believes she may be in South or Central Africa. They last spoke in 2015 when she called him requesting money because she was sick. Since 2015, Applicant has not had any contact with this sister. (Tr. 43-44, 66)

Applicant clarified at the hearing that he has one older brother and two younger half-brothers. Department Counsel requested that the SOR be amended to properly reflect this accurate information, which I granted without objection. Applicant did not grow up with his older brother because he lived in the rural area of Somalia, and was possibly raising goats. Applicant has not had any communication with his brother until about two years ago, when his brother called him. His brother asked for financial help because his wife was sick. Applicant sent him about \$200, and they have not communicated since 2017. (Tr. 44-49)

Applicant does not have contact with his two younger half-brothers. They also live in the rural area of Somalia, possibly raising goats. Applicant reported that the majority of Somalians, approximately 60%, are nomads living in rural areas of Somalia. He reiterated that his family is considered simple folk, and he does not have any assets in Somalia. (Tr. 50-51)

At the hearing, Applicant testified that the counter-intelligence security-screening document contained inaccurate information that he wanted to correct. There was a reference to Applicant stating that he knew a Somali army general and he spoke to him on a weekly basis. This information supported an allegation alleged in the SOR. (§ 1.c) Applicant explained that when he lived in the village, an older man visited his family's grocery shop to purchase food. He believed the man had previously served in the Somali army, and the people in the village nicknamed the elderly man "the General." Applicant got to know "the General" due to him being a regular customer. In addition, Applicant attended private school with "the General's" son, whom he considers his friend. Applicant has had infrequent contact with his friend over the years. When the U.S. government interviewer asked Applicant if he knew anyone who worked for the Government or military of Somalia, he disclosed his connection to "the General" in an effort to be completely forthright. Applicant denied ever stating that he communicated with "the General" on a weekly basis. As indicated in his SOR response, Applicant was informed that "the General" passed away in early 2018. (Tr. 54-62; GE 2)

Applicant testified that the U.S. government interviewer also asked him to disclose someone who could verify his occupancy at the refugee camp in the Netherlands. Applicant provided the name of an individual from Somalia he met at the refugee camp, who now resides in Germany. Applicant stated that this individual was more of an acquaintance, not a personal friend, and the last time they communicated was in early 2018 using social media. (Tr. 62-65; GE 2)

Applicant submitted character reference letters from two co-workers, who both praised Applicant's diligence, efficiency, and honesty. They recommended Applicant be granted a security clearance as he would be an excellent linguist. (AE B, AE C)

### **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(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 classified 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 not drawn inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 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 B: Foreign Influence**

The security concern for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result

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

The guideline notes several conditions under AG ¶ 7 that could raise security concerns, and the following 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.

There is a threat of terrorism and ongoing human rights violations in Somalia. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, through his family members. The above disqualifying conditions have been raised by the evidence

The conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

- (a) contact, regardless of method, with a foreign family member, business 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; and

(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.

Guideline B is not limited to countries hostile to the United States. The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States. The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly.

There are widely-documented safety issues for residents of Somalia because of terrorists and insurgents. The mere possession of close family ties with one or more family members living in Somalia 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 classified information. See Generally ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

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 family members 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 with the United States, and the situation in Somalia places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationship with his family living in Somalia 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 Somalia.

I found Applicant's testimony describing himself as a loyal U.S. citizen to be credible and sincere. His wife and three children are in the United States and are U.S. citizens. His communications with his mother, sister, and friend are infrequent. His communications with his brother, two half-brothers, and other sister are extremely rare. I find that Applicant's ties to Somalia are outweighed by his deep and long-standing relationships and loyalties in the United States. His closest family, home, and all of his assets are in the U.S. He swore an oath of allegiance to the U.S. as part of the citizenship process. He is willing to serve as a linguist overseas supporting U.S. goals. Applicant described his family in Somalia as "simple people" living in a small village and in the rural areas with no connection to the Government or military of Somalia. I find that it is unlikely he will be placed in a position of having to choose between the interests of the United

States and the interests of Somalia. There is no conflict of interest, because Applicant can be expected to resolve any conflict of interest in favor of the United States. AG ¶¶ 8 (a), (b), and (c) apply.

### **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 relevant 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), the ultimate determination of whether to grant eligibility for a security 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 all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B and the AG ¶ 2(d) factors in this whole-person analysis.

The Federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. In deciding whether to grant or continue access to classified information, the Federal government can take into account facts and circumstances of an applicant's personal life that shed light on the person's judgment, reliability, and trustworthiness. Furthermore, security clearance decisions are not limited to consideration of an applicant's conduct during work or duty hours. Even if an applicant has a good work record, his off-duty conduct or circumstances can have security significance and may be considered in evaluating the applicant's national security eligibility.

In sum, Applicant's connections to foreign family members in Somalia are limited. His connections to the United States taken together, including his spouse and three children who are U.S. citizens, and his willingness to support U.S. goals as a linguist are sufficient to overcome the foreign influence security concerns under Guideline B. After evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated 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 B:	FOR APPLICANT
Subparagraphs 1.a - 1.d:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, I conclude that it is clearly consistent with national security to grant Applicant's national security eligibility. Eligibility for access to classified information is granted.

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Pamela C. Benson  
Administrative Judge