



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



In the matter of:)	
)	
)	ISCR Case No. 18-02179
)	
Applicant for Security Clearance)	

Appearances

For Government: Erin Thompson, Esq., Department Counsel
For Applicant: Ray King, Esq.

06/17/2020

Decision

BENSON, Pamela C., Administrative Judge:

Applicant was unable to mitigate the foreign influence security concerns arising from his connections with family members and associates in Somalia and Kenya. National security eligibility for access to classified information is denied.

Statement of the Case

On January 17, 2018, Applicant completed and signed his security clearance application (SCA). On September 27, 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 October 1, 2018, and requested a hearing before an administrative judge. He admitted SOR allegations ¶¶ 1.c, 1.d, 1.e, and 1.g, and he denied ¶¶ 1.a, 1.b, and 1.f. This hearing was continued due to a family emergency by the Applicant in March 2019. Applicant requested a continuance, which I granted for good

cause. The Defense Office of Hearings and Appeals (DOHA) reissued the hearing notice on September 16, 2019, after Applicant agreed to participate in a video-teleconference (VTC) hearing on September 26, 2019. During the VTC hearing, Applicant testified, however the video equipment had technical difficulties, and another hearing was rescheduled for January 13, 2020, to conclude the hearing.

Department Counsel offered Government Exhibits (GE) 1 through 3, and Applicant did not offer any documents. I admitted GE 1-3 into evidence without objection. Applicant testified during both the September 26, 2019, and the January 13, 2020 hearings. DOHA received the hearing transcripts (Tr.) on September 2, 2019, and on January 22, 2020. The record closed on January 13, 2020.

Administrative Notice

Department Counsel offered summaries for administrative notice concerning foreign influence security concerns raised by Applicant's connections to Somalia and Kenya. Department Counsel also provided supporting documentation. Applicant did not object to me taking administrative notice of facts concerning Somalia and Kenya, and I granted Department Counsel's motion.

I have taken administrative notice of the following facts:

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. Al-Shabaab killed more than 100 people after four attacks in 2017. 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.

Findings of Fact

Applicant is 59 years old. He was born in Somalia and graduated from high school in 1978. He was ranked as a Major (artillery officer) in the Somalian army and came to the United States in August 1990 for military training. He worked closely with the U.S. military for nearly a year when Somalia erupted in civil war. Applicant requested to stay in the U.S. and was offered political asylum. He rented an apartment in State A, which was paid by the Somalian government for two years. (Tr. 13-14; GE 1, GE 2, GE 3)

Applicant was married in 1988 and divorced in 1996. In February 2005, he married again through a religious ceremony, which was recognized in the U.S. after they were legally married in 2012. His spouse is a naturalized U.S. citizen from Somalia. Applicant became a naturalized U.S. citizen in June 2008. He is a dual citizen of Somalia and the U.S. Applicant currently is employed by a county government agency as deputy auditor for public relations. He is applying for a linguist position with a DOD contractor. His employment is contingent on him obtaining a DOD security clearance. (Tr. 14; GE 1, GE 2, GE 3)

Foreign Influence:

Applicant's mother is approximately 85 years old. At the time the SOR was drafted, his mother was living in Kenya to receive medical treatment since the medical healthcare system in Somalia was generally nonexistent during that time. At the hearing, Applicant stated that his mother is now residing in Somalia. Department Counsel requested I amend

the SOR to reflect the current information, which I did without an objection. Applicant's mother is a citizen and resident of Somalia. He communicates with his mother approximately twice weekly. He also sends her approximately \$400 every month. His deceased father was employed by the Somalian government in the postal service. (Tr. 15, 21-24; GE 1, GE 2, GE 3)

One of his brothers is also a citizen and resident of Somalia. Applicant does not communicate regularly with him. His brother is currently residing with his mother. A niece and her five children also live with his mother. The house contains approximately eight bedrooms that can accommodate the family. The house is valued at approximately \$140,000, and Applicant would inherit one-fourth of this property upon her death. Applicant communicates frequently with his niece. His youngest brother remains in Kenya and continues to receive treatment for mental health issues. Applicant communicates with this brother every couple of days. (Tr. 15-17, 24-27; GE 1, GE 2, GE 3)

