



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



In the matter of:	)	
	)	
[Redacted]	)	ADP Case No. 20-01354
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Eric C. Price, Esq. Department Counsel  
For Applicant: *Pro se*

03/24/2021

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves trustworthiness concerns raised under Guidelines F (Financial Consideration) and B (Foreign Influence). Applicant has mitigated the security concerns under Guideline B, but he has not mitigated the concerns under Guideline F. Eligibility for assignment to a public trust position is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on August 23, 2018, seeking eligibility for a public trust position. On June 10, 2019, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR), citing trustworthiness concerns under Guidelines B and F. The CAF acted under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on September 25, 2020, and requested a decision on the written record without a hearing before an administrative judge. Department Counsel submitted the Government’s written case on November 30, 2020. On December

2, 2020, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on January 13, 2021, and he did not respond. The case was assigned to me on March 12, 2021.

The FORM included Item 4, a summary of a personal subject interview (PSI) conducted by a security investigator on November 13, 2018. The PSI summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the PSI summary; make any corrections, additions, deletions or updates; or object to consideration of the PSI summary on the ground that it was not authenticated. I conclude that Applicant waived any objections to the PSI summary by failing to respond to the FORM. "Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive." ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

Department Counsel requested that I take administrative notice of relevant facts about Ethiopia (Hearing Exhibit I). I have granted the request in part. One paragraph of the request for administrative notice is based on a document from the Congressional Research Service (CRS), attached to the request for administrative notice and referenced in footnote 9. Reports prepared by CRS do not necessarily contain statements of fact that are not subject to reasonable dispute, nor do they necessarily represent the official positions of the U.S. Government.

The disclaimer at the end of the CRS document proffered by Department Counsel includes the following:

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. **Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role.** . . . (Emphasis added.)

Based on the limited purposes for which CRS reports are published, I have not taken administrative notice of the facts recited in the CRS document.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted all the allegations. His admissions are incorporated in my findings of fact.

Applicant is a 49-year-old technical data manager and training coordinator employed by a defense contractor since January 2018. He attended a technical college from March 2015 to May 2016 but did not receive a degree. He served on active duty in the U.S. Navy from May 1992 to February 2008 and received an honorable discharge.

Applicant married in January 1995, divorced in May 1997, remarried in September 1997, and divorced in August 2009. He married his current spouse in January 2010. He has two children from previous marriages, ages 22 and 20, and a five-year-old child from his current marriage.

Applicant received a security clearance in May 1992, which was revoked in June 2007 for financial reasons. When his clearance was revoked, he was given a choice of cross-rating to another specialty that did not require a clearance or being discharged. He chose to be discharged. (GX 4 at 2.) His clearance was later reinstated on a date not reflected in the record. He was unemployed for about two months after his discharge and for short periods between jobs, from September to November 2008, March to May 2010, February to April 2012, and January to February 2015. He was laid off in December 2015 because his application to continue his clearance was denied. He was unemployed from December 2015 to May 2016.

While Applicant was unemployed, he surrendered the vehicle and incurred the deficiency alleged in SOR ¶ 1.a. He was evicted from his apartment and lived in his car for three months. He sent his wife to live with her parents in Ethiopia. He fell behind on his utility and cellphone payments and was unable to make his child-support payments.

Applicant worked for a state government from May 2016 to June 2016 and was a federal employee from July to November 2016. He worked for a defense contractor from January 2016 until January 2018, when he began working for his current employer. He satisfied the arrearage on his child-support payments in June 2017. (GX 4 at 6.)

### *Financial Considerations*

The SOR alleges eight delinquent debts totaling about \$47,109. In Applicant's answer to the SOR, he attributed the delinquent debts to his unemployment for nine months, from February to December 2015. The evidence concerning these debts is summarized below:

**SOR ¶ 1.a: deficiency of \$14,285 after repossession of a vehicle.** This account was opened in July 2015. Applicant surrendered the vehicle in April 2016 because he could not make the payments. (GX 6 at 3.) He submitted no evidence of payments, payment agreements, or other resolution of this debt.

**SOR ¶ 1.b: delinquent auto loan placed for collection of \$7,599.** In the November 2018 PSI, Applicant told the investigator that he stopped making payments on this auto loan because he was being assigned overseas and had no need for the vehicle. (GX 4 at 9.) In his answer to the SOR, he stated that this loan became delinquent when he was laid off in December 2015. The credit reports from May 2018 and November 2019 reflect that the last activity on this debt was in December 2016 and that it was referred for collection in December 2017, after he was hired by a defense contractor. (GX 5 at 2; GX 6 at 3.) He submitted no evidence of payments, payment agreements, or other resolution of this debt.

**SOR ¶ 1.c: cellphone bill placed for collection of \$1,777.** This debt was placed for collection in April 2017. In the PSI, Applicant told an investigator that he did not intend to pay this debt because he was informed that it would remain on his credit report even if he paid it. (GX 4 at 7.)

**SOR ¶ 1.d: utility bill placed for collection of \$374.** This debt was placed for collection in March 2016. (GX 5 at 2.) Applicant submitted no evidence of payments, payment agreements, or other resolution of this debt.

**SOR ¶ 1.e: deficiency of \$18,784 after repossession of a vehicle.** This account was opened in July 2015 and charged off in June 2016. (GX 6 at 3.) Applicant submitted no evidence of payments, payment agreements, or other resolution of this debt.

**SOR ¶ 1.f: delinquent rent placed for collection of \$3,139.** The debt was placed for collection in November 2017. (GX 6 at 7.) In the PSI, Applicant told an investigator that he incurred this debt when he broke his lease on an apartment to move to a new job. He also told the investigator that he did not intend to pay this debt because he was informed that it would remain on his credit report even if he paid it. (GX 4 at 8.) In his answer to the SOR, he stated that this was incurred when he was laid off, could not pay his rent, and was evicted.

**SOR ¶ 1.g: medical bill placed for collection of \$587.**Placed for collection in December 2017. In the PSI, Applicant told an investigator that he did not intend to pay this debt because he was informed that it would remain on his credit report even if he paid it. (GX 4 at 8.)

**SOR ¶ 1.h: cellphone bill placed for collection of \$564.** This account was placed for collection in May 2017. In the November 2018 PSI, Applicant told an investigator that the debt arose when he switched cellphone providers and the new provider did not honor its promise to pay off the previous provider. He told the investigator that he did not intend to pay this debt. (GX 4 at 8.) The credit report from May 2018 reflected that the debt was disputed. (GX 6 at 7.) The debt is not reflected in the credit reports from November 2019 and October 2020. (GX 5; GX 7.)

Applicant provided no information about his current income and expenses. In the PSI, he told the investigator that he had never received financial counseling or used any debt-consolidation services. (GX 4 at 9.)

### *Foreign Influence*

Applicant's 36-year-old wife is a citizen of Ethiopia and is a permanent resident of the United States. They married in January 2010, in Qatar, while Applicant was working for a defense contractor in that country. Her green card expires in July 2025. At the time of the PSI, she was a student, not otherwise employed, and had no connections to a foreign government, military or security services, defense industry, foreign movements, or intelligence service.

Applicant's mother-in-law and father-in-law are citizens and residents of Ethiopia. His father-in-law is employed by a commercial bank in Ethiopia. His mother-in-law was employed by the Ethiopian National Intelligence and Security Service as a secretary until she retired recently. (GX 4 at 3.) The record does not reflect her duties as a secretary with any specificity and does not reflect when she retired. Applicant has limited communication with his mother-in-law because her ability to speak and understand English is limited. He provided no information about his contact, if any, with his father-in-law.

I have taken administrative notice that Ethiopia is a federal republic with a generally stable government. The United States first established diplomatic relations with Ethiopia in 1903. The current form of government was established in May 1991, when a coalition of guerilla groups ended 17 years of a Marxist military dictatorship and established a federally organized state with regions based on the ethnicity of the population. The ideology of the government was "developmental democracy," which prioritized economic development over political rights.

In April 2018, a new prime minister released thousands of prisoners, allowed exiled dissidents to return, unblocked hundreds of media outlets, enabled the formation and unfettered operation of new political parties, and undertook revisions of repressive laws. Despite these reforms, ethnic tensions remained. Ethnic violence arose in November 2020, including mass killings of ethnic and religious groups by nonstate actors, causing the U.S. Embassy in Addis Ababa to issue a security alert, warning of military action and heightened instability throughout the country. The U.S. Department of State has issued a Level 3 travel advisory ("reconsider travel") and has assessed Addis Ababa as a medium-threat location for terrorism directed at or affecting U.S. government interests.

The U.S. diplomatic relationship with Ethiopia is focused on four broad goals: (1) protecting U.S. citizens, (2) strengthening democratic institutions and expanding human rights, (3) spurring broad-based economic growth and promoting development; and (4) advancing regional peace and security. The United States is the largest bilateral contributor to humanitarian needs in Ethiopia and provides development assistance to promote democratic, citizen-responsive governance, and broad-based economic growth and prosperity.

Since 2019, Ethiopia has increased its collaboration with the United States on regional security issues. It actively prosecutes crimes associated with terrorist activity. It also provides the United States with information, evidence, and access to witnesses to facilitate investigation of combat terrorist organizations.

Ethiopia has a poor human rights record. However, there is no evidence that it targets the United States for military and economic intelligence or that its government mistreats its own citizens to gain military or economic information about the United States.

## **Policies**

The standard set out in the adjudicative guidelines for assignment to sensitive duties is that the person's loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is clearly consistent with the interests of national security. SEAD 4, ¶ E.4. A person who seeks access to sensitive 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information.

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions 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. The 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 protection of the national security is the paramount consideration. Under AG ¶ 2(b), any doubt will be resolved in favor of national security. The Government must present substantial evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. 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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for assignment to a public trust position.

## **Analysis**

### **Guideline F, Financial Considerations**

The trustworthiness concern under this guideline is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified or sensitive information to raise money. It encompasses concerns

about a person's self-control, judgment, and other qualities essential to protecting classified or sensitive information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and the documentary evidence in the FORM establish the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so; and

AG ¶ 19(c): a history of not meeting financial obligations.

The following mitigating conditions are potentially applicable:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not fully established. Applicant's nine-month unemployment was a condition largely beyond his control. However, he has not acted responsibly. He has taken no significant actions to resolve his delinquent debts. To the contrary, he informed a security investigator that he had decided to not pay them, because he was informed that they would remain on his credit reports even if he paid them.

AG ¶ 20(d) is not established. Applicant submitted no evidence of payments, payment agreements, or other resolution of his delinquent debts.

AG ¶ 20(e) is established for the cellphone debt alleged in SOR ¶ 1.h. It is not established for the other debts alleged in the SOR.

## **Guideline B, Foreign Influence**

The trustworthiness concern under this guideline 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 maybe 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 following disqualifying conditions under this guideline are potentially relevant:

AG ¶ 7(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;

AG ¶ 7(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.

AG ¶ 7(e): shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

AG ¶¶ 7(a) and (e) require substantial evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. See, e.g., ISCR Case No. 12-05839 at 4 (App. Bd. Jul. 11, 2013). “Heightened risk” is not a high standard. See, e.g., ISCR Case No.17-03026 at 5 (App. Bd. Jan. 16, 2019).

When family ties are at issue, the totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). “[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's



spouse.” ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at \* 8 (App. Bd. Feb. 20, 2002); see also ISCR Case No. 09-06457 at 4 (App. Bd. May 16, 2011).

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified [or sensitive] 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, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317 (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields.

Nevertheless, 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. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

AG ¶¶ 7(a) and 7(e) are established. While Ethiopia is a friendly nation and is not known to target the United States for economic or military intelligence, it suffers from ethnic violence and is threatened by criminal activity, kidnapping, and terrorism from neighboring countries in East Africa. The vulnerability of Applicant’s in-laws to coercion, threats, and violence is sufficient to raise the heightened risk that he may be subjected to manipulation, coercion, or intimidation through his wife or his in-laws.

AG ¶ 7(b) is established. There is a potential risk of a conflict of interest between the interests of the United States and the safety and security of his in-laws in Ethiopia. Applicant has not rebutted the presumption that he has ties of obligation to his in-laws.

The following mitigating conditions are potentially applicable:

AG ¶ 8(a): the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

AG ¶ 8(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

AG ¶ 8(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.

AG ¶ 8(a) is not established. Ethiopia is a turbulent country, vulnerable to terrorist and criminal elements in surrounding countries. While it appears that Applicant's mother-in-law is no longer employed by the Ethiopian government, there is no evidence of the extent to which she has continued official or social contacts with employees of the Ethiopian government.

AG ¶ 8(b) is established. Applicant has deep and longstanding relationships and loyalties in the United States. He has was born, raised, and educated in the United States. He served on active duty in the U.S. Navy for almost 16 years and held a security clearance during his Navy service. He has worked for multiple defense contractors since his discharge from the Navy. He has no immediate family members living in Ethiopia or other East African countries. He has virtually no contact with his in-laws in Ethiopia. His wife and three children live in the United States.

AG ¶ 8(c) is not fully established. While Applicant's contact with his in-laws is infrequent, he has not rebutted the presumption that those contacts are not casual.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all relevant circumstances. An 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.

I have incorporated my comments under Guidelines F and B in my whole-person analysis. Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his/her credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). After weighing the disqualifying and mitigating conditions under Guidelines F and B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the trustworthiness concerns raised by his family connections to Ethiopia, but he has not mitigated the trustworthiness concerns raised by his delinquent debts. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with national security to grant him eligibility for a public trust position.

### **Formal Findings**

Paragraph 1, Guideline F (Financial Considerations)	AGAINST APPLICANT
Subparagraphs 1.a-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Paragraph 2, Guideline G (Foreign Influence):	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for a public trust position is denied.

LeRoy F. Foreman  
Administrative Judge