Applicant has three nephews who are citizens and residents of Somalia. One of his nephews is employed by the Canadian government in the capital of Somalia, working with the United Nations. At the time of Applicant's background interview, this nephew had been previously employed as a consultant for the President of Somalia in the presidential palace. Applicant communicates with this nephew on a monthly basis. Applicant's second nephew is currently employed by the Minister of Finance in Somalia. His third nephew, also living in Somalia, is currently unemployed. The third nephew has requested Applicant send him money on occasion. Applicant sends him \$50 to \$100 whenever he can afford it. (Tr. 18, 28-32; GE 1)

Applicant admitted that an acquaintance of his, who had served with him in the Somalian army, was also the Defense Minister of Somalia from 2015 to 2017. He stated that this acquaintance currently resides in the same city as Applicant, but he has not spoken to his colleague since 2016. (Tr. 17-19, Tr. 1/2020 7-9)

Applicant also admitted that the current Minister of Foreign Affairs in Somalia attended middle school with him. Applicant met with him during a visit he had to Applicant's U.S. city of residence. In February 2018, Applicant organized a meeting with the Somalian Minister of Foreign Affairs and the Somalian Community Association in his city. Since that meeting, Applicant has not had further contact with him. (Tr. 1/2020 10-11; GE 3)

Applicant admitted that in 1984, while he served in the Somalian army, he purchased three properties in Somalia worth an approximate combined value of \$120,000. He is uncertain if anything has been built on his properties, and he would like to sell them at some point. Applicant does not own a home in the U.S., nor does he have any future retirement accounts in the U.S. His only asset in the U.S. is an apartment building he purchased during an auction in 2010. The apartment building is currently unoccupied, but he would like to rent the apartments out someday. He estimated the current value of the apartment building at approximately \$100,000. (Tr. 1/2020 11-13; GE 3)

Applicant stated during a background interview that he would like to retire in Somalia within the next ten years, but only if the political party and the government of Somalia resolved their conflict. During the hearing, Applicant admitted he would retire in Somalia, especially if he generated enough income from his apartment building in the U.S. He would also return to Somalia if he were offered a Somalian government position, perhaps in the capacity of rebuilding the Somalian army. (Tr. 1/2020 14-17; GE 2, GE 3)

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;

(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.

There is a threat of terrorism and ongoing human rights violations in Somalia and Kenya. Applicant has ongoing familial connections with his mother, niece, nephews, and his brother. He has a substantial property interest in Somalia he values at about \$120,000. 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.

Some of Applicant's family members and foreign contacts are, or recently have been, employed by the Somalian government. The instability and risk of terrorism in Somalia present an unacceptable risk that Applicant may be placed in a position of having to choose between the interests of a foreign individual, group, or government and the interests of the United States. AG ¶ 8(a) does not apply.

Applicant's ties to the United States are not substantial. His interest in real property in Somalia is worth more than the real property interest he has in the U.S. Applicant maintains close relationships with his mother, niece, and nephews in Somalia, to whom he is bound by affection or obligation. He maintains regular communication with his family members, to include providing funds to them as needed. This is commendable, but demonstrates that the contacts and relationships are neither casual nor infrequent. AG ¶¶ 8(b) and 8(c) are not applicable in this case.

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.

There are no allegations of any misconduct by Applicant or that his family members are criminals or terrorists. He does, however, continue to have close connections to Somalia through numerous family members and his Somalian property interests. He

provided insufficient evidence that the resulting potential for pressure, coercion, exploitation, or duress is diminished at present.

After weighing the disqualifying and mitigating conditions under this guideline, and evaluating all the evidence in the context of the whole person, Applicant has not mitigated the security concerns at issue. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the interests of national security of the United States to grant him eligibility for access to classified information.

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, I conclude that it is not clearly consistent with national security to grant Applicant's national security eligibility. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge